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OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PROTECTION OF FREEDOMS BILL

WRITTEN EVIDENCE

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Written evidence

Memorandum submitted by The Association of School and College Leaders (ASCL) (PF 03)

The Association of School and College Leaders (ASCL) is the professional association for the leaders of secondary schools and colleges. ASCL represents over 15,000 members of the leadership teams of schools and colleges throughout the UK.

Overview

1. ASCL welcomes many of aspects of this bill, and has no opinion on others that are outside its scope. School and college leaders do have concerns about certain aspects of the bill, however, the full implications of which do not seem always to have been considered before it was drafted.

Biometric Data in Schools and Colleges

(Part 1 chapter 2)

2. ASCL opposes this chapter in its entirety. School and college leaders are not aware of the use of this kind of technology causing any problems for any young person, nor of any but very isolated concern about its use amongst parents, which often disappear once they see how the system works in practice. Indeed ASCL members report parents as being pleased with it for the reasons set out below.

3. What is proposed here is a very burdensome and bureaucratic new regulation that will address no significant problem. In short, it is exactly the kind of legislation that the present government promised to repeal, not enact.

4. It would appear that the use of biometric systems for access, library and catering purposes in schools and colleges is being confused with the use of biological material and biometric data in the criminal and terrorism contexts. The biometrics systems in use in education do not precisely identify individuals in the general population in the way that police fingerprinting may do, but merely distinguish between different students well enough to charge the correct ones for their lunch. The information would not be sufficient for investigative, forensic or evidential purposes even if made available for such, as of course it cannot be under the data protection registration of the institution concerned. The data is deleted once the student leaves.

5. The proposed approach is heavy-handed in the extreme. The written consent of both parents will be difficult to obtain in the case one is absent or alienated. Some families that are less well educated or more generally hostile to authority dislike signing any kind of official documents and may well refuse to do so without any concern for the issue in question.

6. The approach is much more severe than that applied for example to religious education, both more sensitive and more important, where parents have a right to withdraw their child but are only required to write if they wish to exercise that right. If it is determined to proceed with the essence of this chapter, *ASCL believes that a similar approach would be far more sensible, giving parents the ability to opt out, rather than requiring schools and colleges to conduct a burdensome exercise of collecting signatures to opt in*. Opt-out systems are perfectly permissible and work well in gaining permission to use photographs of pupils, for instance.

7. Schools and colleges have invested heavily in this technology, and for good reason. The purpose is to prevent fraud, and, in the case of dinner money, for example, intimidation and theft by other pupils. Alternative systems depending on the carrying of a card are clearly more open to abuse, and suffer from the possibility of cards being lost, stolen or simply left at home. Such systems have the value of concealing the source of funding so that children in receipt of free school meals are not singled out from their more affluent colleagues.

8. The confusion and cost of operating two systems to allow for significant numbers of students who, or whose parents, have not opted in will mean that in practice schools and colleges will have to abandon this technology. They would not have invested in it if it had not offered the substantial advantages listed above. These will be lost.

9. Under the terms of this chapter new systems will have to be installed either as an alternative to the biometric system or to replace it. This is not a good time for increasingly scarce public resources to be used to replace perfectly serviceable and indeed preferable systems. Further, many such systems are supplied on lease and involve contracts of some years duration. If these have to be broken there will be further unnecessary costs. Again, if it is determined to proceed with this chapter, *ASCL believes it should apply only to new systems installed after a particular future date*. Where systems have been in place for some time, parents who do not wish their child to participate will have already made alternate arrangements. At the very least, there should be a lengthy lead time to allow existing contracts to expire.

10. It is not clear why schools and further education colleges, respectable and responsible public bodies, are singled out in this chapter. If this data could be misused, it is surely more likely to be so by other organisations than these, and there seems to be no intention to legislate to prevent any other organisations using such systems.

Regulation of Surveillance

(Part 2)

11. Schools and colleges have also invested in CCTV for the protection of their buildings and equipment. This has generally been done on the advice of the police or insurers or both.

12. They have also invested in it for the protection of staff and children. The case of Phillip Lawrence is a reminder of the dangers that teachers in difficult areas face, and CCTV has played a part in a number of cases in which ASCL has been involved in defending against unfair and false allegations. Similarly, the knowledge that CCTV may mean detection has assisted in the prevention of bullying. The Webster case has reminded everyone of the way in which a minor school fracas in an unsupervised area can lead to appalling consequences (*Webster v Ridgeway School*). CCTV can also help to prevent situations arising where an individual teacher is targeted by a class of children with tragic consequences (for example the *Harvey* case at All Saints School, Mansfield).

13. Whilst the provisions in the bill are aimed elsewhere, ASCL seeks reassurance that CCTV systems on educational premises, including those that overlook public places, will not be brought under the regime that is to apply to surveillance in public places.

Safeguarding

(Part 5)

14. ASCL welcomes the simplification of the system for vetting and barring unsuitable people from working in schools, and the removal of the controlled category. However, we have some concerns that staff in FE colleges who may have access to young people as technicians are at present not included in the regulated category. Although they generally work under supervision there are occasions when they do not. A clarification in the new guidance document would be helpful.

15. We also welcome the narrowing of the regulated category to remove from the list governors and inspectors, occasional visitors and supervised volunteers.

16. ASCL has welcomed the proposals to simplify guidance on safeguarding children. However, we would ask that all guidance that concerns schools and colleges should be in a single document that can act as a reference manual rather than separate documents being produced. The Bichard Report drew attention to the fact that had the school been aware of a Home Office circular (Home Office Circular 47/9) the appointment of Ian Huntley would not have taken the route it did. ASCL pointed out in evidence that given the vast number of purely educational guidance relevant to schools it was unlikely that a school would also investigate circulars from the Home Office. We would ask both the Home Office and the DfE to collaborate closely on any guidance arising from this legislation and to make it readily available to schools and colleges.

17. ASCL welcomes the portability of Criminal Record Certificates.

18. ASCL has had serious concerns about the operation of the CRB system which we have also raised in the context of the Education Bill. Members have had careers blighted by the inclusion of allegations that have had no foundation whatsoever, or which arose out of a misunderstanding of a teacher's powers to use reasonable force for lawful purposes. We welcome the opportunity given to an individual to challenge the contents of the certificate before it is released to the employer.

19. For the same reason ASCL also welcomes the tighter standard to be observed by the police and strongly endorse the "reasonably believes" formulation.

20. We have been concerned since we gave evidence to the Bichard Inquiry about the inconsistency of approach to "soft" intelligence by the 43 separate police forces. We welcome the introduction of a code and the provision for the Secretary of State to nominate "one relevant police officer" and would urge that this latter provision is implemented as soon as possible.

March 2011

Memorandum submitted by Claire Sandbrook (PF 04)

Submission to the Protection of Freedoms Bill Committee from Claire Sandbrook, Authorised High Court Enforcement Officer and CEO of Shergroup High Court Enforcement

The Protection of Freedoms Bill—Wheel Clamping and Enforcement Agents

1. Clause 54 of the Protection of Freedoms Bill currently before Parliament states the following with regard to the immobilising of vehicles.

Offence of immobilising etc vehicles

54 Offence of immobilising etc vehicles

(1) A person commits an offence who, without lawful authority—

(a) immobilises a motor vehicle by the attachment to the vehicle, or a part of it, of an immobilising device, or

(b) moves, or restricts the movement of, such a vehicle by any means, intending to prevent or inhibit the removal of the vehicle by a person otherwise entitled to remove it.

(2) The express or implied consent (whether or not legally binding) of a person otherwise entitled to remove the vehicle to the immobilisation, movement or restriction concerned is not lawful authority for the purposes of subsection (1).

(3) Subsection (2) does not apply where—

(a) there is express or implied consent by the driver of the vehicle to restricting its movement by a fixed barrier, and

(b) the barrier was present (whether or not lowered into place or otherwise restricting movement) when the vehicle was parked.

(4) A person who is entitled to remove a vehicle cannot commit an offence under this section in relation to that vehicle.

(5) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine,

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(6) In this section "motor vehicle" means a mechanically propelled vehicle or a vehicle designed or adapted for towing by a mechanically propelled vehicle.

2. This clause has, we would submit, been brought forward primarily to deal with the problem of "cowboy" clampers who clamp people's cars on private land and charge extortionate amounts to release the clamp.

3. However, it may have unintended consequences, as outlined by John Kruse in a recent comment on the LADER (Local Authority Debt Enforcement and Recovery) website.

4. Mr Kruse said as follows:

> As many readers will know, this aims to ban wheel clamping on private land. I think there are a number of potential problems with the clause 54 of the Bill, which deals with clamping, but the key one is this: clause 54(1) will make it a criminal offence to clamp a car "without lawful authority." As some readers will know, I have for a long time questioned the right of enforcement agents to clamp in most cases. The Home Office states that bailiffs have "common law and statutory powers to clamp." This is mistaken. There is certainly no common law power to clamp and very few statutory provisions which could be read as endorsing the procedure. So, it appears that this Bill may have an unintended effect if it passes into law in its present form. Some of you may wish to raise this with the minister or your MP. You may also wish to note that the Coalition will be permitting public responses to this particular piece of legislation.

5. Mr Kruse has long argued that enforcement agents do not have the power to immobilise vehicles they have seized by the application of wheel clamps to the vehicle concerned, and has written a number of articles in the past putting this view forward.

6. Needless to say, operatives within the civil enforcement industry take a contrary view, with a number of articles having been written to contradict Mr Kruse. This position has been backed up by Professor (now Lord Justice) Beatson in his review of bailiff law, conducted in 2000, and legal opinion provided by lawyers at the then Lord Chancellor's Department (now MoJ) in 2002.

7. The argument centres on the interpretation of whether what the enforcement agent is doing amounts to wheel clamping or not.

8. As operatives within the High Court enforcement industry, we would argue that it is not. Wheel clamping takes two forms—it is the practice of attaching a clamp to an illegally or wrongfully (ie without permission) parked car, with the intention of not removing it until a penalty charge for that illegal or wrongful parking plus any other costs charged have been paid; or it is the practice of applying a clamp to a car as a criminal sanction for non payment of a magistrates' court fine, with the clamp being removed once the fine and any other costs incurred have been paid.

9. What we are doing is securing goods legally taken into control by enforcement agents in the pursuit of an unpaid civil court writ or warrant, thereby securing the item taken into control (which in this case just happens to be a motor vehicle) to prevent it being removed, tampered with or destroyed, thereby frustrating the enforcement of a court order. Such "closed possession" is commonplace for goods seized by enforcement agents. It just so happens that in this instance, the item seized and taken into "closed possession" happens to be a motor vehicle, and clearly the most effective way to stop the vehicle being moved, destroyed or tampered with is to immobilise it by way of the application of a wheel clamp.

10. There is clearly a world of difference between the situations outlined above.

11. An issue we would ask to be borne in mind is that if the immobilisation of seized vehicles in this way is made illegal, a likely consequence is that enforcement agents will feel compelled to remove vehicles to a pound prior to sale at auction on the first visit to the debtor's premises. This will have the effect of increasing the costs associated with writ or warrant enforcement substantially—and these costs would have to be passed on to the judgment debtor.

12. We would argue that this difference has already been understood and recognised in other scenarios and regulations. For example, enforcement agents do not need to be licensed by the Security Industry Authority (SIA), the body that is currently responsible for licensing, amongst others, wheel clampers (they are also responsible for licensing door supervisors and security guards)—the SIA having recognised that what enforcement agents do in this situation is not "wheel clamping" in the accepted sense of the phrase but securing goods seized in pursuit of a warrant or writ, and that therefore they do not come within the remit of the SIA for licensing purposes.

13. We would therefore ask that consideration is given by the Committee to clarifying the provisions contained within clause 54 of the Bill, to ensure that what is captured by its provisions and made illegal is the wheel clamping of cars wrongfully or illegally parked on private land but not the seizing of goods taken into legal control by enforcement agents in the enforcement of court judgments.

March 2011

Memorandum submitted by John Kruse (PF 05)

PROTECTION OF FREEDOMS BILL

PART 3, CHAPTER 2—WHEEL CLAMPING

AUTHOR

I have specialised in civil enforcement law for the last 22 years. I have written extensively in the academic and professional press; I have published several books on the subject, most recently *Law of seizure of goods* (Hammicks, 2nd edition, 2009), Powers of distress (Wildy, Simmonds and Hill, 2009) and *Bailiffs' law* (two volumes—*A lawful trespass and Persons of no value?*, Wildy, Simmonds and Hill, 2009). I work as a trainer and consultant in the field and am editor of the periodical *Bailiff Studies Bulletin*. The Bulletin has issued a number of reports and discussion papers over the last six months; I submitted a copy of a report I had prepared upon the practice of wheel-clamping on private land to the Home Office in January.[1]

SUMMARY

The clauses of the Protection of Freedoms Bill, which propose to criminalise vehicle immobilisation, will have two unintended effects:

— they will criminalise most vehicle clamping as used by private bailiffs in the enforcement of debt; and,

— they will not necessarily end "cowboy" enforcement activity as it will still be possible for enforcement against motorists to continue under the guise of levies of "distress damage *feasant*" by the landowner.

Clamping on private land

1. *General comments*. I will not comment at length on many aspects of these proposals as I am sure that many companies involved in this area will do so. I will limit my general observations to the following points:

— *Business impact*—clearly a large number of companies may cease to trade and a large number of employees may lose their employment as a result of this ban. Whilst the prevention of "cowboy" clamping is highly desirable, this seems a disproportionate consequence.

— *New remedies*—private car parking companies are granted a specific power to claim for lost charges against the driver and the keeper of the vehicle. In truth, this is a remedy of very limited utility. I see many clients in my daily advice practice who face threats of court action for unauthorised parking. Claims seem never to be brought because the car parking firms know that the cost and inconvenience of issuing a claim for such a small sum is scarcely ever to be justified by the amounts recovered. Equally, it is not made very clear in the Bill whether the extension of the powers of removal in the Road Traffic Regulation Act will continue to apply solely to police and local authorities, or whether they may be extended to others.

— *Distress damage feasant*—although wheel-clamping is prohibited by the Bill, the levying of distress damage feasant is not. If it is correct to interpret "lawful authority" as including an exercise of a landowner's right of levying distress against trespassers, it would seem that the removal and

[1] *Wheel-clamping—an irregular remedy*, January 2011.

impounding of unlawfully parked vehicles will continue to be lawful. If this is correct, then companies presently operating as wheel-clampers may be able to continue to trade with the necessary changes in equipment and practice.[2]

2. *Statutory remedy.* In light of the last paragraph, I again urge the Government to consider creating a statutory remedy of seizure against trespassing chattels akin to the power to distrain stray livestock found in the Animals Act 1971. If my reading of clause 54 is correct, largely unregulated enforcement may be able to continue, with little guidance on practice, especially charges, to be derived from common law.

Clamping by Private Bailiffs

3. *Lawful authority.* Clause 54(1) of the Bill prohibits clamping "without lawful authority." The explanatory notes to the Bill state that "bailiffs have a mix of statutory and common law powers to immobilise and tow away vehicles for the purposes of enforcing debts (including those arising out of unpaid taxes and court fines)." I am sorry to observe that the Home Office is mistaken as to the extent and nature of bailiffs' powers. The Bill as it currently is written is likely to criminalise the use of clamps by many private bailiffs companies. As I have long argued that clamping by bailiffs in the enforcement of debt is unjustified and wrongful, I am not especially aggrieved by this, but I imagine many enforcement agencies will be and are likely to contact the Home Office to protest. When the Tribunals, Courts and Enforcement Act 2007 is finally brought into effect, it will endorse the use of immobilisation devices by enforcement agencies, but between the current Bill becoming law and that (constantly receding) date, clamping will become unlawful in respect of many debts. If this is the Government's intention, I wish it to be clear about its actions.

4.*Common law rules*. Impounding of goods on the premises where they are seized (contrary to the statement in the explanatory notes) is not lawful at common law.[3] The only exception to this is levies of *distress damage feasant*—which remedy, as I discussed in my recent report, does not easily apply to wheel-clamping and is of no relevance at all to the enforcement of debt.[4]

5. *Clamping under statute*. It follows, therefore, that it is only lawful for private bailiffs to immobilise debtors' vehicles if the statute under which they act explicitly endorses the impounding of the goods in question upon the debtors' premises. My analysis of the situation is as follows:

- impounding on the premises by means of clamps is definitely lawful only for rent arrears and county court judgments because the statute in question explicitly endorses securing the goods on the premises where they have been seized;[5] and,
- impounding on the premises by means of vehicle immobilisation is not permissible in any other cases. This will include levies for income taxes, indirect taxes, local taxes (council tax and NNDR), fines (excepting clamping orders, of course), execution for road traffic penalties and child support maintenance.

6. *Conclusion*. I have discussed these issues at length elsewhere, but I hope that the potential problem will be clear.[6] I have no personal objection to the criminalisation of clamping for private bailiffs as many are using the procedure without lawful justification and have been for many years, but if the Government is unhappy with this possibly unintended result of the Bill, it may wish to amend it.

I hope that these observations may be of some assistance in consideration of these relevant clauses of the Bill.

March 2011

Memorandum submitted by Diane and Duncan Hartley (PF 06)

I am writing to all of you on behalf of myself and my husband, as we do not want the dreadful experience we underwent last evening to be the fate of any other hapless individual in this town. As the Protection of Freedoms Bill is currently in the committee stage in the House of Commons, we are submitting our personal testimony for the Committee's consideration, in order that such practices as were inflicted upon us last night be outlawed.

We would like to express our wholehearted support for Item 54 of this Bill, and our hope that it become law in order to put an end to extortionate, unjust companies such as PCM. We would also hope that "lawful authority" (54.1) is not something which private companies such as PCM would ever have the ability to earn. If there is anything the Committee can do to encourage the passing of this provision within the bill, we would like to express our utmost gratitude in advance.

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2 *Wheel-clamping—an irregular remedy*, January 2011, p 3.
3 M 21 Hen VII fo 39b pl 55; *Peppercorn v Hoffman* (1842) 9 M&W 618.
4 *Wheel-clamping—an irregular remedy*, January 2011, p 3.
5 Distress for Rent Act 1737 s 10; County Courts Act 1984 s 90.
6 See *My Law of seizure of goods*, 2nd edition, Hammicks Law Publishers, 8.2.2, my *A lawful trespass*, Wildy, Simmonds and Hill, 1999 c 8 and my article *Further aspects of impounding distrained goods considered* in Civil Justice Quarterly, vol 18, January 1999, pp 58–64.

Our Experience

Upon returning to the Windsor Riverside Car Park from a concert at Eton College at approximately 22:15, we were horrified to discover a wheel clamp fitted onto our car; my husband had misread the misleading "until 9:00" sign to mean 9pm (rather than 9am), and thus had only paid up until that time. Almost immediately, two young women in an unmarked white van pulled up beside our vehicle, and smugly demanded we pay them a £120 fine for our honest mistake. As it turned out, they belonged to the company PCM, whom we have since discovered is notorious for its use of deception. This was the same company which had inspired such collective public outrage for their practices in Windsor in 2009 that the Windsor town council considered placing an ASBO on this company in response, having no power to outlaw their operation.

In our experience, PCM employed deceptive tactics with us. They offered us a choice in the matter which was tantamount to no choice at all: we could appeal, but according to these women, we had to pay the fine before we could appeal. They also told us that our vehicle would accrue £120 each day, the balance of which we would have to pay should our appeal be unsuccessful. We later found out that this was all incorrect information: there is no fee prerequisite for appeal, and there is no daily accrual of the original fee.

I cannot understand how this type of medieval practice is still allowed in our society. What they were doing to us was tantamount to extortion, and their operation is an unjust, exploitative racket. Any legislation (or lack thereof) which gives a landowner the right to implement such outrageous punitive measures must surely be changed.

We are filing an appeal with the company on the grounds of their deception, but have little hope of it being granted. On behalf of ourselves and others who have suffered such outrageous treatment, I urge you to please pass this Bill; the practices of companies like PCM are an utter travesty and need to be reconciled to the overarching principles of our society.

March 2011

Memorandum submitted by Sharon Vogelenzang (PF 07)

Summary

1. The Protection of Freedoms Bill is meant to restore freedoms. I want to tell you about how my own freedoms were taken away by the police and the Crown Prosecution Service. I want to ask you to help prevent cases like mine by amending the Protection of Freedoms Bill to take the word "insulting" out of section 5 of the Public Order Act 1986.

2. My husband, Ben, and I were prosecuted under section 5 in 2009. All that had happened was that a guest in our hotel had got upset at us during a discussion about religion (which she initiated). The police and the Crown Prosecution Service pursued the case all the way to trial. They actually prosecuted it as a "religiously aggravated" section 5 offence. The judge threw the case out. He seemed to agree that the case should never have been brought. But we lost our business because of the prosecution. And it was one of the worst experiences of our lives.

Our Story

3. Running a hotel was our dream for a long-time. We wanted to provide a place where people would feel welcome and cared for. The business really started to take-off when we contracted with the pain management centre at our local hospital to provide accommodation for people who were coming in for treatment. We received lots of referrals from 2008 onwards—and lots of nice thank you cards afterwards from the people who stayed.

4. One lady referred from the hospital in March 2009 was a convert to Islam. She was not the first Muslim guest we had welcomed into our hotel (which is also our home) and we have always had good relations with local people in the Muslim community.

5. Although she had lengthy discussions with another guest about her faith, we didn't talk with her about her faith, or our own (we are Christians) until the last day of her stay. Previously she had always worn Western dress but on her final day she came to breakfast wearing a long robe. She asked if I knew she was a Muslim and I said I did. She approached me again a few minutes later to raise the subject of her Islamic dress but I was busy emptying the dishwasher.

6. She then initiated another conversation about her religion with my husband Ben. He tried to make light of it but the lady appeared determined to keep the conversation going. She did so by attacking the Christian faith, saying, "Jesus was just a minor prophet and the bible is not true". I joined the conversation saying "we would have to disagree with you there as we are Christians."

7. She referred again to the issue of Islamic dress and I said I couldn't understand why she would want to put herself into bondage. She became angry and said, "I knew this was going to happen" and walked off.

8. She again raised the issue of religion with Ben and with another guest and again became angry and walked off.

9. She left that day with the other guests, most of them exchanging the usual pleasantries and, apart from feeling a little bruised by the encounter, we didn't give it any more thought until we were told she had made a complaint to the police.

The Police Handling of Our Case

10. We were asked if we would voluntarily attend the police station for an interview, which we did. We got to the police station at 10 in the morning and left at about four o'clock. We were interviewed separately.

11. I went into a small, white room with a table and four chairs. One of the two officers took notes and the interview was recorded on tape. It was a very distressing experience. Neither of us had ever been in trouble with the police before.

12. The complainant said we had been shouting and whirling around and insulting her. None of this was true. But the police charged us under section 5 of the Public Order Act. They said it was religiously aggravated. If we had been convicted we could have been fined up to £2,500 each.

13. At the trial Ben was put on the stand first, and I saw all the stress of the previous eight months coming out as he gave his evidence. He was distraught afterwards. He sat in court crying his eyes out.

14. The court was told my husband offended the lady by calling Mohammed a warlord. He never said that. But Hugh Tomlinson, QC, our barrister, said that even if he had, "The fact that someone is upset or offended is not a reason for criminalising the speech used by the other person".

15. Thankfully, the judge reached his decision very quickly. He said the evidence against us was unreliable and implied the police should have handled matters differently and that the case should never have been brought. But the police stood by their decision, issuing a public statement after the hearing, defending themselves.

16. After the publicity of the trial we received messages from around the world, most of them sympathising with us, but some of them threatening violence against us, including some death threats. We reported these threats to the police. They did follow a couple of them up; one led to a reprimand of a gentleman and a small fine (he had apparently never done anything like that before but he was influenced by the media's negative reporting); the other one, we were told by the investigating Police Officer that this person was already under investigation in another City so, disappointingly for him, he said was told by the CPS that he couldn't take this any further for us.

The Collapse of Our Business

17. The police had told the hospital about the charges against us and the hospital had stopped referring people to us. Since 80% of our business came from them, our business collapsed. We had to sack staff and we and other family members had to work unpaid to try to keep the business afloat. We tried to persuade the hospital to refer people to us again after we were cleared. After all, the court had declared us innocent. But they wouldn't.

18. Our hotel business closed in September 2010 and we re-opened the premises as a social enterprise, aiming to provide respite care, a contact centre and other services for the local community. As I've said, we are Christians and we trust God to bring good out of a bad situation.

Conclusion

19. We hope you can see that the police made a mistake in prosecuting us under section 5. But we understand the pressure they feel under in these controversial cases. We've spoken out publicly about the fact that we believe section 5 is too broad. By making "insults" criminal, it puts the police in a difficult situation when someone claims to have been insulted by a conversation or a disagreement.

20. Even though we were acquitted we went through a terrible ordeal which cost us our business. We lost our freedom of speech the day we were charged, because it makes you afraid to say things even though you have every right to say it.

21. We should have freedom to disagree without the police having to get involved. It would be better for the police, and better for people like us, if Parliament made clear that feeling insulted by someone does not mean they have committed a criminal offence against you.

22. I understand that the Public Bill Committee calls witnesses. I would be willing to come and speak to the Committee if you would like to hear more about what happened to us. We were helped through our difficulties by The Christian Institute and especially by Mike Judge their Head of Communications. He was present throughout the trial and was closely involved in everything and he can explain very clearly what happened. He can also give evidence about other cases where section 5 has been misused. If I am called to give evidence to the Committee I would like it very much if he was able to accompany me.

March 2011

Memorandum submitted by Rob Dawson the Institutional Compliance Officer at the University of Chester (PF 08)

PAPER TO THE PUBLIC BILL COMMITTEE REGARDING THE PROTECTION OF FREEDOMS BILL, CLAUSE 77: RESTRICTION ON INFORMATION PROVIDED TO REGISTERED PERSONS

"Omit—

(a) section 113A(4) of the Police Act 1997 (requirement to send copy of criminal record certificate to registered person), and

(b) section 113B(5) and (6) of that Act (requirement to give relevant information and copy of enhanced criminal record certificate to registered person)."

1. The following comments are based upon experience gained in my day to day work which has, since the inception of the CRB, involved overseeing CRB checking of students at the University of Chester. These experiences are further supplemented by my work with the CRB and ISA as Chair of the CRB's Education Consultative Group. I have also been a member of a Universities UK/GuildHE working party which in conjunction with the DfE and BIS, developed guidance for universities on the Vetting and Barring Scheme. I am a regular speaker to Higher Education groups, such as the Academic Registrars Council, on the implications of CRB and VBS requirements and their effect on Higher Education.

2. On the whole the proposals detailed in both Home Office reports, published February 2011, following the reviews of the VBS and the criminal records regime, which have influenced the Protection of Freedoms Bill, are welcome. The recommendations should promote a more reliable, responsive and user-friendly CRB disclosure and checking process, and help avoid, for example, undue and unexplained delay in processing disclosures to which the current system is prone.

3. My main concern relates to Clause 77, which responds to Recommendation 4 of Sunita Mason's report, recommending that a new CRB procedure is developed so that the criminal records certificate is issued directly to the individual applicant, who will be responsible for its disclosure to potential employers and/or voluntary bodies. Ms Mason's report acknowledges that she gave this issue a great deal of thought and consulted widely. I would, however, hope that whilst the recommendation is accepted, further thought can be given to the adoption of an approach which would ease the potential administrative burden that clause 77 will cause for Registered Bodies who initiate CRB checks, in particular those Registered Bodies who are likely to be undertaking a large number of checks in short periods of time, Higher Education Institutions being a good example of this group.

4. The University of Chester undertakes approximately 1,700 CRB checks per annum, chiefly in respect of applicants aged 18–19. Most checks are on students who enrol on programmes of study that involve regulated activity, eg initial teacher training, nursing, midwifery and social work, and most are undertaken between August and September, shortly before the commencement of the academic year for entry to the programme. Approximately 1,000 CRB checks were accordingly undertaken by the University of Chester for September 2010 entry across the programmes detailed above. We do not undertake repeat checks. The current system at Chester is in use in other universities, so that once a firm and unconditional offer of a place has been given by the Higher Education Institution and accepted by the applicant (usually by the third week in August) they are contacted and requested to complete a CRB form. Applicants are then invited to attend a CRB signing session (fourth week in August or first week in September) where their identities are checked face to face and the CRB form is signed and countersigned. The form is dispatched to the CRB immediately following the session and once the Higher Education Institution's copy of the disclosure is received (usually four to six weeks later) the number is noted on the student record. By this time the applicant has become a student, attending Higher Education and living in accommodation associated with his/her study term-time address. However, the student's copy of the CRB disclosure will have been sent to their home address, which could be anywhere in the UK. Once its copy of the disclosure has been received, no further action is necessary on the part of the Higher Education Institution.

5. Clearly, Recommendation 4 must be considered within the context of the wider proposal contained within the two reports and relevant clauses of the Protection of Freedoms Bill. Given that, under clause 78, CRB checks may only be undertaken on persons aged 16 and above, alongside the scaling back and redefining of "Regulated Activity", the number of persons aged 18 or 19 in possession of a CRB check, prior to commencing Higher Education, can be anticipated to be substantially reduced. Therefore, their commencement on a Higher Education course which includes regulated activity will be the occasion when these persons aged 18 or 19 initially apply for the portable disclosure envisaged by clause 80 of the Bill, applying through their chosen Higher Education Institution as a Registered Body.

6. In the case of an employer or voluntary organisation who may undertake a number of checks throughout the year, or a large voluntary organisation with a large number of local offices, for example, the Scouts, the burden of asking the handful of applicants whether their disclosure has been received will be limited and clearly manageable. By contrast, because clause 77 will no longer require disclosures to be sent to Higher Education Institutions, substantially increased follow-up work will be required of institutions which offer courses similar to those listed above, thereby increasing workload and administrative processes away from core functions at a time of severe financial exigency.

7. The response to a recent Freedom of Information Act request to the CRB, published under the CRB's disclosure log,[7] shows that 110 Higher Education Institutions made a total of 159,802 disclosure applications during 2010. Seventy-three of these institutions made at least 1,000 applications, with the "top" nine making over 3,000 applications. The resources to be expended in following up a group of over 1,000 applicants to establish whether they have received disclosures and their contents will clearly be substantial and, it is suggested, inappropriate.

8. Recommendation 4 was no doubt not intended to have this impact and it may be that the effect on Higher Education was not considered in the formulation of the recommendation. Indeed, it is noted that Ms Mason did not undertake any face to face discussions with representatives from universities in her review and that the report refers to employers and voluntary organisations. The Safeguarding Vulnerable Groups Act 2006 went some way to recognising the difficulties and experiences of Higher Education in defining universities as "personnel suppliers". Moreover, whilst interested parties were able to make written submissions during the review process for both the VBS remodelling and criminal records regime there did not appear to be any indication that Recommendation 4 was a possibility.

9. During the CRB/ISA consultative group meetings which included representatives from the Home Office, Department for Education, ISA and CRB regarding implementation of the VBS, long discussions took place when it was revealed that Registered Bodies would not be notified that the VBS registration notice had been issued to the applicant for VBS registration. This matter was then reconsidered and amended. This reconsideration by the relevant Government Departments, the ISA and CRB suggested that there was a recognised need for Registered Bodies to be informed of an individual's initial registration. Of course in the changed circumstances of the proposals, the ISA registration or continuous monitoring aspects of the VBS will not be implemented.

10. It is not the intention of this response to dismiss either clause 77 or Recommendation 4; Recommendation 4, in particular, has merit for the reasons given in the report. However, where a CRB disclosure takes a considerable period of time or a Higher Education Institution is unable to obtain a copy of the disclosure from a student for any reason, including, perhaps, that the student is unable to retrieve his or her own copy, the impact on the student could be the loss of a university place for the intended year of entry. The impact on the Higher Education Institution may be loss of income which will result because institutions are unable to delay the start date of a course for individual students. Where a student misses the first few weeks of a course it becomes increasingly difficult for that student to catch up. Entry deferred until the following September is the result, as it is unlikely that either Higher Education Institutions or their placement partners would be prepared to allow an individual to engage in Regulated Activity in the absence of completion and sight of a satisfactory CRB disclosure.

11. To alleviate these difficulties, I would invite consideration to be given to the CRB issuing the Registered Body with a letter, sent at the same time as the disclosure is dispatched to the applicant, stating that a disclosure (including Number) has been sent to the applicant at a particular address. This would be neither costly nor burdensome for the CRB and would enable Registered Bodies who undertake a large number of checks at particular periods in time to know whom to contact for sight of the disclosure document. This proposal accords with Recommendation 4 of Ms Mason's report.

12. I would take this opportunity of thanking Committee Members for their consideration of this matter.

March 2011

Annex A

List of Higher Education Institutions and Number of CRB Applications made During 2010

Organisations Name	*Total 2010*
Anglia Ruskin University	4,237
University of Hertfordshire	4,151
Edge Hill University	3,830
Sheffield Hallam University	3,800
University of Cumbria	3,507
Canterbury Christ Church University	3,284
Manchester Metropolitan University	3,092
The University of Nottingham	3,092
University of Plymouth	3,026
The University of Manchester	2,983
Birmingham City University	2,719
University of Leeds	2,719
University of East Anglia	2,658
University of the West of England	2,466
University of Central Lancashire Higher Education Corporation	2,443
University of Birmingham	2,383

[7] http://www.crb.homeoffice.gov.uk/your_rights/freedom_of_information/foi_log.aspx

Organisations Name	*Total 2010*
University of Southampton	2,314
The University of Wolverhampton	2,282
Leeds Metropolitan University	2,191
London South Bank University	2,189
Liverpool John Moores University	2,158
University of Teesside	2,090
University of Northumbria at Newcastle	1,994
University of Bedfordshire	1,947
University of Brighton	1,917
Newcastle University	1,884
University of Warwick	1,878
University of Huddersfield	1,855
University of Hull	1,801
University of Worcester	1,741
The Nottingham Trent University	1,699
University of Greenwich	1,694
Oxford Brookes University	1,687
University of Chester	1,655
Institute of Education University of London	1,635
Middlesex University	1,634
University of Sunderland	1,617
University of East London	1,586
Kingston University	1,576
The University of Northampton	1,555
Coventry University	1,544
University of Derby	1,519
University of Salford	1,519
University of Sheffield	1,495
The University of Liverpool	1,432
Newman College of Higher Education	1,396
University College London	1,396
Cardiff University Registry	1,380
University of Portsmouth	1,348
The University of Cambridge	1,315
University of York	1,283
University of Wales Institute Cardiff	1,266
Bangor University	1,262
University of Glamorgan	1,224
University of Gloucestershire Education	1,222
University of Exeter	1,176
De Montfort University	1,174
University of Bristol	1,141
University of Chichester	1,141
Thames Valley University	1,135
Bishop Grosseteste University College Lincoln	1,131
City Community and Health Sciences, City University	1,120
University College Plymouth St Mark and St John	1,111
Staffordshire University	1,105
The University of Reading	1,095
Bournemouth University	1,083
University of Oxford	1,081
University of Bradford	1,074
University of Leicester	1,066
University Campus Suffolk	1,043
University of Essex	1,040
Daa Keele University	1,023
Open University	1,000
York St John University	996
University College Birmingham	992
University of Surrey	967
Bath Spa University	966
Swansea University	960
London Metropolitan University	958
University of Durham	917
Brunel University	889
Goldsmiths College University of London	860

Organisations Name	*Total 2010*
The University of Bath	832
University of Wolverhampton School of Education	824
Leeds Trinity University College	793
The University of Winchester	783
University of Wales Newport	770
University of Lancaster	716
Queen Mary University of London Barts	701
Swansea Metropolitan University	661
St Georges University of London	643
University of Lincoln	625
University of Kent at Canterbury	550
University of Sussex	549
Aston University	540
Buckinghamshire New University	524
The University of Bolton	517
Glyndwr University/Prifysgol Glyndwr	508
University of Wales Trinity Saint David	483
Durham University Student Community Action	465
Department of Health Sciences University of York	438
Loughborough University	400
University of Bristol Union	365
Cambridge University Students Union	352
Aberystwyth University	335
Keele University	303
Leeds University Union	302
City University	240
University of The Arts London	235
Cardiff University HR	228
Guild of Students the University of Birmingham	221
University of Exeter Students Guild	217
University of Oxford Department of Education	214
Writtle Agricultural College Higher Education Corporation	194
Roehampton University	173
Hull University Union	129
Sheffield Hallam University Union of Students	83
De Montfort University Students Union Limited	75
Total	**159,802**

Memorandum submitted by Andy Robertson (PF 09)

SUMMARY

Section 5 of the Public Order Act is too vague and is being used wrongly to interfere with the legitimate work of Christian street preachers. I have experienced this myself. Police officers tried to use it to stop me preaching in Gainsborough after an unsubstantiated complaint. The problem seems to be that the wording of Section 5 is too broad and vague. I urge the Committee to look at the proposal from the Joint Committee on Human Rights to amend Section 5 so that instead of outlawing "threatening, abusive or insulting" words, it focuses on "threatening or abusive" words and no longer covers the vague and subjective idea of "insult".

1. My name is Andy Robertson and I have been an open air preacher with the Open-Air Mission (OAM) for over 12 years.

2. OAM was established in 1853 and is a respectable, mainstream evangelical organisation. We employ 13 open-air preachers throughout Great Britain. All our preachers receive training and together we work hard to present the gospel in ways that people can relate to and without causing unnecessary offence.

3. For many years we have done our work with little difficulty. But in recent years, quite a few of our preachers have been told by police that they are somehow breaking the law. Often, the police cite Section 5 of the Public Order Act. But they are not applying it correctly. This is borne out by the fact that not one of our preachers has ever been prosecuted, let alone convicted, under Section 5. But when a police officer tells you to stop preaching and claims you are breaching the Public Order laws, it is very intimidating, even if you know they are mistaken.

4. OAM national training conferences used to just focus on theology and ways of being more effective. But in recent years we have had to invite lawyers to come and tell us about our legal rights when we are on the streets. We shouldn't have to do this. I urge the Committee looking at the Protection of Freedoms Bill to consider amending Section 5 to stop the current confusion.

5. I preach in various places but I'd like to tell the Committee about one experience I had in Gainsborough. I go there once a month and preach for an hour in the marketplace.

6. One day I got a letter from the local council, West Lindsey District Council, telling me they wanted me to stop preaching. One councilor in particular had taken a dislike to my message. But I just preach the message of mainstream Christianity. I like to think I have a fairly relaxed and friendly style. I don't single people out or shout at people (although the voice is raised for the Gospel to be heard). I often use a display board like you would see in a Sunday School.

7. The Council suggested I was breaking some kind of byelaw. I subsequently had several exchanges with them but no one could ever show me which law it was or what it said, that I had supposedly broken.

8. I was concerned someone might make an allegation about the content of my preaching so I started to record myself when I went out preaching.

9. One day I went into Gainsborough to preach as normal and two police officers asked me for a word. I kept the recorder running, (I had mentioned during the conversation that I had recorded what I had preached but I don't think they heard that) so I have a record of the conversation. The officers were perfectly friendly, but they said the Council had told them I wasn't allowed to preach there with a display board. They said it was a council byelaw but they didn't know which one or what it said.

10. When I asked them to specify which one they changed tack and said they were moving me on because I was "causing offence" to people around me. When I asked why, they said I had been making homophobic comments. I was absolutely stunned because I hadn't mentioned homosexuality at all.

11. I asked what they would do if I refused to leave with the board and they said they would arrest me for breach of the peace. I agreed to move the board but I said that I would continue to preach. I told them the Council had already admitted they could not stop me from preaching.

12. The officer insisted that there were claims that my preaching was homophobic. I said this was untrue and told them I had recorded my preaching to prove it.

13. I wanted to make it clear that I could still preach. After all, I have the right to free speech just like everyone else. I also pointed out that, even though I had not mentioned homosexuality, it was not a crime to say that homosexuality is a sin. The officer said, "That's probably going to fall under section five of the Public Order Act." I told him that was not right and told him that I had a copy of section five with me. (This was because of the teaching and advice we had received at our conferences about our legal rights. I also had a copy of a written legal opinion that OAM had obtained and issued to all its workers.)

14. The officer replied, "Well, as I understand section five of the Public Order Act that would cause harassment, alarm or distress to people. And if you're saying that's a sin, and if I was gay, I'd be quite offended by that."

15. He kept saying that there was "a fine line" between what I could and could not say but without telling me exactly what it was. As a law-abiding citizen this didn't really help me to know how to keep on the right side of the law.

16. I pointed out that people passing by sometimes swear at me, which definitely can be prosecuted under Section 5, but no-one ever seemed interested in enforcing the law against those people.

17. All in all it was a very disturbing experience. They hadn't clarified the complaints from the person. They just seemed to think that because someone had claimed they felt offended that was enough for them to use Section 5 to silence me. They put all the pressure on me as if I had done something wrong. It was very unfair. I should not have to live with the real possibility or fear of being arrested just because someone takes an opposing view to me or me to them, for that matter.

18. I respect the police. They have a hard job to do. They should not have to waste their time with people like me who haven't done anything wrong.

19. Section 5 is obviously difficult for police officers and citizens alike to understand. It is too vague. The inclusion of "insulting" words within its scope seems to make it hard for police to know what to do when someone claims to have been insulted by someone else's opinion. I hope Parliament will use the Protection of Freedoms Bill to change it to make it more certain and to protect freedom of speech.

March 2011

Memorandum submitted by Girlguiding UK (PF 10)

1. Girlguiding UK is the UK's largest voluntary organisation for girls and young women, with more than half a million members and recognised volunteers. Over a third of girls and young women (aged 7–21) are involved in guiding, or have been in the past and almost half of all the women in the UK have been involved in guiding at some stage in their lives. We run Rainbows, Brownies, Guides and Senior Section, enabling girls and young women to develop their potential whatever their ability or background. We are striving to offer new opportunities to a broad diversity of communities through our expanding network of 60,000 trained volunteer Leaders.

2. Girlguiding UK is one of the organisations leading the way in ensuring the continuing development of good practice in child protection issues. We support the continuation of free Criminal Record Bureau checks for volunteers. Such checks are in addition to our own stringent procedures to ensure the protection of girls and young women in our care.

3. Girlguiding UK uses a bulk system for CRB disclosure applications that is completely electronic. New Girlguiding UK volunteers who are required to undergo a CRB check fill in an online form that asks the same questions as the standard CRB questionnaire. A coding system is then used to transmit this information to the CRB system. We find this works very well from both a volunteer and a staff perspective.

4. We would like to reiterate that in our experience the requirements to undergo a CRB check, along with Girlguiding UK's own stringent checks to ensure the protection of the girls and young women in our care, does not deter potential volunteers. We support the highest standards of child protection within the voluntary sector and seek to lead the way in ensuring the continuing development of good practice in child protection issues.

5. *Clauses 63–63*: We welcome the introduction of a distinction between supervised and unsupervised access to young people which is particularly relevant to Girlguiding UK when our groups have occasional visitors or someone visits a group to see if they would like to volunteer on a regular basis.

6. *Clause 71*: We believe both the proactive and reactive options for informing bodies providing regulated activities about whether a person is barred would be effective. The reactive option would be preferable for Girlguiding UK because around 8,000 volunteers both leave and join the organisation every year.

7. *Clause 77*: Girlguiding UK is strongly opposed to only the applicant receiving the certificate for the following reasons:

(i) This clause would reduce the number of people volunteering. If a prospective volunteer has a previous criminal history they may not want to show it to a local Guiding Commissioner who may be known to them. They are likely as a result not to choose to volunteer, even if their criminal history would not prevent them from volunteering with Girlguiding UK.

(ii) If a prospective volunteer did choose to show a Guiding Commissioner, who are themselves volunteers, a certificate with offences recorded it is likely that they would not have enough knowledge of the law to interpret the information. This puts far too much responsibility on Commissioners who may leave because they do are unable to handle the pressure of taking these decisions without the necessary expertise or support. There are over 4,000 local Commissioners so it is not feasible to train and support all of them to make sensitive judgements about whether a past offence was a risk to young people and how to mitigate those risks.

(iii) If only the applicant received the certificate and showed it to their local Commissioner who made a decision about their suitability to become a volunteer then these decisions would vary depending on who took the decision. Girlguiding UK uses an e-bulk system so very few certificates are sent to the headquarters but those that are will be considered by trained staff that can make a risk assessment and, equally importantly, put support measures in place for the volunteer if needed.

(iv) There is unsubstantiated evidence that CRB check stop people from volunteering but in Girlguiding UK's experience this is not the case.

(v) We would recommend that those applying for a CRB check for paid work receive only one certificate but that the two certificate system stays in place the voluntary sector for the reason outlined above.

8. *Clause 80*: Girlguiding UK strongly supports a procedure to enable continuous updating of checks. However, we would like to see confirmation that these would remain free of charge for the voluntary sector.

March 2011

Memorandum submitted by the European Secure Vehicle Alliance (ESVA) (PF 11)

SUMMARY

1.1 Whilst the general thrust and approach of the Bill are well founded, ESVA strongly recommends that action must be taken to significantly upgrade the regime associated with the production and distribution of vehicle number plates. Failure to do so will limit the efficacy and ultimately public acceptance of the measures being undertaken to establish Automatic Number Plate Recognition (ANPR) across the United Kingdom.

INTRODUCTION

2.1 My comments are influenced by three discrete experiences. Most importantly I have served as ESVA's executive director—an associate parliamentary group—since its formation in 1992. ESVA focuses on vehicle related crime and disorder and on building the cohort of compliant motorists and has considerable expertise regarding ANPR.

2.2 Secondly, I have been involved in policing as a citizen since 1994 and currently am vice-chairman of my local Neighbourhood Action Group but also served as an independent member of Thames Valley Police Authority from 2005–09. And thirdly, I have developed a keen interest in the education and development of young people and have long experience of school governorship and youth club management. From 2007 to the present time, I have served as safeguarding manager for Buckinghamshire County Rugby Football Union.

DISCUSSION

3.1 I applaud the overall thrust of the Bill and judge that my experience and concerns have been encapsulated well. The proposed changes in the scope of the Vetting and Barring Scheme are extremely welcome and will provide a welcome stimulus to the recruitment of volunteers across many aspects of community involvement.

3.2 ESVA's involvement with ANPR has been considerable and a comprehensive briefing was written for parliamentarians in Autumn 2009 and is attached. The Bill addresses effectively many of the issues raised in the briefing but there is one critical matter, namely the inappropriateness of the UK's current regime to manufacture and distribute vehicle number plates, which does warrant government attention.

3.3 The scale of the ANPR camera network is now significant, providing in excess of 10 million reads per day and certainly justifies parliamentary attention to ensure that concerns regarding oppressive surveillance are satisfied. ANPR's value in meeting society's expectations to reduce the threats associated with inappropriate use of vehicles is based on the integrity of the data that it analyses—namely a vehicle's number plate.

3.4 In ESVA's view—the United Kingdom is now in the enviable position of having developed the most comprehensive ANPR network in the world—but perversely has perhaps the most ineffective vehicle number plate manufacturing and distribution regime in the world. A reasonable assessment would be to accept that 1% of vehicle number plates are non-compliant in some way and as a result could raise an alert on the national ANPR infrastructure. One might consider that 1% non-compliance is acceptable—but this constitutes over 300,000 vehicles and could generate in excess of 100,000 alerts per day on the national ANPR system thus adding considerable clutter on a system which should be finely tuned to highlight vehicles of genuine concern. Failure to address this "clutter" will prejudice the general public's perception of ANPR's value if it fails to act effectively and also captures compliant motorists within enforcement regimes that should only be applied to non-compliant motorists.

3.5 At the peak of vehicle crime in the mid 1990's—the Association of Chief Police Officers (ACPO) presented a plan to the Home Office with 14 recommendations to reduce vehicle crime and ESVA has maintained a keen interest in their proposals since that time. One recommendation was the adoption of the Swedish method of number plate manufacture and distribution—they have one central supplier of security printed number plates linked to their equivalent of the DVLA which has been operating successfully since 1972.

3.6 The United Kingdom has 40,000 suppliers of number plates and little control of what is becoming to be regarded as a commodity as are batteries and windscreen wipers. And yet the UK motorist is charged at least the equivalent of a 50% premium for a set of plates versus the price charged to Swedish motorists.

3.7 Sweden has a reputation of being an international leader in road related issues—seat belts were adopted in Sweden 25 years before legislation in the UK—and on such a basis—a new number plate regime should have been implemented in 1997 in the UK—and would have happened if government had adopted the ACPO recommendation.

3.8 The Vehicles (Crime) Act was enacted in 2002 and made minor amendments to the UK's number plate regime in establishing a register of suppliers but has in reality made no impact on the integrity of the system which has also been weakened by the growth of internet suppliers.

3.9 A study of the number plate regime across the European Community indicates that the majority of members operate a single source supplier of number plates attuned to the Swedish model and most other countries where there is a strong regional governance structure, eg France, Germany and Holland, also have rigorous regimes in place which aim to give all number plates a high degree of integrity.

3.10 Most countries now consider number plates to be securely produced national documents with a direct link to the national vehicle registration authority whilst the UK regime currently fails absolutely to meet either of these criteria.

March 2011

Annex 1

AUTOMATIC NUMBER PLATE RECOGNITION (ANPR): MAXIMISING ITS POTENTIAL

1. Executive Summary

ANPR continues to develop its effectiveness but is now at a stage in its evolution where there needs to be a fundamental review of its use and governance. Ideally, this should be within a framework that includes all other types of camera-based technology.

The Home Office in its recent consultation on the Regulation of Investigatory Powers Act (RIPA) 2000 and the House of Lords Select Committee on the Constitution (HoL SCC) in its report, *Surveillance: Citizens and the State*, would both benefit by adopting a wider strategic and contextual framework.

Surveillance is regarded by both RIPA and HoL SCC as their primary focus but attention also needs to be given to database management and the promotion of greater citizen compliance.

There should be an acceptance that issues around the privacy of the individual and surveillance can be complex. However, management and development of ANPR should be simplified by the adoption of enhanced, proven vehicle number plate manufacture and distribution systems used in other European countries such as Sweden and Norway.

Even though ANPR has already made a measurable contribution to policing, its potential to add further value is significant. Camera technology continues to improve as should database accuracy, analysis and management.

ANPR's policing spectrum is extremely wide in its ability to address terrorist threats to local neighbourhood issues associated with non-compliant vehicles. This ubiquity presents policing teams and their partners with a challenge in determining priorities whilst there is also a shift in operating methods as "hits" will now be available from a national data centre whilst previously 'hits' were obtained and assessed by operating road-side units.

2. Introduction

This broad review seeks to explore the progression of ANPR over the past 33 years and help shape its future development by reflecting on what lessons can be learned to date from its own and related technologies. The challenges that ANPR faces will be described in the four following areas :

(i) current and proposed legislation;

(ii) views and concerns related to surveillance and data protection expressed by the general public, public servants and campaigning groups;

(iii) appropriate governance; and

(iv) potential impact on policing strategies and operating practices.

Automatic Number Plate Recognition (ANPR) is a mass surveillance method that uses optical character recognition to read the licence plates on vehicles. Modern cameras are capable of reading one plate per second on vehicles travelling at up to 100mph (160 km/h) and a UK data centre has recently been established by the police with the capacity to store 50 million reads per day.

The History of ANPR.

ANPR was invented in 1976 in the UK at what was then know as the Police Scientific Development Branch (PSDB) (now titled Home Office Scientific Development Branch) and the first arrest due to a detected stolen vehicle was made in 1981.[8]

Provisional Irish Republican Army (IRA) terrorist bombings in the City of London resulted in the establishment of the "ring of steel" in 1993—a surveillance and security cordon using initially CCTV cameras. In 1997, ANPR cameras, linked to police databases, were fitted at entrances to the ring of steel and gave feedback to monitoring officers within four seconds.[9]

[8] http://en.wikipedia.org/wiki/Automatic_number_plate_recognition

[9] Coaffee, Jon (2004) *Rings of Steel, Rings of Concrete and Rings of Confidence: Designing out Terrorism in Central London pre- and post September 11th*, *International Journal of Urban and Regional Research*, Vol 28 Number 1 2004.

Such a strategic approach was also interpreted as a traffic management strategy and proved to be the testing bed prior to the introduction of the London Congestion Charge in 2003.

In October 2002, the Home Office Police Standards Unit (PSU) and the Association of Chief Police Officers (ACPO) helped introduce dedicated intercept teams using ANPR in nine police forces.

A series of successful trials, titled "Laser 1", "Laser 2", "Laser 3" and "Laser 4" resulted in all forces having the ability to operate ANPR generated response teams by 2006. Also, provision was also made for the development of a National ANPR Data Centre (NADC) and a Back Office Facility (BOF) system providing ANPR data storage and analytical tools for all forces in England and Wales.[10]

It was envisaged that such facilities would be delivered in 2007 but the national infrastructure capability is becoming operational in 2009. The NADC currently receives between eight to 10 million number plate reads every day but the system has been designed to have the capacity to store 50 million reads a day.[11]

The National Policing Improvement Agency (NPIA) agreed to take responsibility for the delivery of the National ANPR Infrastructure in 2007. More recently, a wide-ranging Police National ANPR programme has been established, led by the NPIA, to deliver the ACPO Strategy on ANPR. This is managed by a Board comprising NPIA, ACPO and APA (Association of Police Authorities) membership and covers all aspects of technology, policy and standards development.

3. Current and Proposed Legislation

Legislation always follows technological and societal advances and it is a challenge for data protection authorities to keep pace with these advances and apply legislation and develop policy in rapidly changing circumstances.[12] (Ref 5)

ANPR technology and its usage has yet to attract specific legislation and to date has generally been linked to CCTV legislation as and when appropriate.

However, the recent Home Office public consultation paper (Regulation of Investigatory Powers Act 2000 (RIPA): *Consolidating Orders and Codes of Practice*, April 2009) does make specific reference to ANPR in the area of overt and directed, covert surveillance situations, as described in the two paragraphs and examples that follow:

> Para 2.28: "The use of overt CCTV systems by public authorities does not require authorisation under the 2000 Act. Members of the public will be aware that such systems are in use and their operation is covered by the Data Protection Act 1998 and the CCTV Code of Practice 2008. Similarly the use of ANPR systems to monitor traffic flows or detect motoring offences does not require an authorisation under the 2000 Act. The use of ANPR in this manner will obtain personal data through capture of the vehicle registration number but the use of such systems is also conducted in accordance with the framework of the Data Protection Act 1998."

Example

There may be circumstances where overt surveillance equipment, such as town centre CCTV systems or ANPR is used to gather information as part of a reactive operation (eg Attempt to identify offenders for criminal damage offences in a town centre or disqualified drivers). This may not necessarily amount to covert surveillance if the persons subject to the surveillance are aware that it is taking place. Use in these circumstances is unlikely to interfere with Article 8 rights under the European Convention of Human Rights (ECHR) and is generally no more than an intelligence driven use of crime prevention and detection capability of CCTV or ANPR.

> Para 2.29: "However, where CCTV or ANPR systems are used in a covert and pre-planned manner for such surveillance of a specific person or group of people, a directed surveillance authorisation should be sought. Such covert surveillance forms part of a specific investigation or operation and may result in the obtaining of private information about a person (namely, a record of their movements and activities) and therefore falls properly within the definition of directed surveillance. The use of the CCTV or ANPR system in these circumstances goes beyond their intended use for the general prevention and detection of crime and protection of the public."

Example

A local police team receive information that an individual suspected of committing thefts from motor vehicles is known to be in the town centre area. A decision is taken to use the town centre CCTV system to conduct surveillance against that individual such that he remains unaware that there may be any specific interest in him. The targeted, covert use of overt town centre system to monitor and/or record that individual's movements should be the subject of a directed surveillance authorisation.

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[10] PA Consulting—*Police Standards Unit—Evaluation of ANPR 2006–07* April 2007.
[11] ACPO ANPR *National Media Handling Strategy 2009*.
[12] Review of EU Data Protection Directive Summary—prepared for the Information Commissioner's Office—Rand Europe—Conference Declaration—May 2009.

This above example could be judged as somewhat bureaucratic and the consultation invites comments and views on seven questions, including one pertinent to ANPR: What more should be done to reduce bureaucracy for the police so that they can use RIPA more easily to protect the public against criminals?

The original act was a response to the Human Rights Act 1998 and created a regulatory framework to govern the way that public authorities use covert investigatory techniques.

The techniques regulated in RIPA are subject to safeguards approved by Parliament to ensure that investigatory powers are exercised compatibly with the European Court of Human Rights.

In particular, the substantive protections of Article 8 (right to respect for private and family life) are guaranteed by the express terms of RIPA which only permit the authorisation of the relevant techniques if the tests of necessity and proportionality are satisfied.

Authority can only be granted by designated officers of sufficient seniority and in the case of the most intrusive techniques, independent prior approval is required.

ANPR falls into the Directed Surveillance technique category and oversight is the responsibility of one of three independent commissioners (The Chief Surveillance Commissioner) and his concerns were the first to be expressed, four years ago, by a public servant and are summarised below in section 5.

The Information Commissioners Office issued its CCTV Code of Practice—Revised Edition 2008. The code provides good practice advice for those involved in operating CCTV and other devices which view or record images that relate to individuals (for example vehicle registration marks).[13]

The code was first published in 2000 and has the benefit of having been tested over the last decade in a relatively open and public arena

The code contains guidance on issues such as:

> Ensuring effective administration, storing and viewing the images, disclosure, retention, letting people know, subject access requests, staying in control, monitoring your workforce.

Although ANPR remains relatively in its infancy, its databases will also be subject to Freedom of Information enquiries which generally will be considered appropriate as regards data held on the enquirer but not on another party.

4. The Political Context

The House of Lords Select Committee on the Constitution in its second report of session 2008–09—*Surveillance: Citizens and the State* makes two recommendations relating to CCTV:

(a) We recommend that the Home Office commission an independent appraisal of the existing research evidence on the effectiveness of CCTV in preventing, detecting and investigating crime.

(b) We recommend that the Government should propose a statutory regime for the use of CCTV by both public and private sectors, introduce codes of practice that are legally binding on all CCTV schemes and establish a system of complaints and remedies.

This system should be overseen by the Office of the Surveillance Commissioner in conjunction with the Information Commissioner Office.[14]

The context within which surveillance systems are assessed in terms of their efficacy and legislative framework might well consider broadening its scope to include road safety camera and ANPR systems in addition to CCTV. Consideration could perhaps also be given to including police use of hand-held, head and body cameras.

5. Views and Concerns of the Public, Public Servants and Campaigning Groups

Two recent reports both indicate general public support for the usage of ANPR by the police.

1. A Populus/AA on-line panel survey of 75,000 AA members in March 2009 framed the following question:

> ANPR cameras are used in a variety of circumstances on the roads (eg monitoring traffic flow, managing the London congestion charge, helping authorities spot illegal vehicles, monitoring criminals).[15]

To what extent do you agree or disagree with the following statement?

> "Knowing that ANPR cameras are used on the roads makes me feel safer and I believe is a useful tool."

[13] http://www.ico.gov.uk
[14] http://www.publications.parliament.uk/pa/ldselect/ldconst/18/18.pdf
[15] www.theaa.com/public_affairs/news/car-key-crime-947904.html

On the basis of a response by 10,112 members:

Strongly Agree	31%
Somewhat Agree	34%
Neither Agree or Disagree	19%
Somewhat Disagree	8%
Strongly Disagree	7%
Don't Know	1%

2. Police Review in its 22 May 2009 edition reports on doctoral research undertaken by Alina Haines, University of Huddersfield in collaboration with West Yorkshire Police.

A postal survey with 1,500 responses and focus group sessions involving 30 people revealed that 89% were positive about the introduction of ANPR in Leeds. They said that the main benefits of ANPR were the improved identification and detection of offenders, in particular drivers without insurance.

There was a consensus from the people who took part in the focus groups that the potential misidentification and criminalisation of innocent people was one of the biggest disadvantages of ANPR, raising concerns about whether the technology alone is sufficient to ensure offender detection and protect the innocent.

Some members of public appeared to be worried about the use and security of personal data, with 58% of people saying the police service can be trusted to safeguard information gathered from cameras and use it properly.

The Chief Surveillance Commissioner has expressed concerns regarding ANPR in the past four years in his annual reports to the Prime Minister and to Scottish Ministers.[16] The 2008–09 report makes one, related reference to ANPR. "If the visual recording of car drivers is conducted in a manner that is covert and where there is no intent to stop the vehicle immediately, it may be necessary to consider an authorisation for directed surveillance. The intention to retain recordings of individuals for potential later use is deemed by Commissioners to be an invasion of their privacy. Although a human right is not absolute, it is equally important that public authorities do not consider that the ends always justify the means."

Privacy International have lodged an official complaint with the Information Commissioner's Office (ICO) referring to the possibility of all ANPR captured by the National ANPR Database Centre (NADC) being held for five years.[17] In July 2009, ACPO and the NPIA (National Policing Improvement Agency) responded jointly to the ICO proposing a two year maximum retention period.

The Joseph Rowntree Reform Trust's study titled *Database State*—published in March 2009—reports on research undertaken by the Foundation for Information Policy Research which "provides the most comprehensive map of Britain's database state currently available". Of the 46 databases assessed in the report only six were given the green light.

That is, only six are found to have a proper legal basis for any privacy intrusions and are proportionate and necessary in a democratic society. Nearly twice as many are almost certainly illegal under human rights or data protection law (red light) and should be scrapped or substantially redesigned, whilst the remaining 29 databases have significant problems and should be subject to an independent review (amber light).

More specifically

National ANPR Data Centre—rated as amber—primarily on the basis that there is an absence of evidence that the resulting privacy intrusion brings real crime-reduction gains. (Note—some evidence is provided on page 12 of this paper).

DVLA—rated as amber—until the governance and access problems are honestly tackled.

CCTV—rated as amber—until evidence in real crime-reduction supports the considerable investment.[18]

The European Secure Vehicle Alliance (ESVA) is an associate parliamentary group dedicated to the reduction of vehicle related crime and disorder. Since the publication of an ACPO 14-point vehicle crime reduction plan in 1994, it has taken an active interest in one element of the plan—namely the development of a significantly enhanced method of manufacture and distribution of vehicle number plates.

Sweden has operated for over 30 years with one single manufacturer and distributor of number plates whereas currently the UK has approximately 40,000 suppliers. In addition, the advent of roads pricing regimes such as the London congestion charge and high cost of fuel has resulted in significant increases in thefts of number plates—estimated to be in excess of 100,000 per annum.

The Department for Transport has established a working party to consider issues associated with vehicle number plates and together with its related agencies has a great interest in enhancing vehicles user compliance. Significant effort is undertaken to ensure the accuracy of the vehicle and driver databases and

[16] www.surveillancecommissioners.gov.uk/docs1/osc_annual_rpt_2008_09.pdf
[17] http://www.guardian.co.uk/uk/2008/sep/15/civilliberties.police
[18] http://www.jrrt.org.uk/uploads/database-state.pdf

ESVA considers that the most critical vehicle identifier—namely the number plate—should be afforded a comparable system to ensure its integrity and compliance. From a national ANPR database perspective reading 10 million vehicle movements a day, every possible step should be taken to eliminate the likelihood of spurious reads.

6. Appropriate Governance

CCTV has dominated legislative thinking to date and it is most encouraging to note the specific references to ANPR in the Home Office's consultation document on RIPA. Furthermore, the Information Commissioner's Office has focused on CCTV in offering guidance whilst issues associated with ANPR have been registered by the Chief Surveillance Commissioner.

The Department for Transport are also a key governmental stakeholder so a future, suitable legislative framework requires inputs from the two "information commissioners" as identified in the House of Lords committee's report and two government departments.

The experience gained by the local road safety camera partnerships involving both central government departments together with local authorities and police could well serve as an useful starting point.

The Chief Surveillance Commissioner in his most recent report[19] also refers to the importance of training to ensure appropriate understanding and implementation of directed surveillance exercises. Meanwhile, the Home Office RIPA consultation seeks to explore what prior approvals are required for ANPR related investigations.

Furthermore, it would be useful to address countermeasures being taken by non-compliant motorists to overcome road camera based systems.

So-called "Hoodies" may not simply have been a response to the ubiquity of town centre CCTV systems but steps should be taken to minimise the emergence of the equivalent amongst road users.[20] For example—vehicles with number plates intending to mislead cameras and perhaps also (illegal) heavily tinted vehicle glazing.

7. Potential Impact on Policing Strategies and Operating PRactices

ANPR embraces an extremely wide policing spectrum from targeting criminals (including terrorists) through their use of the road to tackling local neighbourhood concerns associated with non-compliant motoring, for example, the use of "local pool" vehicles that are driven with no tax or insurance.

Camera technology is constantly improving and is now capable of use in both day and night and reads the number plate but also possibly captures vehicle make, model and colour, and also driver and passenger images.

Vehicle related data is capable of being analysed more effectively but effort is always required to improve the quality of the vehicle data itself—as highlighted by ESVA in Section 5.

Data sources currently employed by the police include:

- Police National Computer (PNC), Local and Neighbouring Force Databases;
- MIDAS (Motor Insurance) Database; and
- Three DVLA Databases; known vehicles with no registered keeper, vehicle with no valid road tax, and issued vehicle registration marks.

Success in maximising ANPR's potential will rely on building public confidence in its usage which in turn relies on ensuring that ANPR generated data is used appropriately and that the police actually make good use of the intelligence provided.

As experience of ANPR has evolved, three policing styles can be identified:

Response Policing—early usage relied on road side cameras and response teams capturing vehicle data and responding immediately as they judged appropriate to generated hits. This policing style will need to evolve to take advantage of the intelligence provided to the central command and control centres in constabularies from the National ANPR Data Centre (NADC).

Investigative Policing—the potential for ANPR historical data to assist in a great variety of investigations at all levels will become clearer as the national database becomes more populated and recognised as a valuable resource.

Proactive Policing—Whilst some investigations will require a RIPA authorisation when tracking the movements of a specific vehicle/driver—other applications may be more general and be intelligence led investigations aiming to spot vehicles thought to be associated with burglary for example.

[19] www.surveillancecommissioners.gov.uk/docs1/osc_annual_rpt_2008_09.pdf
[20] www.telegraph.co.uk/news/uknews/1584317/Hoodies-were-the-scourge-of-Medieval-London.html (*Daily Telegraph*—8 April 2008).

ANPR has played a valuable role in investigating terrorist attacks and other successes include:

(a) The evaluation of the ACPO Project Laser Pilots (mainstreaming the use of ANPR in 2006–07) showed that the use of ANPR by vehicle response teams and other staff resulted in:

— the arrest of 20,592 individuals with around 5% of these designated as prolific or priority offenders (and others mainly for drugs offences, vehicle crime and disqualified driving),

— the identification of 52,037 vehicle-related document offences (mainly no road tax),

— the seizure of 41,268 vehicles for document offences (mainly no insurance), and

— the identification and recovery of 2,021 stolen vehicles.

(b) The Motor Insurers' Bureau reported that the level of claims made as a result of accidents involving uninsured drivers fell by 5.8% in 2007, and by almost 10% since 2006. In addition, they report they report that the police have used the Motor Insurers Database data to remove over 200,000 uninsured vehicles in 2006 and 2007 from our roads of which 40% are disposed or crushed.[21]

(c) The latest Department for Transport study reports that the overall rate of unlicensed vehicles in Great Britain was estimated to be 0.7% in 2008 and represented a drop from an estimated 1.1% in 2007. Strategies to establish a continuous licensing approach will have also made a significant impact.

An appendix to their report refers to the effect and treatment of misread registration marks as ANPR technology formed the basis for the research study. The overall rate of misreads for ANPR-based sightings within the survey can be estimated at between 1.1% and 2.9%.[22]

It will be vital to continue seeking out and celebrating these successes to build ANPR's reputation both within the police service and with the public.

It is inevitable that there will be instances where vehicle stops generated as a result of ANPR data will prove to be inappropriate and such instances must be more than outweighed by its success.

ESVA is an associate parliamentary group, established in 1992, with the aim of reducing vehicle related crime and disorder.

Memorandum submitted by Dale Mcalpine (PF 12)

THE NEED TO AMEND SECTION 5 OF THE 1996 PUBLIC ORDER ACT

1. I am a committed Christian and have for the past five years delivered open air sermons and handed out Christian literature in various towns and cities including in my home town of Workington in Cumbria.

2. On Tuesday 20 April I went with two friends into Workington Town Centre where we set up to preach in Campbell Savours Way.

3. While one of the other men was preaching I saw two Police Community Support Officers walk up and stop outside a nearby shop. They were discussing what my friend was saying. A town centre official joined their discussion.

4. I then had a discussion with the town centre official who told me that our preaching was wrong and tried to convince me that the Bible was not clear and had more grey areas than what I was presenting. We had a short discussion where I explained to her that Jesus said unless we forsake our sins we will perish, she said I was talking "nonsense" and called me arrogant, she had to leave but said she would return and looked forward to continuing our conversation.

5. One of the PCSOs went up to talk to her. He seemed to want to ask her about our conversation. He then came up to me had said "We have had a complaint. If you make any racist or homophobic comments then I will have you arrested." I said I was not racist or homophobic. It was quite intimidating to be accused of that by a man in a uniform and threatened with arrest. I explained that I preach what the bible teaches about sin. The bible says we are all sinners and describes many different sins. Homosexual activity is just one of them. The gospel is about how we can be forgiven by God and that is only through Jesus Christ. It is impossible to talk about forgiveness without talking about sin. It would be like trying to talk about medicine without talking about what symptoms the medicine cures.

6. The PCSO said "I am offended. I am a homosexual." He told me he was the LGBT liaison officer. I replied that homosexuality was still a sin. He left.

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[21] www.miic.org.uk/press (8 January 2008).
[22] http://www.dft.gov.uk/pgr/statistics/databasespublications/vehicles/excisedutyevasion/ved2008

7. I discussed what had happened with my colleague and we agreed that we would not mention homosexuality in our preaching. (We had not planned to anyway.) I got up on to my little step-ladder and preached about evolution and that God is our creator also about the need to repent of sin and forgiveness through Jesus Christ, I mentioned sins like adultery, blasphemy and drunkenness, I did not mention homosexuality.

8. A different town centre official turned up and tried to tell me I was on private property, which I was not. It was clear that they were trying to find a way of getting us to go away. We had only been there 40 minutes. As soon as the official left, the PCSO came back and asked for my name and address. He then used his radio. I had a pocket video camera and I pressed the record button at this point. The video is available on You Tube for anyone to watch to see what happened next.

9. Within a short time three police officers arrived and joined the two PCSOs who were already there. I was now surrounded by five men in uniforms. The opening question from one officer was "What have you been saying homophobic-wise?"

10. I said homophobia was hatred of homosexuals and I do not hate homosexuals. I said the only time I had said anything about homosexuality was to the PCSO and only then after he had raised the subject with me. I said anyway it was not against the law to say that homosexuality is a sin and referred to the recent vote in Parliament to include a free speech clause in a new homophobic incitement offence.

11. The officer replied, "It is against the law. Listen mate, we're pretty sure. You're under arrest for a racially aggravated section 5 offence." Not only was I shocked beyond belief at being arrested (I have never been arrested in my life) but I was bewildered that he was taking about racial aggravation. I hadn't said a word about race.

12. He read me my rights and I was led away by the arm to a police van. I was taken to the police station and held in a cell to wait to be interviewed. I had my finger prints and DNA taken and they checked on me every hour. From my arrest to my release I was detained for 7 hours and 46 minutes.

13. I was brought in front of a very abrupt desk sergeant. I was charged with using "threatening, abusive or insulting" words "to cause harassment, alarm or distress" contrary to Section 5 of the Public Order Act.

14. I was released on bail on the condition that I must not preach in public until after my trial. I had been due to preach in my home church the following Sunday but I had to cancel that because of that bail condition. It was a serious infringement of both my freedom of speech and my freedom of religion for the state to stop me from preaching in my own church.

15. I was supported with my legal defence by a Christian charity. I am not quite sure what I would have done if I hadn't had their help. It would have been terrible to be in that situation on my own.

16. I appeared at Workington Magistrates Court on 23 April, 2010 and pleaded "not guilty". I was released on bail awaiting trial.

17. There was lots of press coverage of my arrest. On 3 May press reports quoted the homosexual activist Peter Tatchell as saying the arrest was heavy-handed and an attack on free speech. He said, "If offending others is accepted as a basis for prosecution, most of the population of the UK would end up in court." He generously offered to appear as a defence witness.

18. My lawyers wrote to the Crown Prosecution Service and called for the proceedings to be dropped. On 7 May the CPS said they were discontinuing the case due to lack of evidence.

19. On 25 May my lawyers wrote to Cumbria Police giving notice of a civil claim for wrongful arrest, unlawful imprisonment and breach of my human rights to free speech and religious liberty.

20. On 27 May Keith Porteous Wood, a homosexual and Executive Director of the National Secular Society, offered to appear as a witness in support of my civil action.

21. On 23 August lawyers for Cumbria Police admitted liability and began negotiations for an out-of-court settlement. On 16 December I accepted a police offer of £7,000 plus costs and a personal apology to settle my claim.

22. Needless to say, I was not concerned about compensation but about freedom of speech. I hope I practice what I preach when I talk about forgiveness. I forgive the officers who arrested me. But if no-one stands up when the police start arresting people for no good reason, we are all in trouble.

23. The fact that the police admitted liability proves that the way they used section 5 to arrest and charge me was wrong. But I still think the law should be changed to stop the same thing happening again. It is too easy for someone to claim to be offended and summon the police to arrest the person who offended them under section 5. In my case, their own LGBT liaison officer appears to have called them in to arrest me. Perhaps they felt they could not say no.

24. People might not agree with my views about sin and forgiveness. But everyone has views that are offensive to someone. Section 5 seems to be so all-encompassing that it can be used to arrest people just for expressing controversial opinions. Today it is views about morals. Tomorrow it could be views about foreign policy or climate-change or budget-cuts. Section 5 needs to be changed.

March 2011

Memorandum submitted by Equality and Human Rights Commission (PF 13)

SUMMARY

— The Equality and Human Rights Commission welcomes the opportunity to comment on the Protection of Freedoms Bill. Our advice on this Bill is provided in the context of our statutory duty to promote, enforce and monitor the effectiveness of equality and human rights enactments.[23]

— The Commission broadly welcomes the Bill as providing better protection of human rights. In particular, we welcome measures in relation to the retention and destruction of biometric data, which we consider would provide for a more proportionate regime.

— However, the Commission considers that aspects of the Bill could be strengthened to ensure they adequately protect human rights. For example, we welcome proposals to amend section 44 stop and search powers, but consider they may fail to meet requirements under the European Convention on Human Rights. The Commission would suggest additional safeguards for use of these powers.

— The Commission also welcomes further regulation of CCTV surveillance. We would suggest a comprehensive review and reform of legislation governing information privacy to simplify existing legislation, as well as ensure it adequately protects and promotes the right to privacy.

PART 1—REGULATION OF BIOMETRIC DATA

Commission's position

The Commission welcomes provisions in the Bill regarding the regulation of DNA profiles and fingerprints. These proposals reflect aspects of the Scottish model, which the Commission considers provides a more proportionate system than currently in place in England and Wales.

The Commission recognises the importance of the database as a tool for detecting and preventing crime. However, we have always considered that retaining DNA samples and profiles indefinitely regardless of the circumstances of the case to be incompatible with the right to privacy under Article 8 of the European Convention on Human Rights ("the Convention").

In addition, the Commission considers that the over-representation of ethnic minority men[24] and other vulnerable groups such as children[25] and people with mental health conditions on the database engages and may violate Article 14 of the Convention regarding prohibition of discrimination.

The Commission regards indefinite retention for all recordable offences to be disproportionate, as found in the case of *S and Marper*.[26] We recommend that the Bill provisions align with the Council of Europe's guidance on the use of DNA within the criminal justice framework.[27]

In relation to proposals on the retention periods for DNA profiles and fingerprints, the Commission considers that the starting point should be that these are destroyed when a final decision has been made in a particular case, subject to limited circumstances. The limited circumstances can be summarised as follows:

— When there has been a conviction;

— when the conviction concerns a serious criminal offence against the life, integrity and security of a person;

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[23] Sections 8 and 9, Equality Act 2006.

[24] A Commission report in 2009 found that Black men were four times more likely to be on the DNA database (30%) than white men (8%). It found that the database held about one third of all Black men and the proportion of Asian people on the database was increasing beyond their proportion to the size of the population. (*Police and Racism: What has been achieved 10 years after the Stephen Lawrence inquiry report?* 2009. Equality and Human Rights Commission).

[25] *Hansard*, 14 January 2009, column 788w: http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090114/text/90114w0014.htm#090115103000152. In 2009, it is estimated that there were over 150,000 children on the DNA database with a further 300 added per day.

[26] In the case of *S and Marper v UK*, the European Court of Human Rights (ECtHR) held that the "blanket and indiscriminate" retention of fingerprints, DNA samples and profiles of persons amounted to a violation of the right to respect for privacy under Article 8 of the Convention. Following the judgment, the framework governing the retention and destruction of DNA samples was amended by way of the Crime and Security Act 2010 (CSA), although the Commission regarded this framework did not sufficiently address the issues identified by the ECtHR. See: *S and Marper v United Kingdom* [2008] ECHR 1581 (4 December 2008).

[27] Committee of Ministers Recommendation No R (92) 1, para 8 and the related Explanatory Memorandum: cited in *S and Marper* at n 3 above paras 43 and 44.

— the storage period is strictly limited and regulated by law; and

— the storage is subject to independent or parliamentary scrutiny.

The Commission considers that the Bill meets these criteria to some extent.[28] Importantly, it treats DNA samples differently from profiles and fingerprints.

Destruction, Retention and Use of Fingerprints

Clause 7: Retention of children's DNA

The Commission welcomes the provisions on the retention of DNA of children, however, would suggest that these measures do not go far enough. The Commission would advise that the DNA material of children not convicted of an offence be destroyed as soon as reasonably practicable in all but the most exceptional circumstances.

The retention of a child's DNA can be particularly harmful to them and can lead to stigmatisation, as the UN Committee on the Rights of the Child found in its concluding observations in 2008.[29] Therefore, the Commission would advise that children arrested for or charged with a minor offence are not treated in the same way as adults.

In the case of convicted children, the Commission considers that there should be a presumption in favour of destruction of DNA material on reaching 18 or at the end of the sentence, if it is beyond their 18th birthday.

Clause 9: National security

Clause 9 of the Bill provides that fingerprints and DNA profiles ("section 63D material"), may be retained for as long as a "responsible chief officer" determines that it is necessary for the purposes of national security, subject to renewal every two years.

In effect, this would allow for the indefinite retention of section 63D material of people who have never been convicted of or possibly even charged with an offence.

The Commission has concerns with this provision. In our view, it will fail to address the current disproportionality of ethnic minority groups on the database. We also consider this provision may not meet the test of proportionality and therefore will not comply with Article 8 of the Convention.

For that reason, the Commission would advise the government to re-consider this provision.

Clause 18: Definition of conviction

Clause 18 of the Bill defines a conviction as including cautions, warnings and reprimands under the Crime and Disorder Act 1998, and it specifies disregarding the Rehabilitation of Offenders Act 1974.[30]

Cautions, warnings and reprimands are aimed at low level repeat offenders, such as drug addicts. Therefore, the Commission considers it would be disproportionate to treat these in the same way as convictions.[31]

Part 2—Regulation of Surveillance

Commission's position

The Commission recognises that CCTV can be a useful tool in the prevention of crime and can increase people's feelings of safety and security. However, the use of CCTV and other surveillance camera technology engages the right to privacy under Article 8 of the Convention and therefore the aim of the use of a surveillance power must be clearly and unambiguously established, and its scope strictly confined to the requirements of the investigatory aim it pursues.

The Commission welcomes the intention to place CCTV and other surveillance camera systems on a statutory regulatory basis, and the associated regulatory function of a Commissioner to oversee compliance with the code.

While we welcome the current proposals as a step in the right direction, we have concerns as to the complexity and adequacy of the proposed regulatory system for CCTV.

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[28] See Equality and Human Rights Commission's parliamentary briefing, January 2010, Home Affairs Select Committee's Inquiry into the National DNA database.

[29] The UN Committee on the Rights of the Child has raised concerns about the retention of DNA data on the National DNA Database irrespective of whether they are charged or convicted—see Committee on the Rights of the Child 49th Session, Concluding Observations on UK, 20 October, at para 36. Full report available at: http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf

[30] Section 18(2).

[31] See Home Office website for more on the status of cautions and warnings: http://www.homeoffice.gov.uk/police/powers/cautioning/

The Commission is concerned that the proposals will not increase the ability of individuals to ascertain what information is held on them or to challenge why or how that information is held. The Commission is also concerned that the complex legal and regulatory regime will prove difficult to follow for those operating CCTV and other surveillance camera systems.

Evidence

Individuals and communities have expressed concern about the use and impact of CCTV.[32] For example, concerns were raised by Muslim communities regarding the recent positioning of over 200 CCTV cameras in an area of Birmingham.[33]

The processing of personal data captured by CCTV is regulated by the Data Protection Act 1998 (DPA) and the use of covert CCTV systems is subject to the Regulation of Investigatory Powers Act (RIPA) 2000. Both have associated codes of practice and regulators.

The Commission considers that as this legislation sanctions interferences with human rights for necessary public interest purposes, it should be as accessible and transparent as possible.

In its report, *Surveillance: citizens and the state*,[34] the House of Lords Constitution Select Committee stated:

> "We recommend that the Government should propose a statutory regime for the use of CCTV by both the public and private sectors, introduce codes of practice that are legally binding on all CCTV schemes and establish a system of complaints and remedies."

While the Commission welcomes the placing of CCTV and other surveillance cameras on a statutory footing, the Commission is concerned that these proposals add another layer to an already complex and confusing statutory and regulatory system.

The provisions set out in this Bill will have to be read in conjunction with the DPA 1998 principles and Article 8 of the Convention, and where appropriate the Regulation of Investigatory Powers Act (RIPA). While some aspects of regulation of CCTV may be suitable for a statutory code, the Commission considers there is a need for comprehensive legislative reform of regulation of CCTV, and indeed information privacy issues generally.

Clause 33: Effect of CCTV code

The Commission would welcome consideration being given to expanding the scope of the CCTV code to include other government agencies and private sector organisations, including those undertaking a public function.

The vast majority of surveillance cameras are in fact operated by private bodies, for example the use of automatic number plate recognition systems by private car park contractors.

Clause 34: Commissioner in relation to code

The Commission would welcome consideration being given to providing the Surveillance Commissioner with similar complaint and enforcements powers to those of the Information Commissioner. This would ensure consistency in powers, approach and remit between the Information Commissioner and the new Surveillance Commissioner.

The Information Commissioner has responsibility for promoting and enforcing the DPA 1998. There is significant overlap between the Information Commissioner's remit and that of the proposed Surveillance Commissioner, as the DPA 1998 applies to images related to an individual captured by CCTV. The Information Commissioner has already published a CCTV code of practice to assist compliance with the DPA 1998.

Safeguards for Certain Surveillance under RIPA 2000

Commission's position

The Commission welcomes the proposals for additional safeguards to govern the use of RIPA 2000 powers by local authorities. The Commission considers that judicial control affords the best guarantee of independence, impartiality and a proper procedure.[35] We would suggest the greater the independence of the bodies or officials that authorise and review the use of covert methods, the greater the likelihood that the regulatory regime will satisfy the requirements of Article 8(2) of the Convention.

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[32] See for example report on *Surveillance Society: Surveillance Studies Network* September 2006: Big Brother watch 2010: the grim RIPA.
[33] Thames Valley Police, *Project Champion Review.* 30 September 2010.
[34] House of Lords Constitution Select Committee, *Surveillance: Citizens and the State*, 2nd Report of Session 2008–09, HL Paper 18-I. London: The Stationery Office.
[35] *Rotaru v Romania* (2000) 8 BHRC 43 at para 59; *Kopp v Switzerland* (1999) 27 EHRR 91 at para 74.

However, in addition, the Commission recommends a more comprehensive review of legislation regarding information privacy generally, in particular the DPA 1998 and RIPA 2000. The key objectives of such a review would be:

(a) to simplify the legislation, which is a complex and unwieldy legislative regime and has been described as "puzzling" and "perplexing";[36] and

(b) to ensure that legislation and regulation which deals with information privacy rights adequately protects and promotes the right to privacy and is compliant with the Human Rights Act 1998.

Part 4—Counter-terrorism Powers

Commission's position

The Commission welcomes the reduction in the pre-charge detention period from the previous regime of up to 28 days to a maximum of 14 days. The Commission also welcomes the removal of the order making powers, which would have enabled a reversion to up to 28 days detention.

However, the Commission is concerned that the proposed pre-charge detention period still remains significantly in excess of that in the normal criminal justice system.

The Commission considers that long periods of pre-charge detention raise serious matters of principle and practice and therefore considers the lower the extended period of pre-charge detention, the more likely it is that the measures will be necessary and proportionate.

As a starting point, the Commission would suggest that normal periods of pre-charge detention within the criminal justice system of up to four days should be used wherever possible.[37]

The Commission is also concerned to note that the sunset clause, which required annual renew of extended periods of detention of up to 28 days, has been removed. This means the new provision for up to 14 days detention will be permanent.

Evidence

As a matter of principle, extended periods of pre-charge detention are contrary to human rights and British constitutional history and values.[38]

Article 5(3) of the Convention requires that any person detained be brought before a court and Article 5(4) requires that the legality of detention should be determined speedily by a Judge. Furthermore, any period of detention must be accompanied by the appropriate procedural guarantees, sufficient to ensure compliance with the Convention.

If terrorism matters were dealt with through the usual criminal processes in usual circumstances there would be a maximum period of pre charge detention of up to 4 days. This is similar to elsewhere, including Canada (one day), the US (two days), Germany, (two days), Spain (five days), and France (six days). It would also be in accordance with the recommendations of Lord Lloyd in his 1996 inquiry into terrorist legislation.[39]

In 2008, the UN Human Rights Committee noted its concern at extended detention periods.[40] Both it, and the UN Universal Periodic Review have recommended strict time limits and strengthened guarantees for those in detention,[41] and that any terrorist suspect arrested should be promptly informed of any charge against him or her and tried within a reasonable time or released.[42]

The original power under the Terrorism Act 2000 was for up to seven days detention, and this was only increased to 14 days detention by the Criminal Justice Act 2003. Comparatively, few numbers are held in detention for over seven days. From 2006–09, 91% of those arrested under terrorism charges were released within a week and a significant proportion of those held for over seven days were not subsequently charged with terrorism offences.[43]

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[36] Lord Bingham in Attorney General's Reference (No 5 of 2002) [2004] UKHL 40 paragraph 9.

[37] See for example recommendations of Report of the Eminent Jurists Panel on Terrorism, *Counter Terrorism and Human Rights*, Geneva 2009; Recommendations of Lord Lloyd; Lord Lloyd of Berwick, Inquiry into Legislation Against Terrorism (cm 3420 October 1996).

[38] The rights to liberty, presumption of innocence and protection against unlawful imprisonment were enshrined in the Magna Carta. Extended periods of detention without charge engage Articles 5 of the Convention. Extended periods of detention also potentially engage Article 3 (prohibition on torture), Article 6 (right to a fair trial) and Article 14 (non discrimination).

[39] Lord Lloyd, *supra*.

[40] CCPR Concluding Observations, 93rd Session UK review July 2008:http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement

[41] United Nations Human Rights Council Universal Period Review: http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx

[42] CCPR concluding observations, 93rd Session UK review July 2008:http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/433/42/PDF/G0843342.pdf?OpenElement

[43] House of Commons Library research paper 11/20.

Solution

The Commission would recommend that this power should remain subject to annual renewal by Parliament. We also consider that there should be an assessment by the Crown Prosecution Service as to whether it continues to be necessary in light of the nature of the terrorist threat, as well as consideration of its operation and necessity by the independent reviewer of terrorism legislation.

Fairness of judicial procedures for extended warrants

Commission's concern

The Commission recommends the government takes this opportunity to amend Schedule 8 of the Terrorism Act 2000.

The amendment could provide for full implementation of the requirements set out in the judgment of AF22[44] in relation to the use of special advocates and closed material in extended pre-charge detention proceedings. This would ensure that the procedure for judicial consideration of request for extended periods of detention is fair, meets Article 5 requirements, and enables the detainee to effectively know and challenge the basis for detention.

Evidence

In the recent case of Sher,[45] it was argued that the lack of the special advocate procedure meant that the detainee was unable to effectively challenge the evidence on which an application for extended detention was made.[46] The court considered that the current regime under Schedule 8 of the Terrorism Act met the requirements of Article 5 of the Convention, and that there was no need for the special advocate procedure. However, the Commission understands that this decision is currently being appealed.

Stop and Search Powers

Commission's position

The Commission welcomes proposals to amend s44 stop and search powers. While the Commission considers this an improvement on the previous regime, we would suggest that additional safeguards are required to ensure they fully comply with the Convention.

The Commission recognises that there may be exceptional circumstances where it is necessary for there to be a power to stop and search without reasonable suspicion. However, any departure from the principle of reasonable suspicion must be only used where it is strictly necessary to prevent a real and immediate act of terrorism. Its use must be non-discriminatory and in accordance with the provisions of the Convention.

Evidence

The European Court of Human Rights (ECtHR) considered the compliance of the previous s44 powers with the Convention in the case of *Gillan and Quinton v UK* in 2010.[47] While making no determination on compliance with Article 5 of the Convention, the court found the powers breached Article 8 stating:

"The safeguards provided by domestic law have not been demonstrated to constitute a real curb on the wide powers afforded to the executive so as to offer the individual adequate protection against arbitrary interference."[48]

The court was particularly concerned regarding the wide discretion given to a police officer when a s44 authorisation was in place, and the lack of any need for suspicion in how they exercised the decision to stop and individual.

"Of still further concern is the breadth of the discretion conferred on the individual police officer. . . . That decision is . . . one based exclusively on the "hunch" or "professional intuition" of the officer concerned. Not only is it unnecessary for him to demonstrate the existence of any reasonable suspicion; he is not required even subjectively to suspect anything about the person stopped and searched"

The court set out a number of criticisms. These focussed on:

— The basis on which an authorisation could be made;

— process for making and reviewing an authorisation;

— the restraints on an individual police officer in exercising the power once an authorisation was made; and

— the ability of an individual to effectively challenge the use of the powers.

[44] *Secretary of State for the Home Department v AF.*
[45] *Sultan Sher and others* (2010) EWHC 1859.
[46] The special advocate procedure is used where there is closed or secret evidence. A special advocate is appointed on behalf of the defendant who has access to closed and secret evidence. The special advocate puts the defendant's case to the court, although the defendant is not able to see the material. The procedure is used in immigration appeals, control orders, and other cases where there is a need to withhold evidence from the defendant for national security reasons.
[47] *Gillan and Quinton v United Kingdom.*
[48] *Gillan ibid* para 79.

The Commission regards the provisions in the Bill address a number of these concerns, in particular in relation to when an authorisation for the use of these powers can be made, the length and geographical scope of the authorisation, and approval for the authorisation.

This is welcome, however, the Commission considers that greater safeguards should put in place. For example, there is no provision in the Bill that address the concern of the ECtHR in relation to the lack of requirement of reasonable (or any form of) suspicion on the part of the individual police officer in deciding to search an individual.

The Commission has sought the advice of Rabinder Singh QC, counsel in the case of *Gillan*, and Professor Aileen McColgan. Their advice is that, as currently drawn, the powers are likely to be arbitrary and discriminatory in their use and to breach Article 5, 8 and 14 of the Convention. Singh and McColgan question whether the use of such powers without reasonable suspicion can fully comply with the Convention. However, they support the view that the more tightly drawn the powers and stringent the safeguards, the greater the likelihood that the court will find the use of the powers in practice to be compliant.

Additional Safeguards that Should Apply

Authorisation of designation

Clause 60(1): s43 B (1): Schedule 6B (7)

To strengthen the safeguards for the use of the stop and search power, the Commission considers that designations should be subject to prior judicial authorisation. In urgent cases, an authorisation could be made by a senior police officer, with the requirement that it must be confirmed by a judge within 24 hours.

The current provision in the Bill provides for authorisation of a designation by a senior police officer. The court in the Gillan case expressed concern over review of authorisations. In particular, the court noted the limited review powers of the Secretary of State, and the fact that as far as it was aware no authorisations had subsequently been refused. It also expressed concern that the only judicial scrutiny of use of the powers was limited judicial review.

The Bill strengthens the powers of the Secretary of State to review authorisations. However, the Commission remains concerned that initial authorisation is by a senior police officer, and is only subject to subsequent scrutiny by the Secretary of State, with limited possibility of judicial review.

Geographical extent of stop and search area

Clause 60 (1): s 43B (1)(b)(ii)

The Commission would suggest that this provision should be more tightly proscribed to include a specific geographical limit. The Commission would suggest a geographical limit of no more than one square mile.

Duration of designation

Clause 60(1): section 43 B(1)(b)(iii)

The Commission suggests that such a maximum duration should be no longer than 48 hours. Any need for longer periods of designation should require a fresh authorisation, made by a judge.

Concerns were raised in respect of the previous legislation that rolling authorisations were used, to create long continual periods of designation. The Commission suggests the Bill is amended to prevent this occurring, with a limit specified as to the number of authorisations that can be made consecutively and in relation to a given place.

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is an independent statutory body established under the Equality Act 2006. The Commission works to reduce inequality, eliminate discrimination, strengthen good relations, and promote and protect human rights. As a regulator, the Commission is responsible for enforcing equality legislation on age, disability, gender, race, religion or belief, sexual orientation or transgender status, and encouraging compliance with the Human Rights Act. The Commission has achieved "A" status accreditation as a National Human Rights Institution, enabling us to participate in the United Nations Human Rights Council, and to undertake monitoring of the UK's human rights obligations.

March 2011

Memorandum submitted by the British Parking Association (PF 14)

1. Thank you for inviting the British Parking Association to give evidence to the Bills Committee on the Protection of Freedoms Bill.

2. The BPA is Europe's largest professional parking association with over 700 corporate members including local authorities, commercial parking providers, equipment manufacturers, bailiffs and many others.

3. Amongst other services we have established an Approved Operator Scheme for private parking provider members which requires them to comply with a Code of Practice. This Code requires members to act in a reasonable way in managing parking on private land, particularly in relation to the fees they charge, the signs they display and how they generally manage the land.

4. The BPA is an Accredited Trade Association at the DVLA that only companies that are members of the ATA can access the vehicle keeper data from the DVLA. We have established strict standards to ensure that operators comply with the Code, including the appointment of a third party auditor and a sanctions scheme which ensures both compliance with Code and rising standards in the sector.

5. To date, we have terminated five memberships of the scheme for failure to comply with the Code.

6. The Approved Operator Scheme is a voluntary scheme attempting to self-regulate the sector and we have long campaigned for regulation of the private parking sector, encouraging successive governments to adopt the model of the AOS in a regulatory framework in which membership of an ATA would be compulsory to ensure that all parking providers comply with an industry code.

7. Chapter 2 of the Bill provides for the banning of all immobilisation and removal of vehicles on private land without lawful authority. The BPA supports any move by government to deal with the rogue elements of the parking sector, including those who clamp and remove without compliance with our Code of Practice. However, we believe that a total ban on clamping and removal is a step too far and will deprive many law abiding landowners and their operators of an important tool to protect their land.

8. Our comments therefore, are related to the need to properly manage private land and to recognise that the issues addressed by Chapter 2 of the Bill addresses only part of the issue and we believe the Bill should go further.

9. Firstly we believe that clamping and removal should be retained at least as a last resort for land owners. It is a known fact that a small number of drivers continue to ignore parking regulations both on the public highway and in car parks and it is necessary to ensure that sufficient safeguards are in place to prevent this small minority of drivers from causing significant difficulty both the landowners and to law abiding motorists. We believe that the last resort is necessary for the following category of vehicle:

10.

(a) vehicles not registered in the UK, for which there is no recourse in UK law.

(b) *Unregistered vehicles*—we believe there are a significant number of vehicles not properly registered at the DVLA.

(c) *Persistent evaders*. This category of motorist simply will not accept the issue of parking tickets as a means of changing their behaviour.

(d) Removals to deal with obstructive parking where there are vehicles parked across fire exits, ambulance bays or in disabled person's bays.

11. We are concerned that if clamping and towing away is banned that this will not deter the rogue elements of our industry. Rogue clampers will simply migrate to rogue ticketing. There are already examples of companies which ticket vehicles without following them up via the DVLA but rely on the motorists paying the ticket on receipt of it. Typically motorists will pay 30%–40% of such tickets. Our concern therefore is that simply by banning clamping in order to tackle the Government's concern about rogue clamping the problems simply move into another part of the parking sector and will defeat the Government's objective of ridding the sector of these unacceptable activities.

12. In order to properly address this issue we believe the Bill should set out a proposal to regulate the sector. Local authorities are already regulated in relation to both their activities on the public highway in relation to parking enforcement and in their own car parks. We see no reason why the private parking sector should not move in the direction of this regulation which is currently contained within the Traffic Management Act 2004.

13. We do recognise, however, that the Government is not keen to introduce new regulation and we have therefore prepared a proposal which was submitted to the Secretary of State last November which sets out our thoughts on independent regulation of the sector. The heart of this proposal is to make it compulsory for parking operators to be a member of an Accredited Trade Association, thereby ridding the sector of any rogue elements whether engaged in ticketing or clamping.

14. We believe that as part of the need to regulate the whole sector, the Government should introduce into the Bill the principle of keeper liability. We are pleased that clauses already set out this principle but we are concerned that this clause only relates to circumstances where tickets are issued to the vehicle at the time of the event. This effectively rules out the principle of keeper liability for parking tickets issued in car parks

managed by ANPR (Automatic Number Plate Recognition) systems. These ANPR systems are increasingly attractive to landowners in managing their car parks and to create a separation between these two types of activity both denies the technological developments taking place in the parking sector as well as further confusion for the motorist. We believe that the principle of keeper liability should apply in all circumstances.

15. We also believe that an independent Appeals Service should be introduced to protect the consumer and that this should go hand in hand with the introduction of keeper liability. These two principles are already established under the Traffic Management Act and the BPA has been piloting an Appeals Service with a view to delivering a permanent service subject to the establishment of keeper liability in all circumstances in private car parks.

16. We are concerned that the Bill will effectively prevent landowners from removing vehicles from their land. This seems to be an extraordinary imposition on private landowners, especially in the case of trespass, bearing in mind that such a description includes large car park operators (such as supermarkets and shopping centres) through to private individuals (such as private driveways and access roads). The solutions proposed in the Bill, that the Police will be given discretion to remove vehicles in circumstances where they deem it necessary, is clearly unworkable as the Police are unable to resource such a commitment and we believe that this discretion will hardly ever be used.

17. There is discretion in the Bill for landowners to relocate vehicles in the car park being managed. It is extremely unlikely in the case of the vast majority of landowners that they will have at their disposal the means to relocate such vehicles when they cannot recoup the cost from owners of those vehicles. Our conclusion is therefore, that these provisions are unworkable and will cause significant problems for landowners by providing false comfort.

18. The Impact Assessment prepared by the Home Office contains a series of assumptions and inaccuracies which we are drawing to the Home Offices' attention. We are particularly concerned that the *Equality Impact Assessment* in Annex 2 assumes that there will be no impact. Over many years organisations representing disabled drivers have campaigned for disabled persons bays to be introduced into car parks and for landowners to ensure that they enforce these bays. There is much evidence that such enforcement is taking place but it will cease if this Bill becomes law in its current form. The simple fact is that issuing a ticket to a vehicle parked in a disabled persons bay will not free up that bay for a disabled person and we are concerned that all the work done to encourage private landowners to embrace the needs of disabled people will be lost if they are unable to tow vehicles away to free bays up or to threaten to tow vehicles away to create a deterrent in the first instance.

19. We are concerned that the Bill proposes only a fine for the offence of clamping or removing without lawful authority. We do not believe this is sufficient a deterrent to rogue clampers and there is a risk that without the threat of imprisonment rogue clampers will continue to operate in certain circumstances, playing off the income they derive from the potential of a fine. We encourage the Committee to consider including imprisonment as a penalty for clamping without lawful authority.

20. In conclusion, we believe that without the above issues being addressed the rationale behind Chapter 2 of the Bill is flawed. The Bill is clear in that clamping and removal will continue with lawful authority, which means that these activities will still take place on land managed by Local Authorities, where the DVLA use their powers, and in certain other circumstances where byelaws permit landowners to continue to clamp and remove. Many of these activities are already regulated through primary legislation and we believe that to be consistent the Bill should be addressing the need to regulate the private parking sector and introduce a "level playing field" alongside public land managed by local authorities. This would provide consistency for the motorist and landowner and would be much better understood by all concerned. By simply banning clamping and towing away on private land, the Bill risks creating much more confusion in this area and leaving both landowner and motorist no better off as rogue activities continue and the rights of reasonable people are undermined.

21. The author would be delighted to provide more information and clarification on the above at the Committee Meeting.

March 2011

Memorandum submitted by Richard Thomas CBE, Information Commissioner, 2002–09 (PF 17)

CLAUSE 95—APPOINTMENT AND TENURE OF INFORMATION COMMISSIONER

This Memorandum argues that, if the Information Commissioner will be unable to serve more than a single term of office, a maximum of five years will be too short.

1. The new Paragraph (3C) to be inserted into Schedule 5 of the Data Protection Act by Clause 95(1) of the Bill provides that the Information Commissioner may not be appointed again for a further term of office. This is welcome as part of the package of measures intended to reinforce the essential independence of the Commissioner.

2. However, I consider that it is necessary to make a further change to the Schedule which stipulates a maximum term of five years. Otherwise no Commissioner will be able to serve more than a single term of five years.

3. I was appointed by Her Majesty as the Information Commissioner for an initial five year term taking effect from November 2002. In line with the existing law, I was then re-appointed for a second term on the understanding that I would retire on my 60th birthday in June 2009. I therefore served for a total of almost seven years.

4. I consider that a single term of five years would be undesirable for two main reasons:

(i) it would restrict the field of candidates; and

(ii) five years is not long enough for a Commissioner to adopt the necessary strategic approach to the functions.

Field of Candidates

5. I applied to be the Commissioner at the age of 52. I was then working—at a higher salary than was then paid to the Commissioner—for a law firm. I had previously worked across public, private and voluntary sectors. Appointment as Commissioner amounted to a considerable gamble in career and personal terms. Both of my predecessors had been re-appointed for second terms. The unspoken expectation—and my own calculation—was that I would be appointed for a second term unless, of course, I was judged to be unsuitable. I am clear that I would not have applied for a single five year term, which would have expired around age 57.

6. It is my view that many people in their late 40's or early 50's would have taken a similar view, especially those with suitable skills and experience within the private and voluntary sectors. (The location of the ICO office in Wilmslow, near Manchester, further acts to narrow the field.) There is a real prospect—which could undermine at least perceptions of independence—that the most interested candidates would be civil servants used to a culture of a job change every five years.

A Strategic Approach

7. The role of Information Commissioner is complex and demanding. The Commissioner carries considerable personal responsibility—everything is done in his or her name—and is in effect both Chairman and Chief Executive. This involves both strategic and external functions and internal and operational functions—as well as the judgements that need to be made on a wide range of cases and other matters across an extraordinary range of subject-matter. In addition, data protection and freedom of information law will be (as in my case) largely unfamiliar to most incoming Commissioners.

8. It is my view that five years is not a long enough period for a Commissioner to get to grips with the responsibilities, to build up know-how and contacts, to decide the strengths and weaknesses of the organisation and what changes are needed and to decide and implement the necessary strategic approach. Ironically, a contrary risk is making unwise changes and mistakes in haste. More than five years are needed to get the right balance of both change and continuity.

9. I have discussed this matter with a number of current and former Privacy and Information Commissioners in other parts of the world and there is a consensus that five years are not long enough.

What term?

10. If a five year term is too short, 10 years would be too long. There is no magic solution, but I suggest that seven years should be the new maximum. This would require amendment of paragraph 2(1) of Schedule 5 of the Data Protection Act 1998.

I would be happy to elaborate the personal views expressed in this Memorandum.

March 2011

Memorandum submitted by Michael Charman (PF 18)

PROTECTION OF FREEDOMS BILL, SECTIONS 54–56

Introduction

1. I am Michael Charman, the Managing Director of Pace Recovery and Storage Limited t/as Ace Security Services and the Chairman of the Vehicle Immobilisers Association (VIA). I have also served with the Metropolitan Police Service for 17 years, resigning in 1988 having achieved the rank of Detective Inspector.

2. Ace Security Services has been involved in the clamping of vehicles parked on private land without the authority of the landowner in London and the South East for nearly 20 years. In the past we have had contracts with Southwest Trains, Great Northern Trains, Great Eastern Trains and the whole of the London Borough of Camden. Today we only operate in London and have 191 sites spread throughout the 32

Boroughs of London. Our clients include Lewisham Homes (formally Lewisham Council), the London Borough of Camden, Network Rail and large property managing agents/owners including Workspace, Rendall and Rittner, Kinleigh Folkard and Hayward and Orbit Housing Association. Most of the parking we control is specifically for residents and their visitors.

3. I am extremely experienced in dealing with the problems faced by landowners who wish to keep their parking areas clear of unauthorised vehicles. The role of the clamping company is twofold; firstly to keep out general members of the public and secondly to control the parking on site by those people who are entitled to use the land. The second role is extremely important in London as the majority of residential developments do not have sufficient space for the number of vehicles that maybe entitled to park on the land.

4. Clamping is a very emotive subject and those in the industry face conflict on a daily basis. Even though the clamping company is responsible for dealing with this conflict, some always spills over onto the landowner. We charge an annual site fee for every contract with landowners. These fees range from £200 to £2,900 per year. Our clients are all aware of the conflict that will arise from using clamping to control the parking on their land. They have tried all other methods available to them and have been left with no other choice but to pay for the service of clamping.

5. We hold keys, swipe cards and fobs for 47 of our sites where they have barriers or gates, either at the entrance to the site or in designated areas within the site. Although these type of security measures help with the control of parking, on their own they have failed to properly control the parking on the land.

6. The VIA was formed just after the Crime and Security Bill received Royal assent on 8 April 2010. Although there had been several forums held with the SIA over the previous years, there was no organisation that truly represented vehicle immobilisers. A few of us had been arguing ever since the introduction of licensing, that the licensing of individuals would be ineffective and that it was the licensing of the companies that was needed to control the industry. This has been proved to be correct and we wanted to ensure that with the new regulations there would be a definitive code of practice that would rid the industry of the "rogues" once and for all.

7. At the first meeting on April 10, 22 companies, with sites all over England and Wales, were represented. Together we formulated our objectives and agreed that we would be prepared to work to one set of rules that would include maximum clamp release fees, clear signage and bring an end to unwarranted multiple charges. It was agreed that I would be responsible for writing our code of practice. The constitution and initial code of practice of the VIA can be viewed at www.viassociation.org.uk

8. Since the announcement by Ms Featherstone to ban clamping and towing on all private land, the VIA has spent most its time monitoring statements by government and the progress of the Protection of Freedoms Bill.

Evidence

9. This evidence is submitted on behalf of our clients and the thousands of residents that will be adversely affected if the proposed ban on clamping and towing is made law. This is no dispute that the clamping of cars as a deterrent to stop the misuse of parking on private land needs to be carefully and strongly regulated. The majority of companies involved in this industry have already shown their agreement to this, confirmed in the publication of the results of the Final Impact Assessment on Proposed Business Licensing in March 2010 and their support of the VIA.

10. The clamping of a vehicle is a very powerful action. The driver is deprived of their vehicle and is required to immediately pay for the release of that vehicle. However, my experience and records over the past 20 years show that it is an action that is required as the final deterrent against the actions of some drivers who believe they have the right to park where they want, irrespective of the needs or wishes of the landowner. The use of tickets and barriers are very useful tools in controlling parking but on their own will not prevent the increasing aggressive behaviour of some drivers.

11. This evidence is supported by what is happening on the streets. More and more councils and boroughs are implementing stronger measures to control parking and prevent the obstruction of entrances by vehicles. Drivers ignore warning signs, road markings and designated parking areas. They are issued with PCNs that are going unpaid and the same vehicles continue to park without any concern for the regulations or that they may be obstructing the entrance to someone's residence or business. This leaves councils and boroughs with no other choice but to eventually resort to clamping and towing.

12. Even the DVLA is unable to enforce the need to purchase a road fund license without the threat and use of the clamp or towing away of offending vehicles. The problems experienced by councils, boroughs and the DVLA are no different to those experienced by private landowners.

13. Some of the increased problems "on street" over the years has been caused by the effective parking control on private land bordering these areas. Once unwanted cars are stopped from parking on the private land by the use or threat of the clamp, they are displaced to neighbouring properties or onto the street. The Government has given no consideration to the displacement of vehicles from the streets back to the private land, which will happen, if this ban is implemented. The people who abuse parking "on street" are no different to those who abuse it "off street".

14. In a letter to my MP, Crispin Blunt, in November 2010, Ms Featherstone stated "We agree that it is important to balance the rights of the motorist to have access to their vehicle, with the rights of landowners to use and control access to their property." By implementing a ban on clamping, the Government is saying that the rights of the motorist having access to their vehicle are more important than the rights of the landowner to protect the use and control of their land. In other words a person, who parks blocking a garage, depriving the owner of the use of that garage or the vehicle inside, has more rights than the garage owner. How can it be fair or right that the aggressor has more rights than the aggrieved?

15. Ms Featherstone goes on to say "The ban on clamping and towing on private land will not prevent landowners or vehicle immobilisation companies from carrying out other forms of parking control, for example ticketing or using barriers." Evidence from my sites, together with reports from Westminster and Greenwich Councils, clearly show that tickets on their own do not work. There is no inconvenience to the driver and they are a very poor deterrent. These councils already have the power proposed under section 56 and yet report that from 1 April 2009 to 31 March 2010, the total number of tickets paid is only 63%. This is completely contrary to the evidence put forward by Ms Featherstone in the Impact Assessment of 18 January 2011, where it is quoted that the average of recovery of tickets on private land at this time is 75%, expected to rise to 90% with the introduction of Section 56. One of the reasons given by Westminster Council for this low figure is the number of foreign plated vehicles and the lack of correct registered keeper details held by the DVLA.

16. As already mentioned in paragraph 5, the use of a barrier or gates can be a useful tool in controlling the entrance to a particular piece of land by unwanted vehicles. What they will never do is control the parking of vehicles once they are inside the barrier. One of the reasons the Government has given for not implementing the Crime and Security Act 2010 is that "We believe, however that this would have been an expensive and complicated solution to the problem." Does the Government think that the installation of barriers would not be an expensive and complicated matter for landowners? Even if they could all get planning permission, which some are unable, there is the problem of getting all residents to agree to the extra cost as most lease agreements will not have a provision for the installation of a barrier. The cost of a barrier is not just the installation, there is also the cost of ground works to supply electricity and the ongoing maintenance. This will amount to thousands of pounds. Barriers are also prone to breaking down. Once that happens, the land will have no protection.

17. One of our sites in South East London is owned by the City of London. It is a very large residential area with a church and an old people's home with marked ambulance bays. Barriers were already in place to control access to the main residential parking areas when our contract began in August 2000. These barriers have been out of operation on several occasions, resulting in an increase of unauthorised parking on each occasion. Even with the barriers working, we receive calls every week from residents who are unable to use their parking bays as there is an authorised vehicle in their bay.

18. Section 55 extends the powers of Section 99 of the Road Traffic Regulation Act 1984 (removal of vehicles illegally, obstructively or dangerously parked, or abandoned or broken down) to cover private land. The police will have the power to move cars that are parked dangerously or obstructively on private land. No one believes the police will have time to deal with such incidents. This is confirmed in the 2011 Impact Assessment under "Police Response". This new power would be exercised at the discretion of the police and not a duty. It was the view of ACPO that police forces would consider attending only where, in their view, there is a risk of harm. They specifically recommended steps to be taken to ensure that the public are aware that the police would not attend routinely to resolve civil parking disputes. Making this clear would be key to ensuring that the public's expectations are not raised inappropriately. The Government has made no attempt to make this clear to the public; on the contrary they have gone out of their way to infer that police will help in dealing with unwanted cars.

19. During the release of statements and information to justify the ban on clamping and towing, the Government has made frequent reference to the "success" of a ban in Scotland, yet the Scottish Government does not want the new legislation to extend to Scotland. This could be due to the fact that they are having trouble with the abuse of disabled bays in private car parks and may be considering their own legislation to allow clamping to solve some of these problems.

20. More importantly, I believe it is very misleading to continue to compare Scotland, with a total population of 5.1 million, to England, where the 32 London Boroughs alone have a known population of 7.7 million, which does not include the millions that visit or pass through London every year.

21. In paragraph 16, I mentioned that one of the reasons for not implementing the clear answer to the problem of rogue clampers, which is the Crime and Security Act 2010, is the cost. One of the examples given is the cost of at least £2 million to set up an appeals system that would have to be underwritten by public funding. I have contacted several of our landowners and asked them if they would be prepared to contribute to an independent appeals system. Without exception, the answer was "of course we would". This is an avenue that has not been explored by the Government as a way to save costs.

22. There are two other important points that need to be addressed. The first concerns the explanatory notes to Section 54(2). I assume that this section was necessary to negate the edict of *Arthur v Anker* which made clamping lawful provided there was correct signage displayed on site so that any one driving onto the land would be reasonably expected to see and read the warning sign, thereby consenting to the possibility

of their vehicle being clamped and the payment of a release fee. Explanatory notes, by definition are there to explain what is meant by the legislation—*"198. Subsection (2) provides that any consent, whether express or implied, given by a person entitled to remove the vehicle to the immobilisation, movement, or restriction of movement, does not constitute lawful authority for the purposes of subsection (1). A driver of a vehicle, by parking in a commercially run car park, may have impliedly accepted the landowner's offer to park (or that of the parking company acting as the landowner's agent). He or she may also, depending on what is advertised at the car park, have impliedly agreed to comply with the terms and conditions advertised, including the parking charges and the associated enforcement mechanism for those charges. However, by virtue of this subsection, the operation of the law of contract as it applies to commercially run private car parks does not confer lawful authority on the landowner or operator of a car park to clamp or tow away a vehicle parked there."*

23. These notes refer specifically to a commercially run car park and the driver having implied the acceptance of the landowner's offer to park. The land that the majority of clamping companies protect is private land where the public are not invited and therefore there is no offer to park. The notes go on to state that by subsection 2, the law of contract as it applies to commercially run private car parks does not confer lawful authority. If one is to take these notes as correct, *Arthur v Anker* would still apply to residential car parks which are definitely not run as commercial car parks.

24. The second important point concerns the second reading of the Bill on 1 Mar 2011: Column 210:

> **Gavin Barwell (Croydon Central) (Con)**: Further to my right hon Friend's answer to the hon. Member for Luton South (Gavin Shuker), will she confirm that local authorities will continue to have the power to clamp on the public highway? Will residents in private developments be able to contract with their local authority to clamp on private developments? I have been contacted by a large number of people in my constituency who have tried ticketing and barriers but found that they do not work close to the town centre and public transport hubs. Could local authorities continue to clamp on private land?
>
> **Mrs May**: I am grateful to my hon Friend for raising that point. Local authorities already have the ability to take a controlling interest and to run parking on private land, subject to the agreement and request of the landowner, although that facility has not been much used.

25. I, nor any of my clients, have ever heard of the ability of local authorities to take a controlling interest and to run parking on residential private land. We have contacted Croydon Council who has confirmed that they do not and will not provide a clamping service for private residential estates. The same applied to Surrey Council and Banstead & Reigate Borough Council. This seems to indicate that the Home Secretary has not been properly informed or she has made a terrible mistake. Either way, the public has been misled by a statement from Government.

26. As already mentioned, private landowners are subject to exactly the same problems as experienced on public land with the relatively low numbers of thoughtless, selfish and foreign drivers. At the moment, like local Councils, they can decide to what level they want to go to control the problem. It is very important to remember that it is the landowner's choice to use a clamping company and in most cases, they will only do it as a last result. If the ban goes ahead, the problems faced by landowners and residents will increase substantially and in reality there will be very little they can do about it.

27. This legislation may be good politics for the Liberal Democrats, but it will not protect the freedom of landowners or residents to live a peaceful life. If the clamping and towing of offending vehicles is to be made unlawful, then it should apply to everyone. Why should an offending vehicle be protected on private land, but not on the streets?

28. It seems clear that the Government does not understand the problems of trying to control parking on private land and the affect it will have by implementing a ban on clamping and towing. It certainly does not seem to understand the difference between private land where the public are invited, such as commercially operated car parks, and private land where the public are not invited, such as residential areas.

29. Rogue clampers are in the minority and are usually one or two operators working a very small area. If the Crime and Security Act 2010 was implemented, the majority would disappear, if for no other reason that they would not to be able to afford the business licence fee. The public do have a right to be protected from made up charges and sharp practices, but at the same time the landowner should not be forced to have to put up with aggressive behavior from inconsiderate drivers.

March 2011

Memorandum Submitted by Steve Jolly (PF 20)

"Birmingham Spy Cameras No Thanks!"

Summary

1. The CCTV provisions in the Protection of Freedoms Bill are disappointing. Much of what is contained in the Bill or the Code of Practice consultation can be found in previous Home Office guidance or the 2007 National CCTV Strategy. A proper debate is urgently needed that explores all aspects of surveillance cameras and cuts through the cries of parliamentarians that "it's what the public wants!" The issues associated with Automatic Number Plate Recognition cameras (ANPR) and their ability to track citizens are not addressed in any meaningful way. Public consultation on surveillance cameras requires an informed debate and it is therefore a great shame that the Liberal Democrat's proposal for a Royal Commission "to recommend on the use and regulation of CCTV" failed to make it into the Bill.

Introduction

2. Having given much consideration to the relevant sections of the proposed Bill and the Code of Practice consultation document I feel it is important to put my views before the committee regarding this important matter.

3. Whilst in opposition the Liberal Democrat party produced a Freedom Bill[49] which appears to be the forerunner to the current Protection of Freedoms Bill. Chapter 4 of the Freedom Bill called for the establishment of a Royal Commission "to recommend on the use and regulation of CCTV". Such a Royal Commission is urgently needed to address what the Surveillance Studies Network recently referred to as "a remarkable anomaly"[50]—the public and political support for surveillance cameras despite their ineffectiveness in achieving their stated objectives.

4. A full public debate to address both the failures and negative impacts on society of surveillance cameras is desperately needed. Both the 2007–08 Home Affairs Committee's *A Surveillance Society?* inquiry and the 2008–09 Constitution Committee's *Surveillance: Citizens and the State* inquiry failed to get beyond the hackneyed cry of parliamentarians that "it's what the public wants!" Both of these inquiries took evidence before the Campbell Collaboration's *Effects of Closed Circuit Television Surveillance on Crime*[51] evaluation was published in December 2008. The Campbell Collaboration's evaluation concluded that: "CCTV schemes in city and town centres and public housing [. . .] as well as those focused on public transport, did not have a significant effect on crime" (page 19).

5. Once in government the calls for a Royal Commission into surveillance cameras were replaced by rhetoric albeit strong. On 19 May 2010, the Deputy Prime Minister in a speech on constitutional reform[52] acknowledged that:

> "It is outrageous that decent, law-abiding people are regularly treated as if they have something to hide. It has to stop."

6. Accordingly, he promised:

> "to transform our politics so the state has far less control over you, and you have far more control over the state.
>
> [. . .]
>
> A fundamental resettlement of the relationship between state and citizen that puts you in charge."

7. In relation to the rapid and unchecked proliferation of public surveillance what freedoms did Mr Clegg promise to protect? None. Only that:

> "CCTV will be properly regulated."

8. Now we are asked to accept that concerns about surveillance cameras can be brushed aside without a full debate and that somehow proper regulation is the answer.

9. The Bill contains no definition of "freedoms" and what exactly the Bill is supposed to be protecting, this despite the extremely detailed definitions that the Bill contains. It also seems strange that this Bill has begun its passage through parliament before the independent Commission to investigate the case for a UK Bill of Rights.[53]

National CCTV Strategy

10. The measures introduced in this Home Office Bill come as no surprise to those following the continued expansion of camera surveillance in the UK, but they do come as a disappointment to those that believed the new government might start to restore some of the freedoms lost by the citizens of the UK. The provisions relating to CCTV in the Protection of Freedoms Bill appear to be a direct continuation of the

[49] http://www.libdems.org.uk/siteFiles/resources/PDF/The_Freedom_Bill.pdf
[50] ICO's report to Parliament on the state of surveillance, November 2010—http://www.ico.gov.uk/~/media/documents/library/Corporate/Research_and_reports/surveillance_report_for_home_select_committee.ashx
[51] Page 19, *Effects of Closed Circuit Television Surveillance on Crime*, http://www.campbellcollaboration.org/lib/download/243/
[52] http://www.cabinetoffice.gov.uk/news/nick-clegg-speech-on-constitutional-reform
[53] http://www.justice.gov.uk/news/newsrelease180311a.htm

Home Office/ACPO *National CCTV Strategy*[54] published in October 2007. The National CCTV Strategy contained a number of recommendations that were allocated to five subgroups, namely "Standards", "Establishment of the National CCTV Body and Registration Scheme", "Police Use of CCTV", "Facilities in the CJS" and "Partnerships and Resources".

11. Whilst the new government may seek to take credit for the idea of looking again at CCTV regulation we find that recommendation 12 of the 2007 National CCTV Strategy states: "Develop legislation to ensure the appropriate regulation of CCTV systems".

12. Much of the National CCTV Strategy is concerned with the establishment of standards, recommendation 2 states: "Agree on digital CCTV standards and digital video formats for public space CCTV, police, and CJS use" and recommendation 3 states: "Seek to influence national and international CCTV standards".

13. Compare these recommendations with the Standards section of the recently published Home Office *Consultation on a Code of Practice relating to surveillance cameras*[55] which states on page 14: "The Government has no intention of requiring that all users must upgrade their systems, but the adoption of industry standards would not only provide assurance for customers that their systems would operate as claimed;" and later also on page 14: "The Government would therefore wish to engage with manufacturers businesses and users on the merits and feasibility of developing a range of technical standards for equipment, at national or international level".

14. Page 15 of the Code of Practice consultation states: "One area in which it may be particularly helpful for the new Code to provide further or refined guidance is in relation to recommended data retention periods", whilst recommendations 18, 27 and 28 of the National CCTV Strategy also refer to retention periods, recommendation 18 stating: "Image retention periods should be standardised and relate to the operational purpose of the CCTV system".

15. It becomes clear when comparing the Home Office's draft CCTV Code of Practice to the National CCTV recommendations that the surveillance camera provisions have no place in a Bill entitled *Protection of Freedoms*. They would be better placed in a policing or crime bill where they could be seen for what they are—part of the continued expansion of the surveillance state.

Automatic Number Plate Recognition Cameras

16. The ANPR network of over 10,500 ANPR cameras[56] and the database attached to it has been developed without any primary legislation, statutory instruments and with no public or parliamentary debate. Its original stated intention was to identify untaxed/uninsured vehicles, but ACPO's *ANPR Strategy for the Police Service 2007–10*[57] declared their intention for ANPR to become "a core policing tool" by March 2010.

17. When ACPO were asked for details of the statutory powers/Act(s) of Parliament under which ANPR cameras are installed and used as a "core policing tool" they simply stated that ANPR "does not require any legislation or statutory powers" to effectively conduct nationwide vehicle surveillance.[58]

18. Yet in the 2004 report *Driving crime down*[59] the then Home Secretary David Blunkett wrote that experience gained in an ANPR pilot "is likely to lead to the introduction of ANPR enabling legislation as soon as Parliamentary time allows". Furthermore the Surveillance Commissioner's 2005–06 Annual Report[60] stated:

> "In the normal case, where a camera is sited in an obvious position and obviously is a camera, the deployment will not be covert. The same will normally apply where adequate notice of the presence of a camera has been given. But ANPR is not a normal case, and it is arguable that, even if the presence of an ANPR camera is apparent, surveillance nevertheless remains covert if occupants of vehicles are unaware that the camera may make and record identifiable images of them. Explaining the true purpose of the equipment briefly is not easy. It is not possible to lay down rules as to what will amount to adequate notice of the presence of the camera and of its function."

19. The Surveillance Commissioner's report went on to say:

> "The unanimous view of the Commissioners is that the existing legislation is not apt to deal with the fundamental problems to which the deployment of ANPR cameras gives rise. This is probably because the current technology, or at least its very extensive use, had not been envisaged when the legislation was framed. The Commissioners are of the view that legislation is likely to be required to establish a satisfactory framework to allow for the latest technological advances. The position

[54] http://webarchive.nationalarchives.gov.uk/20100413151441/http://www.crimereduction.homeoffice.gov.uk/cctv/National%20CCTV%20Strategy%20Oct%202007.pdf
[55] http://www.homeoffice.gov.uk/publications/consultations/cons-2011-cctv/code-surveillance-cameras?view=Binary
[56] Police have more than 10,000 ANPR cameras, February 2010—http://www.kable.co.uk/national-anpr-data-centre-police-acpo-03feb10
[57] http://www.whatdotheyknow.com/request/17502/response/42303/attach/2/ANPR%20Strategy%20for%20the%20Police%20Service%202007%202010.doc
[58] http://www.whatdotheyknow.com/request/details_of_statutory_powers_rela?unfold=1#incoming-48504
[59] http://www.popcenter.org/problems/residential_car_theft/PDFs/Henderson.pdf
[60] http://www.official-documents.gov.uk/document/hc0506/hc12/1298/1298.pdf

> is complicated by the fact that the current technology can be used in a variety of different ways and at different levels of effectiveness. I am accordingly urging upon the Home Secretary the desirability of promoting such enabling legislation as may be needed."

20. Section 29(6) of the Bill inserts ANPR cameras along with CCTV into the definition of surveillance cameras—as if this powerful nationwide surveillance network has always been an accepted part of our national infrastructure. Can this really be seen as a measure that addresses the many concerns about ANPR and the lack of proper debate in its expansion throughout the UK?

21. The national ANPR network is the biggest surveillance network that the public has never heard of. ACPO has also rejected transparency regarding the location and positioning of these cameras.

22. The Government has failed to address the concerns about ANPR cameras—concerns raised by the Surveillance Commissioner, and the wider public including those that fought the Project Champion cameras in Birmingham.

Comparisons with previous CCTV guidance

23. In 1994 the Home Office produced a document entitled *CCTV Closed Circuit Television: Looking out for you*. At first glance it appears that Home Office thinking has progressed very little in the last 17 years. Page 35 of *Looking out for you* states:

> "In order that CCTV systems are used efficiently, that public confidence is maintained, due attention is paid to issues of privacy and that integrity of systems is preserved, it is crucial that a code of practice is developed."

24. However further study of *Looking out for you* reveals that, despite Home Office evaluations that have reported the failings of CCTV, the current proposals lag far behind the 1994 document when it comes to understanding surveillance cameras and their impact on society. In the recent *Consultation on a Code of Practice relating to surveillance cameras* the Home Office present the stated objectives of surveillance cameras under the guise of "Benefits" (pages 6 and 9) and weigh these in the balance alongside what they deem the "Challenges" (pages 8 and 10) which are little more than questions over image format and such like. Compare this with page 15 of *Looking out for you*, which under the heading *Will CCTV create any problems?* lists a number of potential pitfalls:

- "Be aware of the need to avoid the risk of CCTV simply moving crime to another part of your area."
- "Take care that the installation of CCTV will not reduce the vigilance of otherwise active citizens."
- "Be careful that the installation of CCTV will not produce an exaggerated sense of security amongst vulnerable members of the community."

25. None of these pitfalls are explored in the current Bill or accompanying Code of Practice consultation. Whilst the technology has progressed enormously in the last 17 years and as the Code of Practice consultation acknowledges "that modern digital technology is on the cusp of revolutionising the use of CCTV" (page 8), the Home Office's concern for our society has taken a back seat in favour of pushing ahead with the National CCTV Strategy agenda of even more state surveillance.

26. Consultation with the public.

27. Section 29 (3) of the Bill states that the proposed CCTV code may include provision about: "procedures for complaints or consultation". Page 13 of the Code of Practice consultation expands upon this clause of the Bill—under the heading "Pre-Planning" it suggests possible check list contents, including:

> "appropriate consultation with the public, or any specific group, most directly affected by any planned surveillance;"

28. The 1994 document *Looking out for you* also called for public consultation—on page 17–18 under the heading *Planning* the Department of the Environment circular 5/94 is quoted:

> "Prior to the development of a CCTV scheme, there should be consultations with the police, community groups, business people and (if the installation is by a private developer) the local authority."

29. *Looking out for you* also suggests on page 15 that many crime prevention measures can be made more effective by publicising the measure:

> "Many crime prevention measures are remarkably effective for the first year or so, as offenders become less confident in the changed circumstances. The influence of these measures then fades as their familiarity increases. Think through what you might need to do to sustain the impact of CCTV. Publicity is now believed to be crucial to maintain the effectiveness of many crime prevention measures."

30. This concept of publicising CCTV as an effective tool in order to in some way actually make it an effective tool has become the standard practise to the point where the general public believes surveillance cameras are far more effective than the objective reality. This means that simply offering a token consultation is not enough. Only an informed debate can suffice. The constant cries of MPs that their constituents want

more CCTV not less means that no meaningful debate ever takes place. Most MPs seem to see surveillance cameras as an easy win to gain support. This only fuels the support of CCTV that is so often proclaimed, but when the public is asked whether they support CCTV why are they never asked whether they would still support it if it did not do what was claimed? With surveillance technology advancing fast it is surely the duty of parliamentarians to get informed and in turn to inform the public of the facts and dangers of camera surveillance.

31. In a June 2009 House of Lords debate on the Constitution Committee's report *Surveillance: Citizens and the State* Lord Peston pointed out that:

> "if the public want these CCTV cameras—and my *ad hoc* experience is that that is true—what is the correct response that those of us in public life, not least the Government, should give? Should we say, "If it is what they want, then it is what they ought to have even though it is not backed by any evidence at all"? Or is it our duty to educate them and tell them that they are wrong? [. . .] I certainly believe that if all CCTV cameras do is reassure you when you should not regard them as doing so, then someone ought to say to you, 'Why don't you think about it a little bit and realise that you are mistaken?'."[61]

32. Anna Soubry MP, in a debate on *Crime and Policing* in September 2010 in response to comments made by Hazel Blears MP, said:

> "The right hon Lady will know that I said that I want fewer CCTV cameras. That should be the aim of everybody in this Chamber, because people should be able to walk the streets free from the fear of crime and from actual crime."[62]

33. Unfortunately Lord Peston and Anna Soubry MP are rare exceptions.

34. A recent study published in the Canadian Journal of Sociology entitled *CCTV Surveillance and the Civic Conversation: A Study in Public Sociology*[63] looked at public opinion with regard to surveillance cameras in Canada. This study was initiated in part as a result of the publication by The Office of the Privacy Commissioner of Canada (OPC) of *OPC Guidelines for the Use of Video Surveillance of Public Places by Police and Law Enforcement Authorities*[64] which states that "Public consultation should precede any decision to introduce video surveillance." The study's authors were concerned that this basic requirement was too simplistic.

35. What the Canadian study shows is that whilst the call for public consultation looks good on the surface in reality it fails to be an informed debate. When they spoke to members of the public in focus groups they found that:

> "Most participants indicate that they learn about camera surveillance from newspapers and other media." (page 14)

36. This media driven information led to two assumptions:

> "the first of which is that video surveillance effectively deters crime." (page 15)

37. The second being:

> "that public monitoring can aid in responses to crime and after-the-fact investigations." (page 16)

38. But they went on to state that:

> "During discussions about the deterrent effect of cameras, we referred to research suggesting that street lighting might be as, or more, effective as a deterrent (Painter and Tilley 1999). One senior's response marks a modification of her earlier stance concerning CCTV as a deterrent." (page 18)

39. And that:

> "When the deterrent effect of the cameras is similarly questioned with the other group of seniors, several reflect upon and revise prior assumptions." (page 18)

40. They also state that:

> "Our attempts to argue that the reductive effect of video surveillance on violent crimes is empirically unsubstantiated (see Welsh and Farrington, 2009; Gill and Spriggs 2005; Painter and Tilley 1999) fell on deaf ears." (page 20)

41. Clearly it is essential that the public's view should be sought before surveillance cameras are installed but much work has to be done to make sure that the public is better informed. If the public is relying for its information about surveillance cameras on the parliamentarians (who just say the public wants it) and the media (tasked to say it works with the flawed logic that this will make it so) then the public will simply reflect the views of those they have been told to trust.

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[61] *Hansard* HL Deb, 19 June 2009, c1295—http://www.theyworkforyou.com/lords/?id=2009-06-19a.1285.2#g1295.0
[62] *Hansard* HC Deb, 8 September 2010, c387— http://www.theyworkforyou.com/debates/?id=2010-09-08c.343.1#g387.0
[63] http://ejournals.library.ualberta.ca/index.php/CJS/article/viewFile/7419/7393
[64] http://www.priv.gc.ca/information/guide/vs_060301_e.cfm

42. Any public consultation must present all of the facts including the many findings that show the ineffectiveness of CCTV and the substantive research on the negative impact surveillance cameras have on society.

43. The lack of public consultation in the run up to the installation of the Project Champion cameras in Birmingham has been cited as a major failing of the scheme. Whilst this is certainly true it does not mean that the cameras would have been appropriate had the public been consulted. Consultation must be seen as a way of having a full debate not just a box ticking exercise.

Conclusions

44. The CCTV provisions in the Protection of Freedoms Bill fall short of the grand rhetoric of the Deputy Prime Minister and the Freedom Bill that was published by the Liberal Democrat party in 2009. As the campaign group No CCTV has pointed out:[65] "Regulation does not address the core issues of removal of personal freedom, anonymity and other rights. It simply endorses acceptance of surveillance technologies by formalising their "proper use" and leaves no room for the rejection of such technology".

45. It is distressing that the new government has been unable to follow through on its promises to restore lost freedoms. It seems the support of technology regardless of its implications and consequences that was a characteristic of the last government continues unchallenged. This pretence at protecting freedoms is therefore all the more appalling in light of where this technology is heading—with Unmanned Aerial Vehicles (UAVs) such as the BAE HERTI being evaluated by the South Coast Partnership for civilian surveillance operations, cameras linked to databases and able to track individuals, facial recognition, video analytics such as behavioural recognition, cameras that record sound, track eye movements, crowd sourcing systems whereby members of the public watch CCTV feeds, and the list goes on.

46. The name of this Bill bears little relevance to its content with regard to surveillance cameras which will not address the serious issues facing the people and the environments in which they live.

March 2011

Memorandum submitted by a member of the public (PF 22)

While working as a music teacher, in 2007, an allegation was made by one of my students, namely that I had thrown an apple at him, causing bruising and grazing to the chest.

I was immediately suspended pending an investigation (internal, not police). Unknown to me there were preliminary "multi agency strategy meetings" held almost immediately, where it was concluded that I had harmed a child and behaved in a way that indicated I was unsuitable to work with children.

This how my first disclosure appeared:

> On 29 October 2007 whilst working as a teacher it was reported that Mr _____ assaulted a pupil aged 12, by throwing an apple at him causing bruising and grazing to the chest. Multi agency strategy meetings took place on 6 November 2007 and 16 November 2007. The conclusion of this was that Mr _____ had behaved in a way that harmed a child, committed an offence that would have warranted a criminal investigation and behaved in a way that indicates he is unsuitable to work with children at this time and was duly suspended from his position.
>
> "Mr _____ admitted issues with alcohol, and prescription and non prescription drugs (over the counter medication) at the time but denied this impaired his ability to fulfil his teaching role. Witnesses stated that it had not appeared a deliberate act against the pupil, but that Mr _____ had lost control. Mr _____ denied the assault and no further police action was taken as pupil's parents did not wish to pursue as a criminal matter and were content to be dealt with as a local education authority disciplinary case."

This was before I was interviewed, or any witnesses were interviewed and in fact before the internal investigation had even begun. My suspension was not as a result of any findings but rather a non disciplinary action to enable further investigation.

I resigned my post after reaching a compromise agreement with the school, including a good reference and a lump sum. I had been, by this time, suspended for nearly five months. (School policy on dealing with this kind of internal investigation is draconian to say the least. I was not allowed to contact collegues or go within a certain distance of the school).

I did not want to go back because I thought that the kids would give me hell, as may some of the parents, regardless of any findings in my favour from the investigation. I was not aware at this point of what would appear on my crb, in never occured to me and I certainly wasn't informed that anything would be likely to appear there, either by the education authority, my union rep. or the school itself.

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[65] http://www.no-cctv.org.uk/blog/icos_surveillance_society_follow_up_report_-_read_it_and_sleep.htm

I then worked with a supply agency until my CRB came through and on it were the full details of the allegation and the conclusion that I was unfit to work with children and that I had harmed a child. I was immediately sacked.

That was the start of a three year long battle to get back to teaching, which I have only just been able to do (I secured a job as a music teacher in January 2001, but only after the Police finally amended my disclosure). Since the initial statement appeared on my CRB the Police have amended the disclosure 6 times.

Firstly to remove the incredible statement that I "had issues with prescription and non prescription drugs." This after I had approached my Headteacher some time before the allegation had been made to confide that I was suffering from stress and had been to see my doctor who had prescribed a short course of anti depressants, and also that I was not sleeping well and was taking "Nytol"! After a letter from my doctor they removed this.

I had also confided to my headteacher that I was concerned about my levels of weekend drinking. This was four months before the allegation was made. Even though this had absolutely nothing to do with details surrounding the allegation it appears that the Head informed the multi agency meeting of this, and it also appeared on my disclosure.

I had never attended work under the influence of alcohol and it had not been suggested by anyone, including the school, that I was under the influence of alcohol on the day the allegation was made or had ever been at work under the influence of alcohol. Why did this information appear on a criminal record check?

After 18 months and much prompting, and having to issue a "subject access request" the council finally sent the "official" findings and conclusion of the internal investigation to the Police in June 2009, despite the fact that one of their action points from the initial multi agency meetings was that they would pass on any findings to the parties concerned.

I also gained copies of the witness statements. NONE of the witnesses supported the version of events given by the accuser. It still is not clear, as the council have been unable to tell me, where they got the original statement "witnesses said it had not appeared a deliberate act" from. There were 28 children in the room that day, all facing me, and none of the children, during recorded interview, said they saw me throw an apple.

The council conclusion was that "there is no reason to suggest that Mr _____ is unsuitable to work with children" and that ". . .witnesses said that Mr _____ had Not thrown the apple'.

Despite this, and having spent about £6,000 with a solicitor writing letters, the Police refused to amend the statement any further. It still essentially said that I threw an apple, causing injury to a child. There was no intent on my part but that I had behaved in a way that indicated I was unsuitable to work with children. Even though the multi agency meetings were just part of a preliminary investigation, the Police were using the minutes from those meetings as the basis for the content of my disclosure.

Despite the change in law in October 2009, where the House of Lords said that the risk of threat to children had to be balanced against the effect including any information would have on an individual, and that the correct balance had to be struck, it appears that the Police have not changed their blanket approach at all.

The only completed investigation (there was no Police investigation in this and I was never interviewed or charged with anything by the Police) concluded that there was no reason to suggest that I was unsuitable to work with children. The witnesses supported my version of events, the Head gave me a good reference, I had, up until this point, an unblemished character and the education authority cleared me. Yet, until 2011 I was not able to work as a teacher because schools and agency's did not want to take what was a perceived risk. I tried and that was the message I got.

It also stopped me from getting a job in many other areas, as enhanced disclosures are becoming more and more common as part of job applications. So I was only able to work in very low paid, unskilled, temporary jobs.

The only remaining option was to apply to the courts for a judicial review of my case. In response to this the Police finally amended my disclosure and a consent order was agreed between the two parties.

My disclosure now reads:

> In October 2007 while working as a music teacher it was reported that Mr _____ assaulted a pupil by throwing an apple at him, causing bruising and grazing to the chest. Mr _____ was duly suspended from his pending a council investigation.
>
> Mr _____ denied the allegation and witnesses said that Mr _____ had not thrown the apple.
>
> The council concluded that there is no reason to suggest that Mr _____ is unsuitable to work with children.

I accepted this final amendment and this is what now appears on my CRB disclosure under the "Additional Information section".

This newly amended version has enabled me to return to work as a teacher (the final amendment was made in August 2010 and I was working as a teacher again by October 2010, three years after the allegation was made).

As I am a teacher every time I apply for a job this will appear, as all teachers rightly have to undergo an enhanced CRB check. This information will remain on my CRB disclosure indefinitely despite the fact I have no criminal convictions and despite the fact that the only completed investigation into the matter concluded that there was no reason to suggest that I was unsuitable to work with children, and that witnesses confirmed my version of events.

Including this information on my CRB serves no purpose other than to hinder me should I wish to seek employment that requires disclosure in
the future, and could certainly leave potential employees with some questions to ask. It is not criminal information and should therefore not appear on my criminal record check. What is the purpose of, in effect, saying, "We're just letting you know that this person has not done anything wrong".

I am supplying this information in the hope that one of the results of the protections of freedoms bill will be to remove the "Additional information" section from the CRB disclosure and to include only relevant criminal information.

The "additional information" section flies in the face of our "innocent until guilty" system that is one of the foundations of our human rights.

If a new common sense approach to the vetting and barring scheme is to be followed then "common sense" should dictate that it is a disproportionate reaction to include non criminal and irrelevant information on a disclosure simply because the Police hold it.

March 2011

Memorandum submitted by the Federation of Private Residents' Associations (PF 24)

RE PROPOSED BAN ON CAR CLAMPING

1. About the FPRA

   (a) The FPRA has for 40 years been representing the interests of 2.5 million residents and leaseholders of flats. About half of our 550 member blocks are self-managed by leaseholders; they are small community organisations.

2. *Summary of the FPRA's submission*

   (b) The FPRA is concerned about the ban on car clamping. We believe a ban on clamping will have a negative impact on the residents of blocks of flats who have to deal with illegal parking. Illegal parking is a serious problem for many blocks, especially those near stations and shops.

   (c) The threat of clamping has proved to be the only effective deterrent in stopping rogue parkers. The threat of ticketing is not effective as rogue parkers know they are difficult to enforce.

   (d) The ban on clamping removes the freedom of those responsible for parking control in blocks of flat to choose how to manage their property.

   (e) The problem of illegal car clamping can be dealt with by regulation. The current regulatory system is failing because it is poorly conceived. It would not be difficult or costly to re-structure into an efficient system.

FULL SUBMISSION

3. *Problems with physical parking control systems in blocks*

   (f) It has been suggested that "landowners" can erect physical barriers to control parking in place of clamping. The FPRA argues this may be fine for businesses, government departments and the landed getnry, but is not feasible for most ordinary blocks of flats.

   (g) Residents and leaseholders of blocks of flats may not be able to install barriers due to restrictions in the lease, or the physical layout of the grounds. Leases restrict what leaseholders and freeholders can do, and few will have a provision allowing them to build new barriers.

   (h) If the lease does allow, or is amended to allow (a complicated and costly process) the cost of installing and maintaining them will fall on the ordinary leaseholder, which includes pensioners and the not so well off. The FPRA asks why ordinary residents should have to bear the cost of dealing with rogue parkers.

   (i) Car parking control companies are often low cost or cost free for leaseholders as their fees are self-financed from clamping revenue. If clamping is banned, residents will have to pay for car parking patrols and management (again, if the lease allows for it).

   (j) Barriers are inconvenient and restrictive to residents' free movement in and out of their estate, and are inconvenient for visitors, trade vehicles and emergency services.

   (k) Gates pose a danger to children getting trapped and injured. This possibility also adds another responsibility for resident management groups to cope with.

4. *Ticketing is not a deterrent*

(l) The idea that the threat of ticketing is a deterrent to illegal parkers is naive. Tickets are difficult to enforce and the rogue parker knows this.

(m) But the threat to a rogue parker of returning to their car to find it immobilised is a threat that works. Members of the FPRA tell us this, and so do other property managers.

(n) The idea that the police or local councils will remove cars illegally parked in blocks of flats is also naive in the extreme. These organisations are not going to waste scarce resources on policing car parks.

5. *Danger and inconvenience of illegally parked cars in blocks*

(o) Illegally parked cars can block emergency entrances. In event of a fire, an illegally parked car can put life at risk.

(p) Illegally parked cars can stop access for dustbin collections.

(q) Illegally parked cars are a major inconvenience for residents who often have to pay for their parking bays, but cannot use them due to selfish rogue car parking.

6. *Regulation of the parking industry can work*

(r) The current legal framework for regulating clampers is poorly thought out, weak and ineffective. There is no regulation, for instance, on the amount clampers can charge to release a vehicle, no regulation on the time taken to unclamp a car, no regulation of complaints procedures employed by clamping companies. The most basic flaw in the system is that clamping licences are given to individuals rather than the companies themselves, making it difficult to prosecute companies for malpractice.

7. *Whose freedom is the Freedom Bill for?*

(s) The bill will actually disempower the freedom of thousands of small resident-run associations to operate car parking control systems as they see fit. And these local, community-level, volunteer-run organisations are exactly what the government's Big Society is supposed to be empowering.

(t) While the Bill is aimed at freeing drivers from cowboy clampers, the FPRA argues that freedom should also mean the freedom of local residents to be free of rogue parkers.

(u) If clamping is banned, it will cause considerable distress, cost and inconvenience to flat residents and leaseholders. We ask you to please consider the points we raise here.

(v) Please note we have first hand documentation from members to back up our points. We are also available to make a presentation to the Committee in person.

March 2011

Memorandum submitted by the Northern Ireland Human Rights Commission (PF 25)

1. The Northern Ireland Human Rights Commission (the Commission) is the national human rights institution (NHRI) for Northern Ireland. It was created in 1999 under the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998.[66] The Commission is accredited with "A" status by the UN International Co-ordinating Committee of NHRIs.[67] It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,[68] and advising on whether a Bill is compatible with human rights.[69] In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding "soft law" standards developed by the human rights bodies.

2. The Commission will focus its comments the stop and search powers within the Protections of Freedoms Bill. Many other aspects of the Bill, including provisions for DNA retention, do not extend to Northern Ireland following the devolution of justice, and the Commission will provide evidence to the Northern Ireland Assembly on such matters in due course.

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[66] The Commission's powers were modified by the Justice and Security (Northern Ireland) Act 2007.
[67] The UK has two other accredited NHRIs: the Equality and Human Rights Commission for Great Britain, except in respect of matters devolved to Scotland, which has established the Scottish Human Rights Commission. The present submission is solely on behalf of the Northern Ireland Human Rights Commission.
[68] Northern Ireland Act 1998, s 69(1).
[69] As above, s 69(4).

Modification of UK Stop and Search powers

3. Clause 58 would repeal the "section 44" stop and search power introduced under the Terrorism Act 2000 (TACT) which allows police to randomly search persons without a requirement for individual reasonable suspicion. The power can be exercised in a designated area where it is considered "expedient for the prevention of acts of terrorism" and is intended only to be exercised to search for articles which could be used in connection with terrorism.

4. This Commission has consistently raised concerns that the existence of such an unfettered power could lead to its arbitrary exercise and/or its deployment in a discriminatory manner. In July 2010, in *Gillan and Quinton v UK* the European Court of Human Rights found that the power failed the legal certainty test under ECHR Article 8 (the right to respect for private life) in that the powers were "neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse".[70] The present Bill would introduce a replacement stop and search power. The same test applies to this power, namely whether it is compatible with the rule of law in a democratic society by affording sufficient safeguards to prevent its exercise in an arbitrary fashion.

5. It is worth emphasising that the violation of ECHR Article 8 found in Gillan was not under the test of "necessary in a democratic society", where limitations are considered in relation to their proportionality to the legitimate aim they serve. In that context, the actual effectiveness or ineffectiveness of powers such as s44 would be considered. Rather s44 failed the "in accordance with the law" test, that legislation must be sufficiently clear and foreseeable to enable the individual to regulate their conduct. The Court held:

> *In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.*[71]

6. There are tightly defined genuine "emergency" circumstances where it is possible to exercise temporarily, through the time-limited suspension of certain treaty obligations, counter-terrorism powers which would normally infringe on human rights standards, such as the right to private life. Rather than introducing "permanent" powers a threshold must be met of a genuine emergency for which the temporary measures are strictly required; it is therefore only in these circumstances that powers which would otherwise infringe standards such as Article 8 should be introduced.[72]

7. Clause 60 and schedule 5 of the present Bill would introduce a new permanent power to stop and search people or vehicles without individual reasonable suspicion. The power permits a senior police officer to grant an authorisation, if the officer "reasonably suspects that an act of terrorism will take place", and considers that the "authorisation is necessary to prevent such an act". The specified zone for the authorisation can be no greater than is necessary to prevent such an act; and the duration of the authorisation can be no longer than is necessary to prevent such an act, with the maximum period being 14 days. Following an authorisation, the power can only be exercised to search for evidence of terrorism. As with s44, the Secretary of State would have oversight powers to cancel an authorisation or shorten its duration; these powers would also now allow the Minister to restrict the geographical area of the authorisation. A Code of Practice must be issued, which a court or tribunal may take into account in relation to a *constable's* failure to have regard to it. The new proposed power therefore has greater safeguards on the face of the Bill than s44 and some additional oversight. However, there are questions as to whether it will be feasible in practice to verify compliance with some of the authorisation criteria.

8. The oversight power of courts and tribunals in relation to having regard to the Code of Practice appear to apply only to a constable's decision to conduct an individual search. It does not apply to the original decision of the senior police officer to grant an authorisation (having determined that the "generalised" reasonable suspicion actually arises), despite the exercise of authorisation power also being covered by the Code of Practice. The role that schedule 5 would give to the Secretary of State in providing oversight to authorisations is only permissive: restrictions "may" be instigated but there is no duty to do so, if the authorisation criteria have not been met. In relation to oversight of s44 TACT authorisations, shortly before the suspension of use of the power the Police Service of Northern Ireland (PSNI) confirmed to the Commission that while there was dialogue in respect of the necessity of applications, the PSNI was not aware of any instance where the Secretary of State had actually refused or curtailed an authorisation.[73] In addition to the question of whether a member of the Executive is the appropriate person to provide such oversight,

[70] *Gillan and Quinton v UK* (app no 4158/05) para 87.
[71] As above, para 77.
[72] Article 15 of the European Convention on Human Rights permits temporary derogations from a number of rights in the Convention in time of war or other public emergency threatening the life of the nation, provided that the derogation only is to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. Under the United Nations human rights system, the UK is also party to the International Covenant on Civil and Political Rights (ICCPR), Article 4 of which also contains a derogation provision.
[73] PSNI correspondence to Commission, 17 May 2010.

the more general effectiveness of this particular safeguard is therefore questionable. A Council of Europe human rights committee has urged monitoring of the s44 authorisations with particular care to ensure that their granting is not purely an administrative exercise.[74]

9. Unlike the 14-day time restriction, while it should be "no greater than is necessary", there is nothing on the face of the Bill which directly restricts the geographical area. This contrasts with the one square kilometre limit proposed in an unsuccessful amendment to s44 during the passage of the Crime and Security Bill in the previous Parliament. Just before the suspension of s44, the PSNI confirmed that an authorisation for its use was in place for the whole of Northern Ireland, and had been in the past, although the PSNI stressed there had also been times when some policing areas and districts had not had an authorisation in place.[75] Authorisations can only be published retrospectively, if at all, and presuming that the rationale is intelligence-led, the reasoning is unlikely to be set out. Should an authorisation under the new power also cover the entire jurisdiction, or large parts of the same, it is difficult to see how the area being "no greater than necessary" could be effectively challenged.

10. In relation to other safeguards, there is no explicit requirement on the face of the Bill for ethnic monitoring (which in Northern Ireland would presumably include grounds of "community background"). The individual search requirement also relates back to the concept of "terrorism" which is broadly defined in legislation.

11. *The Commission remains concerned that there are insufficient safeguards to prevent the powers being exercised arbitrarily.*

Modification of Northern Ireland Stop and Search powers

12. The Justice and Security (Northern Ireland) Act 2007 (JSA) provides specific powers for this jurisdiction. Section 21 allows the *stopping and questioning* of any person or vehicle by the police or military about identity and movements, without individual reasonable suspicion (or an authorisation). Section 24 and schedule 3 allow *stop and search* in a public place by the police and military for munitions and transmitters, without individual reasonable suspicion.[76] Since the discontinuation of use of the s44 TACT power in July 2010, there has been a corresponding rise in the use of the section 21 and 24 JSA powers, although the overall number of stops has reduced.[77] As ECHR Article 8 is also engaged by questioning powers, the lack of a reasonable suspicion requirement or other limitations leaves both s21 and the s24 stop and search powers susceptible to similar challenge as that brought in Gillan, that is, that they are not in accordance with the rule of law in a democratic society.

13. The s24 stop and search power would be amended by the present Bill.[78] The amendment would limit the power to the military, and remove it from the police. The removal of such an unfettered power from the police is welcome. Its continued permanent availability to the military (rather than the power being a time limited emergency power) is of concern, and, should it be used, likely to face challenge.[79]

14. The present Bill would amend JSA 2007 to introduce a s24 replacement stop and search power for the police in Northern Ireland, without individual reasonable suspicion.[80] The power is drafted in a similar manner to the s44 TACT replacement power, with the authorisation and individual stop exercise tied more precisely to a search for munitions or transmitters rather than to suspicion related to "acts of terrorism".

15. With this power, in the event of a judicial review or other legal proceedings relating to an authorisation, the Secretary of State may prevent the challenge by issuing a certificate stating that the authorisation was justified and that the "interests of national security are relevant to the decision", with appeal only to a special tribunal.[81]

16. Although the introduction of some safeguards is reassuring, the Commission remains concerned that they are insufficient to prevent the powers being exercised arbitrarily.

March 2011

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[74] Council of Europe (Framework Convention for National Minorities) Second Opinion on the United Kingdom, 6 June 2007 ACFC/OP/II(2007)003, para 143.
[75] PSNI correspondence to Commission, 17 May 2010.
[76] Along with a power to stop and search on private property, where there is individual reasonable suspicion.
[77] PSNI quarterly statistics indicate the use of s 21 and s 24 JSA, and combined use of both, rose from 255 instances in the quarter before s 44 TACT suspension (April-June 2010) to 5,535 in the most recent quarter (October-December 2010); s 44 had been used 6,992 times in its own right in the April-June 2010 period, and a further 1,849 times in combination with s 21. Source: Central Statistics Unit, PSNI.
[78] Para 1, Schedule 6.
[79] During the passage of the JSA 2007, the Commission voiced concerns as regards this and other powers being vested in the military on a permanent basis. If a situation were to arise in Northern Ireland, or indeed in Great Britain, requiring the deployment of the armed forces with quasi-policing powers, such powers could be made available through emergency provisions that were in place for a strictly limited period.
[80] Para 2, Schedule 6.
[81] A Tribunal established under section 91 of the Northern Ireland Act 1998.

Memorandum submitted by the Association of Residential Managing Agents (ARMA) (PF 26)

1. Summary:

— The Association of Residential Managing Agents wishes to present written evidence that the banning of clamping and towing away of vehicles on private land will have a seriously detrimental affect on the owners of residential long leasehold property. ARMA's much preferred route is a vigorous licensing scheme as proposed by the British Parking Association.

— Should this approach not find favour then we would ask consideration be given to the following:

— An amendment to chapter 2 clause 54(6):
Clause 54(6) of the Bill contains a definition of "motor vehicle" which includes "a vehicle designed or adapted for towing by a mechanically propelled vehicle." This would include vehicles such as caravans or trailers. As these vehicles do not have to be registered with DVLA, there is no way after the clamping ban comes into force for the landowner to obtain contact details of the registered keeper of such vehicles from DVLA. This will therefore make it very difficult to enforce parking control on private land as it will not be possible to pursue the keepers of caravans, trailers etc for payment of parking tickets. How then can a landowner control the parking of these vehicles without clamping or towing?

— That the format and content of the "contract" under schedule 4.1(1)(a) is specified in Regulations as is the content of the "notice" in clause 6.

2. The Sector:

— There are some 1.8 million private leaseholders in England and Wales, their flats being located in around 80,000 purpose-built blocks or converted houses. These flats house 3.5 million residents.

— Government estimates 40% of these flats are self-managing and are likely to be small properties.

— This leaves some 1.08 million under professional management.

3. About ARMA:

— Formed in 1991, ARMA is the only body in England and Wales to focus exclusively on matters relating to the management of long leasehold residential property. The Association has over 250 firms in membership that between them manage in excess of 850,000 units is more than 34,000 blocks of flats or estates (at least 60% of which are lessee-controlled properties). ARMA's founding principal aims are to represent its members and the interests of lessees, resident management companies and investor freeholders.

4. The Situation:

— Most blocks of flats, particularly new developments, have off-street parking.

— Smaller converted properties would have a few spaces at the front of the property as with private driveways. Larger properties will have substantial areas at ground and, sometimes, basement level dedicated to parking.

— Some properties have free parking in these areas for residents but as parking is such a prized and emotional issue most spaces are allocated with perhaps a few visitor spaces (including disabled bays).

— Bays are normally allocated via the terms of residents' leases or by a separate contract with the landlord. Whatever, the individual residents pay (in city centres substantially) for this parking and perceive it as their personal property. They expect/demand that the landlord/managing agent protects them from others using "their" space.

— It is not the norm to have gates or parking attendants owing to the cost and impracticality.

— Parking at blocks of flats is complex, time-consuming and a highly emotive issue that cannot be ignored. ARMA members perceive there must be an effective method(s) for dealing with "illegal" parking both in the interests of residents who pay for their spaces and health and safety—this must include a reasonably rapid way of ensuring the offending vehicle does not continue to take up a resident's bay.

5. Results of Arma Member Survey:

— A total of 142 corporate members responded in the short response window allowed and responses to the questions below show the percentage of respondents who agreed or strongly agreed.

I utilise methods of parking enforcement at my sites because abuse of private land is a growing problem—93%

I believe that the proposal to ban clamping and towing away on private land will prevent me for being able to effectively manage parking on sites.—84%

The ability to use ticketing as the primary means of enforcement of illegal parkers on my sites is not enough of a deterrent.—81%

The prevailing legislation whereby drivers can ignore parking tickets by stating that "I was not the driver" needs to be changed.—91%

I believe that a total ban on wheel-clamping is not the answer; the industry needs to be properly regulated in order to protect the interests of landowners, residents and motorists.—93%

Also attached as Annex 1 are some 100 written responses to the question:—

— In your opinion what are the likely consequences and effects on the sites that you manage, of this ban?

6. Results of a Leaseholder Survey:

— See Annex 2.

7. Background Reading:

— Annex 3 demonstrating the views of leaseholders represented by the Federation of Private Residents' Associations Newsletter.

— Annex 4 an explanation as to why alternative parking control measures may not work.

March 2011

Memorandum submitted by Sir Paul Kennedy (PF 27)

Re: Views in Relation to Part 2, Chapter 2, Section 37 of the Bill—Judicial Approval for Obtaining or Disclosing Communications Data

This note, as requested, sets out the information and the views I expressed when giving oral evidence, and answers two specific questions asked by the committee (one in the next couple of paragraphs, and the other—as to other statutory powers available to local authorities—on the final page).

In 2010, 134 local authorities used their powers to acquire communications data and between them they made 1811 requests. This was a marginal increase from the year before.

The Committee asked for the number of communications data requests made each year by local authorities since 2005. I publish this figure each year in my Annual Report to the Prime Minister which is available to the public and can provide these as follows:

Year	*No of local authorities who used powers*	*No of requests made*	*No of requests made by all public authorities*	*%age of requests made by local authorities*
2010	134	1,811	552,550	0.3%
2009	131	1,756	525,130	0.3%
2008	123	1,553	504,073	0.3%
2007	154	1,707	519,260	0.3%
2006	122	1,694	Not reported	Not reported
January 2005–March 2006* (*previous commissioner)	124	Not reported	Not reported	Not reported

The figures show that the number of requests for communications data submitted by local authorities is small in comparison with the total requests submitted by all public authorities. In fact for the last 4 years the percentage of the local authority requests to the overall total has remained the same (0.3%).

In 2010, my team of Inspectors conducted 27 inspections of local authorities and in addition my team also inspected 54 local authorities who are using the National Anti Fraud Network (NAFN) service which is described below. Virtually all of the local authorities, which have used their powers, have been inspected at least once since the legislation was introduced. My Inspectorate identified the largest users of communications data at an early stage and they are inspected more regularly, for example NAFN are inspected on a six monthly basis.

I am aware that some sections of the media continue to be very critical of local authorities and there are allegations that they often use the powers which are conferred upon them under RIPA inappropriately. However, I can categorically state that no evidence has emerged from our inspections that have taken place between 2005 and 2010, which indicates that communications data is being used to investigate offences of a trivial nature, such as dog fouling or littering. On the contrary it is evident that good use is being made of communications data to investigate the types of offences which cause harm to the public, such as

investigating rogue traders, loan sharks and fly tipping offences. I have provided the extract from my 2009 Annual Report that relates to local authorities at the end of this report and this outlines in paragraph 3.45 some examples of investigations where communications data has been used effectively to detect crime. Often the telephone number or communications address is the only information/intelligence the local authority has to progress the investigation and identify the alleged offender. During my oral evidence, the Committee outlined the example of a fly tipping case where other investigation methods may be available to negate using these powers, such as witnesses or CCTV. Indeed this may be true in a minority of cases, but for obvious reasons fly tippers tend not to fly tip next to CCTV cameras or witnesses. Local authorities are required to justify why it is necessary and proportionate to acquire communications data in their applications and part of the proportionality test is whether less intrusive methods have been considered or tried to achieve the investigative objective.

It is probably inevitable that introducing judicial approvals into the process will result in a reduction in the number of requests that local authorities will make for communications data, as it will significantly increase the bureaucracy and reduce the efficiency and effectiveness of the current process. Opportunities to exploit communications data as an effective tool to prevent and detect crime may therefore be lost.

There would also be significant cost and training implications in introducing judicial approvals into the process. The Home Office impact assessment (http://www.homeoffice.gov.uk/publications/legislation/freedom-bill/ripa-local-ia?view = Binary) estimates that a Magistrate would need 20 minutes to consider an application and based on an hourly rate of £365, the 1811 requests made in 2010 would have cost approximately a quarter of a million pounds per annum to approve. In addition there would be training costs and in my view there would also be significant costs for a local authority to prepare the documents for the Magistrate and travel to and from the Court to present the case.

This is wholly unnecessary. In my view there is already a robust authorisation process in place which, as we know from our inspections, ensures that communications data is only acquired where it is necessary and proportionate to prevent and/or detect crime. Local authorities are required to adhere to the RIPA Act and its associated Code of Practice and requests for communications data are approved at a Senior Level (Director, Head of Service or Service Manager). In most cases this will be the Head of either the Trading Standards Department or the Environmental Health Department, although Council Solicitors are also often involved. Furthermore, prior to being approved, all applications are submitted to a trained and accredited Single Point of Contact (SPoC) in each local authority. Their role is to provide a guardian and gatekeeper function ensuring that all requests for communications data are lawful and made in accordance with the Act and Code of Practice. The Communication Service Providers (CSPs) will only disclose communications data to an Accredited SPoC in a public authority and therefore this part of the process cannot be by-passed. Each local authority also has to appoint a Senior Responsible Officer (SRO) who is responsible for the integrity of the process, compliance with the Act and Code of Practice and for engaging with IOCCO.

Furthermore approximately 35% of local authorities who reported using their powers in 2010 are routing their applications to the NAFN which, since November 2009, has provided a national SPoC facility to all of its local authority members. The Home Office made a substantial contribution to the establishment of this facility. The accredited SPoCs at NAFN scrutinise the applications independently and provide objective advice to ensure the local authorities act in an informed and lawful manner. Therefore local authorities who are using the NAFN SPoC system already have even more independent scrutiny and this should weed out any requests which are unnecessary or unjustified.

Additionally, as the Home Office impact assessment acknowledges, there is a risk of a magistrate approving an authorisation for a trivial case, in which case the proposed additional safeguard would be totally ineffective.

If judicial approvals were introduced into the process then consideration would need to be given to the future mechanics of my oversight responsibilities. If the powers and duties under Chapter II of Part 1 are exercised by a judicial authority, then I cannot oversee the use of the powers as I do at present. Paragraph 7 of Schedule 7 of the Protection of Freedoms Bill states that RIPA will be amended as follows; *"it shall not be the function of the Interception of Communications Commissioner to keep under review the exercise by the relevant judicial authority (within the meaning of section 23A) of functions under that section or section 23B."* That means that I am not to review the decisions of a magistrate. I understand that, but I still have a duty, pursuant to section 57(2)(b) of the 2000 Act, to review the exercise and performance by the persons on whom they are conferred or imposed of the powers and duties conferred or imposed by or under Chapter 2 of Part 1. That means that my Inspectors will still be going to local authorities to look at what is being done by applicants, authorised persons, Designated Persons, etc. They may find that with the approval of a magistrate data has been requested and obtained when it was disproportionate to seek it. If so they will report to me. That would normally go into my Annual Report to the Prime Minister. Am I to omit this in order to comply with Paragraph 7 of Schedule 7 of the Bill? My current oversight of local authorities only takes up 1/5 of one of my Inspector's time, but nevertheless our inspections are important. I believe that independent oversight provides the public with reassurance that local authorities are complying with the Act and Code of Practice and are not misusing their powers. If any serious breaches were identified during our inspections, or indeed identified by the local authority themselves, they would be reported as errors and described in my Annual Report to the Prime Minister.

There is also a risk that the increase in bureaucracy that would result from introducing judicial approvals into RIPA would encourage local authorities to revert back to using other powers to acquire communications data, such as the Social Security and Fraud Act 2001 and the Enterprise Act 2002. For some time we have been trying to encourage local authorities to use RIPA and not to use other powers that are not subject to the same controls or scrutiny. If local authorities were to revert back to using other powers, their communications data requests would have no oversight by either the Interception of Communications Commissioner or a Magistrate. We would welcome a statutory requirement for local authorities to acquire communications data only pursuant to RIPA.

Finally the Committee asked how communications data requests could be excluded from the judicial approval part of the Bill if this exclusion was not also applied to the surveillance and CHIS authorities. It was suggested that I was advocating an anomaly in the legislation. This is not the case as there are already differences across the three types of authorisations (surveillance, CHIS and communications data) in the proposed Bill. For example communications data requests have already been excluded from the serious crime threshold section of the Bill (although directed surveillance authorities have not) and therefore there would be no difference in also excluding communications data requests from the judicial approval process.

In summary, the findings from our inspections of local authorities should provide the necessary reassurance to the public that the use which local authorities have made of their powers under Part I Chapter II of RIPA has met my expectations and that no evidence has emerged which indicates that communications data is being used to investigate offences of a trivial nature. I regard the proposed measures in the Bill as wholly unnecessary and unjustified.

March 2011

Annex A

THE RIGHT HONOURABLE SIR PAUL KENNEDY, INTERCEPTION OF COMMUNICATIONS COMMISSIONER

Biography

Sir Paul Kennedy (b 1935) was called to the Bar by Gray's Inn in 1960 and took silk in 1973. He served as a Justice of the High Court, assigned to the Queen's Bench Division, from 1983 to 1992. He was Presiding Judge of the North Eastern Circuit from 1985 to 1989. He served as Lord Justice of Appeal from 1992 to 2005 and also as Vice-President of the Queen's Bench Division from 1997 to 2002.

The Prime Minister approved the appointment of Sir Paul Kennedy as Interception of Communications Commissioner under the terms of Section 57 of RIPA from 11 April 2006 to 10 April 2009. On 2 April 2009 the Prime Minister approved the re-appointment of Sir Paul Kennedy from 11th April 2009 until 10 April 2012.

The Interception of Communications Commissioners Office (IOCCO) is a team of staff, who were recruited to assist the Commissioner to carry out his independent statutory oversight regime. IOCCO undertakes a revolving programme of inspection visits to all relevant public authorities (such as local authorities) who are authorised to acquire communications data under Part I of Chapter II of RIPA, and produce a written report of the findings for the Interception of Communications Commissioner. At the end of each calendar year, the Commissioner submits a report to the Prime Minister which is subsequently laid before Parliament and published.

Annex B

RELEVANT EXTRACT FROM THE INTERCEPTION OF COMMUNICATIONS COMMISSIONERS 2009 ANNUAL REPORT TO THE PRIME MINISTER (PAGES 14–16)

Local Authorities

3.38 There are approximately 433 local authorities throughout the UK approved by Parliament for the purpose of acquiring communications data, using the provisions of the Act. No local authority has been given the power to intercept a telephone call or any other form of communication during the course of its transmission. However, local authorities may acquire communications data for the purpose of preventing and detecting crime, although there are restrictions upon the types of data which they may obtain. They do not have access to traffic data, which would enable them to identify the location from, or to which, a communication has been transmitted.

3.39 Generally the trading standards services are the principal users of communications data within local authorities although the environmental health departments and housing benefit fraud investigators also occasionally make use of the powers. Local authorities enforce numerous statutes and Councils use communications data to identify criminals who persistently rip off consumers, cheat the taxpayer, deal in counterfeit goods, and prey on the elderly and vulnerable. The environmental health departments principally use communications data to identify fly-tippers whose activities cause damage to the environment and cost the taxpayers large sums to recover or otherwise deal with the waste.

3.40 Local authorities are required to adhere to the Code of Practice and requests for communications data are approved at a senior level, the level having been enhanced by recent changes to the legislation. In most cases this has been the head of the trading standards service or the head of the environmental health department or housing benefits sections although solicitors have also often been involved. The specialist staff who process applications for communications data are not trained to the same standard as their counterparts in other public authorities, and the infrequent use which most Councils make of their powers sometimes makes it difficult for relevant members of staff to keep abreast of developments in the communications data community. I am pleased that the Home Office has provided funding to the National Anti-Fraud Network (NAFN) and it is able to provide a national SPoC facility to all of its members. During the reporting year we have encouraged local authorities to make use of the facility, as the accredited staff at NAFN have been trained to the same standards as their counterparts in the police. One of my Inspectors has already visited NAFN and the systems and processes are being maintained to a good standard. Local authorities can use the facility with confidence and in the full knowledge that the data will be obtained in accordance with the law. Of course the Designated Person in the local authority still has responsibility for approving the application for communications data but the accredited staff in NAFN scrutinise it independently and this should weed out any which are unnecessary or unjustified.

3.41 During the period covered by this report 131 local authorities notified me that they had made use of their powers to acquire communications data, and this is slightly more than last year. A total of 1,756 requests were made for communications data and the vast majority were for basic subscriber information, although 24 Councils reported that they had acquired some service use data under Section 21(4)(b) of the Act. The total number of requests for communications data is marginally above last year's figure. Virtually all of the local authorities, which have used their powers, have been inspected at least once since the legislation was introduced. The core activities of the trading standards service and environmental health teams are now centralised in a number of the larger local authorities and therefore it is easier for them to manage the process of acquiring communications data. My Inspectorate identified the largest users of communications data at an early stage and they are inspected more regularly.

3.42 During the reporting year 31 inspections of local authorities were conducted. Six of these were inspected for the first time, either because they had notified me that they had started to make use of their powers, or because they were acquiring communications data on a more frequent basis. Twenty one of the local authorities were inspected for a second time and the remaining four were inspected for the third time. Seventeen of the local authorities which were inspected had made use of service use data and generally the Inspectors were satisfied that it was necessary to obtain it and it was proportionate to the investigative objectives. However, one of the local authorities was criticised for obtaining this type of data before carrying out checks to identify the relevant subscribers. At that stage in the process there was no information or intelligence to indicate whether the telephone numbers or their subscribers were associated with criminal or illicit activity and potentially they could have been innocent members of the public who were in contact with the suspect for perfectly legitimate reasons. Changes have been made to the working practices of the local authority concerned, and they will ensure that service use data is acquired correctly in future. I will give some examples of how the local authorities use communications data later in this section of the report.

3.43 I am aware that some sections of the media continue to be very critical of local authorities, and there are allegations that they often use the powers which are conferred upon them under RIPA inappropriately. However, I can state that no evidence has emerged from the inspections, which indicates communications data is being used to investigate offences of a trivial nature, such as dog fouling or littering. On the contrary it is evident that good use is being made of communications data to investigate the types of offences which cause harm to the public and to which I have already alluded in paragraph 3.40 above.

3.44 Twenty three of the local authorities had achieved good or better standards and the remaining eight were satisfactory. It was good to see that the recommendations from the previous inspections had always been fully implemented and where necessary improvements had been made to the systems and processes. My Inspectors found two instances of local authorities obtaining incoming call records, and these constitute errors because Councils are not lawfully entitled to acquire this type of data. The Inspectors were satisfied that these errors were caused as a result of a genuine misunderstanding and not through any wilful or reckless attempt to circumvent the legislation. Most of the staff in the CSPs are aware that they must not comply with requests from local authorities for traffic data, but inevitably one or two may slip through the net. In both the above cases the errors were drawn to the attention of the SROs in the local authorities concerned and action has been take to prevent any similar errors occurring in the future. Incidentally, the number of errors reported by local authorities last year was ten and this equates to about 0.01% of the requests made. I have not encountered any cases which would be serious enough for me to invoke the powers which I have outlined previously in paragraph 3.35 of this report.

3.45 In three of the inspections technical breaches of the Act and Code of Practice were found and this meant that a small amount of data was not obtained fully in accordance with the law. Nevertheless my Inspectors were satisfied that they had no bearing on the justifications for acquiring the data and the data had been used for a correct statutory purpose. My Inspectors looked at the use which local authorities had made of the communications data, as this is a good check that they are using their powers responsibly. They concluded that effective use was being made of the data to prevent and detect crime. Wolverhampton City Council acquired communications data to investigate the large scale manufacture and distribution of

counterfeit media products via the Internet and computer fairs. The offender was convicted and sentenced to three years imprisonment. The estimated loss to legitimate businesses was in the region of £1 million and this was stopped when the four counterfeiting factories were dismantled. The Central England Trading Standards Regional Scambuster Team based at Solihull Borough Council, and West Midlands Police jointly investigated a rogue builder when complaints were received from two members of the public that they had been ripped off. Initially the Crown Prosecution Service advised against going to trial because there were only two victims and it would therefore be difficult to prove the full extent of his criminality. Outgoing call records were obtained in relation to the suspect's phone and this enabled the investigation team to identify a number of other victims who were prepared to give evidence, many of whom had been unaware that they had actually been the victim to a fraud. The offender obtained approximately £200,000 by fraud from his victims over an 18 month period. The case was eventually tried in Birmingham Crown Court and the offender pleaded guilty and was sentenced to four years imprisonment. It is extremely unlikely that he would have been brought to justice if the investigating officers had not made effective use of the powers to acquire communications data.

3.46 Communications data is a powerful investigative tool but it must always be used responsibly and all persons within the process must ensure that they act fully in accordance with the law. The local authorities appreciate that I oversee the use of their powers and the inspections ensure that they comply with the Act and Code of Practice.

Memorandum submitted by the Home Office (PF 28)

You will be aware that the Protection of Freedoms Bill was chosen to act as the pilot for the new "Public Reading stage" for Bills designed to give the public an opportunity to comment on proposed legislation online.

Whilst there is some scope for interested persons and organisations to submit written evidence or give oral evidence to the Public Bill Committee in the House of Commons, the opportunities for the public to get directly involved in making new laws are limited.

Introducing the Public Reading stage was an important commitment in the Coalition's Programme for Government, and I am delighted that this Bill was chosen as the pilot.

In his Written Ministerial Statement of 15 February announcing the launch of this pilot, the Deputy Prime Minister indicated that Government would produce a report on the comments received, with the report being provided to members of the Public Bill Committee. That report is attached to this letter.

The report itself does not offer a point by point analysis of all the comments received, but instead picks out the key issues raised on each part of the Bill. You will however note that the individual comments are reproduced in full in an annex to the report.

As a pilot, there will not be a dedicated "Public Reading day" within the Bill's Committee stage. However, as well as considering carefully the points made on the Bill, the Government will review the process itself and consider how it can be improved and developed. In view of the "pilot" status of this Public Reading stage, the Government would be particularly keen to receive the views of members of the Committee on the attached report, and on the process more generally. I would therefore invite Committee members to write to myself and the Leader of the House of Commons, who will be taking forward the future work on this process, with any such views they might have.

PROTECTION OF FREEDOMS BILL

PUBLIC READING STAGE

A REPORT BY THE HOME OFFICE FOR THE PUBLIC BILL COMMITTEE

Introduction

The Report

1. This report provides an anonymised synopsis of the views expressed on the Public Reading stage website for the Protection of Freedoms Bill. The report is designed to provide Committee members with an overview of the broad themes that emerged from the comments, and should not be seen as a comprehensive account of all of the issues raised. All of the comments submitted during the Public Reading stage are annexed at the end of the report.

2. The report also includes some commentary on a number of the points raised during the Public Reading stage.

Background to the Public Reading Stage

3. The Coalition's *Programme for Government*, included a commitment to introduce a "Public Reading stage" to provide the public with the opportunity to comment online on proposed legislation, with these comments to be discussed during a "Public Reading day" during the Committee stage of the Bill.

4. On 15 February the Deputy Prime Minister announced in a Written Ministerial Statement that the Protection of Freedoms Bill, which had been introduced the previous Friday (11 February), would act as the pilot Bill for this stage. In his Statement the Deputy Prime Minister underlined that part of the reason for introducing this new stage was to give the public a clear chance to comment on important legislation that would affect their lives. The Deputy Prime Minister noted that the Select Committee on Reform of the House of Commons had indicated that Public Bill Committees received very few submissions from private individuals, and that the public were not actively encouraged to submit such evidence. The introduction of the Public Reading stage is therefore intended to address this issue.

5. The Deputy Prime Minister made it clear in his Statement that the Public Reading stage for the Protection of Freedoms Bill represented a pilot, to be used to test the systems which could be adopted for the full roll-out of this stage. As such there will not be a dedicated 'Public Reading day' during the Committee stage of this Bill.

Statistics

6. The website was launched on Monday 14 February, and closed for comments on 7 March. During this time,

— The website was visited by 6,604 separate individuals;

— 256 of these individuals posted comments; and

— A total of 568 comments were received (including one written submission sent to the Bill team).

7. The numbers of comments on individual parts of the Bill are detailed in the main body of the report, whilst annex A gives the figures for each clause or Schedule.

Comments received on the process

8. 18 comments were received under the "What is a public reading stage?" section of the website.

9. As a pilot it is particularly important to assess the comments received that focus on the nature of the Public Reading stage itself, and on how the process may be refined and improved in advance of this new innovation being applied more widely.

10. There was broad support for the Public Reading stage from those that commented under the "What is a Public Reading stage?" section. Most respondents welcomed the opportunity to provide comments on the Bill and saw the pilot as representing a positive step by the Government. One individual even suggested enshrining the Public Reading stage in law to ensure all future Bills were subject to this scrutiny.

11. There were, however, several individuals who voiced concerns regarding whether any of the views and ideas expressed on the site would actually be taken on board by politicians, with some expressing doubt as to whether politicians would even read the comments. These views were also periodically echoed in comments regarding specific clauses in the Bill.

12. The website was arranged on a clause by clause basis, with visitors to the site having to select specific clauses in order to leave comments. Several individuals commented that this way of structuring the website offered no opportunity to suggest new clauses for the Bill. It was suggested that in future there should be a dedicated section where the public can put forward entirely new clauses for inclusion within the Bill.

13. The clause by clause structure for leaving comments also led many individuals to comment on specific clauses when in fact their comments related to the overall policy more generally. For example on clause 1, many individuals left comments on the general DNA retention policy, rather than focussing on the specific clause. The general comments are, of course, perfectly valid, and we will consider the implications for the future design of the Public Reading stage.

14. A common theme amongst the contributions submitted was that the wording of the Bill was very hard to understand. Again, this is a valid point but one that reflects the tension between drafting a Bill in a way that ensures legal certainty and producing laws which the public can readily understand.

15. Although the Explanatory Notes to the Bill were provided on the site, one option might be to give members of the public the option of commenting on these, as an alternative to the text of the Bill itself, on the basis that the commentary on clauses in the Explanatory Notes should provide a more readily understandable explanation of what a particular clause is designed to achieve.

16. Finally on the process adopted for the pilot: there was criticism that the information on the Bill was split across three different websites, with the Cabinet Office hosting the Public Reading page site, the Home Office hosting a page on the Bill which includes various background and supporting documents, and the Parliament website hosting the Bill itself.

PART 1, CHAPTER 1—DESTRUCTION, RETENTION AND USE OF FINGERPRINTS ETC

17. The clauses in Chapter 1, covering DNA and Fingerprint retention, were some of the most commented upon clauses in the Bill, receiving over 100 comments.

18. As noted above many of the ideas submitted to the specific clauses here were concentrated on the wider issues surrounding DNA retention.

19. Many of the comments received argued passionately for a universal database, where records of all individuals both innocent and guilty would be stored. Generally these arguments focussed on the potential for such a database to aid the detection of crimes and better protect the public, with respondents often indicating that the innocent had nothing to fear from police holding such information.

20. There were also a great many, equally passionate, comments to the effect that only those convicted of a crime should have their sensitive personal data retained on such a database. Arguments here ranged from the point of principal that the Government had no right to retain such information without an individual having been convicted (by far the most common argument against retention), through to arguments about the increased risk of "false positive" results as the database increases in size (where a match is shown when in fact there is none), the risk of police abuse, or of accidental transfer of DNA (for instance by picking up a knife in a shop, which is then later used in a murder).

21. The Government recognises that the issue of retaining such sensitive personal data is a divisive one, with the vast majority of comments made under Chapter 1 relating to the issue of whether or not the DNA database should include any data taken from those who have not been convicted of a crime. We believe strongly that DNA and fingerprint evidence is a vital tool in the fight against crime; but storing the DNA and fingerprints of over 1 million innocent people undermines public trust in policing. The Government believes that the determination of an appropriate retention period is essentially a matter of political judgement, and feels that the clauses presented in the Bill represent a sound and balanced approach.

22. There were a handful of comments made on the website that revealed some misunderstandings regarding the provisions in this Chapter of the Bill, and the Government's policy intentions. One individual was disappointed that the Bill did not place the National DNA Database on a statutory basis, when in fact clause 23 does just this. There were also a number of calls for the Bill to ensure that biological DNA samples are destroyed, with many of these commentators expressing their disappointment that this measure was not already included in the Bill. Again, this is an issue already dealt with in the Bill; clause 14 makes provision for the destruction of the biological sample as soon as the numerical profile has been derived and, in any event, no later than 6 months after the date the sample was taken.

23. Several individuals questioned whether the police would be required to inform the person to whom a DNA sample and profile relates when their data was to be destroyed. In order to reduce the administrative burden on the police, these provisions will not require the police to proactively notify a person of the destruction of his or her fingerprints, DNA sample or DNA profile. However, it would be open to an individual to make a subject access request to the police under the Data Protection Act 1998; on receipt of such a request, the police would be required to inform the applicant whether or not such biometric material was held. On a similar theme, there were calls for the Bill to ensure that an individual be informed should the police apply to a court to retain a DNA profile for a further two years, following an initial three year retention period. Whilst the Bill does contain specific provision for this, the usual rules of court would ensure that any such affected individual would be informed so that he or she can decide whether to exercise their right to make representations to the District Judge (as provided for in clause 3).

24. There were multiple comments suggesting that the Police National Computer (PNC) arrest/charge record should also be destroyed at the same time as a DNA profile is destroyed. The Bill only deals with the destruction, retention and use of DNA and fingerprints. The issue of retaining other records held on the Police National Computer is currently the subject of a case before the Supreme Court (*R (on the application of C) (FC) (Appellant) v Commissioner of Police of the Metropolis*). The Government will consider the matter further in the light of the Supreme Court's judgment in that case.

25. There were several comments that the "Commissioner for the Retention and Use of Biometric Material" should be (a) accountable directly to Parliament (rather than via the Home Secretary), and (b) that their appointment should be confirmed by a select committee with the power of veto.

26. The Government considers that the proposed arrangements for appointing and reporting on the work of the new independent Commissioner provide the appropriate opportunity for Parliament to scrutinise and hold to account the Commissioner in the exercise of their functions. The Commissioner for the Retention and Use of Biometric Material will be an independent office holder. He or she will report annually on the exercise of his or her functions under the legislation and will also have to be consulted on the preparation and/or revision of the statutory guidance. Both the report and the statutory guidance must be laid before Parliament and, in the case of the guidance on national security determinations, must be approved by both Houses of Parliament.

27. The Home Secretary will not have power to overturn the decisions of the Commissioner as to the retention or otherwise of biometric material held by the Police.

28. Further to this were calls that an individual should be informed that their DNA is going to be kept for national security reasons, and have the opportunity to argue against that decision.

29. The Government considers that it is not possible or appropriate to notify those persons whose DNA profile or fingerprints are retained for national security purposes without compromising the UK's ability to counter the threats we face from, for example, terrorism (both foreign and domestic).

30. The Government is committed to balancing the need to protect national security with the individual rights of people whose biometric information is retained for such purposes. While this will always be a difficult balance to strike, we consider that the provisions in the Bill (especially the new independent Commissioner) succeed in doing so.

Part 1, Chapter 2—Protection of Biometrics Information of Children in Schools etc.

31. There were fewer than 20 comments relating to Chapter 2 of Part 1 of the Bill (the requirement to gain parental consent before processing biometric information of children in schools and colleges).

32. One of the main concerns emerging from comments on this Chapter relates to the requirement to destroy any such data once a child has left the school or college. There was concern that the school may simply retain this data indefinitely. The Government's view is that this issue is already adequately covered by the Data Protection Act 1998. The fifth data protection principle, as set out in that Act, already requires that personal data should be kept no longer than is needed. The guidance from the Information Commissioner[82] makes clear that in practice this means biometric data should be deleted when the pupil leaves the school.

33. There were also some comments that expressed concern that data already collected by a school or college would not be covered by the provisions in this Chapter, and so parental consent for this would not be required. Such data would in fact be covered as the provisions apply to the *processing* of biometric data (using the definition in section 1(1) of the Data Protection Act 1998). This includes the obtaining, storage and further processing of the data. So although there in nothing in the clauses which mentions retrospective consent, if schools continue to use biometric information systems they will be processing students' biometric data under this definition and so will need to gain written parental consent.

34. A significant number of individuals commented that consent should be sought from the "legal guardian" as opposed to the parent, in order to ensure those acting in lieu of parents were given the same rights and responsibilities as biological parents. Clause 28(4) provides that the definition of "parent" covers "any individual who is not a parent of the child but who has parental responsibility for that child." The Government is therefore satisfied that these concerns are met by the current drafting of the Bill.

35. The final significant theme to emerge from comments on this Chapter is the issue of the age at which parental consent for processing biometric information in schools should no longer be required. Several commentators suggested that by the age of 16 children were old enough to make their own decisions regarding their biometric data, and parental consent should not be required. The Government have given this issue careful consideration. The issues around the use of biometric data are particularly subtle and complex, and even more mature children may not be able to fully appreciate them. In other areas such as marriage and making a will children under the age of 18 need parental consent. In our view the issues around the giving of biometric data are similar in that respect.

Part 2, Chapter 1—Regulation of CCTV and other Surveillance Camera Technology

36. There were 31 comments received covering Chapter 1 of Part 2.

37. One of the recurring themes in relation to the further regulation of CCTV and Automatic Number Plate Recognition (ANPR) systems was the overlap of codes of practice that will have effect in this area, and the possibly competing roles of the proposed Surveillance Camera Commissioner and the existing Information Commissioner. Several individuals commented that it was not clear which Commissioner would have primacy in this area, and which code would take precedence.

38. The Government is clear that the role and responsibilities of the new Surveillance Camera Commissioner will complement but be distinct from those of the Information Commissioner. There will be a strong degree of mutual interest between the Information and Surveillance Camera Commissioners. However, nothing in the Bill interferes with the role and responsibilities of the Information Commissioner who will continue to have primacy on and sole responsibility for Data Protection matters. The two Commissioners will work closely together on areas where surveillance camera issues also raise data protection issues. The Surveillance Camera Commissioner will refer data protection issues to the Information Commissioner's Office (ICO) as appropriate, and liaise closely with the ICO to ensure that any guidance offered on data protection issues is wholly in line with existing data protection legislation and guidance.

39. On the interaction of the codes of practice, the Government is currently consulting on whether users would find it helpful to have a single (combined) code or retain separate documents. The results will inform the direction we take on developing the new surveillance camera code of practice. If separate codes are retained they will be complementary rather than either taking precedence.

[82] http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/fingerprinting_final_view.pdf

40. Another significant point that was raised by one individual on the site relates to the retention periods, and access to, data captured by such surveillance systems. At present both CCTV and ANPR systems are subject to the Human Rights Act 1998, and the Data Protection Act 1998 (DPA). The DPA provides that data should not be retained for longer than is required by the purposes for which it was collected. In practice this means that there is no standard maximum retention period. Organisations like the police have sought to self regulate, however this is exactly the kind of area that we hope the proposed code of practice will address. Several individuals commented that the existence of the Information Commissioner, and the guidance published by him, rendered unnecessary the introduction of the surveillance camera code of practice and the appointment of the new Commissioner. However, the new Code is intended to go wider than CCTV—to cover for example Automatic Number Plate Recognition technology—a point welcomed by the Information Commissioner. The Code is also intended to cover technical aspects which are not currently the focus of the Information Commissioner's code which necessarily concentrates on data protection issues. .

41. A number of individuals commented that the clauses were "fairly toothless", in particular pointing to the non-binding nature of the code of practice. The Government rejects this view. While it is true that an essentially self regulatory approach is being adopted in the first instance in the light of the existing complex landscape, there are already some important safeguards in law—such as the Data Protection Act. Nothing in our proposals changes or weakens these—indeed we will build on them. The police and local authorities will be required to have regard to the new Code of Practice. This will mean their decisions in this area are subject to judicial review. The Bill also includes provision to enable the duty to have regard to the Code to be extended to other operators of surveillance camera systems.

42. The new Surveillance Camera Commissioner will have a broad remit to monitor the impact of the Code offering advice and recommendations as he or she sees fit. The Commissioner will report annually on his or her work to Ministers; it would be open to the Commissioner in the annual report, or separately, to highlight any concerns he or she may have about how the Code, or an aspect of it, is being applied in practice.

43. Finally on surveillance cameras; one individual raised the issue of whether local authorities could simply subcontract the operation of their surveillance cameras to private companies to avoid being subject to the Code. We consider that as long as ultimate responsibility for a camera system rested with the local authority, they would have a duty to ensure that any work carried out on their behalf also paid due regard to the Code. It is also worth pointing out that the code will be designed to be of use to all surveillance camera operators, and as such we would imagine that even private companies not under contract to a local authority will wish to have regard to the principles set out in the code.

Part 2, Chapter 2, Safeguards for Certain Surveillance Under RIPA

44. The Chapter, which relates to local authorities' use of surveillance powers under the Regulation of Investigatory Powers Act 2000 (RIPA), received just eight comments on the Public Reading stage website.

45. Perhaps the most consistent theme to emerge from the comments received was a fear that the measures to require a magistrate's approval would prove overly bureaucratic, and serve to prevent local authorities investigating serious crimes. This fear was increased by Government proposals to impose a seriousness threshold before such powers can be used (to be achieved via secondary legislation).

46. We are not stopping local authority investigations but simply limiting the level of intrusion involved in those investigations to a proportionate level. Local authorities can still investigate offences below the threshold, but will be unable to use directed surveillance under RIPA as part of their investigation. We do not think that the legitimate use of RIPA powers by local authorities will be adversely affected by either of these two measures. The Government will work closely with local authorities to ensure that the magistrate's approval system will not have a detrimental impact on operational requirements. We anticipate this will typically take approximately 20 minutes of a magistrate's time, and approval will not need to be sought in open court (as with arrest and search warrants magistrates will be able to authorise such requests out of court). Similarly the threshold test will only prevent usage in low level cases which do not merit the use of such invasive techniques.

47. There was also a call to widen these restrictions on the use of RIPA powers to other public authorities. RIPA does provide for other public bodies to use these techniques. However, as set out in the Coalition Agreement, the Government's priority is to address the public concerns about the disproportionate use of these powers by local authorities. The Government will keep under review the use of RIPA powers by other public authorities; should the need arise, the Bill enables the requirement for judicial approval to be extended to other such bodies.

48. Finally on the use of RIPA powers one individual suggested that local authorities should not be able to use such intrusive techniques at all. The Government does not support such a view. Local authorities have a duty to investigate serious crimes, such as environmental crimes, underage sales, and employment and benefit fraud, where the use of surveillance powers can be justified.

PART 3, PROTECTION OF PROPERTY FROM DISPROPORTIONATE ENFORCEMENT ACTION

49. Only three comments were received on Chapter 1 of Part 3 of the Bill (powers of entry). With most of these displaying some confusion over how the Bill was set out, and the wording that was used. This point was addressed in the introduction to the report.

50. Chapter 2 of Part 3, which amongst other things prohibits wheel clamping without lawful authority, was one of the most commented on parts of the Bill, receiving over 130 comments from members of the public. As with the comments received on the retention of DNA profiles, the debate covering wheel clamping can be characterised by the passion displayed, and the near complete polarisation of views.

51. Under the first clause (clause 54—which effectively bans wheel clamping and towing away without lawful authority) many of the comments were critical of Government's policy, suggesting that this would in effect amount to a "trespasser's charter", and prevent landowners from legitimately controlling who parked on their land. These comments were reinforced by claims that motorists had an obligation to check that it was legal to park where they were doing so, and that clamping signs often acted as a sufficient deterrent to prevent unauthorised parking.

52. Countering this view there were a considerable number of comments welcoming Government's proposals as "long overdue". A number of these commentators raised concerns regarding clause 54(3), which relates to the presence of a physical barrier. There was a degree of misunderstanding here where several commentators took this clause to mean that if a physical barrier was present at a car park then clamping would still be lawful. This is not the case. Clause 54(3) allows only for physical barriers to be used to control parking by "blocking in" where the barrier was there in the first instance, such as is commonly the case in multi-storey car parks. Clamping or towing on premises with a physical barrier would be unlawful.

53. A handful of other commentators have suggested that imposing a maximum tariff would tackle the issue of rogue clampers whilst also ensuring landowners could deter unwanted parking.

54. The Government is clear that wheel-clamping and towing away should be banned as they deprive the motorist of the use of their vehicle and often cause motorists significant distress and anxiety. Wheel clamping has been the occasion of a great deal of abusive practice, in particular:

- The high level of some release fees
- Inadequate signage, including small size and poor visibility
- Unreasonable behaviour, for example demanding immediate cash payment, and not accepting credit cards
- Immediate clamping or towing away
- Lack of an effective means of contesting a charge

55. For these reasons we consider that a ban on wheel clamping is appropriate (save where there is statutory or other lawful authority).

56. One individual also raised the issue of whether bailiffs would continue to be able to clamp to enforce debt collection. The ban will not affect bailiffs' activities where they are carried out with lawful authority. Lawful authority includes existing statutory powers including the power of certificated bailiffs to immobilise and remove vehicles for unpaid council tax or unpaid national taxes. Lawful authority will include specific powers for bailiffs to enforce debts under a range of existing statutes, as well as common law powers to seize and sell goods to recover a sum of money, in the exercise of which vehicles may be immobilised and towed. This includes the power to immobilise or tow away vehicles in relation to debts enforceable under a Magistrates' Court warrant of distress.

57. One individual asked why the clamping ban will not extend to Northern Ireland. This matter is devolved and the Northern Ireland Minister of Justice has decided that the ban should not apply in Northern Ireland without enough evidence of a problem with clamping and towing as prevalent or comparable with the situation in England and Wales.

58. As well as the ban on wheel clamping, provided for by clause 54, the Bill also includes provisions to enable a parking provider or landowner to recover any unpaid parking charges from the registered keeper of a vehicle where the driver is unknown.

59. This provision proved very controversial attracting over 100 comments. The debate here was passionate with many commentators seeing this provision as the bare minimum defence need by landowners to prevent "rogue parkers" (although many still indicated the threat of clamping was required), whilst others argued that the clause completely undermined the good intention of banning wheel clamping. The argument here tended to be that so called "rogue clampers" would simply switch to become "rogue ticketers".

60. The arguments put forward by those in favour of the provision (and in some cases in favour of clamping) are much the same as those deployed to argue against the clamping ban. That is that motorists should have regard for where they park, and that without tight controls landowners will not be able to deter trespassers.

61. A large volume of the comments received here opposed the provisions. Many commentators indicate that private ticketing companies will charge extortionate rates for tickets, in a manner disproportionate to any loss they have suffered. Several individuals point to this provision as the law in effect legitimising the practice of charging "extortionate" sums for tickets, and giving the motorist no choice but to pay.

62. Criticism also focused on the lack of regulation of the ticketing industry. Many individuals were critical that in order to obtain personal details of the registered keeper of a vehicle, a company simply had to be a member of the British Parking Association (BPA). There was widespread criticism that the BPA was a private trade organisation, which was in no way independent, the argument continuing that Government should not therefore share the private details of the registered keeper. Some comments pointed to the perceived failure of the BPA to control its members in the field of clamping as evidence that further regulation is required.

63. The details of the registered keeper will only be divulged to a company which is a member of a Government accredited trade association (ATA). The BPA is currently the only accredited association for the parking sector. The company must abide by the ATA's Code of Practise, The Code includes provisions requiring prominent signs at the entrance to and throughout the site, and an in-house challenge procedure. The presence of the signs required by the Code means that a contract is created between the parking company and the motorist which is subject to Government's Consumer Protection legislation. Under that legislation any parking relate charge must be reasonable, although the Code includes guidance on what such an amount might be. Compliance with Code of Practise is monitored and any companies that break it are expelled from the ATA, and so lose their access to vehicle keeper data. To date 4 companies have been expelled. The ATA did not have a similar "gatekeeper" role for immobilisation/removal. The Government believes that this measure represents a fair balance, and will allow private landowners to defend their property from irresponsible motorists, whilst also protecting motorists from the excesses of rogue parking control.

64. A final point on the keeper liability clause relates to contract law. Many individuals argued that the registered keeper could not be made liable for a charge if they were not also the driver, as they could not have entered into a contract with the parking provider. In such cases, a parking provider in seeking to recover an unpaid parking charge from the vehicle keeper will be relying on the statutory mechanism as set out in the Bill rather than on the presence or otherwise of a contract between the parking provider and vehicle keeper. The keeper may pay the charge or tell the creditor who was the driver at the time. Equivalent provisions already apply in respect of the enforcement of unpaid parking charges in the case of vehicles left on land that is enforced by a local authority, except that the keeper may not transfer responsibility for the charge to the driver at the time.

Part 4—Counter Terrorism Powers

65. The clauses covering counter terrorism powers did not receive a large number of comments, with the whole of Part 4 only being subject to 39 comments.

66. On the issue of pre-charge detention those who commented had divided opinions. A significant proportion of those who commented felt that terrorism posed a unique threat to the nation, and should be treated as such. Such individuals argued that a maximum of 14 days pre-charge detention was not sufficient and that it was "better to be safe than sorry" on this matter suggesting a 28 day maximum was an appropriate time period.

67. Countering these calls for extended pre-charge detention a significant number of commentators supported Government's proposals, indicating 14 day retention represented a sensible measure.

68. There were some calls also for the length of pre-charge detention to be reduced to seven days.

69. The Government considered this issue carefully as part of the review of counter-terrorism and security powers and concluded that 14 days is the appropriate normal maximum pre-charge detention period for terrorist suspects. No one has been held for longer than this period since 2007. However, in order to mitigate the increased risk of going down to 14 days, the Government has published draft legislation extending the maximum period of pre-charge detention to 28 days; such legislation would be introduced to deal with urgent situations where the extended period was considered necessary.

70. The clauses covering changes to the no-suspicion stop and search measures did not attract a large volume of comments.

71. There were a handful of comments from those who opposed any form of no-suspicion stop and search power, with most of these commentators also going on to say that the proposed revised regime could still be open to abuse by the police, with "rolling authorisations" and the potential for police to use the powers to harass individuals.

72. The Government does not accept these arguments. The revised powers will only be available for use in very tightly defined circumstances and the powers are supported by robust statutory guidance. In the case of the concerns about "rolling authorisations" under the provisions in the Bill rolling authorisations will not be permitted. A new authorisation covering the same or substantially the same areas or places as a previous

authorisation may be given if the intelligence which informed the initial authorisation has been subject to fresh assessment and the officer giving the authorisation is satisfied that the test for authorisation is still met on the basis of that assessment.

73. Some commentators were concerned that clause 59(1) (which repeals the requirement for same-sex searches) could lead to sexual abuse by police officers. The Government does not accept this. We consider that there may be circumstances where it is not feasible to wait for an officer of the same sex to arrive on the scene and this should not be a legal requirement. The code of practice governing stop and search makes it clear that same sex searches should be conducted where possible. This repeal simply brings no-suspicion stop and search powers into line with other stop and search powers available to the police (where there are no requirements for same-sex searches). It should be emphasised that the searches are not "strip searches"—police officers can only require the person to remove hats, shoes, gloves, outer coat and jacket.

74. There were also a number of calls for the police to be obliged to issue a "ticket" to each individual stopped under these powers. Any individual stopped and searched by a police officer should be issued with a form indicating under which power they were stopped. If the officer is called to an emergency during the search they should issue a receipt to the individual, which will explain how to obtain the full form relating to the stop and search.

75. The Government's view is that it would create an unnecessary bureaucratic burden on the police to require them to always issue a "ticket" or "receipt" to the individual stopped. Schedule 5 does, though, require the police to provide a written statement to any pedestrian or driver stopped under the new powers who requests such a statement within 12 months of the stop taking place.

76. Finally in this section there were a couple of individuals calling for the amendment of section 5 of the Public Order Act 1986 (which makes it an offence to use threatening, abusive or insulting words or behaviour), to remove the word "insulting" from this legislation, with a view to enhancing freedom of speech. This is does not relate to the clauses in Part 4, however as the individuals noted, there was no option on the website to propose new provisions. A further comment on this issue was also submitted under Part 7 of the Bill.

Part 5, Chapter 1, Safeguarding Vulnerable Groups

77. Chapter 1 of Part 5, which provides for changes to the Vetting and Barring Scheme received only a handful of comments on each clause (a total of 19 comments were received on the Chapter).

78. The comments here were largely positive, supporting Government's proposals to scale back the scheme as balanced and proportionate.

79. Alongside the largely supportive comments there were, understandably, calls from both sides indicating that government had either gone too far and was putting the vulnerable at risk, or had not gone far enough, with the vetting and barring regime still being overly intrusive.

Part 5, Chapter 2, Criminal Records

80. The clauses covering amendments to the criminal records regime proved to be some of the most commented upon in the Bill, sparking over 90 comments and once more revealing some very passionate feelings on the subject. Many of those commenting provided personal accounts of how the current criminal records regime can prevent rehabilitation, with minor or old convictions, cautions, and police intelligence information, acting as a barrier to gaining employment.

81. With very few exceptions the vast majority of individuals commenting here were pressing for minor convictions and cautions to be removed from CRB disclosures. The comments revealed a significant appetite to reform the Rehabilitation of Offenders Act 1974 (ROA), which was seen by many to be outdated. A phrase repeated in many comments was that "spent should mean spent", a reference to the continued disclosure of spent convictions on standard and enhanced criminal record certificates.

82. A further point, that was raised in many comments, relates to the disclosure of non-conviction information; many felt that unless an individual had been found guilty by a court of law, then information should not be disclosed, one individual suggested that disclosure of "soft intelligence" breached their human rights. Related to this were claims that employers viewed any form of disclosure, for a minor or old conviction, or just of police intelligence, as a reason not to employ an individual, so in the words of one commentator employment would be blocked through the disclosure of "allegations, hearsay, rumour and gossip". There was strong criticism too of the change in clause 79 that information would only be disclosed where a chief officer "reasonably believes" it to be relevant. Here several individuals suggested that the change was a token amendment that would make no real difference.

83. There was widespread misunderstanding of clause 78 (which provides for a minimum age for applicants for CRB certificates to be issued). Here several individuals thought that no information held about an individual from before they were 16 would be disclosed. This is not the case; criminal record certificates will continue to include convictions in respect of offences committed by the applicant for a CRB certificate when under 16, the same will apply to any non-conviction information held by the police. This clause instead ensures that an individual has to be at least 16 years old to be eligible to apply for CRB certificate.

PART 5, CHAPTER 3—DISREGARDING CERTAIN CONVICTIONS FOR BUGGERY ETC.

84. There was widespread support for the principle behind this provision, however there were calls for the application to be considered by a court rather than the Secretary of State, to ensure independence. There were also several individuals who suggested that the process of application was unfair, and that such convictions should be automatically deleted.

85. The Government considers that a decision on whether to disregard a relevant conviction can properly be made by the Home Office, taking advice from a panel of experts in appropriate cases. The Bill provides for a right of appeal to the High Court in the event that an application is refused. As to why it is not possible simply to designate all convictions under section 12 or 13 of the Sexual Offences Act 1956 as disregarded convictions without the need for an application process, this is owing to the fact that not all the behaviour covered by these offences has been decriminalised (for example, the section 12 offence also covers non-consensual sex), consequently it is necessary to consider any convictions on a case by case basis.

86. On the effect of the disregard there was considerable concern by some commentators that not all records of a disregarded conviction would be deleted, but in some cases records would be retained but annotated to explain the effect of the disregard.

87. Where it is possible to delete a record of a disregarded conviction, such as those held electronically, this will be done. However there are certain records, such as court ledgers held in national archives, where it will not be possible to delete the record without destroying other court records. It is in these circumstances that records would be annotated to explain the effect of the disregard.

PART 6—FREEDOM OF INFORMATION AND DATA PROTECTION AND PART 7—MISCELLANEOUS AND GENERAL

88. Parts 6 and 7 attracted fewer comments (42 and 30 respectively).

89. These comments were clustered around two main themes. Firstly on the changes to the Freedom of Information Act, more than 20 individuals expressed disappointment that the Bill does not repeal the exemption under the Act for information relating to communications with the Royal Family or Household or extend the Act to them.

90. The second issue which attracted a significant number of comments was clause 99, which repeals section 43 of the Criminal Justice Act 2003 which provides for certain serious fraud trials to be conducted without a jury. Here the provision was largely welcomed, as protecting a fundamental right, though some did comment that such cases could impose heavily upon those called to serve as members of the jury.

91. The remaining clauses were largely supported and received few comments.

March 2011

Annex A

Breakdown of the number of ideas/comments left on the Public Reading stage website for the Protection of Freedoms Bill, broken down by Part, Chapter and Clause.

Part of Bill	*Chapter of Bill*	*Clause Number*	*Ideas/Comments received*
Part 1—Regulation of Biometric Data			127 (+ 1 written submission)
	Chapter 1—Destruction, Retention and Use of Fingerprints Etc		112
		1	54
		2	0
		3	7
		4	2
		5	0
		6	4
		7	3
		8	1
		9	4
		10	6
		11	2
		12	1
		13	4
		14	3
		15	1
		16	1
		17	0
		18	5
		19	0
		20	3
		21	1

Part of Bill	*Chapter of Bill*	*Clause Number*	*Ideas/Comments received*
		22	0
		23	3
		24	3
		25	4
	Chapter 2—		15
	Protection of Biometric	26	7
	Information of Children in	27	6
	Schools Etc	28	2
Part 2—			31
Regulation of	Chapter 1—		23
Surveillance	Regulation	29	11
Surveillance	Regulation of CCTV	30	0
	and Other	31	2
	Surveillance Camera	32	1
	Technology	33	5
		34	1
		35	3
		36	0
	Chapter 2—		8
	Safeguards for Certain	37	1
	Surveillance	38	7
	Under RIPA		
Part 3—			143
Protection of	Chapter 1—		6
Property from	Powers of	39	3
Disproportionate	Entry	40	1
Enforcement		41	2
Action		42	0
		43	0
		44	0
		45	0
		46	0
		47	0
		48	0
		49	0
		50	0
		51	0
		52	0
		53	0
	Chapter 2—		137
	Vehicles Left on Land	54	29
		55	3
		56	105
Part 4—Counter			39
Terrorism Powers		57	17
		58	6
		59	9
		60	6
		61	1
		62	0
Part 5—			134
Safeguarding	Chapter 1—		19
Vulnerable	Safeguarding	63	2
Groups,	Vulnerable Groups	64	3
Criminal		65	2
Records Etc		66	1
		67	1
		68	2
		69	1
		70	1
		71	3
		72	1
		73	0
		74	0
		75	1
		76	1

Part of Bill	*Chapter of Bill*	*Clause Number*	*Ideas/Comments received*
	Chapter 2—		93
	Criminal Records	77	34
		78	6
		79	47
		80	2
		81	4
	Chapter 3—		22
	Disregarding	82	11
	Certain Convictions	83	0
	for Buggery Etc	84	0
		85	9
		86	0
		87	0
		88	0
		89	1
		90	1
		91	0
Part 6—			42
Free of Information		92	8
and Data Protection		93	29
		94	0
		95	2
		96	1
		97	1
		98	1
Part 7—			30
Miscellaneous		99	12
and General		100	8
		101	0
		101	0
		101	0
		102	0
		103	0
		104	0
		105	2
		106	1
		107	7
Schedule 1			0
Schedule 2			0
Schedule 3			0
Schedule 4			3
Schedule 5			0
Schedule 6			0
Schedule 7			0
Schedule 8			0

Memorandum submitted by the Royal College of Surgeons (PF 29)

Introduction

This briefing document outlines the Royal College of Surgeons' (RCS) response to the Protection of Freedoms Bill, published on 11 February 2011. The RCS welcomes the opportunity to submit evidence to the Protection of Freedoms Bill Committee, and this evidence covers the areas of legislation which are relevant to NHS surgical services and patients.

Background Information

In clinical practice, the RCS recognises that Criminal Record Bureau (CRB) checks are a necessity to protect patients and allow the surgeon and the surgical team to work directly with vulnerable patients within the clinical environment. However, the nature of clinical practice may require a clinician to work across NHS sites and NHS organisations in order to cover absences, respond to emergencies, as well as provide training for other clinicians, receive training or maintain their own skills by visiting another hospital for a short period under appropriate supervision.

Currently there is an impractical implementation of CRB checks. Numerous concerns have been expressed by surgeons that, although they have obtained CRB clearance in their employing Trust, they are refused permission to work in another Trust in any capacity unless they undergo a new full CRB check, requested by the second organisation. This duplication of the enhanced disclosure CRB checking process is largely unnecessary, time and resource consuming and has repeatedly resulted in severe delay or cancellation of operations, adversely affecting patients and services, compromising surgical training programmes and limiting opportunities for continuing professional development.

Observations on the Protection of Freedoms Bill, Part 5

— The RCS welcomes the additional provisions to the Police Act 1997 for up-dating certificates on a continuous basis (Protection of Freedoms Bill, Part 5, Chapter 2, Clause 80).

— The RCS expects these provisions to be interpreted in line with Sunita Mason's recommendations[83] in her review of the criminal records regime in England and Wales. Of particular pertinence to the functionality of enhanced criminal records certificates is Sunita Mason's recommendation that criminal records checks should be portable between positions within the same employment sector.

— The view of the RCS is that in order for the new provisions and recommendations to be effective they should be applied to all types and levels of clinical work in the same sector, including clinicians in training as well as consultants and other non-training grades, and for both long-term and short-term work.

— The RCS believes that the problem with the functionality and cost-efficiency of the criminal records regime can be alleviated through the new recommendations provided that Trusts are explicitly encouraged to implement them.

— Crucially, the RCS is concerned that good existing guidance from NHS Employers for sensible use of enhanced CRB disclosures is currently not being implemented by NHS Trusts with adverse effects to clinical services and patient safety.

March 2011

Memorandum submitted by National Clamps (PF 32)

Protection of Freedoms Bill

Sections 54–56

Introduction

1. I am the Founder and Chairman of Lancashire Clamping Company Limited, trading as "National Clamps". The Company was incorporated in the UK on 16 October 1989.

2. I am the inventor and patent holder of the vehicle immobilisation device known as the "London Clamp".

3. I am also the inaugural President of The Parking Enforcement Trade Association and an Honorary Member of the Institute of Parking Professionals

4. After my former business partner was clamped by a Blackpool Guest House proprietor and charged a 50 pounds release fee, he and I sought the Opinion of Counsel, who specialised in the laws of Tort and Trespass.

5. Understanding the Laws of *Volenti non fit injuria* and the doctrine of *distress damage feasant* we formed a company, cautious of the deterrent factor, and so we charged £30 per sign per year. This was the birth of the service provider.

6. My business partner and I split in the very first year, but I continued and charged a nominal release fee of £25, being very aware of public opinion. My company still charge £30 per sign per year, and the current release fee is £80, having only been increased from £70 in December 2005. At the peak, prior to the Featherstone announcement in August 2010, my company immobilised 10,000 vehicles per annum and received very little bad press. In 2011 to date, we have towed away just four vehicles and on average we never exceeded 10 per annum,

7. Today all National Clamps staff are screened and vetted to BS7858 standards, and the company operates in over 300 towns and cities throughout England and Wales. National Clamps have an Edexcel approved training centre and two in house trainers, our office procedures are ISO 9001 certified. National Clamps are members of the SIA (Securities Industry Association) Approved Contractor Scheme and a former member of the British Parking Association Approved Contractor Scheme. National Clamps are a founder member of The Parking Enforcement Trade Association.

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[83] *A Common Sense Approach: A Review of the Criminal Records Regime in England and Wales*. Sunita Mason. 2011. http://www.homeoffice.gov.uk/publications/crime/criminal-records-review-phase1/criminal-records-review?view=Binary

8. National Clamps have over eight hundred clients who vary in type and size and most council and managing agents have multiple sites. We issue over 105,000 parking permits at the turn of each year and we estimate there are over 5,000 warning signs on client's premises. National Clamps are perceived as predominant within our field and we have worked hard to earn and sustain a good reputation in the industry.

THE POLITICS

9. Clamping is media heaven and this Committee should not be influenced by emotive headlines which only reflect a small minority of motorists. Those in the car park management industry face conflict on a daily basis but their primary role is to keep out general members of the public who have no right to park on the land, and, secondly, to control the parking on site by those people entitled to use the land.

10. Whether the Committee members like "wheel clamping or not", they cannot deny the deterrent value of those signs, and this will never be superseded.

11. Prior to wheel clamping, barriers were used, but were frequently damaged and often out of commission. They are expensive to buy, install and maintain and most of the time are impractical and nothing to do with traffic management. Once inside parking becomes *adhoc*.

12. The Committee would be incorrect to assume that National Clamps revenue is generated by fly parkers. We immobilise vehicles in disabled bays, ambulance bays and pay and display car parks for not exhibiting or exceeding the chosen paid time. Often on campus or hospital sites we clamp for parking on hatched or yellow lines, for not using designated expenses and for parking on pavements.

13. Clamping is now part of traffic management and not just to deter trespassing. It is more a modern solution to a modern problem. Ticket issuing does not deter, it gives the motorist an unconscious attitude "I'll cross that bridge should I come to it" or "I'll talk my way out of it" or "It's not my car". A clamp cannot be denied.

14. In 18 January 2011 Impact Assessment, one of your committee members said that one group affected by the proposed ban were: *"land owners, wider business community: shops and retail areas, offices, residential and industrial premises, medical and educational bodies, and others with responsibility for parking space or land management: will no longer be able to use immobilisation or towing away without lawful authority and will therefore have a reduced range of strategies for removing unwanted vehicles from their land"* It is a fact that ninety percent of our clients never need to use our clampers. Signs where placed where bound to be seen, and clearly and prominently worded provide good car park management. The proposed ban will require the landowner to invest in new equipment such as barrier and ticket machines and personnel to manage the sites, and yet, some Councils have issues with regard to planning permission for barriers etc, as they can cause on road queues and put other motorists and pedestrians at increased risk. Just installing a barrier is the beginning of the costs. Ground works prior to installation to provide electricity and subsequent maintenance and breakdown repairs are all costs the Bill as drafted proposes to lay at the door of the landowner.

15. It is the landowners choice to use a clamping company. They do so, usually after trying other enforcement methods first. Article One, Protocol One of the European Human Rights, clearly states the right to enjoy ones property. Once parked (contrary to each sites specific parking terms), the vehicle is no longer in the possession of the driver or owner. It is now in the hands of the land owner under contract and trespass tort or distress. The doctrine of *distress damage feasant* gives the right of the landowner to seize goods (chattels) and deprive the owner of its use until damages are paid which includes the cost of the debt recovery and a nominal fee. Per His Honour Hirst LJ *"it is not necessary to prove actual damage in support of the remedy of distress damage feasant. The impending threat of damage, namely the presence of a trespassing car, is sufficient: but if actual damage is necessary, the cost of clamping the car constitutes such damage"* (post pp 582G–583B, 584D–E, 585A–B).

16. Lynne Featherstone MP claims "that there is a ban in Scotland and that it is successful". This is misleading to Parliament as, whilst it is true to say there is a ban in Scotland, to continue to compare Scotland, with a total population of 5.1 million, to England, where the 32 London Boroughs alone have a known population of 7.7 million ignoring the millions that visit or pass through London every year, is misleading and questions the assumptions in her Impact Assessment. We have come a long way since the early 90s when the Scottish ban was introduced, but remains unchallenged, and there are many landowners in Scotland who wish they could employ the services of National Clamps and there are many motorists who, if quizzed, would have preferred being clamped instead of being towed away.

17. National Clamps are concerned that Lynne Featherstone MP is a member of the Public Bill Committee considering, amongst other things, a total ban on wheel clamping. As a champion of this Liberal Democrat policy, she is hardly impartial or, it would seem, open to genuine debate. In an open letter dated 16 September 2010 to the BPA Approved Operator Scheme, Mr Troy, CEO British Parking Association said: *"I also expressed my concerns to the Minister at the absence of any consultation on this issue. Although the last government did a consultation on the issue, they manifestly did not consult on the prospect of a total ban so I think it is bad form to have failed to consult the industry on a total ban and I made this clear to her."*

18. Costas Constantinou, writing in the *Telegraph* 31 August 2010 edition said *"A request was made under the Freedom of Information Act to the SIA in May 2010 to disclose the number of clamping licences. The result is that there are 1,900 licensed clampers in the UK but only 1,200 full and part time currently working. In effect*

we have a licensed operative for every 600 square miles of land in the UK." The Impact Assessment states there are "about 1,850 vehicle immobilisers currently licensed by SIA." The Impact Assessment fails to exclude redundancies and the number that got a job and left after they saw the confrontation.

19. A vehicle immobilisation device currently targets the driver whilst a ticket targets the "Registered Keeper". Currently, around forty percent of the vehicles ticketed by National Clamps, are not the registered keeper. They are, for example, taxis or company pool cars or delivery vehicles. Whilst the proposed Bill places the emphasis on change from driver to keeper responsibility, there is no legislation that requires a driver of an offending vehicle on private land, to divulge the driver details at the time of the incident. National Clamps issues around 500 tickets a month. 40% take advantage of the discount; a further 11% pay once we have been to the DVLA and acquired the registered details and about 9% pay after we have used a registered debt collection agency. National Clamps average collection of ticket monies is 60%.This is significantly lower than the 75% put forward in the Impact Assessment. The same assessment assumes the police will manage offending vehicles on private land in future. They are powerless, over stretched and under resourced. With the current coalition government requiring huge cutbacks in Police manpower and assets, the proposed Bill does not fit easily with the cutback regime;. in essence the makings for a different type of disaster.

20. National Clamps requested, but were refused the opportunity to give oral evidence to the Committee, as were the Vehicle Immobilisers Association. How ironic that two major motorist organisations are granted an audience and not one property owner nor managing agent nor clamping organisation, (being the three group of people who will be most effected by the proposed changes). The British Parking Association has been granted an audience and yet they have their own self indulgent agenda which consists of Licensing and the BPA holding the purse. So too, has the Securities Industry Authority been welcome to give evidence, but their existence under another piece of Coalition legislation is under threat.

21. I attended the British Parking Association Approved Contractor Scheme meeting in Daventry last October. Their master plan is to remove all private companies such as mine and replace them by council enforcement. It is already a legal requirement that before you can access the DVLA you are required to be a registered member of a DVLA Approved Trade Association, and then be a member of their Approved Contractor Scheme. In 2010, this privilege costs my Company £6,980, rising year on year. Many within the Car Parking Management industry are leaving ticketing because they have been priced out. Whilst I was at the meeting of BPA Approved Contractors ie barrier suppliers, car park attendants etc, I asked the following questions: *(1) Who would like to see Vehicle immobilisation and towing away kept if regulated? (2) Who would like to see the release fees capped at £100 or £175 if towed away? (3) Who would like to see a two hour gap between a clamp being applied and a tow truck?* I can report that the show of hands was one hundred percent unanimous in favour on all questions.

Those attending were the cream of the UK parking industry and whilst this was consultation in its crudest form, it was honest and untainted.

March 2011

Memorandum submitted by Biostore Limited (PF 33)

A Summary of Our Submission

Biostore does not object to the modified coalition manifesto pledge to "outlaw the use of fingerprinting without parental consent", now changed to require "that parents should give permission for any biometrics to be recorded by a school". The details of how this is to be implemented do require further consideration.

We have proposed a series of suggestions that would allow schools to adopt the spirit and letter of the bill. These are as follows:

- We accept the modified coalition government policy of seeking parental approval for the use of all biometric systems in schools.
- We are happy to continue to implement alternatives to biometrics where required.
- Our belief is that a single signed form from one responsible parent representing a family should be deemed adequate, for any form of biometric the school management deems appropriate.
- If either parent or the student objects to the use of Biometrics they should be able to write to the school and have their wishes acted on.
- Where a school uses CCTV to identify children, there must be 100% written approval from parents or CCTV systems should be removed.
- Once a student reaches the age of 16, they should be able to decide themselves to give informed consent.
- The legislation should be implemented over a period of four years, allowing schools and suppliers to phase in the required changes to systems without requiring significant capital investment in new catering, library or other vital management systems.

Our Submission

1. Biostore Ltd welcomes the invitation to submit evidence to the Public Bill Committee concerning the Protection of Freedoms Bill.

2. Biostore is a commercial organisation which is the main supplier identity management systems to secondary schools. Most of our clients use biometrics to confirm the identity of students and staff using services and facilities within a school or college. A number of schools use smart cards.

3. Our client base includes over 1,000 Secondary Schools, and estimate that well over one million students use our finger based biometrics daily. In total perhaps 3,000 schools use finger based biometrics, with more than two million students using school services with biometrics. Nearly all schools in the country will record additional biometric data, as defined by this Bill, such as photographs, or CCTV images.

4. BioStore has always recommended to clients that they carry out a consultation with staff, governors and parents before introducing biometrics. Our software has alternative methods of identity management built in, allowing students to use identity cards, or pin numbers. Our schools follow this advice.

5. Our experience is that only two users per 1,000 decline to use biometrics. A 99.8% uptake of a voluntary process reflects the views of most of the public on this subject. There is no evidence that we know of, beyond sensationalist press headlines, that students are compelled to register biometrics.

6. The coalition manifesto pledged to require parental consent before children were fingerprinted in schools. This was a very narrow and somewhat emotional focus. Such "fingerprinting" bears no relationship whatsoever to criminal fingerprinting. The manifesto pledge, limited to fingerprints alone would have been impossible to implement without schools turning immediately to alternative biometrics.

7. The Protection of Freedoms Bill changes the Manifesto pledge to include the requirement for written dual parental permission for all biometrics used in schools.

8. This is a highly significant change of policy.

9. There has not been proper consultation or clear thinking about the consequences of this new policy. We would respectfully suggest that the committee reviews the implications of this policy change.

10. Biometric identification is based on fingers, veins, palm scans, voice biometrics, face recognition, typing patterns, gait analysis, and potentially new undiscovered individual characteristics.

11. *What are some of the challenges posed by the change of policy?*

12. Digitally stored photographs are a biometric identifier currently in place in nearly all schools. All those schools currently storing digital photos, which are used to identify children, will need to seek written permission from two parents. This is a peculiarly onerous challenge. Without this permission, schools will not be able to store photographs. Many schools will have permission from 1 parent, but this will not be adequate in future. Existing administration systems that depend on identifying students by photographs will have to be closed down, or will only be usable by a part of the population.

13. According to this Bill all schools using smart cards with photographs will need to reissue cards unless they have written approval from two parents. Without dual written parental approval, cards will have to be reprinted without photographs on. Existing systems that depend on smart cards with photos will have to be modified or closed down. Smart cards without photos are considerably less effective.

14. Schools that use CCTV will need to have the approval of all parents in the school. If one parent objects the system will have be stopped, as CCTV is indiscriminate in recording biometric features. CCTV cannot be set to exclude recording those who have opted out.

15. A number of administration systems (such as cashless catering, library, access control, print and copy management etc) are built around Identity Management systems using photos, cards, or biometrics that have been approved of by one parent. If this permission is declined in future, or cannot be obtained from two parents, schools may have to purchase new admin systems at significant capital cost to meet the diverse requirements of the current parents in a school. New cohorts of parents may request the school to implement new forms of identification, leading to constant process of change and new investment. Schools will lose the ability to manage themselves.

16. Given the high levels of uptake of biometrics including the almost universal use of digital images in schools and colleges, the costs and administrative burden of retrospectively obtaining written consent from two separate parents are going to be very high. A simple estimate suggests that communications alone to obtain written retrospective permission from two parents for photos would cost schools £8 million. This far exceeds the costs outlined in the impact assessment prepared to accompany this Bill. At best this will identify the two users per 1,000 who already have already exercised their voluntary opt out. Seeking dual parental permission, whilst expensive still remains a cheaper option than replacing biometrics with identity cards.

17. If all schools with biometric systems have to replace these with cards, they will incur additional costs of up to £19 million per annum to introduce and maintain a card based solution. This is far in excess of the costs outlined in the impact assessment prepared to accompany this Bill.

18. *Time scales for introduction of legislation*

We approve of parental permission being required, but to be proportional, this should be acquired over time from one parent who represents the family. This common practice should certainly apply to existing students, so that Schools can continue to use management systems in which they have invested heavily in over recent years to improve educational outcomes. It has taken five or more years to implement the number of identity management systems in place. For very practical reasons, there is not sufficient technical capacity in schools or the industry to make the compliance changes to school systems in less than four years without very substantial investment. Schools could easily be caught out in trying to implement new policies, but being unable to do so in a reasonable time scale.

19. Parental permission can be sought more easily for new students, or new installations. According to the wishes of parents, as school or college can make the best decision about how to invest in administrative systems, before they make their initial purchase.

20. The proposers of the Bill need to be aware that individual schools may have to work with many different forms of identification—cards, finger biometrics, facial recognition, and vein recognition according to the diverse wishes of parents and pupils. This will be onerous, inefficient and costly.

21. Inertia, inefficiency, and lack of attention to detail will ensure that not all parents bother to complete the forms needed. Pupils will be able to disrupt school administration by exercising a legal right to change preferred forms of identity on a regular basis.

22. Children can choose their religion at the age of 15, choose to marry at 16, drive at 17, but the proposed legislation requires that they cannot give biometric data without parental approval until they are 18. The Impact Assessment to accompany this bill considered the ages of 12 and 18, as times when children might give consent. Our view is that once children are 16 they should be able to decide themselves whether to use Biometrics. This change would reduce the burdens on sixth form colleges and Colleges of Further Education where parental approval is harder to obtain.

23. Card based systems are very expensive to operate, with a high rate of card loss, admin time to replace cards, cards being stolen or lost, leading to theft of funds, or denial of service because children cannot obtain replacements at critical times. By forcing schools to use card systems, sponsors of this Bill are potentially requiring schools to face high ongoing costs. Smart cards alone cost up to £3.50 per pupil, and losses amount to over 20% per annum. Admin staff time required to administer cards can require the half the time of a staff member. A secondary school can incur costs of £15,000 per annum to maintain and administer a card based system.

24. Those of a cynical nature will observe that a company that lives by selling biometrics will defend its position and justify biometrics. However, when we sell biometric to a school, we make one sale. The biometrics element of a solution will incur a one off capital cost to the school between £500 and £3,000 depending on the software in use. We then charge a modest annual support charge—perhaps £150 per application. The savings to the school in time materials and administrative effort are substantial. Our systems are popular with schools, students and parents because they work, save substantial admin time and are trusted.

25. Our identity management systems work just as well with cards. Installing a card system would make us more money— earned from providing card printers, an ongoing supply of cards, printing inks, support and core software. The annual cost to each school for our services would be in the region of £5,000.

26. To repeat the summary:

Biostore does not object to the modified coalition manifesto pledge "to outlaw the use of fingerprinting without parental consent", but instead "that parents should give permission for any biometrics to be recordedby a school". The details of how this is to be implemented do require further consideration.

We have proposed a series of suggestions that would allow schools to adopt the spirit and letter of the Manifesto and Bill. These are as follows:

- We accept the modified coalition policy of seeking parental approval for the use of biometric systems in schools.
- We are happy to continue to implement alternatives to biometrics where required.
- Our belief is that a single signed form from one responsible parent representing a family should be deemed adequate, for any form of biometric the school management deems appropriate.
- If either parent or the student objects to the use of Biometrics they should be able to write to the school and have their wishes acted on.
- Where a school uses CCTV to identify children, there must be 100% written approval from parents or systems should be disabled.
- Once a Student reaches the age of 16, they should be able to decide themselves to give informed consent.
- The legislation should be implemented over a period of four years, allowing schools and suppliers to phase in the required changes to systems without requiring significant capital investment in new catering, library or other vital management systems.

Biostore hopes this is a constructive proposal for the Committee to consider. We would be happy to enter into a more detailed dialogue if required.

March 2011

Memorandum submitted by Judith Bailey (PF 34)

PROPOSED BANNING OF CLAMPING CARS ON PRIVATE PROPERTY

Summary

The proposal to ban clamping of vehicles on private property will adversely affect many flat-dwellers who at present rely on clamping firms to protect their private driveways from being used by rogue parkers.

SUBMISSION

1. The freehold of our block of 29 privately-owned flats is owned by some of the leaseholders in the form of a management company. The land on our estate, including the drive, therefore belongs to us and is part of our private property. The drive has only 28 parking places—not even enough for one per flat. Our proximity to Guildford town centre and the lack of parking places in surrounding roads make us an easy target for unauthorised parking by non-residents. This situation is probably the same for flats right across the country.

2. There's been a lot of publicity about unscrupulous clampers terrorising members of the public, and of course that needs to be addressed. But unscrupulous motorists who park (and in fact trespass) on other people's property, and prevent the residents from parking, cause a lot of misery, inconvenience and frustration, none of which receives publicity.

3. Three years ago we introduced residents' parking permits to prevent unauthorised parking. We use a licensed clamping firm to check on the parking and to clamp when necessary. There are several notices clearly displayed stating that unauthorised vehicles will be clamped and giving the fee. This scheme has been very successful in deterring unauthorised parking. The number of cars clamped is small—probably fewer than 10 per year—but the threat of clamping is a very effective deterrent. Please note, the clamping fee goes to the clamping company, not to us.

4. If the proposed ban on clamping becomes law, how are we to prevent our drive, our private property, becoming a free parking space once again for anyone in the area?

5. Apparently we will be able to issue parking tickets. But to enforce payment by using the courts will be time-consuming and costly for us, and a waste of time for the courts. And apparently it is the driver not the owner who is liable for the fine, and so the owner can always claim that someone else was driving the car. This situation must be remedied if clamping is banned.

6. Or perhaps we should have a gate? But this will involve considerable expense and all the inconvenience associated with lack of access for visitors, utilities, delivery vans and emergency services.

7. We are being told that since clamping was banned in Scotland "there have been no problems". How is this known? What is the evidence?

8. It is not common practice to ban everyone from doing something just because a few people abuse it. Otherwise we would have no motorists, bankers, doctors or teachers.

9. Do tackle the problem of unscrupulous clampers. Do allow only licensed firms to clamp. Do put a reasonable limit on the clamp release fee. But please leave us with some practical and effective way of deterring unauthorised parking—and at present clamping seems to be the best way.

March 2011

Memorandum submitted by Andrew Clewer (PF 35)

1. I would like to submit my concerns regarding the current CRB situation and how I hope this Bill will change the lives of many people who are currently being treated unfairly.

2. Adults working with children, both in a voluntary or employment capacity, are subject to the possibility of allegations being made against them which result in investigations into their practice and suitability. Where there are concerns the investigating bodies (police, social services, etc) will require answers from the individual. The individual will then be interviewed and maybe cautioned, charged or have no further actions against them and the investigation stops. Some allegations also result in no questionning whatsoever.

3. My concern lies with what is then recorded on the individual's CRB in the soft-information deemed to be at the discretion of the Chief Constable. I am most concerned that when an individual is not questionned they still have allegations recorded against them yet there was no sufficient information

regarding the allegation to result in any questionning yet they have a tarnished reputation as a result of their CRB. When an individual is questionned and no caution or charge is made they have the information recorded too. This I believe is completely unfair and not balanced.

4. I hope that through the Protection of Freedoms Bill, information recorded on a CRB form is only that relating to a caution or charge. I hope that individuals who have not been charged or cautioned will have clear CRB forms. This would seem proportionate. Currently whether cautioned, charged, questionned or even not questionned, an individual is treated the same with regards to having a non-clear CRB. How can this be fair?

5. Please seriously look at the system—surely if there is not enough evidence to move an allegation forward to a caution or charge there is not enough evidence to call into account the person's suitability through any recording on their CRB form.

6. I think the revised system should that be any caution or charge is recorded on the CRB form. Anything not resulting in caution or charge should not be recorded on the CRB form.

March 2011

Memorandum submitted by the Freedom Association (PF 36)

About The Freedom Association

The Freedom Association is a non-partisan, libertarian pressure group dedicated to fighting for individual liberty and freedom of expression. As such, we seek to challenge the erosion of civil liberties and we campaign in support of freedom for the individual and free speech.

Executive Summary

- By 2009, nearly six Million people in England and Wales were on the National DNA database, many of whom who were either innocent or had only committed minor crimes.
- The database is notoriously inaccurate and bureaucratic.
- The Coalition Government aims to reform the database by generally only retaining the data of individuals who have committed crimes.
- In March 2010, 3,500 schools took biometric data from pupils in order to speed up basic administration. Often the data was taken without parental consent. Crucially, the Protection of Freedoms Bill rules that schools can only take biometric data with parental permission, thus protecting children's rights.
- To improve this further, schools should face punishments if they break the Bill's provisions. The Information Commissioner should also be able to rule if schools are acting in the public interests in relation to biometric databases.
- Whilst the Bill is a step in the right direction, there is much room for improvement. As the Bill stands, adults convicted of recordable offences (even for minor crimes) can have their DNA retained indefinitely. Additionally, the Bill will mean that children can still have their DNA retained indefinitely after two warnings.
- Furthermore, if a person is seen as a national security concern, they are exempt from the protections outlined in the bill. National security exemptions could end up increasing the size of the database unnecessarily.
- Under New Labour, the state's ability to control and monitor its citizens increased exponentially. Most prominent was probably the rise of surveillance systems. For example, despite having only 1% of the world's population, reports suggested Britain had 20% of the worlds CCTV cameras, a staggering 4.2 million.
- The Freedom Bill will allow the Home Secretary to appoint a Surveillance Camera Commissioner.
- They will be a code of practice in respect to the development and use of surveillance camera systems for the police, local authorities and the CCTV industry. This could provide the necessary safeguards, to make CCTV use and surveillance proportionate.
- Unfortunately, any failure to act in accordance to the new surveillance camera code will not necessarily make that person liable to civil or criminal proceedings. This should be enforced more strongly to dissuade people from abusing the code.
- Despite the Bill making some welcome changes, we are worried that due to the pace of technological advancement CCTV cameras will rise just at a slower rate.
- The Bill will make many changes to the Regulation of Investigatory Powers Act 2000 (RIPA) passed under the Labour Government.

— Changes are needed, as under the last Government, RIPA had become a snooper's charter, where many public bodies and local authorities spied on individuals, often for ludicrous reasons.

— The Bill will require relevant authorities to receive judicial approval before accessing communications data.

— The grounds that a judicial approval may be granted include a number of reasons such as economic implications, whether it had done anything to stop crime, and if a person's privacy had been unnecessarily breached.

— This is a great improvement over what RIPA was before, as it will make public bodies and local authorities think twice before abusing surveillance powers.

— This is a step in the right direction, but the criteria for judicial approval are very broad and open to abuse.

Chapter 1: The DNA Database and Biometric Data Taken From Children

1. *Introduction*

The National DNA Database was created in 1995 by Home Secretary, Michael Howard, from the 1994 Criminal Justice and Public Order Act 1994. It was meant to contain DNA from people who had been convicted of all but the most trivial of offences (Wallace, H, 2005). At present, it entraps many innocent people, which breaches privacy.

2. *Some Facts And Figures*

There was an endemic ignorance towards liberty in the previous government's approach to the database. In 2005, the UK had a much higher proportion of its population on a national police database than its international counterparts. For example, whilst over 5% of the UK population was on the database, it was 0.99% in the USA and 0.20% in France (Genewatch UK, 2010). By May 2009, the database had the profiles of 5.5 Million people in England and Wales increasing to almost 6 million when including Northern Ireland and Scotland. This accounts for just over 10% of the UK population (Whitehead, T, 2009).

In July 2010, the National Police Improvement Agency (NPIA) reported a slight reduction in numbers, to approximately 5 Million in England and Wales (NPIA, 2010) which is still a higher proportion than most countries. This meant that under Labour a new profile was added every 45 seconds (Blackwood, N, 2011).

The size of the database makes it immensely bureaucratic leading to security breaches and errors. Rehman Chishti MP has stated that "Half a million records on the database were completely wrong: names and details were false (Chishti, R, 2011)." The database is a threat to liberty and nightmarish to manage.

The database needs to be scaled back to stop freedom eroding. John Glen, a Conservative MP, pointed out that both Conservatives and Liberal Democrats agreed that 13 years of a Labour Government saw a squeeze on civil liberties (Glen, J, 2011).

3. *Helping the Innocent*

The retort to those who have concerns about the DNA Database is that much loved phrase "if you have nothing to fear, you have nothing to hide". However, this is simply not the case. According to Jim Shannon MP, as of 24 April 2009, almost one million innocent people were included on the database (Shannon, J, 2011). The National DNA Database Strategy Board has admitted that presently 20% of those on the Database do not have a conviction (Pugh, G, 2011). As Gareth Johnson MP stated, "Those who preach that if you do no wrong, you have nothing to fear embark on a very dangerous journey where the state is master and the individual is subservient to those in control (Johnson, G, 2011)." The change to allow the retention of the innocent in 2004 paved a way for all police national computer records to be kept permanently (Genewatch UK, 2010). This altered the balance between individual privacy and the ability of the state to implement bio surveillance.

It is extremely difficult to remove DNA profiles. They can only be removed under exceptional circumstances decided by the police. This allows police to enforce and make the law, a clear conflict of interest. Even the exceptional circumstances provision does not save many innocent people as according to Gareth Johnson, "an innocent man is not an exceptional man, his profile could be held on the DNA register for life (Johnson, G, 2011). "

Furthermore, Only 283 innocent people had their DNA samples removed under the exceptional circumstances rule in 2008–09, which is considerably less than Scotland where 16,562 profiles were deleted in 2008–09 (Genewatch UK, 2010).

The situation is serious as according to Genewatch UK, "Individuals with records on the DNA Database lose their presumed legitimacy to go about their daily life, their right to refuse to take part in genetic research and their right to keep their family relationships and other genetic information private. Their movements are also checked, which can have a significant effect on their right to protest (Genewatch UK, 2005)." This is devastating for those who have done nothing wrong. Additionally, there are disparities in the law, because innocent people on the database are treated differently to those who are innocent, but are not on the database.

The European Convention on Human Rights in 2008 for once was correct in the case of *S and Marper v United Kingdom* (Almandras, S, 2010: 5) ruled unanimously that legislation in England and Wales allowing the indefinite retention of DNA and fingerprints of innocent people breaches Article 8 of the European Convention on Human Rights (the right to privacy).

The Government is proposing provisions so those who are innocent find it much easier to remove their details from the database. Whilst not committed to removing all innocent people from the database, it would like to see a substantial reduction in the number held on it. This will hopefully restore the principle of innocent until proven guilty, which has been badly undermined. The Law Society has rightly described this as an improvement (Brake, T, 2011).

The Government is moving towards the Scottish legal system's approach where, apart from cases relating to a serious sexual or violent offence, if a conviction does not follow from an investigation or arrest the state cannot retain that person's DNA (Almandras, S, 2010: 1) This should make a policeman's job easier, because he will not have to sift through the data of individuals who shouldn't be there.

According to Theresa May MP, present Home Secretary, this will stop innocent people's data being held on the database indefinitely (May, T, 2011).

Mr Shannon has said that the exceptional cases provisions need to be clarified (Shannon, J, 2011). An amendment could be made to include innocent people under the exceptional circumstances provisions. Thus police would be instructed to recognise the rights of innocent people in law.

Disappointingly, the Government has said it will not remove the DNA of all those who are innocent. Theresa May said, "The police will be able to apply for the DNA of some people who are arrested but not charged to be retained. I would expect that application to be made in certain circumstances, such as when the victim has been vulnerable, which may mean there is very good evidence that the individual concerned has committed a crime (May, T, 2011)." It is commendable to protect the most vulnerable in society, but the loophole could mean substantial numbers of innocent people remain on the database. Thus closing this loophole is recommended.

The Bill should make clear that a right of appeal for individuals who believe their DNA has been retained unlawfully is available. Nicola Blackwood MP, approved such an amendment saying, "I even have one constituent who was inaccurately registered as a sex offender for 15 years owing to a clerical error (Blackwood, N, 2011). "

Furthermore, DNA of those accused of a serious crime but not convicted will see their DNA, with the possibility of it being extended for another two years (Floru, J, 2011). Effectively, they are being treated as guilty until proven innocent. The Government ought to make clear that these people will have their DNA destroyed.

Another problem is once a person's DNA is deleted from the National DNA database, it doesn't specify that it will be immediately deleted from the police's national computer. We believe this should be the case.

4. *Destruction of DNA Copies*

The Bill also concentrates on the destruction of DNA copies, demonstrating the Government is willing to relinquish power.

If a valid reason has been given to destroy a DNA sample or fingerprint, then the police have to comply. It is also made apparent that DNA or fingerprints obtained by unlawful means will be destroyed. Hopefully many people will see their profiles removed.

A major problem is mistaken identity. The Government recognises this and has called for DNA mistakenly taken to be removed (Her Majesty's Government (HMG), 2010–11: 9), as it is an affront to justice and expensive.

5. *Discretionary Powers*

Presently the database has given police a smorgasbord of discretionary powers. For example, information obtained by the *Mail on Sunday*, demonstrated that detectives approved by chief constables trawled the DNA database 60 times a year hunting for criminals' relatives. Additionally police have searched the DNA records for innocent people 363 times in the past six years (Lewis, J, 2010).The standard defence is that these searches only happened in exceptional circumstances and that the number is low compared to the number of innocent people on the database. However, the problem is not with who holds these powers, it is that they are allowed to hold them at all. The state was allowing the police to treat people as guilty by association, which goes against equality under the law and challenges the privacy of those subject to surveillance.

The Government has sent a message through a commitment to remove as many innocent people off the database as possible. This will restrict police surveillance operations on innocent citizens.

The Bill is not a panacea to the problem. For instance, chief police officers can carry out speculative searches within such time as is reasonably required (HMG, 2010–11: 2). Whilst the Government intends to stop random stop and search powers, speculative searches of the database could be used. For example, is it really necessary to carry out a speculative search of DNA from those accused of fraud if they are investigating murder. Also a time frame is not specified. These searches should be restricted through tight

time limits and exemptions for innocent people. Additionally the search should be restricted to those relevant to the crime the police are investigating. So for example if it relates to a sexual offence, only those who have committed a sexual offence should be searched.

The Bill also says that a Chief Police Officer can ask for a time extension from a magistrates' court. This is unnecessary, as three years is long enough for a conviction based on a DNA sample or fingerprint. The time could be limited to a year without jeopardising police work. Moreover, a member of the public should be allowed to call for a judicial review when their DNA is held for the time limit to be lowered or profile destroyed. These changes are imperative to stop police acting as if they are above the law.

6. *Are Police Forces Getting the Message*

Police forces across the country seem deaf to the new message on DNA profiling. For example, the Derbyshire Constabulary webpage on 17 November 2010, states that "Your authority regularly holds onto DNA samples and fingerprint details even when individuals have been found not guilty of an offence. Samples etc are only destroyed in exceptional circumstances. (Derbyshire Constabulary, 2010).

This viewpoint suggests police forces are ignorant of potential miscarriages of justice and there is ample room for abuse.

Consequently, new guidelines are essential for the police to act in the public's interest rather than their self-interest.

7. *Minor Offences*

In recent years, there has been a proliferation of DNA and fingerprints taken from people who have only been convicted of minor offences, such as being drunk, begging and attending illegal demonstrations.

There are a plethora of case studies outlining the problems. One case involves a fourteen year old girl who had her DNA profile taken for pinging a schoolmate's bra (Cunningham, T, 2006). Whilst one does not condone the girl's actions, surely the response was an overreaction. (Cunningham, T, 2006). Angela Hickling, was arrested for theft after a next door neighbour kicked a football over her fence. She could not find it, so could not return it. Later in the day, a policeman questioned her on suspicion of theft. The case was dropped a few days later due to a lack of evidence, but not before her DNA was taken. Similarly, William Copper was arrested and formally cautioned for smoking a cannabis joint in public (Copper, W, 2010). Whilst plainly this is a crime, it is extremely minor. Adding people to the database in these circumstances seems an extraordinary waste of time.

The Government is setting up guidelines to reduce the amount of DNA taken from people for minor offences. This indicates that it is willing to countenance a distinction between minor and serious crimes.

One helpful provision is that people who are arrested, but then not charged or are acquitted of minor offences, will have their DNA records and fingerprints deleted when charges are dropped or an investigation is completed (Genewatch, UK, 2011).

Figures in July 2010, showed over 272,000 individuals under 18 were on the DNA database (NPIA, 2010). Changes to the law will mean that under 18's who are convicted of a single minor crime will have their DNA records and fingerprints deleted after five years, or five years after the end of the sentence if they have been sent to prison. This provides some safeguards (HMG, 2010–11: 6).

Regrettably, the Government plans are not radical enough. For instance, children should be given the most protection under the law. It is wrong that a child convicted of a minor crime should have their DNA held at all. The period of 5 years is still 5 years when the intimate details of a child are held by the state. Furthermore if a child receives commits to minor offences their DNA could be retained for life (HMG, 2010–11: 6). This is disproportionate, and will cause more children to be involved in the criminal justice system than necessary. Rules ought to be included, stating that children convicted of minor offences must not be added to the DNA database and, if they are, the data has to be deleted as soon as possible.

The Bill still says that the DNA profiles of adults can be retained indefinitely if they have committed a minor crime (HMG, 2010–11: 5). This is massively disproportionate and should be amended to a maximum of two years.

Theresa May has said, "Those convicted of an offence includes those who have been cautioned" (May, T, 2011). Subsequently, these people could have their DNA retained indefinitely, similar to a convicted person. This could lead to the DNA Database being extended, despite the Government wanting the exact opposite. Amendments should be made so those who been cautioned will have their DNA removed from the database.

8. *Those Arrested For Crimes outside the Jurisdiction of the UK*

British people can be arrested for something which is not a crime in the UK, but is a crime in a European country like Germany. One such example is holocaust denial.

The Bill says that a person who is convicted of an offence, under the law of any country outside Wales can have their DNA retained indefinitely (HMG, 2010–11: 5).

A Person's DNA should not be taken if they are convicted of something which is not a crime in the UK. If a DNA sample has been retained, it should be destroyed without delay. This is important, because traditionally the British legal system has far more safeguards, such as *habeas corpus*, compared to other continental systems. Additionally if the Government does not do this, it is not protecting its own citizens.

9. *Children in Schools: Biometric Data*

Children frequently have their privacy infringed upon, when being subject to iris scans to take out library books, often without parental consent. This was all part of a biometric data system, rolled out in 30% of secondary and 5% of primary schools across the UK (Blackwood, N, 2011). Schools have actually accelerated the process of running Biometric Data Systems without consent in response to the Government's plans to introduce consent into the process according to Terri Dowty, Director of Action on Rights for Children (Dowty, T, 2011).

DNA profiles will not be taken from children at schools without parental consent. The Bill asserts that if a child refuses to give up any of their biometric information they will not be forced to. Additionally they will not lose out on any opportunities if they refuse to give up their biometric data (HMG, 2010–11: 17). This is a victory for individual choice.

Schools considering extremely intrusive data systems should be deterred. This could be done through requiring schools to request permission from the Information Commissioner's Office (ICO) to hold the data.

Furthermore, as the Bill stands, Schools can disobey the new laws when it comes to permission. With no sanctions, schools who already do not ask for permission have little incentive to comply with the Bill's aims. A sanction could be a fine. This would force schools to see that mass fingerprinting without parental consent is not just morally wrong, but also makes no economic sense.

10. *DNA Retained For National Security*

Undoubtedly some DNA has to be retained for national security purposes. Nevertheless, the term national security has broadened since the War on Terror, often into unrelated areas.

A person under suspicion on national security grounds should have rights to appeal to the relevant court, who can act neutrally. The courts could argue that there is no evidence, and thus the DNA cannot be retained. This would increase accountability.

Presently, terrorism-related offences are exempt from the protections outlined in the Bill, as Chief Constables will still be allowed to ask a magistrate for DNA profiles to be retained indefinitely on national security grounds (HMG, 2010–11: 7). The Government should not undermine liberty when fighting terrorism, as this helps terrorists succeed in destabilising our democracy.

11. *National DNA Database Strategy Board*

The creation of a National DNA Database Strategy Board is welcome (HMG, 2010–11: 15). Transparency will be generated, as the body is subject to Parliamentary approval. Finally, it could be a useful monitor of Police Force's actions.

12. *Conclusions*

The changes are a start towards the Government promoting liberty, rather than undermining it. However, for liberty to be truly safeguarded it needs to go further. If the Governments make the reasonable amendments called for, the relationship between the individual and the state will finally be in favour of the individual.

Chapter 2 : Implications for Surveillance Systems and CCTV

13. *Introduction*

> *"Public acceptance is based on limited and partly inaccurate knowledge of the functions and capabilities of CCTV systems in public places. There may be a need for guidelines that will make possible an informed public acceptance of CCTV through fuller consultation and the provision of information. There is also a need to encourage operational procedures that will maximise the effectiveness of CCTV and minimise any threat to civil liberties which may arise from either sloppy practice or the deliberate misuse of such systems. Any guidelines must anticipate future problems due to the proliferation of CCTV systems, and the pace of technological development which allows increasingly powerful forms of surveillance."*
>
> (Charman, E and Honess, T, 1992: 25):

A Home Office report on the acceptability and effectiveness of CCTV cameras in 1992 foresaw the increasing problems associated with the proliferation of surveillance systems in public areas. It highlighted how surveillance affected the accountability of police, leading to unacceptable levels of intrusion by the state into individual's lives. However, the warnings went unheeded, meaning problems like inadequate Home Office guidelines or statutory controls remain, leading to freedom being attacked. Almost 20 years later, the

number of cameras and their scope and power has risen exponentially. New figures suggest there is one CCTV camera for approximately every 32 citizens in Britain, with around 1.85 million nationwide (*Daily Mail*, 2011). Previous estimates have suggested as many as 4.2 million cameras were in operation in Britain (*Evening Standard*, 2007). The real number probably lies somewhere between the two. British people experience a staggeringly high amount of surveillance compared to other much larger and more authoritarian countries. In 2009, it was calculated that Britain had around 1.5 million more cameras than China and20% of all global cameras. Simon Davies, Director of Privacy International, said "Britain has established itself as the model state that the Chinese authorities would love to have (Kelly, T, 2009)." The law of government unintended consequences, whereby attempting to solve a problem inadvertently exacerbates the existing problem, has been aptly demonstrated.

The rise of CCTV is sometimes attributed to a reaction to the events of 11 September 2001 and the subsequent War on Terror, but in reality cameras were on the rise well before this as an increasingly first line of attack against crime. In subsequent counter terrorism operations Damian Green believes, "The Government sought to clamp down on the entire population instead of concentrating on the tiny number who actively wish us harm. The unintended consequence of this was a surveillance state (Green, D 2010: 45)."

The new Coalition Government is aiming to counter the seemingly inexorable decline of our liberty through the Protection of Freedoms Bill. One subtle yet visible infringement on our privacy has been the rise of the CCTV camera. This report attempts to outline the main themes of the Bill in regard to surveillance systems, what affect it could have, and when necessary, where it could be improved.

14. *The Story So Far*

The rise of surveillance camera technology in our communities and on our streets has been silent but deadly as, according to Damian Green MP, "We have steadily and unwittingly turned into a surveillance society" (Green, D, 2010: 44). However, through the combination of surveillance abuse, research and pressure groups, there has been a growing public consciousness over the issue. Presently, there seems more resistance to wide-scale public surveillance than ever before. Therefore, the Government's Bill reflects the evolving political and cultural attitudes towards an increasingly watched, yet aware, society.

The number of private cameras is difficult to gauge. However, a 2009 report into the number of local authority controlled CCTV cameras by Big Brother Watch found there were at least 59,753 surveillance cameras operated by the 428 local authorities nationwide. This has risen from around 20,000 11 years ago. In London alone, there was a minimum of 8,112 public CCTV cameras, which amounted to a rise of 279% in one decade (Big Brother Watch, 2009). This is expensive, as a survey of 366 councils in 2010 highlighted that nearly £315 Million from 2007 was spent on installing and operating CCTV cameras (Greenhill, S, 2010). According to Alex Deane, former director of Big Brother Watch, this has led to ludicrous situations like the Shetland Islands now having more CCTV cameras than the entire San Francisco police department. He also noted, that the numbers calculated by Big Brother Watch are just a fraction of the number of surveillance cameras in operation in Britain (Deane, A, 2010). The extremely large amount of CCTV and ANPR (Automatic Number Plate Recognition) cameras has helped to make the British the most heavily monitored people in the Western world (McKinstry, L, 2010: 166).

Prior to this Bill, local councils and authorities faced minimal regulation on the implementation and usage of CCTV and ANPR surveillance systems. The private sector is of course difficult to administer, but in the public sphere, the industry has grown almost unhindered. Isabella Sankey, Director of Policy at Liberty, has said to the protection of Freedoms Bill Committee "We have seen a sharp increase in the number of CCTV cameras that are up around this country, over the past 10 years in particular. At the same time, we have not seen an increase in regulation (Sankey, I, 2011)." If you increase the amount of CCTV cameras, allied with no further regulation, then the chances of the cameras being abused are of course augmented.

15. *Effects On Crime*

There is little evidence to suggest that the rise of CCTV has a direct correlation with crime reduction or prevention. As Gill and Spriggs assert after their 2005 report into the effectiveness of CCTV, "CCTV cannot be deemed a success. It has cost a lot of money and it has not produced the anticipated benefits (Gill, M, and Spriggs, A, 2005: 120). Furthermore, a 2009 Metropolitan Police Report found that approximately only one crime was solved per thousand cameras in Britain. When hearing this David Davis, former Shadow Home Secretary said, "It should provoke a long overdue rethink on where the crime prevention budget is being spent (BBC, 2009)."

A Home Office report in 2005 explored the impact of CCTV on crime and the fear of crime in different areas (city outskirts, market town, estate etc). It concluded that out of the 14 areas studied, only two schemes experienced a statistically significant reduction in recorded crime relative to the control area (Gill, M and Spriggs A, *et al*, 2005: 34).

16. *State Surveillance Going Wrong*

One example of the potential for state surveillance to go awry was the experiences of Sparkbrook and Washwood Heath, two predominantly Muslim neighbourhoods in Birmingham. A network of over 200 CCTV and ANPR cameras was set up in a rapid time period, marketed to locals as a general crime prevention measure. However, it emerged that the surveillance network was being financed under a secretive counter-terrorism initiative known as Project Champion. The underhand tactics and opaque nature of the events in Birmingham sparked anger amongst civil liberties groups and within the local community. This anger is presumably on two counts, firstly that it was set up with no public consultation and secondly, it seemingly demonstrated rather obvious racial profiling of an overtly Muslim community. The police belatedly realised this when West Midlands Police Chief Constable, Chris Sims, admitted "He was 'deeply sorry' that his force got the balance between counter-terrorism and intrusion into people's lives so wrong (*Birmingham Post*, 2010)."

A recent case in Edinburgh of a female cleaner being stalked by a security guard, further exemplifies the potential for surveillance to be perverted. The security guard in question James Tuff, used the camera system at Dynamic Earth to track his victim and then radio her with lewd comments. He eventually sexually assaulted Dora Alves inside the attraction, which has 500,000 visitors a year (Lavelle, C, 2011). It is reports like this, and other examples of overbearing and intrusive surveillance allowed under the Regulation of Investigatory Powers act 2000 that make the proposed changes in the Bill very welcome.

17. *Government Changes*

Part II of the Protection of Freedoms Bill deals with the regulation of surveillance, CCTV, ANPR and other surveillance camera technology. There will be a number of changes implemented to better regulate surveillance technology. This is important as according to Isabella Sankey, whatever the real number of cameras in operation today in Britain, the number is somewhat irrelevant, what is required is "proper legal regulation and proportional use (*Daily Mail*, 2011)."

Two specific changes proposed in the Bill stand out. First, is the creation of a statutory code of conduct, which will provide guidelines for local councils and police authorities wishing to implement a surveillance network in a community. Secondly, there will be the creation of a Surveillance Camera Commissioner who will oversee the state of CCTV and liaise with the Secretary of State and other authorities to ensure surveillance potential is not abused. The report will now look at these developments in more detail.

18. *The Statutory Code Of Conduct*

The existing Secretary of State will be in charge of creating the code of practice containing guidance about surveillance camera systems (Her Majesty's Government (HMG), 2010–11: 19).

The code of conduct specified in clause 29 will offer extensive guidance to local authorities when planning to set up a surveillance system. A thorough assessment will be required. Aspects to consider include the location of camera apparatus, the type of surveillance apparatus to use, the cost and value, and ultimately whether or not the surveillance system is worth implementing. Only when these different factors are taken into consideration should there be a decision to continue or not. The code will also contain information on the consultation and complaints procedures. It also rules on what can and cannot be utilised by virtue of obtaining image information (Almandras, S, 2011: 16). These are encouraging steps.

The code must pass through both Houses of Parliament, and the draft may be altered if either House makes any amendments. Importantly, the Secretary of State will be obliged to keep the surveillance camera code under review (HMG, 2010–11: 21). Hopefully, this will prevent the executive ignoring the legislature's concerns. Despite no obvious attempts to tackle the increasing sophistication of intelligence surveillance, this will mean the code does not remain in a state of perpetual stagnation or forgotten about. Under the new provisions, the Home Secretary will have to consult with several authorities, named in the Bill, when devising the code. They include the new Surveillance Camera Commissioner, the Information Commissioner, the Association of Chief Police Officers and any other party, which the Secretary deems appropriate. This will ensure the Home Secretary has a relatively wide breadth of advice and feedback.

The new code will force the police and local councils who want to implement a CCTV system to be more transparent in their approach and to offer details before being cleared to introduce it. Under Clause 32, it is obliged that the code is made publicly available for any seeking its details and guidelines. This should encourage a move away from the existing opaque modus operandi (HMG, 2010–11: 20).

It is wrong that surveillance cameras have been used without a proper regulatory framework, which is why the Bill's emphasis on the new statutory code is a welcome development that could be extended or strengthened in the future.

19. *The Surveillance Camera Commissioner*

The Bill also allows for the appointment of a Surveillance Camera Commissioner who will be responsible for "encouraging compliance with the code of practice, reviewing its operation and providing advice on it, including on any changes that might be necessary (May, T, 2011). "

The Commissioner will be responsible for monitoring the usage of the code, and encouraging compliance with the code, reviewing the operation of the code and providing advice about the code (including changes to it or breaches of it) (Almandras, S, 2011: 18). Essentially, the Commissioner acts as a sober interloper, providing constructive advice on the guidelines proposed.

Furthermore, there will be certain standards applicable to persons using or maintaining systems or apparatus as well as the persons processing information obtained by virtue of systems (HMG, 2010–11: 20). This could force people to think twice before using these surveillance powers. Additionally, the new code will suggest the length of time certain data should be retained. This will be particularly important when dealing with data gained from ANPR cameras, which the Home Office admits is more easily searchable (Independent, 2011). It is fundamental that data should not be held for any longer than necessary.

Under the new rules, local councils and police authorities intending to introduce CCTV systems in their communities will have to justify their choices to the public. Any person seeking to investigate or gain information on surveillance camera systems in their community will be able to obtain that information easily and readily whilst the personal data itself is appropriately safeguarded (Almandras, S, 2011: 17). It is hoped that through this, public knowledge of the statistics and objectives of will increase, as will public confidence in the proportionate and correct use of surveillance technology.

20. *Future Implications and Suggested Improvements*

The Bill has brought the topics surrounding surveillance systems and what type of society we desire to live in, to the forefront of national and Parliamentary debate. This can only be positive.

While the new legislation will control CCTV and ANPR more tightly, there are still concerns that the pace of technological change will outpace legislative updates. The potential of sophisticated technology to improve the scope, versatility and accuracy of visual monitoring is extensive. For example, in "event-led" motion cameras, body language sensors can detect "unusual movement" at train or tube stations. This technological advancement will make it harder for the state's apparatus to give up its surveillance addiction. It is apparent that the surveillance code of conduct will have to evolve with the technology or face being left inadequate. Therefore it needs to be held under regular review, but how regularly this will occur is not emphasised clearly in the Bill. Thus, an amendment should be inserted, calling for yearly reviews of the code of conduct. It is surprising that, despite the relatively clear direction that "intelligent" technology is moving, the Government did not pre-empt this.

The code of practice for surveillance systems has included provisions for several functions. It will contain considerations surrounding location, types of apparatus, utility and feasibility of the system, as well as publication of relevant information and standards applying to those handling the data. Nevertheless, it is deeply concerning that, according to Liberty, "The Bill does not make the provision of guidance in these areas compulsory (Farthing, S, and Robinson, R and Sankey, I, 2011: 12)." The guidance should certainly be made compulsory or risk discouraging those whom the guidance is aimed at, namely local councils and the police authorities; after all, making something compulsory means forcing people to do what they otherwise might not do. For instance, it is highly likely that if taxation were not compulsory most people would avoid it.

Similarly, it is regrettable that in outlining the effect of the code, Clause 33(2) does not include the potential for liability when contravening the surveillance camera code:

> *"A failure on the part of any person to act in accordance with any provision of the surveillance camera code does not of itself make that person liable to criminal or civil proceedings."* (HMG, 2010-11: 22)

Despite the Bill suggesting that the guidelines may include provisions on which locations would be suitable and which would not, coercive requirements to fully abide by the advice are strangely lacking. The Bill should therefore underscore, through tougher language, punishments for breaking the new code. This could have a profound effect in dissuading individuals from paying minimal attention to it. If there is not any punishment mechanism, people like in the Edinburgh case will get away with abusing surveillance powers. Also, it could mean that officials using surveillance powers will still be unaccountable for their actions.

21. *Conclusions*

In the difficult economic climate, the effectiveness and spiralling costs of profligate CCTV usage have to come under scrutiny. The value of surveillance systems when compared to conventional methods of crime prevention needs to be questioned openly. With most departments facing expenditure cuts, it is correct that the Government is acknowledging the spiralling costs of CCTV surveillance. Whilst there are some benefits, the matter should be viewed like any business would view a balance sheet. Currently, the liabilities heavily outweigh the profits of an increasingly spied upon population, because of the financial implications, intrusiveness and negligible effect on reducing crime.

Moreover, CCTV can dissuade local communities and citizens from taking action themselves, as they become dependent on the state, sapping them of responsibility. As Philip Johnston has contended, "When the state seeks to do everything, its citizens feel they need do nothing. Big government removes the obligation on its citizens of independent action, self-sacrifice and voluntary effort (Johnston, P, 2010: 80)." The Bill will make it more difficult for local councils and police authorities to implement surveillance as whimsically as they have done. This will create an atmosphere where people will have consider and question the profligate spread of CCTV cameras in certain areas, as a direct replacement for police officers, who are not merely neutral bystanders. This could help reduce crime as, since the growth of CCTV, the primary means of crime prevention, more traditional, community based measures have too often been discarded in recent years (Privacy International, 1997). However, despite assurances of tighter regulation and less CCTV profligacy, the fundamental reality remains that CCTV camera usage is still increasing and will continue to do so, only perhaps not as fast. Unfortunately, we may not see an end to abuse of surveillance powers yet, despite this first, encouraging step.

The Coalition Government has set out its stall in defence of civil liberties and against the tide of the surveillance state. It needs to be bolder though to slay the dragon of the Big Brother state.

Chapter 3: Implications for the Regulation of Investigatory Powers Act 2000 (RIPA)

22. *Introduction*

The new Protection of Freedoms Bill is attempting to make many positive changes to RIPA. This Act was designed to regulate the power of public bodies carrying out surveillance and investigation operations and covers the interception of communication. It tried to deal with the ever-changing means of communication, but many think civil liberty concerns were ignored. It also endeavoured to prevent or detect serious crimes, thus safeguarding the economic well being of the UK. The Act could be used for a wide range of security issues. After all, there are not many Acts of Parliament that end up being used for both snooping in bins and supposedly top-secret terrorist operations.

23. *Interception of Communications*

RIPA allows for the interception of communications by the Home Secretary, which is fraught with concerns about undermining individual freedom. In 2009, the Secretary of State issued 1,514 interception warrants to access telephone or private email conversations (Liberty, 2010: 1). It was a case of the Home Secretary literally invading individual privacy, sometimes on mistaken or circumstantial evidence. Clearly there was little respect paid to the idea of individual privacy, which is necessary if the ideal of innocent until proven guilty remains. This provision can now be carried out by numerous bodies, which include: the Security Service (MI5), the Secret Intelligence Service (MI6), Government Communication Headquarters (GCHQ), Serious Organised Crime Agency (SOCA), police forces, and competent authorities of overseas countries (Liberty, 2010: 4). Privacy campaigners believe there are many more organisations that have access to these powers under the law (*Guardian*, 2009). This is quite different to the intention of the Bill, where only nine organisations including the police and security services were allowed to use these powers. This shows that when governments get powers, they inevitably try to extend it to as many public bodies as possible.

Furthermore, in 2010 alone 134 authorities made 1,811 requests, which was a slight increase on the previous year, where figures were in the region of 1,700. In general every year since these surveillance powers have been in place the numbers have increased. So rather than regulating surveillance as the legislation suggests it in fact seems to have encouraged surveillance. What is even more disturbing is that the present Intercept of Communications Commissioner who revealed these figures to the Protection of Freedoms Public Bill Committee, thinks that this number if anything is too low, and that authorities should use their powers more often (Kennedy, P, 2011).

These powers can easily threaten freedom of speech. For example, a person expressing their political views in private could be spied on by the Government, which can act against this person. Whilst freedom of speech being undermined catastrophically in this way seems unlikely in modern day Britain, when the state has powers like these, they generally use them. For example, in 2007 alone there were 519,260 requisitions for communications data from telephone companies and ISPs. Whilst the content of an email or telephone call can only be obtained with a warrant from the Home Secretary, RIPA does allow government to access communications data for a wide range of reasons including national security and tax collection (Freedom House, 2009: 111). This figure went on an upward trajectory in 2008 to 525,130 requests (Liberty, 2010: 3). Privacy concerns here are perfectly valid, if you look at Government departments' record of looking after personal data.

24. *Surveillance of Private Property*

RIPA allows for covert filming or bugging someone's home or vehicle so your private vehicle or home effectively becomes the property of the state. This power is not used sparingly as in 2009–10 there were 384 of these warrants issued (Liberty, 2010: 1). It is a fearful thought that Big Brother can listen to conversations in your private residence. No person should be put under suspicion by an authoritarian state in their home.

25. *Monitoring In Public Places*

RIPA has allowed authorities to covertly monitor the movement of individuals in public places. They can follow them around, film them, or track them audibly. In fact, in 2009–10, law enforcement officers issued 15,285 of these directed surveillance authorisations and other public authorities received 8,477 (Liberty, 2010: 2). Those authorised to use this provision include: the police, SOCA, the intelligence services, HMRC, government departments, all local authorities, fire authorities, the Charity Commission, the Environment Agency, the Financial Services Authority, the Food Standards Agency, the Gambling Commission, the Office of Fair Trading, the Gangmasters Licensing Authority, the Care Quality Commission, the Health and Safety Executive, NHS bodies, the Inspector of Education, the Information Commissioner and Royal Pharmaceutical Society.(Liberty, 2010: 8) While surveillance is necessary at times to prevent crime and other unsocial behaviour, the numbers issued demonstrate that it is being used disproportionately. A citizen should not be subjected to this type of surveillance without proper reason and cause yet, with large numbers like this, it would be unsurprising to come across miscarriages of justice. Why does the Food Standards Agency need to monitor public places. Are they going to use these powers to monitor what people eat, and if they are doing so, why do they need to?

26. *Covert Intelligence*

RIPA provides a provision allowing for Covert Human Intelligence Services. This provision allows for an agent to make contact and maintain a relationship with a person covertly to gather information. This provision was used 5,320 times by law enforcement authorities and 229 times by other public authorities in 2009–10. The provision can be used by the same bodies mentioned above (Liberty, 2010: 10). A person should not have to live in fear that an acquaintance may actually be someone sent to spy on them. This could lead a person to self-incriminating himself. Moreover, it will lead to people distrusting the state.

27. *Communications Monitoring*

The last provision of RIPA allows authorities to examine a person's communication record. This does not include the substance of the communication but allows authorities to see where a phone call was made or which website was visited, the date and time of communication and how long it lasted, and subscriber information. The allowed authorities include amongst others the Serious Fraud Office, the Royal Mail Group, IPCC (Independent Police Complaints Commission), and the Pensions Regulator (Liberty, 2010: 12).

28. *Effects On the Innocent*

Those who were put under surveillance and found innocent were not notified of this. This lack of accountability allowed RIPA to become a snooper's charter. If there had been a provision in place notifying when innocent people had been spied upon, it would have encouraged the state's apparatus to investigate by conventional means and think twice about using RIPA powers, because they would fear being embarrassed and punished for unfairly targeting innocent individuals. However, just as with the DNA database and CCTV surveillance, many innocent people became victims of injustice.

29. *Investigatory Powers Tribunal (IPT)*

The original RIPA legislation did set up the IPT to investigate anything done by an organisation to a person under RIPA. It could also investigate complaints about alleged conduct by or on behalf of intelligence services. However, the IPT was designed as a secret charter and there was no right of appeal and the hearings all had to be in private. The secretiveness and the lack of an appellate process go against common judicial principle. Between 2000 and 2009 the IPT looked into 956 complaints and only found fault four times (Chalmer, S, 2010:). It seems that the IPT was ineffective in regulating RIPA.

30. *Intrusion Levels*

The powers held under RIPA have led to a shocking level of intrusion by the state. Campaign groups have discovered that 12,500 are under surveillance every year and never know. There is no public accountability, as people do not know that they are being spied upon. Under RIPA legislation 14,000 spying operations are conducted by councils, police and other bodies (Chalmers, S, 2010). It seems that the state is more interested on intruding into people's lives than looking after them.

31. *Local Councils*

In some instances organisations such as MI5 or MI6 require the power to use covert surveillance to protect national security, but is it really necessary for local councils to spy on their citizens to such a large extent? Local councils were some of the worst offenders for using RIPA surveillance with 372 local councils using RIPA 8,575 times over the past two years, meaning an average of eleven surveillance operations each day. This surveillance only resulted in 399 prosecutions. (Big Brother Watch, 2010: 5) The lack of prosecution could mean that the surveillance was being used for things other than to detect crime and is a massive waste of resources as it was not an effective crime-fighting tool. Newcastle-upon-Tyne Council can call themselves

leaders in this field after using RIPA to spy on their residents 231 times in two years (Appleyard, N, 2010). Obviously, Newcastle is wasting a large amount of its resources when they could be used to strengthen the community, rather than treating everyone in the community as a potential criminal.

Councils have also used their powers for reasons not altogether altruistic. For instance, in June 2008, 121 local councils revealed that they had used the legislation in a 12-month period to monitor behaviour by examining the private communications of residents (*Guardian*, 2009). One example of this was the actions of Poole Borough Council who spied on Tim Joyce, Jenny Paton and their children to see if they were cheating the school catchment system. The level of intrusion included obtaining phone billing records and tracking her and her children's travel for three weeks. Moreover, they admitted the powers supposedly only to track criminals and terrorists were used six times (BBC, 2008). This is an example of the powers being used disproportionately, ridiculously and intrusively due to a complete lack of regulation. Jenny Paton fought a legal battle with Poole Council claiming what they did was illegal and the IPT ruled in her favour ruling unanimously that it was illegal. (Chalmers, S, 2010).

Additionally, RIPA has been used by councils to spy on their employees. For example, Darlington Council was particularly proficient in spying on their own employees whom they suspecting were lying about their car parking. It seems the common sense approach of talking to your own employees has gone out of the window. Five councils became part of the army of the nanny state policing lifestyle choices by spying on people who they suspect of breaking the smoking ban. In perhaps one of the clearest examples, Suffolk County Council used RIPA powers to make a "test purchase" of a puppy. I'm sure that the people of Suffolk are happy that their hard earned money is being wasted on causes like this. The powers have been also been used to monitor work time, sick pay, and even to spy on their wardens who are employed to spot crime (Appleyard, N, 2010). If private companies acted like this, it would be considered an extreme invasion of privacy and could result in litigation. Those employed by the council should uphold the same standards. Additionally, it is an abuse of power. That they are being used in this way suggests the powers should be regulated tightly or removed completely.

Brian Binley MP proposed this in 2008, after Northampton Borough Council was found to have used powers meant for counter-terrorism operations to catch people who let their dog foul on the grass. He said, "As I understand it, what is happening is that somebody is naming a dog owner whose dog is defecating on the pavement and the dog owner is not picking it up. So what the borough of Northampton does is go out with a secret camera. I just find this remarkable. If it was not so serious it would be totally laughable. But we really are turning local authorities into private detectives or the equivalent of KGB operatives. I just wonder whether the people in this country want this world or not—I suspect they do not (Binley, B, 2008)."

The sad fact is that many citizens have been spied upon by their local councils without even knowing it. It is excellent that Jenny Paton was able to win her legal battle but innocent people should be informed of surveillance and able to take the guilty authority to "court" and gain some sort of compensation (The Freedom Association, 2010). Additionally, if a crime is a serious offence it is more than appropriate that the police should investigate it. Local councils will still be able to catch people committing these crimes by employing wardens and putting more police on the beat.

32. *What the Government's Bill Aims To Do:*

The Home Secretary realised that the present situation could not be allowed to continue. She pointed out that "school catchment area rules and dog fouling are not offences that warrant being subject to surveillance. These tactics are more appropriately used for tackling serious crime and terrorism, and it was irresponsible of the previous Labour Government not to put in place stronger safeguards for their use (May, T, 2011)." The new Freedom Bill adds a provision that requires a magistrate to give approval to an authorised person before acquiring communications data (HMG, 2010-11: 24–25). We hope this provision will stop the frivolous use of RIPA powers.

It also aims to prevent councils from using RIPA powers for anything other than prevention of a serious crime. (HMG, 2010–11: 24-25). A magistrate is a much better form of authorisation than the original form of self-authorisation for many reasons. A magistrate has objectivity and can look at the evidence presented and decide if the reasoning for the warrants merits approval. They do not have the self-interest that the body seeking to carry out the investigation does and therefore they will make the system less open to abuse.

The Home Secretary has also said, "Local authorities will be authorised to use directed surveillance only for offences that carry a maximum custodial sentence of at least six months." Subject to limited exemptions relating to the under-age sale of alcohol and tobacco, this measure will restrict local authorities' use of surveillance to serious cases (May, T, 2011)."

Communications data regulation through a voluntary code of conduct under the Anti-Terrorism, Crime and Security Act 2001 includes three main areas:

— Traffic Data: This says where a person was when a mobile phone call, Internet connection or some other means of communication took place.

— Service Use: tells how communication occurred, the date and time it happened, and how long it lasted.

— Subscriber Information: The name and address and details of direct debit of people using communication means.

— The conditions for approval remain the same as before. It will still be used for the protection of national security, preventing serious crimes, and protecting the economic well-being of the United Kingdom which includes collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department. Approval will be granted only if the judicial authority believes that there are reasonable grounds to do so and that obtaining communications is necessary and reasonable to achieve one of the aims mentioned earlier (Home Office, 2001: 4).

Hopefully these welcome changes will mean that the vast majority of the public can go about their business without the threat of being spied upon. It should also represent a victory for freedom of speech, as the regulation should act as a check on the Government monitoring people's political opinions.

33. *Suggestions*

Whilst giving power to magistrates is a move in the right direction, the generality of the phrase serious crime presents a problem. With no specific guidelines, a magistrate will be forced to decide if the offence is bad enough to grant a local council a warrant and this personal decision may result in discrepancy in warrants granted. The vagueness of the instruction given to a magistrate does not clearly mark out what is "responsible" to issue a RIPA warrant. This should be plainly set out in a codified way so as not to be abused by judges and be equal for everyone under the law.

Additionally, clearer instructions will reduce the likelihood for the state apparatus to be able to abuse surveillance powers. By doing this, it would mean what has been allowed to be authorised by public authorities can only be authorised by the judiciary, which will bring in concerns about human rights as well as having an approach which will be much more independent. If this does not happen, we may see more stories of RIPA surveillance power being abused by public authorities. However, if the Bill is strengthened it will go the full way down the checks and balances route, which will mean a much more proportionate and fair use of the powers. This would provide the necessary reassurance that the public needs.

We also think that presently the Bill still allows police and intelligence services, to abuse their powers. This is because both these bodies will be exempt from judicial authorisation as the Bill stands (Metcalfe, E, 2011). As RIPA covers areas, for example intercepting phone calls and bugging people's home that intrudes into a person's privacy, this needs to be policed properly. Therefore both these bodies should also be under judicial authorisation. If not both these bodies will continue abusing their powers.

We are also worried that unnecessary exemptions are being made. For example, Mrs May stated that local authorities can still carry out direct surveillance operations in relation to under age tobacco and alcohol sales. This is a minor crime, which should be treated like other minor crimes in the Bill and thus not lead to unnecessary surveillance.

34. *Conclusions*

These proposals to change RIPA are an excellent start and should provide more personal privacy to everyone across the nation. However, the Bill does not go far enough and could be changed to offer more protection to citizens from being spied upon. Even with the bill, RIPA powers are still intrusive and could still be used by people who are trained for covert surveillance. With some worthwhile changes to the Bill, this unsatisfactory situation can end.

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April 2011

Memorandum submitted by the Chief Surveillance Commissioner (PF 37)

Covert Surveillance by Local Authorities

You have invited me to make a written submission but have not indicated any particular aspect on which my views are sought.

As you know, by virtue of the Police Act 1997 and the Regulation of Investigatory Powers Act 2000 (and its Scottish equivalent), I have oversight of all public authorities, apart from the Security Services, in relation to the carrying-out of all covert surveillance, except intercepts. I have been Chief Surveillance Commissioner for nearly five years, during which all public authorities have been inspected more than once and I have read the report after each inspection. In consequence, I have unique knowledge of how all public authorities are performing and I summarise this in my Annual Report to the Prime Minister and the First Minister for Scotland, the most recent of which I sent on 3 June 2010.

In relation to local authorities, the general picture over recent years has been of improving standards in and diminishing use of directed surveillance: the number of annual authorisations by all public authorities (apart from law enforcement agencies) has fallen from over 12,000 in 2006–07 to about 8,000 in 2009–10: less than half of these are by local authorities and the majority are by government departments. Changes to the Codes of Practice which came into effect in April 2010, requiring a Senior Responsible Officer and the involvement of elected members, have strengthened local authority procedures.

I know that, for two or three years, there has been media criticism of local authorities in relation to covert surveillance. Much of this has been wrong or ill-informed. For example, I know of no occasion when covert surveillance has been improperly used in relation to dog fouling. Such tactics are unlikely to be necessary or proportionate in relation to a pavement, but dog excrement carries a parasite which can cause blindness in children, so dog fouling in a children's playground may be a serious matter meriting covert surveillance. In any event, the media criticism relates to a very small number of cases in which covert powers may have been used inappropriately. 50 years as a barrister and judge have taught me that isolated examples of incompetence rarely provide a sound basis for changing procedural structures.

As you will appreciate, I have no agenda nor any axe to grind. How much or how little covert surveillance is carried out and by whom is a matter for political decision, initially by Parliament and then by public authorities. My job is to see that whatever Parliament permits or requires is carried out in accordance with the legislation and in a way which is human rights compliant.

My understanding of what is proposed in relation to local authorities is that, first, the threshold for covert activity should be raised so that it is only permissible if the suspected offence carries a potential sentence of up to six months imprisonment and, secondly, that a magistrate should approve local authority authorisations.

It is not obvious why local authorities should be treated differently from other public authorities within the present scheme and I know of one government department whose practices currently cause me more concern than any local authority. I express no view about raising the threshold. Local authorities are well able to make their case as to the extent to which a higher threshold may or may not inhibit their ability to deal effectively with the various types of un-neighbourly behaviour which cause concern in local communities. It is, perhaps, worth pointing out that categorising as "serious" an offence which might attract six months imprisonment contrasts starkly with the Police Act 1997 definition of a serious offence as one which is likely to attract at least a three year sentence for an adult.

My concern relates to the involvement of magistrates, which, in my view, is unnecessary and is likely to be ineffective. I believe that adequate consideration has not been given to the following matters:

— although there have been isolated examples of incompetence, no general flaw has been suggested, still less demonstrated, in the present authorisation process for which almost all local authorities have appropriate policies and training programmes in place;

— although it is intended that 30,000 magistrates will be trained, I have reason to believe that no approach to this end has been made to the Judicial Studies Board and I know of no other body which could provide proper training for them; in any event the training budget proposed is £10,000: 33 pence per head seems unlikely to provide effective training particularly as proportionality, necessity and collateral intrusion are not straightforward concepts and will be entirely novel to magistrates;

— although no relevant statistics are kept, I estimate that there are about 2,000–2,500 local authority authorising officers; training 30,000 magistrates to oversee their decisions does not seem particularly sensible;

— there is an obvious danger that, even if properly trained, magistrates will rubber-stamp proposed authorisations, as occurs, for example, on applications for search warrants and local authority authorising officers are likely to become less fastidious if their authorisations are to be reviewed by magistrates who, inevitably, particularly having regard to the number of people involved, will have far less experience;

— as the OSC will apparently have no supervisory role in relation to magistrates, by what means, if any, will a magistrate's decision be challengeable by appeal, judicial review or otherwise?;

— inevitably, conflicts of interest will arise when a magistrate is asked to sit on a case in which he or she has authorised surveillance;

— delay will necessarily occur if there is scrutiny by magistrates.

If the members of your Committee would like me to expand or clarify anything I have said, I shall be happy to do so.

April 2011

Memorandum submitted by Fair Play for Children (PF 38)

PART 5 OF THE PROTECTION OF FREEDOMS BILL

Summary

Fair Play for Children is an organisation founded in 1972 and dedicated to to promotion of the Child's Right to Play within the context of the United Nations Convention on the Rights of the Child.

Our membership includes several hundred organisations, many of them small local bodies who as late as 2001 had no access to information about the previous convictions of prospective employees and volunteers.

We are confident that, based on our online survey of employers a couple of years back (over 1200 responses), the CRB system has improved child protection good practice and awareness to a remarkable degree.

We have long experience in this field having taken part in the pre-CRB pilot, VOCS (Voluntary Organisations Consultancy Service) funded by the Department of Health, between 1994 and 2002.

We are highly critical of any attempts to make this into a party political issue as has been evident in recent weeks by a senior government minister and we also are concerned by the unfortunate tendency to refer to alleged "common sense" in place of firm evidence.

We also favour use of pilots, as with the "Sarah's Law" situation, with this Bill when enacted.

Our concerns cover basic aspects of the Bill especially clauses 66 and 71.

We have adopted the position that the proposal to send certificates to applicants only seriously undermines the principle purpose of the 1997 Police Act re disclosure, that employers should be able to access an independent, third party disclosure unmediated by the applicant as an aid to making safer employment decisions.

We also are able to propose that consideration of regulated activity status be aided by a statutory risk assessment guidance framework which employers would be able to access online for a step-by-step process which would inform them that the position was regulated, or not, or borderline and requiring further consultation with CRB. We propose that this would enable case-by-case determination of regulated status before the recruitment stage rather than a blanket approach and thus be more proportionate.

Our Comments

1. We are basing our response on government publications enabling a paragraph by paragraph response below.

2. However our main concern must centre on Clause 66:

3. "Clause 66 would amend the eligibility criteria for barring. Under the current system, anyone convicted of an offence resulting in automatic barring, or subject to discretionary barring because of other convictions or conduct, could find themselves placed on the barred list regardless of whether they had ever worked with children or vulnerable groups or ever intended to do so. The Bill would amend this by limiting the barring provisions to those individuals who had previously worked, or had expressed an intention to work in, regulated activity. People who had never worked in, or had no intention of working in, regulated activity would no longer be covered by the system and would not be entered on the barred lists even if convicted of a relevant offence."

4. We hold this to be introducing a serious regression in child protection law in that it has been the case since the 1933 Children and Young Person's Act that someone convicted of relevant Schedule 1 offences is barred from working with children under 18. This proposal would change that based on no sound evidence that such a change is warranted. The previous barring schemes such as List 99 would have had such information passed to them. Disqualification under Part 2 of the Criminal Justice and Court Services Act 2000 Section 28 also is relevant.

5. The key issue here is that both the Bichard and Cullen Reports, based on real and tragic events, underlined the necessity to share information about those who are known risks to children and that is why these were the subject of automatic referral and of barring. Those who are subject to such barring know they are disallowed from working with children as a result of their convictions. It is entirely reasonable that at an early stage an employer should be able to find out this by making a simple enquiry to ISA. This will deter people with such disqualifications from even considering applications. One thing is certain and that is that there are serious offenders who will seek out any loophole they can to circumvent the law. If we are speaking of "common sense" one need ask just a few parents and other adults and they would say it was axiomatic such people go at once onto the barring list.

6. Reading the Research Paper RP11-020 of 23 February 2011 we can find no evidential basis that such a change has any basis in known offender behaviour, in criminal offending and re-offending statistics. There is no Article 8 gain here that can be justified when set against A8 rights of children and also their Article 19 of the UN Convention on the Rights of the Child which we hold has equal merit and claim on the UK as the ECHR. The person who has committed such an offence has no special right to additional protection which we believe this proposal offers for no justifiable reason. The offence and sentence are what they are, and the need for that information to be placed with ISA is in promotion of A19 UNCRC. The 2000 Act makes no reference to whether the person will ever seek a position working with children and to introduce a different measure re ISA is wholly unsustainable. Indeed one measure would contradict the other. If the person is disqualified there is no reason they cannot be placed on the ISA list, no appreciable costs and no threat to the rights of the individual who is disqualified. The public will not be happy with such a change once it becomes understood—this is not a scaling back of the 2006 Act alone, it goes against the grain of legislation over many years including the 2000 Act.

7. In our Report, *Out with the Bathwater?*, we cite the case of David Lawrence whom we encountered during the pre-CRB pilot, VOCS. We were able to supply checks to a junior football league akin to CRB Enhanced, and a good deal of soft intel was revealed which led to the league removing his access to children. Later he was convicted of multiple offences. On leaving prison in November 2002, it took him until the following March to become involved similarly in another league then unable to access CRB checks (as the FA had not got its Act together). It took the FA and others a Court Order using the 2000 Act to remove him. Access frequency? Less than the period brought in by Ed Balls early in 2010. He is a multiple offender

and, on the evidence, recidivist. He is typical of a class of dangerous offender who pose continued risk to children, the evidence is that they seek opportunity. Sharing of information as envisaged by Cullen and Bichard, the latter through barring, is one of the most effective means of doing this.

8. Our argument is that such persons should be permanently barred whether or not they seek employment because the evidence is that they will try to gain entry to opportunities to access children and that this bar is one element in the machinery to prevent and dissuade them. Since this would not affect their A8 rights unless they did attempt to seek such opportunity and would help protect the A8 and A19 UNCRC rights of children, we believe S66 should not be enacted as envisaged, and consistency with S28 of the 2000 Act ought to be maintained. We can see no argument that the right to privacy extends to an individual who has been convicted of such offences to the extent proposed under S66.

9. Differentials in home-based and activity-based settings. Much has been made by those hostile to vetting and barring in activity settings of the notion that offending against children occurs more often in home-based situations than activity-based, as if this somehow justifies reducing or even eliminating the need for vetting. Fair Play has encountered numerous such claims where vetting is characterised as evidence of "nanny state" and over sinister trends against individual freedom and civil rights. Many nonsense scare stories originated from such sources and they have had an impact in the media and possibly in decision-making. They are as corrosive as the equally-numerous "laws" people seem to think exist but do not. Often we find people saying it's against the law eg to take photos of children, or to let them sit on laps etc in play projects. This is where common sense can be encouraged.

10. However, Fair Play wishes to point out that although there are more offenders in home-based settings, the attached document differentials.pdf sets out the effect of the number of victims an offender will access in such settings. We start with a disadvantage that not much solid data exists. So we have had to make estimates. So, in the domestic situation, where it will be mainly parental/close family, common sense will suggest there will be one or two victims in most situations. We do not have data on whether such offenders will tend also to offend in activity settings but we feel this is not likely to be the case though we admit we have no basis for that particular opinion bar anecdotal.

11. The activity setting provides far more doubt as to the victim level. Those convicted of offences are unlikely to admit any more offences than plea bargaining will require for leniency for admission. At the extreme end, a study in the US of those admitting offending but undetected suggests that over 24,000 victims were accessed by just 160 offenders giving a victim "tally" per offender of 160.

12. What is known is that the percentage of offending is 89.6% by Family, 6.2% by professionals and 4.2% others. Our calculations attached show projections based on numbers of victims per offender and we show 4 scenarios. If there are five victims per professional, one per family and one other the victim ratio is 75% family, 24% professional and 3% other. At 15 victims per professional, one per family and two other, the difference is profound in that 49% of victims are of professionals, 48% family and the rest Other. As it is accepted that offenders in professional settings (and we include volunteers in this) will tend to seek more than one victim either simultaneously or one after the other over a period of years, we conclude that the claims about the scarcity of offending in activity settings in comparison with family are wholly undermined.

13. The tendency of activity-based offenders to have multiple victims and possibly also to use existing compliant victims in recruitment must form a strong basis re measures to vet and bar known offenders. In our Report, *Out with the Bathwater?*, David Lawrence is such an offender, almost compelled it may seem to seek opportunity, and whose offending occurred over more than two decades and involved multiple victims.

14. We also wish to draw attention to the fact that many victims do not come forward and that many prosecutions are based on sample charges not on totality of victims.

15. The outcome of our concern is that the proposals in the Bill must take full account of the serial nature of much offending of this type even after conviction and release from prison.

16. During this response we introduce the concept of "secondary access" where children are accessed in terms of creating trust in situations which may not appear to warrant checking but because the worker may live in the same community as children at an activity, secondary access can occur in that community. Example: David Lawrence was a football referee and coach for a junior league but had a shop where the police say they had reason to believe he committed offences, often on boys accessed via the league. Fair Play has seen the value of access to enhanced level checking in such situations, not based on frequency of activity nor on lack of supervision, but based on risk assessment re opportunity.

17. Our conclusion is that the proposed changes do not match "real life" and need to be reconsidered as fact would suggest a less lax regime than the Freedom Bill would provide.

18. The proposal re S66 of the Bill will introduce ambiguity and lack of clarity into the barring system. It could mean that an employer would find it hard to find out if someone was subject to a Disqualification Order etc in a situation where they believed a check justified.

19. This also illustrates the danger of a one-size-fits-all approach inherent in the attempt to redefine regulated activity. In the comments to government papers below, we recommend a risk-assessment approach to defining regulated activity where a framework is established to which employers (including voluntary bodies taking on volunteers) can apply (online pre-advertising) to establish whether a check ought to be sought. In such a system, the barring information quickly establishes whether an applicant is OK or not, and

the applicant will understand that this will be so. This will deter those who are barred even from applying. Deterrence is a major element in vetting and barring, one little researched, but it is as important to information to employers in our view.

20. We also believe that even in non-regulated situations where trust of children is involved, employers ought to be able to consult, with the applicant's agreement, the barring list online. No unreasonable intrusion into A8 rights is involved as any barred person ought not to be applying, and the A8 and A19 rights of children will be protected. This would be a simple process and would not involve the applicant in such positions being the subject of a CRB/ISA formal application or employers in cost and is akin to the Sarah's Law system already proven effective.

21. No regard has been paid to the A8 rights of other staff and volunteers, only to the applicant's. We believe that there have been situations where the ignorance of other staff and volunteers as to the previous convictions of people working with them have created situations where their A8 rights re reputation have been involved. We have seen the effect of newspaper publicity that a convicted child offender has been working with them unknown, and of public association of others with the offender in the aftermath. This was where there was no access to such conviction or barring information. The colleagues of applicants deserve the re-assurance and protection of their reputations that our approach would offer.

22. The issue of numbers of people to be the subject of checks has been central but we can find no evidence to sustain what the actual numbers would have been under the original 2006 Act system. 11 million, nine million—we feel numbers have been plucked from the air. This exercise indeed has become all too much a numbers game. We put it plainly—if a risk-based system were to show the need (a) to regulate and (b) allow access to barred status information about eg 11 million, would that be wrong, would it be disproportionate?. It would be "common sense" and it would be consistent with A19 UNCRC. Maybe the figure would be much lower, as the Government intends, but only time and experience of working the proposed system will tell, and we argue that no government should worry if it can show on that accumulated evidence that the situations covered were indeed justified.

23. Our proposed approach would, for example, mean that one employer sending staff into schools regularly re maintenance work would not need to seek barring information, based on the risk assessment framework we envisage, but another might. This would cover variation and be case-by-case. In our responses below we demonstrate that this could be done pre-advertising of posts so A8 rights of applicants would not be affected. The approach informs employers of whether they should seek checks and would enhance employers employment good practice.

24. Fair Play also wishes to propose that any new scheme be the subject of pilots, in the same way as the Sarah's Law proposals were tested. This would enable refinement of procedures based on pilot experience and evidence, prior to full roll-out.

25. "Clause 71 would introduce new arrangements for informing bodies providing regulated activities about whether a person is barred. Two options would be available: reactive and proactive. The reactive option would enable a regulated activity provider to apply to the ISA to find out whether a particular person is barred. Under the proactive option, the regulated activity provider could register with the ISA to be automatically informed if a particular person becomes barred. Both options would require the consent of the individual in question." (Research Paper 11/20) The central purpose of sharing of information to promote child protection is not served if the applicant has to give consent if the employer is making a check within the employment period. An employer may suspect that an employee's status may have changed and should have the facility to check. But we believe very firmly that a system where the current employer is informed automatically has real child protection merit, and that this would require retention of the monitoring function of ISA. Indeed we cannot see how a barring system which makes it mandatory for employers to check at application stage can make much sense unless there is the automatic updating system.

26. This will not mean a separate ISA registration process and record keeping. When a CRB application is made, that in effect is a form of recorded registration and we understand CRB retains that information, for example in case there are disputes, for confirming to employers that a CRB disclosure has been made etc. Such disclosures contain information re barring and surely it would not take much effort to inform that last-known employer of status change. That might also enable an employer to respond that the person has moved from their employment and maybe to what kind of position if known. The CRB notification of update would invite the employer's response and ask especially if it were known whether the employee's new position elsewhere might involve work with children. Such a system could help promote child protection and deter re-offending/assist in detecting breaches of the law.

27. An issue passed over by the review is the charging scheme for volunteers. In our Report we outlined the result of an FoI we undertook through CRB to establish how CRB paid for the non-charge. It emerged that, as understood, there is no Government grant to cover the cost of provision of checks to volunteers. CRB is required to balance its budget in this regard by loading the charge to employers for paid staff checks. This in fact adds 25% to the cost of each Enhanced Disclosure from the figures CRB provided.

28. Frankly this is unfair on employers and a hidden charge on employment. Whilst many we surveyed in the voluntary sector, of which we are firmly a part, want no change, we have to be upfront about self-interest and say this is not justifiable. There seem to us to be three routes: such posts are charged for regardless of paid or unpaid status, volunteers are charged or the Government makes subsidy available.

29. Successive Governments have expressed full support for volunteering and for not burdening voluntary bodies or volunteers with such costs, and this is not the time, if there ever could be one, for the first or second options in 17 above. The government talks of the Big Society and we say that on this, where the sum will not be a huge one, that it should put its money where its mouth is. The most cost-effective means is subsidy to the CRB. If it also wants Umbrella Bodies not to charge for administration to organisations for volunteer applications, maybe some form of grant-in-aid to a maximum per application could be available, removing even a £10 or more processing charge borne by voluntary groups where their volunteers' applications are concerned.

30. Budget implications we worked out as £31 million pa re CRB charges and the grant-in-aid would not be excessive on top of that.

31. "However, we fear that the proposed changes to criminal record checks will add to the burden faced by voluntary organisations such as the Scouts. The decision to send a single copy of the CRB disclosure to a potential volunteer who must then pass it to their local Scout leader will undoubtedly save the Government money but it will increase the amount of bureaucracy expected of local volunteers, who give their time to support young people not to chase CRBs. We call on the Government to retain a system where a copy of the CRB disclosure is sent direct to the organisation to ensure that local volunteers remain free to do what they do best, unfettered by unnecessary bureaucracy." We agree with the Scouts Association concerns here and have sympathy with their views about employers being sent copies.

32. One of the central tenets of Cullen was that the employer receive such information directly from an independent third party not the employee. Our concern is that the employee might then attempt forgery or other deception re the certificate in their possession. This proposal in the Bill entirely negates the original sense of Cullen and puts too much control into the hands of the applicant in our view. After all, CRBs were meant all along to be an employer's tool for helping make better recruitment decisions and we see this idea as a total retreat from that principle. How can that be served if the employee wants to withhold that information? We can see the sense of delay—the applicant would need to be able to inform CRB of the need for delay which would be automatic where the applicant was arguing about being barred. That delay would remain in place until resolution of dispute by the VBB. Now the Bill proposal not to consider barring until the person made application clearly would cause long delays in recruitment. The current SVGA system considers barring at the time of offence/report and any dispute and A6.1 situation is resolved then. The applicant is fully aware of barring status re employment before making application. In the proposed system, this all happens at the point of application. That not only hinders the employer's wish for a smooth recruitment process (and risks delay and/or expensive re-advertising and re-interviewing) it is hardly fair to the applicant who later is able to show s/he has successfully appealed the ISA proposal to bar. The new proposal is actually an A8 regression for the applicant as well as unsound in child protection terms.

33. In our view, if the applicant makes no bid for a delay, the information should then go to the employer as now. The central purpose of the CRB was never for the employee to have such a certificate, it was for the employer to do so to aid recruitment, the employee having a copy to safeguard rights. The idea that the employee has the decision whether to release information or not is, frankly, nonsense. Providing that there is the option of delay in the appeal situation, the best course is to retain employer disclosure. That was the purpose of disclosure!

April 2011

APPENDIX

Below are various government documents concerning the Bill, our comments are given para by para.

Part 5: Safeguarding Vulnerable Groups, Criminal Records etc

Chapters 1 and 2: Safeguarding of vulnerable groups and criminal records

45. The Programme for Government (section 14: families and children) said "we will review the criminal records and vetting and barring regime and scale it back to common sense levels".

Fair Play published its Report, *Out with the Bathwater?*, in June 2010, anticipating the review of the VBS scheme. It made a number of recommendations which would have both simplified the origin al scheme and at the same time made it more rigorous in the protection of children. Additionally it proposed improved civil liberties safeguards for applicants and for a fairer and more proportionate disclosure of Local Police Intelligence ("soft") to employers.

http://www.fairplayforchildren.org/pdf/1281540226.pdf

http://www.fairplayforchildren.org/index.php?page=HTML_News&story_id=7374

6. The Vetting and Barring Scheme was established in response to a recommendation made by Sir Michael (now Lord) Bichard in his June 2004 report following an inquiry into the information management and child protection procedures of Humberside Police and Cambridgeshire Constabulary; the Bichard Inquiry was established in response to the conviction of Ian Huntley, a school caretaker, for the murders of Holly Wells and Jessica Chapman. The Inquiry Report recommended, amongst other things, that a registration scheme should be established for those wishing to work with children or vulnerable adults.

Fair Play would remind all MPs and current Ministers that the 2006 Act was a) drafted and legislated in the wake of a serious report into a tragedy. Also, that it was adopted without Division in either House. The current Deputy Prime Minister was, indeed, newly appointed as Shadow Home Affairs spokesman for his Party. As an organisation which was deeply involved in the pre-Bill stages in a DFES Implementation Working Party, we have been deeply disappointed by the representation of the original Act by Members whom we feel ought to know better. Whilst "Protection of Freedoms" has a laudable "ring" to it, one of those freedoms is to be protected as a child.

Bichard, as our Report demonstrates, in fact proposed a registration which would have been a registration of all those working with children as a condition of being able to work. What emerged with VBS was in fact a scheme to identify those who should NOT work with children. In identifying this, the VBS scheme in fact was predicated to build on and put onto a proper statutory basis up to seven existing barring schemes run by Ministers, such as List 99. The migration from List 99 and the others to the Vetting and Barring Scheme has been completed.

We would identify the error, if there were one, that the VBS that emerged required all who were within the Act's scope to 'register' not in the original Bichard sense of "licence to work with children" in effect, but in order for existing criminal records, barring and LPI to be reviewed and the employer advised as to whether the person was barred or not and what criminal records information and LPI was known.

It would be interesting perhaps to ask CRB what happends to eg application forms for Enhanced Disclosures now, what is retained and in what form.

Fair Play proposed that a simplified scheme would:

1. Require the employer to register online with CRB/ISA (eg provide PAYE ref details, Co number, charity registration) and to be given a single ID.

2. Require the applicant to register online an intent to apply for a post with employer, quoting the employer ID. S/he then sent by email one-time applicant ID to be used to verify the application.

3. Employer submits applicantion online, validated by employer ID and one-time applicant ID.

4. Application carries test for eligibility based on regulated activities which could help reduce number of inappropriate applications at source.

5. CRB receives online applications and immediately submits these to PNC, ISA and local Police Force(s).

6. Police check for LPI and send any which can reasonably be regarded as relevant to ISA who then consider any such with regard to their barring functions.

7. ISA checks against its List, makes any new or revised barring decision and remits this with any remaining LPI to CRB. This subjects LPI to more rigorous Article 6.1 consideration as the VBB is a *quasi-judicial* body, a fact underlined by recent judgments. It is at this stage that we believe the apoplicant must be engaged in the consideration of allegations, representation, cross-examination etc, prior to decision on barring status. We do not believe it is very fair to suddenly unload on an applicant a pile of LPI data outside of such a machinery.

8. CRB combines ISA idecision., PNC records and any relevant LPI remaining into a CRB Enhanced Certificate.

9. However we are strongly of the view that an end must be made to the indiscriminate issuing of all LPI and unspent records to employers at the behest of the Police. We believe it would be better if an outside and independent body, such as ISA, made the decision as to what should be released and that there should be a relevancy test—ie based on a detailed job description provided by the employer. Our long experience is that on too many occasions applicants were disadvantaged unnecessarily by employers having access to information of no justifiable relevance to the post on offer. This has, in our view, militated against the Rehabilitation of Offenders intentions of the CRB scheme, and our Survey of employers concerning our proposals was quite clear in the support we gathered for a more balanced approach. Indeed, we felt our concerns backed by one negative comment where a religious body opined that they wanted full access to such records, as now, as this helped them gauge the moral status of the applicant as set against their own beliefs. We took the view, very strongly, that this is not what a vetting and barring scheme is there to supply. Such questions are for interview etc, outside such a statutory scheme.

10. Most importantly, whilst we are easy on the question of a single certificate going to the applicant (we assumed one would also go to the employer), we are adamant that one requirement MUST be made of an employer in a Regulated Activity situation. That is, it MUST be mandatory for the employer to consult the relevant Barring List, and we say this can be done quickly, within minutes, online. Any retreat on this must put children at risk. Again, if the Certificate issued to the applicant carried some ID (eg the issue 12 number ID currently borne on each certificate) plus an Applicant ID (provided to the Applicant as above) this information plus the Employer ID (as above) would validate the request and the information could be released through a secure online portal for download etc. In our view, all it would need to state is that Applicant A Certificate ID issued on [date] and Barring Status—plus warning of penalties for employing in Regulated Activity.

11. Our knowledge is that people will apply to employers where they perceive laxness and non-checking. Our Report has detailed information on this.

1. http://www.bichardinquiry.org.uk/10663/report.pdf

47. The Safeguarding Vulnerable Groups Act ("SVGA") provided for such a scheme maintained by the Independent Safeguarding Authority ("ISA").[84] Originally some 11 million people working with children or vulnerable adults would have been required to be monitored under the Scheme. In response to concerns about the scope of the Scheme, the then Government commissioned its Chief Adviser on the Safety of Children, Sir Roger Singleton, to conduct a review of the Scheme. Sir Roger Singleton's report[85] and the Government's response was published on 14 December 2009 (*Hansard*, House of Commons, column 50WS to 53WS).

Fair Play would remind that there was a good deal of inaccurate and anecdotal material which made specious claims about the VBS. We'd use the Respected Authors example much quoted in the national media, Mr Pullman and others fulminated about having mandatorily to register with ISA to be able to go into schools for single visits.

There was one simple problem with such a claim—it was never the case because authors will be free-lance and exempted from compulsory registration and in any case single visits would not have been covered even if they had had PAYE status. However, it is our understanding that anyone who has been barred by statute may not enter such establishments. Whilst we can see the sense of an author choosing not to seek what would have been voluntary ISA registration (surely a matter of cost) we can see a case for schools being able to consult the barring list. Surely if parents were asked, they would not want such a barred person in their children's schools for whatever reason, nor if children were asked (no one thinks of this) would they be likely to agree. It should remain an offence for such a barred person to enter such an establishment, full stop.

We cite the following cases re authors:

http://www.fairplayforchildren.org/index.php?page=HTML_News&story_id=7749

http://www.fairplayforchildren.org/index.php?page=HTML_News&story_id=4743

http://www.guardian.co.uk/books/2010/apr/05/william-mayne-obituary and http://en.wikipedia.org/wiki/William_Mayne

This is no desire to 'hound' it simply recognises that such a person as the latter case has no lawful business going into a school whatever his renown, and that this is so for very sound reasons.

48. The revised Vetting and Barring Scheme, as recommended by Sir Roger Singleton, would have involved some 9.3 million individuals.

Our view of Sir Roger's Review was that it was not predicated in sound child protection good practice. A numbers game arose, as if *per se* this was or is the real issue. We ask Members to accept that, if sound child protection good practice principles worked out in practice to require the vetting of 11 million people that would be right. The poor basis of the review was inherent in one of its major yardsticks, to change the basis for checking from eg two sessions a month to one or more a week. Such a crude yardstick goes completely against the risk assessment criteria Fair Play has urged its Member organisations to use and which we hope will invest the new scheme.

Our Report makes it clear that the basis for risk assessment here must be principally the opportunity any activity presents for the building of trust between child and adult and the vulnerability of the child where the adult has mal-intent. That, as we know from long and positive experience of direct work with children, can be built on frequencies well below Sir Roger's recommendations. It seemed to us that his brief denied him much scope in this regard.

It was an error to assume the number to be checked must be reduced because it was too high. The correct question would have been "how many situations are there where regulation is needed and what is the proper basis for evaluation and risk assessment?" We are clear that the issue of trust is the sound basis and that risk assessment case-by-case is indeed the answer. But if that were to increase the number to be checked that would be the right thing to do.

One other aspect neglected in all reports we have seen is that of what we have come to term "Secondary Access". Put simply, after a club sesson, we do not put children away in a locked cupboard until next time (though sometimes we are sure workers feel this might be a good thing . . .), nor are workers. If they all live in a small community/neighbourhood, then the Trust built by virtue of attendance at a club etc can be carried into the community, and has been exploited by offenders. Secondary Access is a serious component of any risk assessment and must, therefore, be considered in any new regime. If the scope of the activity on its own might not reach the regulated activity definition, the secondary access may well.

[84] The ISA was originally known as the Independent Safeguard Board; the change of name was made by section 81 of the Policing and Crime Act 2009.

[85] *Drawing the Line*—A Report on the Government's Vetting and Barring Scheme, available at: http://www.ccpas.co.uk/Documents/VBS%20Draw%20Line%20Report.pdf

Two examples. Mum takes son to judo, stays or there is close supervision of volunteers—and she then drives him home and he does not see the judo people again for a week. Maybe a case for not checking BUT such an approach fails to do justice to a situation where six volunteers suddenly find that another volunteer is indeed an offender—Members need to imagine waking up one morning to find that the seventh person has been arrested and is a known offender. We have seen this. It hardly helps attract new volunteers, it can wreck an organisation, and affects their rights re reputation.

Second case. Boy/Girl walks to club, gets to know a volunteer who grooms him/her and meets him/her outside club hours in local community. Secondary access and parents may be lulled into thinking this is healthy and nice. It has happened. Checking on barred status will help activity organisers avoid this. This need not be an onerous or time-consuming matter.

Based on what is being proposed, we would see scope for a means, again online, for volunteer to ask for onetime ID, organisation to provide evidence of status and for a simple request, backed by the volunteer's ID to consult the barred list. A matter of minutes and peace of mind for all concerned.

Our view is that most volunteers would have no problem with this and would be glad to be working in a set-up where they know this is common and good practice.

On 15 June 2010 the Home Secretary announced that voluntary applications to be monitored under the Scheme, which was due to begin on 26 July 2010, would be suspended pending a further review and remodelling of the Scheme (*Hansard*, House of Commons, column 46WS to 47WS). The Home Secretary announced the terms of reference of the remodelling review on 2 October 2010 (*Hansard*, House of Commons, column 77WS to 78WS), as follows:

> "In order to meet the coalition's commitment to scale back the vetting and barring regime to common-sense levels, the review will:
>
> Consider the fundamental principles and objectives behind the vetting and barring regime, including;
>
> Evaluating the scope of the scheme's coverage;
>
> > Our deep concern is that this whole business was not the outcome of any rigorous or fact-based evidence. Ministers of two governments reacted to a lot of unfounded anecdotal verbiage and claims, ignored evidenc e from CRB's surveys and played the gallery. What on earth does "common sense levels" mean? What plays to that gallery? MPs and Ministers will soon find out that that gallery will soon yell blue murder when inadequate measures full of holes, uncertainties and contradictions are found wanting. "Adequate" is the word not "common sense". Or should the question have been worded "Could the balance between adult liberties and children's rights be improved by scaling back the employment vetting systems which involve the CRB?" We ask this because it is misleading to portray the issues as those of liberties re over-weaning bureaucracy. This might suit the purposes of ex-Marxist now-turned-general-purpose-pundits-on-liberties but it does not stand up to rigorous scrutiny.

What is depressing is that the actual public vetting part of VBS was never trialled. This is simply ludicrous, to go the the time, effort, upheaval and expense of a legislated public safety function and to call it in on grounds of political expediency untried. The damage done to confidence in the legislative process in the final moths of the last government and in this one apropos children's safety is considerable amongst those of us who have worked in this field over more than two decades in one way or another.

What Fair Play hopes to see is for any new system to be piloted first,,maybe over a year, in limited areas, and evaluated. This was not done with VBS, with a resulting mess, but was implemented very successfully with "Sarah's Law", piloted in a few areas and now rolling out nationally. MPs and Ministers may like to recall the dreadful predictions from so-called civil liberties pundits about how Sarah's Law would be a vigilante-filled nightmare. We commend a pilot.

The most appropriate function, role and structures of any relevant safeguarding bodies and appropriate governance arrangements.

Recommending what, if any, scheme is needed now; taking into account how to raise awareness and understanding of risk and responsibility for safeguarding in society more generally."

Fair Play has been involved in criminal records checking since 1994. We "went" with CRB when it came on stream in 2002. Prior to this we accessed police records with LPI from 1994 as part of the Home Office funded VOCS (Voluntary Organisations Consultancy Service) scheme. We probably processed 8–10,000 VOCS checks on behalf of member organisations in the period to March 2002 and had experience of disclosure of LPI—see our Report for detail. Throughout this period we have maintained that any such disclosure scheme is part, albeit an important one, of an overall good child protection practice by employers, staff and volunteers. Typically our Members have been small community based bodies delivering "front line" often inexposed situations. Until VOCS they had no access to criminal records and little child protection awareness.

49. The report of the remodelling review was published on 11 February 20111. Amongst other things, the report recommended that the requirement on those working with children and vulnerable adults to be monitored under the Scheme should be dropped. Chapter 1 of Part 5 of the Bill gives effect to the report's recommendations.

50. Part 5 of the Police Act 1997 ("the 1997 Act") makes provision for the Secretary of State (in practice, the Home Secretary) to issue certificates to applicants containing details of their criminal records and other relevant information. In England and Wales this function is exercised on behalf of the Secretary of State by the Criminal Records Bureau ("CRB"), an executive agency of the Home Office. These certificates are generally used to enable employers and prospective employers or voluntary organisations to assess a person's suitability for employment or voluntary work, particularly where this would give the person access to children or vulnerable adults. The CRB has operated since March 2002.

51. Part 5 of the 1997 Act provides for three types of disclosure:

— A criminal conviction certificate (known as a "basic certificate") which includes details of any convictions not "spent" under the terms of the Rehabilitation of Offenders Act 1974. Basic certificates are not yet available from the CRB.

— If these are brought in at last, they should have clearly stated what they do not contain and that they are unsuited to employment with vulnerable groups—otherwise it is almost certain that unsuspecting parents may be conned in informal home care situations, legal or otherwise.

— A criminal record certificate (known as a "standard certificate") which includes details of all convictions and cautions h e ld on police records (principally, the Police National Computer ("PNC"), whether those convictions and cautions are spent or unspent.

— CRB no longer accepts these as appropriate to children and young people situations, we do not provide a service for these as an Umbrella Body.

— An enhanced criminal record certificates (known as an "enhanced certificate") which includes the same information as would appear on a standard certificate together with any other relevant, non-conviction information contained in local police records and, in appropriate cases, barred list information held by the ISA.

52. Mrs Sunita Mason was appointed by the previous Administration in September 2009 as the Government's Independent Adviser for Criminality Information Management and was commissioned to undertake a review of the arrangements for retaining and disclosing records held on the PNC. Mrs Mason's report[86] was published on 18 March 2010 alongside the Government response set out in a Written Ministerial Statement (*Hansard*, House of Commons, column 73WS).

Our National Secretary was one of those who met Ms Mason during her second Phase review. We raised concerns with her about her second Report

53. On 22 October 2010, the Home Secretary announced a further review, again by Mrs Mason, of the criminal records regime (*Hansard*, House of Commons, columns 77WS to 78WS). The review was to be undertaken in two phases. The questions to be addressed by Mrs Mason in the first phase were:

— Could the balance between civil liberties and public protection be improved by scaling back the employment vetting systems which involve the CRB?

— Or should it have been worded "Could the balance between adult liberties and children's rights be improved by scaling back the employment vetting systems which involve the CRB?" We ask this because it is wholly misleading and inappropriate to portray the issues as those of liberties re over-weaning bureaucracy.

— Where Ministers decide such systems are necessary, could they be made more proportionate and less burdensome?

— Ministers did not decide VBS, it arose from an Independent Report translated into an Act of Parliament, supported without a Division. This smells of revisionism!

— Should police intelligence form part of CRB disclosures?

54. Mrs Mason's report on phase one of the review was published on 11 February 2011. Amongst the recommendations made in the report were:

— children under 16 should not be eligible for criminal records checks (recommendation 1);

— Fair Play agrees with this.

— criminal records checks are portable between positions within the same employment sector (recommendation 2

— Fair Play agrees with this.

— the CRB introduces an online system to allow employers to check if updated information is held on an applicant (recommendation 3);

[86] *A Balanced Approach: Safeguarding the public through the fair and proportionate use of accurate criminal record information* available at http://library.npia.police.uk/docs/homeoffice/balanced-approach-criminal-record-information.pdf

Fair Play agrees with this but this must be mandatory for regulated activities and maybe voluntary for other employers who can show their scope of work as relevant and that they have risk-assessed in making a decision to seek to check the list

— a new CRB procedure is developed so that the criminal records certificate is issued directly to the individual applicant who will be responsible for its disclosure to potential employers and /or voluntary bodies (recommendation 4);

We see some merit in this, it enables the applicant to make a choice as to whether to disclose it. However, with regulated activity, the employer must have a right to know the reference number of the disclosure for the purpose of checking the barred list online and they must check that list by law. To fail to require this will open up opportunities for prospective employees and volunteers to attempt to mislead gullible employers. Many employers will feel most unhappy that at post-interview stage they could not access the relevant criminal records and LPI before making a decision. We feel our proposed system would be more suitable. Also we have argued above that the proposal changes entirely the purpose of CRB disclosures which were always envisaged as a means to enabling employers to make safer recruitment decisions.

— the introduction of a package of measures to improve the disclosure of police information to employers (recommendation 6):

— the test used by chief officers to make disclosure decisions under section 113B(4) is amended from "might be relevant" to "reasonably believes to be relevant" (recommendation 6a); Support but we believe the decision would be better made at ISA with the help of an ACPO appointee.

— the development of a statutory code of practice for police to use when deciding what information should be disclosed (recommendation 6b); Support—but used by VBS—see our ideas on this;

— the development and use of a common template to ensure that a consistent level of information is disclosed to the individual with clearly set out reasons for that decision (recommendation 6c); Support as above;

— a timescale of 60 days for the police to make decisions on whether there is relevant information that should be disclosed on an enhanced disclosure (recommendation 6d); Support the current "additional information" provisions under section 113B(5) are abolished so that the police use alternative methods to disclose this information outside of the criminal records disclosure process (recommendation 6e); this is unsound.

— the effective use of the development of the PNC to centralise criminal records check decision making through the amendment of legislation to allow any chief officer to make the relevancy decision in enhanced disclosures, regardless of where the data originated (recommendation 6f).

Fair Play feels this leaves the Police as judge jury and executioner and we would prefer to see an independent machinery, as per the VBB, and the Police submit all LPI to ISA unless this might hamper an investigation. But we think the code of practice idea plus the common template could be useful also. We want to see Article 6.1 rigour on this.

We want to see the PNC developed so that the existence of LPI in a Force is flagged up on the PNC—not the detail but the fact it is there.

— the CRB develop an open and transparent representations process for individuals to challenge inaccurate or inappropriate disclosures and that the disclosure of police information is overseen by an independent expert (recommendation 7).

The Vetting and Barring Board duly revised should offer the means to this. Once PCN, LPI and Barring Information are known to ISA, the A6.1 process must be to inform the applicant prior to decision-making.

Memorandum by the Home Office

INTRODUCTION

1. This memorandum addresses issues arising under the European Convention on Human Rights (ECHR) in relation to the Protection of Freedoms Bill introduced in the House of Commons on 11 February 2011. The memorandum has been prepared by the Home Office with input from the Department for Education, Ministry of Justice, Northern Ireland Office and Cabinet Office. The Home Secretary has signed a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights.

2. This is a human rights enhancing Bill.

4. The provisions about criminal records protect the freedom of the individual by limiting the age at which people can apply for certificates and the persons to whom the information is revealed as well as by introducing additional safeguards into the regime. It also protects the wider freedom of society to live safely by providing for more regular up-dating of the certificates and making other minor amendments to the regime. The provisions about vetting and barring are also a mix of protecting the freedom of the individual from undue state interference while protecting the wider freedom of society to live safely.

5. This memorandum deals only with those clauses of and Schedules to the Bill which raise European Convention on Human Rights (ECHR) issues.
Fair Play for Children considers this memorandum defective in a serious degree. It deal soley with the incorporated Rights 1-12 and 14 of the ECHR as legislated in the HRA 1998. This is a proper consideration but we are bound to ask would this have been done had the HRA 1998 not been enacted? The UK was signatory to and have ratified the ECHR many years before, and until the HRA the best courts could do was to "take the ECHR into account". One of the principal reasons for non-ratification may well have been supremacy of parliament considerations, based on the relationship of the UK judiciary and Parliament to the Court at Strasbourg. The HRA 1998 and the device of Declaration of Incompatibility seems to have addressed that issue.

The new Bill raises issues around numerous of the ECHR articles, especially A6, 8, 14 and it will be seen that Fair Play addresses aspects of the proposals with those matters in mind.

One of our principal concerns is the lack of evidential base for changes to an Act whose main vetting procedures have never been put into practice. We will criticise as sloppy thinking the recourse to phrases such as "common sense levels" as any form of yardstick for measuring the actual or indeed potential impact of the original scheme. We will make reference, as a comparison, with the history of Sarah's Law, the scheme to enable eg someone with children intending to marry, to make checks about the child protection history of a prospective partner. There was a commotion amongst some civil liberties groups, and grim predictions of leaked information leading to vigilante action etc. The wholly sensible approach was to subject the scheme to a pilot phase specifically to monitor potential concerns. It is quite clear that this has proven a total success as an exercise, and the scheme is able to be rolled out nationally across police force areas.

Would that both this and the previous government adopted such an approach with the SVGA. Take the allegation about numbers to be required to submit an application to CRB for a VBS check. 11 million? 9 million? Where is the evidence for numbers and where is the evidence the new scheme will reduce and to what numbers?

In any case, this is not a "numbers game", though this is what has been focused on. It is about ensuring that in every situation where such a check is needed, it is carried out. If that meant 4 million, so be it—or 12 million . . . A pilot might have given some indication of the scale nationally, and that might have been the time for re-think based on analysis of the above core principle of need.

We support the idea that any requirement to be VBS checked ought to be based on risk analysis. That may well, however, be in contradiction to the "common sense levels" claim and also make a nonsense of the decision to abolish all controlled activity situations.

Indeed, the very strong part of this Bill, the risk analysis, echoes our own Report (*Out with the Bathwater?*, June 2010) where we say that it is the production by the employer of a detailed job description presented as part of the VBS/CRB application, which will enable eg ISA to determine what LPI and relevant exempt conviction information should be released.

We agree with the aim of the Bill to encourage better-informed employer decisions on recruitment (an aim of the CRB scheme also from the outset) but the too-narrow categorisation of jobs in order to reduce numbers for its own sake will risk situations not being checked where this is necessary.

What would be better is an easily-accessed online test which employers would use to determine whether the post (paid or unpaid) should be the subject of a VBS application. Fair Play envisages a step-by-step discovery process where the employer, at the stage of planning the post as a new or existing job application would log on to the site and undertake a detailed questionnaire which would seek detail of eg age range, premises, activity, types of access including secondary access (see below), supervision, frequency and, crucially, facility to build trust with children. In the large majority of cases the outcome would be a simple piece of advice—"From the detail and answers you have supplied, this activity would/not be a Regulated Activity and a VBS check will/not be required" with a caveat that it is the employer's legal duty to make sure on this and that if in doubt consult [VBS]. In a minority of cases, the advice might be that the employer should consult VBS, giving a reference number so VBS and the employer can refer to the same document produced as a result of the questionnaire. We suggest that this be required in any situation where a post would involve regular access to eg premises or situations where children are present on a regular basis at the same time as the post-holder.

In this approach, Regulated Status is defined quickly on a case-by-case basis. The approach would allow for one job to determine others of a similar nature for that employer by use of an ID. ["This post is similar to ID number" at the point the application for a VBS/CRB is made.] It also will aid small voluntary bodies unsure as to whether their volunteers need a CRB/VBS. In many cases it will show perhaps they will not. Bodies like Fair Play who deal with child protection issues and also are Umbrella Bodies with CRB will find this approach immensely useful in our role of education and information. One of our forthcoming free online publications will be a risk assessment system we term 'Child Protection Auditing".

This case-by-case risk-based approach will give also a good indication of the real numbers involved over a period of time.

Fair Play for Children is concerned that the issues have been presented as child protection v Liberties, and that no mention has been made of the UN Convention on the Rights of the Child. This contains obligations the UK has ratified and there can be no moral or other argument, other than wholly-inappropriate narrow legalism, that it should not have equal status with the ECHR in the consideration of these issues.

Child protection is a RIGHT, it certainly comes within the scope of ECHR A8 (right to respect for home etc) as child protection failure impacts upon a child's home and privacy. But the UNCRC has equally important rights which apply to children, and they may be balanced one against the other but there is no precedent or legal b asis that we can determine for the Government to balance these against ECHR rights. This means they must be considered entirely on their own merits.

The relevant UNCRC Rights:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Article 6

1. States Parties recognise that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 25

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practises;

(c) The exploitative use of children in pornographic performances and materials.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

(a) The law of a State Party; or

(b) International law in force for that State.

We have highlighted those Articles directly relevant and we believe firmly that analysis must also be carried out as to how the proposed legislation will square with those UNCRC obligations. The point is that, as a child aggrieved because of alleged deficiency cannot make reference in Court proceedings to the UNCRC other than to urge its provisions be "taken into consideration" and as no Court can make a ruling based on the UNCRC provisions, the Government must ensure that the Act is sound with regard to those obligations. As the UNCRC, unlike the ECHR, provides no machinery for individual submission for redress or complaint to a treaty-based court or tribunal, this point is especially relevant.

Numbers to be registered, so-called "common sense" levels etc have no bearing at all in this regard, and we underline Article 3.1's provision the best interests of the child shall be a primary consideration" a requirement unparalleled in the ECHR.

We are clear that the Freedom Bill Part V needs further examination through this UNCRC filter.

Incidentally, we believe such analysis should always be applied to all Government Bills etc and a Ministerial declaration made as per the ECHR. This will help promote liberties, and of one of society's recognised most vulnerable groups.

For the record, Fair Play sees justice in a proposal to incorporate the UNCRC into UK domestic law, a subject for another forum.

Part 5: Safeguarding Vulnerable Groups, Criminal Records etc

Chapter 1: Safeguarding of vulnerable groups

145. The Vetting and Barring Scheme ("VBS") operates under the Safeguarding Vulnerable Groups Act 2006 ("SVGA"). As currently drafted, there are two key elements to the VBS—firstly the Independent Safeguarding Authority ("ISA") can bar individuals from engaging in a regulated activity in relation to children and/or vulnerable adults; secondly, any person engaging in such an activity is subject to monitoring by the Secretary of State (in practice the Criminal Records Bureau ("CRB")). Whereas the ISA is currently barring individuals, the monitoring system has not yet been brought into force.

146. The SVGA contains offences for individuals to work in activity from which they are barred and for employers to employ barred individuals in such activity. Regulated activity is defined in the SVGA and concentrates on roles involving contact with children and adults defined as "vulnerable" under the Act.

147. The SVGA also contains offences (not yet in force) for individuals to work in regulated activity when not monitored by the CRB and for employers who fail to check whether their employees are monitored.

148. The SVGA contains provision for information about barred individual to be shared with employers and other relevant parties (for example, keepers of registers such as the General Medical Council) and contains obligations on certain parties (for example, employers and keepers of registers) to provide the ISA with information that it might consider relevant for a barring decision.

149. The Vetting and Barring Scheme's purpose is to strike a necessary balance between the public interest in protecting vulnerable groups on the one hand, and ensuring that those who are in close contact with such vulnerable groups are not subjected to disproportionate scrutiny or to a culture of suspicion on the other hand. The Scheme itself will engage the Article 8 rights of those working with vulnerable groups, because of the need to carry out checks to establish that they are appropriate people to have contact with these groups.

The scheme will also involve the A8 rights of vulnerable groups, their right to be protected by the state from exploitation. Not a single mention has been made of the obligations the UK has under the UN Convention on the Rights of the Child, one of which is that the child's interests will be a primary consideration.

150. Chapter 1 of Part 5 makes significant amendments to the VBS which operates under the SVGA. As part of the Coalition Agreement, the Government committed to reviewing the Vetting and Barring Scheme to scale it back to common sense levels. This is being done by ensuring that the tension between the individuals' rights and the need to protect the public is re-balanced.

The term "common sense" is too imprecise and emotive to be a sound basis for a wholesale review of a law whose main provisions have never been put into practice. That this issue has become a party political matter/contention and that little evidence has been advanced for such a change before implementation is symptomatic of bad law-making. In our view, the original scheme should have been subject to pilots, as per the equally controversial "Sarah's Law" of which many alarming claims were made prior to the pilots and of which few if any have been found to have been justified.

151. Clause 66 amends the barring regime set out in Schedule 3 to the SVGA in two ways. Firstly it ensures that the ISA can only bar an individual from working with either children or vulnerable adults if the ISA is satisfied that the individual is working or is likely to work with these groups. At present, there need be no suggestion that that the individual is seeking to work (or is actually working) with these vulnerable groups. This will mean that the stigma of being barred from working with either children or vulnerable adults will only attach to those who are seeking to engage in this work. This is in keeping with the re-balancing of individual Article 8 rights and the general interest in protecting vulnerable groups. There is a specific UNCRC obligation to protect children from exploitation etc. The Government considers that this is a more targeted barring scheme which will result in fewer people barred without lowering the level of protection afforded to vulnerable groups. Fair Play has seen no evidence advanced that this claim is sustainable. The use of the term "common sense" relates to opinion of what might be regarded by "the man on the Clapham omnibus" as sensible but it has no relation to any studies nor indeed to actual operation of the original scheme. Commitments have been made by governments (both the previous and current) which had no evidential basis. On this basis it is considered more proportionate than the current scheme. On no evidence.

The original scheme carries forward a practice in place for many decades so that people convicted of certain offences have an automatic bar re future contact with children. No evidence has been advanced that changing this would be safe. Auto-barring must remain in all such cases. If any change is needed it may be to ensure A6.1 compliance where affected individuals seek review of their barring. It is an offence for such a barred person to seek such employment, this has been the case for many years and the VBS scheme simply carried through that principle. The current situation, maintained by the original VBS, is that such a person knows that they are barred by statute and that this has been logged with the VBS. Thus the children barring scheme is a register of such barrings by statute and extreme caution must be applied before this is altered.

The other routes to barring (referral by employers etc) were brought into being because employers had no statutory obligation—other than List 99 and latterly POCAL situations)—to refer employees re unsuitable if non-criminal behaviours. That general requirement MUST remain, that employers remain mandated to make such reports. If the Bill's proposals are carried through this will mean that a person will be able to make an application to work with children and the employer will find there is no existing bar in place. ISA will then have to await receipt of information via CRB which will delay the process. The ideal situation is that the employer should have a mandatory obligation to consult the list or at the very least be able to seek the agreement of the person to consult the barring list at an early stage, via a quick online procedure, and the person's barring, if there, will come to light even before interview. As the employer has a statutory obligation to refer any such application to the police as a breach of the law, this will act as a deterrent to those who are barred and still seek access.

As the VBS system only applies when people are seeking to work with children etc, the proposed change is hardly effective anyway. Enhanced CRBs applied for in such circumstances would be the only way for such barring information to be accessed anyway. It is very odd indeed to read an argument that someone

should not be placed on the barring list because they will not be working with a vulnerable group. This is frankly insane! If someone's behaviour is so questionable as to be needed to be reported, then s/he should be considered by ISA at the time of the report and placed on the barring lists if found to fulfil barring criteria not wait for an application. If that were carried through it would mean delay and if the person then wanted to appeal the decision to bar even more delay.

What is the A8 issue in this? That the applicant, if he has such a conviction, has a right to privacy if he does not make an application to work with children? This has no practical relevance because no one will get to know the fact unless s/he makes application to work with that group. In that situation, the fact will come to light quickly and indeed ISA will have evidence of an attempt to breach the law by the applicant and thus make a complaint to the police in the applicant's locality. That will have a greater deterrent effect on re-offending and will remove the possibility that an employer might choose not to make such reference. In any case we do not see there can be such an A8 argument anyway. The information is private to the applicant unless and until s/he seeks to breach the law which must be that the person may not lawfully apply to work with children. If s/he does so, a breach of law is committed and it is easily detected.

The barring list system was intended to record ALL who are barred from working with children and vulnerable adults and it MUST be maintained. The key issue for both Cullen and Bichard was sharing of information and the proposed alteration does not improve the rights of children nor is it any real advance for applicants for such work. Children too have A8 rights under the ECHR as well as the equally-important, if not incorporated, rights under the UNCRC. (Attention should be paid to the effects of recent Welsh Assembly decisions re the UNCRC).

152. The second change to the barring system is to the "automatic barring subject to representations" manner of barring an individual. At present, an individual who meets prescribed criteria under paragraph 2 or 8 of Schedule 3 to the SVGA will be automatically barred from working with children or vulnerable adults subject to their representations. At present these representations are made after the ISA has barred the individual, however this was ruled incompatible with Article 6 and 8 in the November 2010 High Court judgment: *Royal College of Nursing and others v Secretary of State for the Home Department* [2010] EWHC 2761 (Admin). Therefore clause 68 amends paragraphs 2 and 8 to ensure that representations must be considered before the ISA bars any individual under these paragraphs. The Government considers that this will ensure compatibility with Articles 6 and 8 in light of the High Court judgment. Fair Play believes the RCN judgment requires the ISA regime to be changed to be properly A6.1 compliant, and the proposed changes are a step in the right direction. The quasi-judicial nature of the VBB is important and must be strengthened so that there are full appeal rights before decisions are made, that decisions are fully appealable in the higher courts on the usual grounds for appeals at law. It would be better if such decisions were made not at the time of application for a job, as the Bill's proposals would entail, but as per the original SVGA system.

153. Clause 67 abolishes the concept of controlled activity in sections 21 to 23 of the SVGA. This was the activity which was not "regulated activity" under the SVGA because there was not direct or close contact with vulnerable groups, but nevertheless this activity would be controlled to a certain extent because it enabled individuals to access, for example, personal records about vulnerable groups. It has been decided that in line with reducing the overall scope of the Scheme, it would be targeted and proportionate to remove this concept from the Scheme on a risk-based approach.

Fair Play understands the concern but risk assessment would demand a case-by-case basis and we would propose that controlled activity not be retained but that all such activity be subject to risk-assessment based on a statutory code of practice which we think should be the basis for all applications so that the distinction between controlled and regulated would be replaced by compliance with such a statutory code of practice. This would mean that employers would be required to show due cause, based on the statutory guidelines, as to why why the position should be subject to a regulated activity status. That there are situations which would not pass the threshold is certain but it would not serve child protection and their rights for cases to be excluded where it could be shown there was a real assessed risk. Some current controlled activities would not pass the assessment, others would—this might even apply to regulated positions.

Fair Play wishes to introduce the concept of "Secondary Access" at this stage, one which is based on real-life and known situations. Our report "Out with the Bathwater" contains examples. In short, someone may be working in a situation with children where there would under the new scheme no requirement on the employer to make reference to ISA via CRB. This might be an ancillary post connected with eg a youth club where the main staff would be covered, or in an organisation where such checks would not be possible. In many such situations such staff and employees not covered do live in the same communities as the children who use the facilities. We are clear that those who seek to access children for illegal purposes will use such situations within an organisation to build trust which they can exploit unmonitored outside that setting. No opportunity for such people to avoid their known convictions and barrings should be lost.

In our view, a very simple online system would enable an employer who can show "due cause" to consult the barring lists, it would require the electronic signature of the applicant, and would be a good balance of rights. In this, the employer registers as an organisation fitting a statutory code definition and a permanent ID is issued. The applicant makes online application for a one-time ID for the post s/he is seeking, and when the employer and applicant IDs are submitted, ISA can confirm simply whether the person is barred or not. If offered a position the full Enhanced CRB process can be applied to.

154. Clause 68 abolishes the concept of monitoring in section 24 of the SVGA. This, in addition to the barring function of the ISA, was one of the two main tenets of the SVGA's scheme. The monitoring system would have required any individual engaged in "regulated activity" in relation to either children or vulnerable adults to make an application to the Secretary of State to be monitored. This would have involved the collation of any updated material (such as new convictions, cautions or referrals from employers and professional regulators) in relation to people registered with the scheme, and referral of any new information to the ISA. Offences would have attached to individuals who were not subject to monitoring and employers who employed those who were not subject to monitoring. The monitoring provisions have not been brought into force and the Government announced a halt to the start of monitoring when it decided to review the whole VBS. The approach taken in the new provisions is to remove the monitoring provisions and instead enable employers to check whether their employees are barred and be informed if current employees become barred (clause 71). In order to ensure that these provisions do not create a safeguarding gap, there will also be a duty for employers to check an employees barred status if that employee will be engaged in regulated activity (clause 72). The Government considers that this is a more proportionate interference with Article 8 rights since information will only be shared if it is serious and suggests a risk of harm to vulnerable groups. Because of our arguments re controlled activity etc, we believe there is a case for risk-assessed situations outside of regulated activity to be within the scope of the provision highlighted in yellow above.

155. The provisions also significantly reduce the scope of regulated activity, namely activity from which individuals can be barred, both in relation to children and in relation to vulnerable adults (clauses 63 to 65). This has been done in order to scale back the coverage of the VBS to common sense levels by taking a risk based approach, thereby resulting in what the Government believes to be a more targeted and proportionate scheme. The reason for this is that the legitimate aim of protecting vulnerable groups is being achieved in a less wide-ranging manner, which focuses on a risk-based approach.

We dispute that "common sense" is an appropriate yardstick. "Risk-based" has to allow for both controlled and "secondary access" situations otherwise it is not truly risk-based. Nor would the exclusion of such situations fulfil UK obligations to children under the UNCRC nor A8 as they have equal claim to that right. Indeed there has been reference to child protection rights in this document as if the former is not a right, as it is in A8 and UNCRC terms. The harm done, the effects suffered where we get the balance of rights wrong has to make for real caution.

156. Finally the provisions give the ISA discretion to review cases and remove persons from the list in certain circumstances (clause 70) which the Government considers is important to ensure that exceptional cases can be dealt with swiftly.

Fair Play sees this as good in A6.1 terms. Redress through appeal is sound "Rule of Law" and that term is the one that applies, not "common sense".

Chapter 2: Criminal Records

157. Chapter 2 of Part 5 amends Part 5 of the Police Act 1997 ("the 1997 Act") which provides for the disclosure of criminal records for employment vetting and related purposes. Part 5 of the 1997 Act provides for three levels of criminal record certificates. Firstly, section 112 provides for a criminal conviction certificate which contains the details of all un-spent convictions that are recorded on central records. Section 112 is not yet in force in England and Wales. Section 113A provides for a criminal record certificate (known as a "standard certificate") which contains all details of all convictions (including spent convictions) that are recorded on central records. Section 113B provides for an enhanced criminal record certificate (known as an "enhanced certificate") which contains all details of all convictions (including spent convictions) that are recorded on central records plus any information which a chief officer thinks might be relevant to the purpose for which the enhanced certificate was requested and ought to be disclosed; in prescribed cases, it can also contain information about the ISA's barred lists.

158. Convictions become spent in accordance with the Rehabilitation of Offenders Act 1974 ("ROA"), which determines whether a conviction becomes spent and, if so, after what period of time, which in turn is determined by the length of sentence attached to the conviction. However, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023 as amended—"Exceptions Order") provides for situations in which the protection for spent convictions is removed. The 1997 Act links into the Exceptions Order as the application for either a standard certificate or an enhanced certificate must state that the purpose for which the certificate required is an "exempted question" within the meaning of the Exceptions Order. What this means in practice is that applications for a standard certificate or an enhanced certificate are limited to certain positions including caring for children, child minding, being a foster parent, or being a registered immigration advisor amongst others. Coming within the scope of the Exceptions Order is sufficient for a standard certificate, however an application for an enhanced certificate must also fall within the prescribed purposes as set out in the Police Act 1997 (Criminal Records) Regulations 2002 (SI 2002/233—regulation 5A, as amended).

Our experience is that much information provided by virtue of the Exceptions Order is both irrelevant to the job under offer and often embarrassing to the applicant for no good child protection purpose. A filer is required and we believe this can be based upon a detailed job description provided by the employer to ISA or CRB at which stage, having established there is no requirement to bar, it is decided what such conviction information it is proper and proportionate to release. We want to see the end of a practice we knew was

happening and which our survey confirmed. That is a church group wanted the retention of the supply of all Exceptions material as it was argued they might want to know about the moral character of the applicant in making a decision. This is not in any sense the proper use of conviction information, it intrudes on A8 rights without due cause. Employers can ask such questions at interviews, it is no place of CRB/ISA to assist in this.

159. Once the CRB (all of the functions of the Secretary of State under Part 5 of the 1997 Act are carried out by the CRB, an executive agency of the Home Office) has obtained all the information required in accordance with section 113A or section 113B, the CRB issues the certificate to both the applicant and the registered body who countersigned the application (or who transmitted the application electronically).

160. The Government considers that the CRB process engages Article 8 rights as it is concerned with disclosing sensitive personal data. Although the Government considers that this is done in pursuance of a legitimate aim—namely the prevention of crime and the protection of the rights of others (for example, by ensuring that those working with vulnerable groups are suitable to do so), the current provisions aim to meet this legitimate aim in a more proportionate manner.

161. In total this Chapter amends the current provisions relating to CRB certificates in eight ways.

162. Firstly, this Chapter (clause 78) ensures that no application for any type of CRB certificate can be made unless the individual making the application is aged 16 or over. The current provisions do not set any age limit. The Government considers there to be human rights implications in carrying out CRB checks on minors in that this constitutes an interference with their Article 8 rights which is hard to justify in light of the need to protect children under both Articles 3 and 16 of the UN Convention on the Rights of the Child. As children are to be protected, the Government considers that they should not be subject to a criminal records disclosure process unless they are at the stage of working in positions of trust with vulnerable groups—therefore the Government has decided that under 16s should not be able to apply for any type of CRB certificate and no person aged under 16 should ever be asked to make such an application. On this basis the Government therefore considers that we are making the provisions in Part 5 more proportionate by including an age limit and also ensuring compliance with our UNCRC obligations.

We agree with this, it has caused problems and uncertainty, and over-reaction. However, clear advice should be formulated as to the types of suitable reference that might be sought. We would suggest GP in the sense that the young person eg volunteering might be protected from undue stress etc

163. Secondly, these provisions (clause 77) ensure that, contrary to the current position, the standard certificate and the enhanced certificate will be sent to the applicant only, rather than also to the registered person (normally the employer) at the same time. This means that sensitive personal data is only being disclosed to the person about whom it relates. This will enable an individual to decide whether to show the certificate to any other person and also enables any dispute about the information released on the certificate to be determined before it is seen by the potential employer. This means that sensitive personal data is sent only to the data subject who can then make an informed decision about any onward disclosure. We consider that this will remove any interference with the data subject's Article 8 rights which resulted in light of the obligation to send a copy to the registered person.

Fair Play can see some merit in this but the concept seems flawed to us in that employers are only meant to seek an Enhanced Cert upon the offer of employment. This proposal will mean either this quite proper provision of conditional upon job offer will be breached (as it is now indeed) or the applicant will be made a job offer and will receive the Enhanced CRB which they will then have to decide whether or not to submit to the employer. If the applicant has a record s/he knows is correct, then the employer wastes a lot of time and cost. If there is information the applicant wishes to dispute this will take time and the whole object of the clause is lost because the employer will know "something is up" and may quite likely press for an answer from the applicant which s/he may be poorly-placed to give.

This hardly addresses A8 issues. We would suggest that the same effect could be achieved if at the application stage the applicant is given an option for a copy of the disclosure to be :

(a) sent to the employer/reg body etc at the same time as the applicant's copy; or

(b) sent to the applicant only but who can opt then for a copy to go to the employer by return. The reason for this is that the employer gets a copy which is theirs, its forwarding has been allowed by the applicant but it also enables the employer to retain the copy for a set period to enable consideration of any information contained on it.

Consideration ought to be given to defining how long employers could retain disclosures issued in this manner. Also as to what information on the disclosure might be retained and how.

The Government proposal says nothing about how long the employer is able to retain the applicant's copy, whether they can make copy or extract. Our proposal enables better consideration of any "allowed" disclosure.

164. This is linked to the third change which is an amendment to the disputes process, whereby we are ensuring that any dispute over police intelligence information can be sent to an independent chief officer of police for consideration (clause 79). At present, the information is re-considered by the same chief officer of police who took the original decision to disclose the information. The Government considers that this

should improve the disputes process by enabling an independent but expert chief officer to consider any dispute. This seems to us to make for delays and also it places in a single person power to make such a decision. Fair Play believes that the existence of ISA and the quasi-judicial nature of the VBB makes it the logical place for the consideration of LPI. We propose that ALL LPI held by the police on an applicant be sent to ISA for consideration as to barring. If the applicant is barred as a result of the LPI, the employer will not see it, as the application will fall. If there is no barring situation, then we believe ISA should decide whether any remaining LPI is relevant to the position being applied for, based on a detailed job description which the employer should have to supply to ensure compliance with regulated/controlled (see above) status, and to help decide what LPI is relevant. If the proposal to send the disclosure certificate to the applicant only is carried through, this route will reduce the amount of LPI published and make it more proportionate to the post being applied for. We would add that this route also can be applied to the vexed issue of disclosure of previous convictions etc. It is not proportionate in our view to allow the wholesale disclosure of convictions many of which will have no bearing on the job in hand. Our LONG experience is that this has been a subject of real and unnecessary discomfort to applicants—a conviction many years before may have no bearing on ability to do a job. We think ISA should also "filter out" irrelevant past convictions. This will be appealable, in our view, and will considerably assist Rehab of Offender objectives and A8 compliance in that regard.

To help consistency, we believe that ISA/VBB should have an ACPO officer allocated to advise, and where there is an appeal, a 2nd ACPO officer for "second opinion".

165. The fourth, fifth and sixth changes are linked to the disclosure of police intelligence information on enhanced certificates (clause 79). The provisions heighten the test that must be met in order for a chief officer to decide to disclose police intelligence or other information from a "might be relevant" test to a "reasonably believes to be relevant" test. The provisions also enable a more centralised system of decision making. At present, each chief officer of police takes decisions in relation to information that they hold. As the computer systems are centralised, these provisions will enable all "relevancy" decisions to be taken by a smaller number of chief officers which should help to ensure a minimum level of expertise and consistency. In addition, the provisions enable the Secretary of State to issue guidance in relation to information disclosed by the police which should also help to ensure consistency of decision. The Government considers that these three measures should result in more proportionate disclosure of information, because of the higher test for disclosure and the more consistent decision-making process which should result in less sensitive personal information being disclosed overall.

Our proposal above achieves the objectives even more consistently. The "reasonably believes" change is wholly correct. Our system allows for full A6 challenge.

166. The seventh change is to remove the statutory basis under the enhanced CRB certificate provisions for the police to disclose information directly to the registered person while not disclosing to the individual (in relation to whom the information pertains) when doing so would harm the interests of crime prevention or detection (clause 77(1)(b)). The Government considers that this can already be properly done when appropriate under the police's common law powers to disclose information. The Government believes that it would help to emphasise the exceptional nature of the circumstances and the need for the police to justify the approach in each individual case on the basis of their operational discretion supported by common law powers. Again the Government consider this to be more proportionate approach to disclosing sensitive personal information.

Our proposal above would better accommodate such a measure because of the quasi-judicial nature of VBB. However we are VERY uneasy about this whole idea and suggest there should be further research and consideration. Whatever the outcome, we believe it will have chance of being done proportionately and fairly if routed via ISA with ACPO officers giving advice at that stage.

167. The eighth change is to make CRB certificates portable (clause 80). At present, a CRB certificate is a snap-shot in time and any new employer will need to see a new certificate and employers who continue to employ the same person may still at various intervals require a new certificate. The updating system will enable an employer to go online, with the individual's consent, and check whether there is any information that would appear on a new CRB certificate if applied for now, or whether there is no new information. It is estimated that over 90% of re-checks result in no new information. The online system will not disclose any personal information, simply an indication as to whether there is no new information or whether a new application for a CRB certificate should be made. As well as being a measure likely to be welcomed by both the employer and the individual, the Government considers that this will significantly reduce the amount of personal data being re-sent (because certificates with the same information will not be re-sent) and therefore will result in a more proportionate system.

Fair Play FULLY supports a one-time certificate, fully portable. We see the sense of applicant consent if at the stage of job offer. However, we do NOT see the sense of requiring employee consent if an employer has reasonable cause to believe there may have been a change affecting employee's suitability to undertake

work involving significant access to children, we believe they should have a right to make reference to an online update service. If they do so we suggest a statutory requirement to inform the employee they are doing so, and that the employee should be able to have written evidence this has been done.

168. Overall the Government considers that this package of measures enhances the respect for an individual's private life and will lead to a more targeted and proportionate CRB disclosure system.

Chapter 3: Disregarding Certain Convictions for Buggery etc

Given that private consexual gay sex between adults ought never to have been a criminal offence, these measures are overdue and have no bearing on Fair Play's concerns. If there were a conviction involving an adult and a person over 16 but under 18 at the time when the age of consent was 18 there will be need to consider the implications where the regulated activity involves work with people in the 16–17 age group. However, we feel this may well be covered by existing measures which are not related to age of majority but to vulnerability. Currently a teacher becoming involved with a student in that age range can find themselves in trouble, rightly so in our view.

Likewise over 16 but under 21 when consent was 21.

169. Chapter 3 of Part 5 set up a scheme whereby individuals who were convicted or received a caution in respect of section 12 (buggery) or 13 (gross indecency between men) of the Sexual Offences Act 1956 (or corresponding military service offences) may apply to the Secretary of State to have their convictions or cautions disregarded. An individual will only be successful in his application if the behaviour which constituted the offence was consensual and the other party was aged 16 or over.

170. Consensual heterosexual activity in private has never been criminalised, however, until relatively recently consensual homosexual activity in private was still criminal. The European Court of Human Rights in the 2000 case of *A.D.T. v UK* considered that, bearing in mind the narrow margin of appreciation in the case, the absence of any public health considerations and the purely private nature of the behaviour in the case, the continuing existence of section 13 and prosecution for that offence, in the particular case, was not justified under Article 8.

Memorandum submitted by the National Union of Teachers (PF 39)

Introduction

1. The purpose of this memorandum is to provide a commentary from the National Union of Teachers—the largest teachers' organisation in Europe—on the protection of biometric information of children in schools. The memorandum identifies to members of the Bill Committee areas where we believe clarification or amendments would be useful.

Consent must be "explicit" not "implicit"

2. The NUT supports the aim in the Bill to strengthen the data protection rights of minors through the added protection of parental consent. The Union has sought for many years now to address the individual and collective concerns of teachers over the increasing use of biometric technologies in schools, not only in relation to pupils, but in relation to school staff as well.

3. Guidance from the British Educational Communications and Technology Agency (BECTA) and the Information Commissioner have been helpful in explaining the current legal framework to concerned teachers and parents, who have been dismayed to discover that schools are currently permitted under UK law to process biometric data without the express consent of data subjects (ie pupils and school staff) or parents.

4. The Bill provides that a child's biometric information must not be processed without the consent of each of the child's parents, except where one of the exceptions under clause 27 of the Bill applies. Crucially, the Bill does not make it clear whether the consent sought must be "express" or "implied". This distinction has great significance in the context of data protection legislation. If consent is "implied", it will be sufficient for schools to place the burden on parents to "opt out" if they do not want their children's biometric data processed, rather than "opt in" if they do. In the NUT's view, the sensitive nature of biometric data requires schools to do more than seek passive or implicit consent. When responding to the Ministry of Justices' recent call for evidence on the current data protection legislative framework, the Union expressed the view that biometric data should fall within the scope of "sensitive personal data", since the special nature of such data requires data controllers to seek express as opposed to implied consent before processing information. The Union continues to hold that view.

The right to be consulted

5. The NUT believes that in addition to upholding the right of parents to object to the processing of their children's biometric data, the Bill should also provide pupils, parents and school staff with a right to be consulted about proposals to introduce biometric technology to their schools and/or extend its use further. The Union's own experience of the growing use of fingerprint technology in schools is that in most cases:

— there is little or no discussion with pupils, parents and school staff about the governing body or local authority proposals;

— other innovative, cheaper and less intrusive methods of obtaining the same information have not been investigated and considered; and

— parents and school staff have not received assurances that the requirements of the Data Protection Act will be met.

The Union believes that a requirement on schools and local authorities not merely to inform, but also to consult, would address most if not all of these concerns.

Reasonable alternatives to biometric processing

6. The Bill provides that children whose parents object to the processing of biometric information should be given a "reasonable alternative means" of participating in school activities (clause 26(6)). To assist schools, it would be very helpful if the Bill contained criteria for determining whether alternative means might be reasonable or otherwise. For example, schools might wish to consider the extent to which the alternative(s) would be practical and/or cost effective, or the extent to which the alternative(s) would disrupt the smooth running of the school.

The issue of pre-existing consent

7. As the explanatory note to the Bill acknowledges, a significant number of schools in England and Wales currently use automated fingerprint recognition systems. The NUT knows from casework experience that many parents and school staff have acquiesced to the processing of their biometric data because they were provided with no alternative. This is particularly so where access to school premises is controlled by fingerprint recognition systems and pupils and staff have no alternative method of accessing the school. It would be helpful if Ministers could make clear whether schools will be required to seek consent anew from pupils, parents and staff once the Bill is enacted, or whether consent given under the existing regime (which makes it optional for schools to obtain consent in any event) will be binding on data subjects and parents under the new regime.

April 2011

Memorandum submitted by Campaign for Freedom of Information (PF 40)

DISCLOSURE OF DATASETS UNDER THE FOI ACT

Further to the Campaign's oral evidence to the Protection of Freedoms Bill committee on 24 March, we would like to make a number of additional points about the provisions on "datasets" in clause 92 of the Bill.

Clause 92 amends section 11 of the Freedom of Information Act 2000, by providing, amongst other things, that where an FOI request is made for a dataset in electronic form:

— it must be supplied in a form which is capable of being reused; and

— if the public authority is the copyright holder, no copyright restrictions may be imposed on its reuse other than those set out in a "specified licence". We understand the intention is to automatically permit reuse, subject to the modest conditions set out in the Open Government Licence or a variation of it.

The clause also amends section 19 of the FOI Act, requiring authorities to publish any requested dataset as part of their "publication schemes" and keep it up to date, unless the authority is satisfied that this is not appropriate.

These are welcome provisions. However, we have concerns about the definition of the term "dataset", which underpins the measures:

> "(5) In this Act "dataset" means information comprising a collection of information held in electronic form where all or most of the information in the collection—
>
> (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority,
>
> (b) is factual information which—
>
> (i) is not the product of analysis or interpretation other than calculation, and
>
> (ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and
>
> (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded."

Paragraph (c) of the definition provides that a dataset ceases to be a dataset if any change is made to the way in which the information in it is presented. On the face of it this means that even a modest change in presentation, such as the merging of two columns of data into one, or the separation of one column into two, would mean that the information ceased to be a dataset.

Many datasets will be adapted over time as circumstances change, for example, where there are changes to the physical boundaries of a monitored area, to legal definitions affecting the monitored population (eg a dataset showing benefit claims by particular groups may be adapted when the entitlement to the benefit changes) or to reflect changing policy objectives or public expectations. For example, public concern about the injuries to children in road traffic accidents may lead to an existing dataset being modified to distinguish between adults or children or between children of different ages.

Under paragraph (c) of the current definition, any such change would mean that the information ceased to be a dataset. The authority would no longer have to release it in reusable form or publish it under its publication scheme and could then impose copyright restrictions preventing FOI requesters from publishing the data without permission.

This would lead to the new dataset provisions being circumvented by relatively modest changes to the way in which data is presented. It would also permit authorities to deliberately modify a dataset in order to reduce the disclosure requirements. We assume this is not the intention, but it appears to be a consequence of the current drafting.

The Bill's Explanatory Memorandum refers to the purpose of paragraph (c) of the definition of dataset as follows:

> 339. New subsection (5)(c) requires that the information within datasets has not been materially altered since it was obtained or recorded. Datasets which have had "value" added to them or which have been materially altered, for example in the form of analysis, representation or application of other expertise, would not fall within the definition for the purposes of new subsection (5).

There is an obvious mismatch between this explanation and the actual text of subsection 5(c) which is clearly not limited to changes which add value to the data (for example, by combining two separate datasets of different types of data) or changes involving the application of special expertise.

If the purpose of 5(c) is to exclude data which is the product of sophisticated analysis or other expertise, it appears to be redundant, since this is already achieved by clause 5(b)(i). This excludes from the definition of dataset, information which is "the product of analysis or interpretation other than calculation". Given this provision, we have some difficulty understanding the purpose of the further constraint set out in 5(c).

In any event, we question the purpose of section 5(b)(i) itself. Why should information which is the product of analysis or interpretation automatically become subject to restrictions on its reuse?

Suppose an authority holds a dataset on road traffic accidents, and suppose that it later adapts that dataset to show whether road calming measures have helped reduce accidents. The improved dataset might then show which accidents occurred on roads with particular types of traffic calming measures, and whether those measures had been properly implemented.

- The decision on whether a calming measure had been properly implemented would involve "analysis or interpretation" which, under paragraph 5(b)(i), would exclude the information from the definition of dataset.
- The newly added data would mean that the presentation of the information would have been "organised, adapted or otherwise materially altered" since it was originally recorded, thus excluding it under paragraph 5(c).
- The dataset would have had "'value' added . . . in the form of…expertise" thus falling foul of the policy objective set out in paragraph 339 of the Explanatory Memorandum.

In our view, none of those arguments should be sufficient to justify the reimposition of copyright restrictions. The dataset has been adapted to help assess the success of an existing policy. If an FOI requester obtains that data and wishes to reproduce it on their own web site, together with their own analysis of the data or critique of the policy they should be entitled to—without having to seek copyright permission from the authority or face the prospect of having to pay for a copyright license.

We suggest that the only circumstances in which the authority should be entitled to impose copyright restrictions are where the dataset is being commercially exploited by the authority or where "value added" changes have been made in order to make it suitable for such exploitation. Where a dataset has been modified simply to reflect changing circumstances or to contribute to the authority's decision-making, as in this example, these restrictions should not apply.

This example illustrates why, in our view, it is not just datasets which should be excluded from copyright and reuse restrictions but all information released under the FOI Act where (a) the authority is the copyright holder and (b) the information is not being commercially exploited by the authority or being processed with a reasonable prospect of being so exploited.

When publication of a dataset is "not appropriate"

Clause 92(4) of the bill inserts a new section 19(2A) into the FOI Act, requiring authorities to publish any dataset which has been requested under the Act under its publication scheme unless "the authority is satisfied that it is not appropriate for the dataset to be published".

We are not clear why this "satisfied that it is not appropriate" test has been adopted, particularly as it involves a subjective element (that the authority is not satisfied) which will be difficult for the Information Commissioner to oversee.

The obvious circumstances in which authorities should be entitled to refuse to publish a requested dataset are where:

— There is no obligation under the Act to release the dataset because the information is exempt from disclosure (and the public interest test, where it applies, is not satisfied).

— The cost of locating, retrieving and extracting the necessary information exceeds the cost limit which applies under section 12 of the Act.

If any further restriction on proactive publication is necessary, a more suitable test would be that publication "is not reasonably practicable". This would avoid the subjective element of the proposed text and corresponds to the reasonably practicable test used elsewhere in the Act, eg in section 11(1) and in the other amendments proposed in clause 92.

This formula will still allow relevant guidance to be included in the code of practice under section 45 of the Act as envisaged by the amendments in clause 92(5) of the bill.

April 2011

Memorandum submitted by the Blackheath Cator Estate (PF 41)

CLAUSE 54. OFFENCE OF IMMOBILISING ETC VEHICLES

Summary

1. This estate, the Blackheath Cator Estate, like others in Greater London, would face significant practical problems from the imposition of a blanket ban on vehicle clamping. Our main entrance is about 200 metres from Blackheath railway station, adjacent to Blackheath's Concert Halls and close to its shops and restaurants. Public parking in other parts of Blackheath, including areas of park and display, is controlled by the local authority.

2. We have no quarrel with legislation to deal with rogue clampers. The estate uses a clamping firm 70% of whose work is for local authorities. In practice they clamp few vehicles but the threat of clamping is generally an effective deterrent to commuters and others disrupting the passage and parking of vehicles associated with its 3–4,000 residents, those coming to work on the estate, and those coming to use its facilities which include two churches, two schools, three residential homes, halls accommodating a wide variety of activities, sports facilities and retail premises. Legitimate parkers are provided with annual passes or deploy temporary notices.

3. We respectfully ask that clause 54 should be rejected in its present form and we are taking advice on possible amendment; advice that we expect to share with our local representatives when it is available.

Local representation

4. The estate crosses the boundary between the London Boroughs of Greenwich and Lewisham and includes parts of three parliamentary constituencies:

(a) Eltham—Clive Efford MP;

(b) Greenwich and Woolwich—The Rt Hon Nick Raynsford MP; and

(c) Lewisham East—Heidi Alexander MP.

Identity and Declaration of Interest

5. I am the Revd Dr Adam Scott OBE. I am one of the clergy in the parish of St Michael and All Angels. Blackheath Park, which is largely co-terminus with the Estate. I have been on the parish staff since 1974—the parish church was built by the Cator family who gave their name to the estate within which it is situated.

6. I write as a resident—having lived with my wife in a terraced house with a 17 foot frontage at 19 Blackheath Park, SE3 9RW since 1982. I have a resident's parking permit.

7. I am also one of many shareholders in Blackheath Cator Estate Residents Ltd—the local amenity company serving thousands of people on the estate. I have been working on this topic with a fellow resident, John Bartram, a director of the Blackheath Cator Estate Residents Ltd. "We" in this document relates to our representations on behalf of ourselves and of the company. It uses a reputable clamping firm, 70% of whose work is for local authorities—that 70% is unaffected by the proposed ban.

A Local Situation

8. Between 3,000 and 4,000 people live on what was once the park of a big house and there is a wide range of housing some old homes, many private post-war developments and two council estates served by schools, some retail outlets, sports facilities and halls as well as a homes for elderly people and another for those with learning difficulties.

9. In 1950 a residents' association was formed and, in 1965, its remit was widened by taking over the ownership of the roads and the administration of the Estate from the Cator family trustees, and, in 1982, it was re-named the Blackheath Cator Estate Residents Ltd (BCER). Apart from maintaining the roads, BCER also has to look after parking on the estate and uses a combination of conventional yellow lines, bays for those with disabilities and spaces reserved for residents.

10. Essentially the Estate occupies the South Eastern quarter of Blackheath Village. It is close to the shopping and entertainment area of the Village and its North West gate is just two hundred meters from Blackheath's busy commuter railway station. Therefore, to maintain some discipline on observance of the conventional parking signs, BCER have, for many years, employed firms who have the capability for putting notices on, and—if appropriate—clamping cars parked in contravention of the signage.

11. The London Borough's of Lewisham and Greenwich, who are responsible for neighbouring streets, police parking in those areas and there are two car parks in the village where one pays to park as well as pay-and-display parking on some streets.

12. Our church halls are heavily used for a variety of community purposes including a nursery school, scouts and other youth activities, events for older people, blood donation and even as a polling station. We also have midweek services, weddings and funerals. Visitors to the church and halls are permitted to park and—with the current restrictions and clamping as a threat—there is usually space for their vehicles.

13. Many of the facilities on the estate are accessed by people living outside the estate and that makes closing the roads to all but residents impractical.

The Legislative Proposal and Suspect Rationale

14. Clause 54 seems to be part of the agenda to stop there being what people perceive as a war on motorists. Our concern is that this clause would lead to a war by motorists against residents and visitors to this and other estates. Please appreciate that we are against rogue clampers extorting unreasonable sums from motorists.

15. As we understand it, the ban on the use of clamping upon private land has been proposed because there are some rogue clampers.

16. We recognise the need to balance the rights of motorists to have access to their vehicles with the rights of landowners to use and to control access to their property. In terms of the effect upon an estate like this, the impact of the legislative proposal seems to be to establish a *de facto* right for any motorist to drive onto private land and to park provided that they do not abandon their vehicle, or park dangerously or in a manner that causes an obstruction. At the same time, the effect seems to be to emasculate the landowner—in this case an amenity body looking after a large estate—from exercising proper stewardship of a community resource. It is hard to see what an amenity body like BCER would be able to do when seeking properly to control parking in an estate like this one if a ban came into force.

Responding to Home Office Reasoning

17. The suggestions made by the Home Office (Lynne Featherstone MP, CTS Reference: M11889/10) seem to be these:

(a) There have been rogue clampers, therefore all clamping on private land should be banned—Philosophically this seems to be faulty—it is not an argument that has yet held much force in banning membership of parliament, banking, practicing medicine, law or accounting because there have been rogues—rather society looks to regulation and to removing, from practice, the rogue element.

(b) A similar ban has worked in Scotland—I am not aware of there being, in Scotland's larger cities, private estates, like the Cator Estate, with the mixture of residential, educational, care, sports, halls, church and retail premises. Scotland's entire population is smaller than London's and it does not have a metropolitan area like London's where a large estate like ours—so convenient to a good commuter railway station—could become a park and ride for those wishing to park during a day.

(c) Private landowners can use ticketing or barriers—that works well in a well confined area like a supermarket car park but not on a large estate with thousands of residents and many legitimate visitors expecting to drive too and fro. We gather that ticketing would also be very difficult for a private amenity company to enforce legally.

(d) The local authority has a responsibility to remove abandoned cars—We accept this, but the problem is not so much the relatively rare abandonment of a car as regular parking by commuters or others who would be able to avoid parking in places where the relevant Council can render (and enforce) a charge.

(e) Cars creating a danger or an obstruction could be removed by the police under new powers—agreed but parking in a bay set apart for motorists with disabilities, for residents of a particular set of homes or the space that has been marked up for hearses used for funeral coffins and for bride's cars would not constitute obstruction.

18. As explained, we have no time for rogue clampers whether they operate on private land or on public roads. A blanket ban presents real difficulties for estates like ours in a large city like London. I am confident that the committee could come up with a solution that would be better than the blunt use of a blanket ban.

19. A sensibly drafted law would permit properly regulated clamping in situations of estates like this one and thereby allow disabled motorists to access special spaces and residents to continue to park reasonably near their homes rather than being squeezed out by motorists taking advantage of the inability of the amenity organisation to enforce conventional signage.

April 2011

Memorandum submitted by Proserve Enforcement Agency (PF 42)

Chapter 2 of Part 3 Vehicles Left on Land Clauses 54, 55, 56

1. We are certificated bailiffs and vehicle immobilisers, the company has been in existence since 1992, our expertise is, we act as land bailiffs for commercial and private landowners, enforcing their regulations relating trespassing chattels. Accompanied with our bailiff certificates which enable us to levy distress, we are licensed vehicle immobilisers.

2. We have in a five year period lawfully immobilised over 2,000 vehicles, the vehicles have unlawfully trespassed on our clients land. Our sites give clear warning to people not to park or wait, with terms and conditions of the landowner displayed.

3. Our sites are not pay and display car parks, where people are invited to park.

4. Our landowners specifically warn people not to park or wait, our sites include industrial estates, commercial operated car parks with licensees, and dock distribution parks.

5. In 2006 we were instructed by The Master, Fellows and Scholars of the College of the Holy and undivided Trinity within the town and University of Cambridge of King Henry VIII's Foundation, to enforce their regulations at Trinity Distribution Park, Felixstowe. Our instructions resulted from the unsatisfactory service they had received from the then criminalised traffic warden service. Our service is paramount to the safety of visitors and occupants to the distribution park, we have a specific protocol in place for the site, which has been designed and developed by our client, together with ourselves to stop trespassing vehicles and trailers through immobilising, removing and the issuing of notices for trespass. The Distribution Park has a specific problem with foreign vehicles that visit there, we have attempted to issue parking (trespass) notices in the past, however, we stopped issuing them following instructions from our client as none were ever paid.

6. In and around the Port of Felixstowe we are constantly called out by a number of landowners at various sites including the distribution Park in order to remove trailers that have been left to trespass on their sites. Trough experience it is not possible to issue penalty notices on trailers as they do not have a registration plate. The only means of detecting the owner of a trailer is via the last company that test plated the trailer, and invariably they do not have the owner's details, this will be the same problem for the police.

7. The proposed legislation has not taken into consideration the freedom of the landowner, who does not permit anybody without lawful authority to park or leave vehicles on their land, they rely solely on companies such as ourselves to police their sites, without help from other agencies.

8. Enforcement is not solely reliant on a remedy, the threat of the remedy usually prevents the action, by removing the remedy there is no threat of action.

9. Our clients licensees who pay for the peaceful enjoyment of their car and lorry spaces, will not be able to protect the use of their space by issuing a ticket, furthermore if they need to use their space, where do they go if it is being occupied by a trespasser, we are called some 10 times per week relating to such incidents.

10. With the reduction in policing and council budgets neither agency will be willing or able to assist in the removal of trespassing vehicles at short notice, I am assuming this is why the proposed legislation in Clause 55 provides the power (Not a Duty) to remove vehicles in the circumstances described in section 99 has been submitted.

11. In the legislation there needs to be a clear definition between parking and trespassing. The Bill does not attempt to define the difference between trespassing and parking, they are fundamentally separate issues that require separate forms of enforcement. If you are invited to park on private property then it is a parking issue, if you are told not to enter, park, or wait, it is then an issue of trespass.

12. As the bill does not criminalise parking and trespassing on private land, it therefore leaves private property open to abuse from selfish individuals, who ignore landowners requests not to enter or park or wait without legal authority.

13. Clause 54, subsection 2 refers to the use of an affixed barrier that can be lowered if the driver had not paid the requisite parking charges. Am I to assume this clause has been submitted taking into account? large companies that operate barrier controlled car parks. This submission will create further complications rather than elevating the problem that it is intending to solve. Our clients do not advertise parking charges, they are charges for trespass, we do not enforce regulations at pay an display car parks, we issue penalties for trespass, there is no provision for this in the legislation. The barrier suggestion will create a volatile, confrontational incidents.

14. I have heard many comparisons to how the banning of clamping in Scotland has worked since 1992. The current population in Scotland is 5,168,500, there are 7,668,304 people living in London alone, there are currently over 50 million living in England, this means 84% of the total population of the United Kingdom live in England, England's population density is more than treble the European average. Taking into account the sheer numbers of the population and the density, together with the numbers of built up areas in England, where as in Scotland the density is low due to the fact that many parts are unsuitable to live or occupy, it would therefore be reasonable to assume the problem of trespass would be far less.

15. How will the proposed changes in legislation enable us as a company to enforce our landowners rules on their own property.

April 2011

Memorandum submitted by the Civil Enforcement Association (CIVEA) (PF 43)

Introduction

1. The Civil Enforcement Association (CIVEA) has recently been formed through the merger of the Association of Civil Enforcement Agencies (ACEA) and the Enforcement Services Association (ESA), formerly the two trade associations representing private certificated bailiffs, and companies employing such individuals, operating in England and Wales. The new association is now, therefore, the sole representative for such companies, individuals and their activities.

Background to Clamping by Bailiffs

2. The Association's members are entrusted, *inter alia*, with the recovery of unpaid local and central taxes, unpaid parking penalties, unpaid magistrates' courts fines, unpaid child maintenance and other debts owed to public bodies.

3. The various Regulations governing these activities are set to be formalised within a single transparent Regulation under the Tribunals, Courts and Enforcement Act 2007 (TCE).

4. Under the various existing Regulations, bailiffs routinely seize goods to either sell at public auction to recover the sums due but more commonly, under walking possession agreements to secure payment arrangements to discharge the sums due over fixed periods of time.

5. Since the days of Community Charge when debtors were actively encouraged to deny bailiffs access to household goods, bailiffs were required to find alternative goods to seize in order to encourage payment. This led to an increase in the seizure of vehicles which negated the need of entry to domestic premises.

6. Currently, bailiffs seizing vehicles under the various regulations often immobilise such vehicles at the point of seizure prior to their removal for sale. Immobilisation is undertaken for a number of reasons including health and safety. When a vehicle is seized, it is not unknown for the debtor/owner of the vehicle to try and move the vehicle to prevent it being taken and there have been incidents of the seized vehicle being used to ram the bailiff's vehicle or, in worst case scenarios, to threaten and injure the bailiff. Applying an immobilisation device (wheel clamp) prevents unauthorised access and inappropriate use of the vehicle.

7. It is also a fact that the initial seizure of a vehicle by way of immobilisation is a cheaper alternative for the debtor than its immediate removal by tow truck. It allows the debtor a window of opportunity to discharge the sums due at less cost before the tow truck is engaged.

8. The benefits of immobilisation have been recognised by Government and it is accordingly being included as a mandatory step in the enforcement process introduced by the TCE and Regulations. The provisions in the TCE Act have been formulated after 20 years of consultation and research and accordingly represent best practice and therefore immobilisation as part of the process of taking control of goods, to use TCE terminology, must be listed as a lawful activity under this Act.

Clause 54

9. Clause 54 of the Protection of Freedom's Bill is included to provide protection against rouge clampers dealing with cars parking without permission on private land. As with the Private Security Industry Act 2001, the focus, as noted by the then Home Office Minister Charles Clarke was on the "unscrupulous behaviour of some wheel-clamping firms who prey on motorists."

10. The debates regarding the PSI Bill all focused on "parking on private land", rogue and cowboy clampers' and members of the public; there was no mention of fines, bailiffs or debtors.

11. The Research Paper 11/20 regarding the Protection of Freedoms Bill notes that, "Wheel clamping on private land has been a major problem for some years. The legality of wheel clamping on public land is clearly set out in legislation but on private land, including car parks, it has not expressly been provided for in law. As a result there has been considerable controversy about the behaviour of some private wheel clamping companies and even about the legality of clamping vehicles on private land. The view of successive governments has been that owners of land must be able to take action against those who park without permission and that wheel clamping may be an effective way of dealing with such situations, but that any action must be carried out in a reasonable manner. Cases against wheel clampers are heard in the civil courts. The Coalition Programme of May 2010 stated that one of the Government's transport priorities was to "tackle rogue private sector wheel clampers".

12. Again, it is clear the focus of Clause 54 is in relation to unauthorised parking on private land rather than the use of clamping by bailiffs as an enforcement tool in executing court orders and warrants.

13. Clause 54 of the Bill will effectively make it a criminal offence to clamp (immobilise) a vehicle on private land except where one has the lawful authority to do so (for example, on behalf of a local authority, the DVLA or the police).

14. The commentary on Clause 54 states that the offence does not apply where a person is acting with lawful authority when immobilising, moving or restricting the movement of a vehicle.

15. It goes on to say that there are a number of bodies with statutory powers to immobilise or remove vehicles in specified circumstances, including: local authorities when enforcing road traffic contraventions on the public highway or local authority managed car parks; the police when enforcing road traffic contraventions or otherwise removing vehicles illegally, obstructively or dangerously parked; the police and local authorities when exercising their powers to remove abandoned vehicles from public and private land; the Driver and Vehicle Licensing Authority (DVLA) in respect of vehicles that have no road tax; the Department for Transport's Vehicle and Operator Services Agency in respect of vehicles that are not roadworthy; and the police and local authorities exercising their powers to remove vehicles forming part of an unauthorised traveller encampment.

16. In respect of bailiffs, it states that bailiffs have a mix of statutory and common law powers to immobilise and tow away vehicles for the purposes of enforcing debts (including those arising out of unpaid taxes and court fines).

17. However, aside from The Fines Collection Regulations 2006 which provides for the issue and execution of Clamping Orders there is no specific mention in any [enforcement] Regulation regarding the use of clamping or immobilisation.

18. Accordingly, there are already arguments that "lawful authority" will derive from the relevant statute under which bailiffs are acting and as many do not expressly or implicitly endorse vehicle immobilisation, clamping in the enforcement of debt will no longer be lawful in those cases.

19. This will result in a sharp increase in the numbers of cases where vehicles are immediately removed [rather than clamped and de-clamped] denying the debtor an opportunity to pay the lesser costs. It will also undermine the enforcement of many debts where it is not possible to immediately remove a vehicle (or enter a household) and where clamping currently secures the bailiff's and the creditor's position. It will also increase the risks to the safety of bailiffs and other members of the public as noted in "6" above.

20. As [private] bailiffs recover in the region of £650 million of "State Debt" annually and clamping is an important enforcement tool in promoting payment, it is essential that there is no ambiguity within the Bill regarding the lawful authority of bailiffs.

21. Accordingly, the Association requests that the Bill include an amendment to Clause 54 in the following form.

Insert:

54(7) In this section "lawful authority" includes a warrant or order issued from or authorised by a magistrates' court, a county court or the High Court for the seizure of goods.

Memorandum submitted by Eric Tweedie (PF 44)

THE VETTING AND BARRING SCHEME

Introduction

I am a former Fire Service Watch Commander now in retirement. During my time with the Fire Service I received training and gained considerable experience in legislative matters. I respectfully request that the committee consider the following:

My interest in the Vetting and Barring Scheme relates to the fact that I hold the voluntary post of Child Protection Officer for the Aikido Research Federation of which I am a member.

We are obliged to conform to the British Aikido Board policy to ensure that any children within our organisation may be protected from harm so that they can train in Aikido in safety.

I am concerned that, although it is essential to provide safety for children, any protection scheme should be reasonable in its scope and application in our society.

The previous government's scheme was far too draconian and was widely regarded as totalitarian control of the population in the name of Child Protection.

The government got it wrong and I am anxious that the same mistakes should not be repeated.

Draft studied

I have studied the draft of the legislation relating to the new scheme which you propose to introduce.

I have listened to the comments of my colleagues and after much consideration make the following observations.

Effectiveness of legislation

Many people believe that too many gaps have been left in the new legislation which leaves doubt about its relative effectiveness.

For example it is believed that the committee have not specified which people in the population will require a CRB check in order to work with children. Four million persons are reputed to still require CRB checks. (By CRB check, I define this as where an applicant is required to engage the services of a licensed agency, pays a fee, and following searches of criminal records is issued with a certificate.)

There are doubts about the constant need for up-dates to CRBs.

There are still doubts relating to unnecessary CRB checks.

Abolition of CRB checks

I believe that a case can be formulated to completely abolish CRB checks (as previously defined above) in order to work with children and this will save considerable expense especially as there is a recession on. (By this I mean that it is not necessary for an applicant to be required to engage the services of a licensed agency, to pay a fee, and following searches of criminal records be issued with a certificate) (See further below)

I am not proposing abolition of background checks on individuals so here I am drawing a distinction between CRB checks paid for by the applicant and background checks for which employers should be responsible.

To begin with CRB checks are wrongly used for more than one purpose:

(a) To supposedly protect children from paedophiles.

(b) To inform interested parties regarding recorded criminal activities of prospective job applicants.

At present we have two aspects of the same type of system to do the same job when, particularly in relation to children, we need only one thing; the Barring List.

Definition of persons requiring CRB checks

Many people are waiting for the committee to define just who of the four million members of the population will require CRB checks.

In relation to the new legislation I believe that the committee has already detailed exactly who in the population shall be compelled to have a CRB check in order to work with children and there is no need to restate this by drawing up a comprehensive list of occupations and posts to which the legislation will apply.

The new legislation clearly states that any person on the barred list cannot work with children and makes it an offence for anyone to do so.

This also means that any person not on the barred list cannot be prevented from working with children. This is very plain and very simple.

It will also be an offence for an employer to knowingly employ a person who is on the barred list so in any event an employer must check out a prospective employee.

The new legislation now provides better protection for applicants than previously because now only substantial clear evidence of a serious nature can be considered and used in order to bar an individual from working with children.

It may also be desirable for employers to be able to carry out background checks on employees for evidence of other crimes committed, (other than paedophilia) but this is entirely a separate matter from the prospect of specifically working with children.

Final comments

Finally, what we need in a new system is:

(a) Provision of coded to access through a licensed agency to the Barred List and to other Criminal Records to be available to all prospective employers.

(b) Abolition of the requirement for people to engage the services of a licensed agency and be issued with a certificate. (In other words to have to provide their own CRB certificate at their own expense.)

(c) A legal requirement for all background checks to be carried out by prospective employers at the employer's expense. This includes checking the Barred List.

(d) A legal requirement for prospective employees to accept that background checks will be carried out by employers at no cost to the prospective employee. This may help to curtail unnecessary background checks.

(e) A legal obligation for employers to be compelled to carry out up-dating of background checks on employees.

Unfortunately this is the only way to ensure that later convictions of employees come to light, and in relation to the safety of children, the sooner any convictions for paedophilia are detected the better.

No system will be completely ideal and will provide complete safety for children but up-dating records will make the new system as good as it can be for now.

Most fair minded people will accept this to protect children.

My final comment to all doubters who ask the burning question "How many and just who of the four million "possibles" in the population may be employed to work with children".

The answer is "All who do not appear on the Barred List".

April 2011

Memorandum submitted by Steve Purkiss (PF 45)

I write to object to the proposal to ban wheel clamping on private land.

I'd also like to enquire as to how an allegedly impartial committee is comprised of Lynne Featherstone (the person proposing the ban), Gareth Johnston (who supported the 2010 ban on wheel clamping), Dianne Johnston (who was clamped and charged £250.00), plus the AA and RAC who are both already widely known to openly oppose wheel clamping?

Whom may I ask will be representing private land owners whose property is currently protected?

Why isn't the proposal being heard by a totally impartial committee that have shown no previous views or stances?

Should the bill be agreed would the committee like to explain how I am to protect my property successfully? Issuing parking fines is not an active deterrent. I'm sure that if the time was taken to communicate with any Local Authority that currently issue tickets they would be able to to advise how many millions of pounds they have outstanding in unpaid parking fines. As a transport manager I have personally witnessed parking charges that have escalated into hundreds of pounds after the drivers claimed to have not received the initial ticket. How is this an improvement to the existing clamping system?

I have employed a legitimate clamping company (National Clamps) for over two years now and their signs alone have acted as a deterrent. During this time only one vehicle has been clamped and charged £80.00.

Prior to employing National Clamps I had various arguments with inconsiderate motorists and on at least two occasions have been physically threatened.

Why can't legislation against "cowboy" clampers be brought in as opposed to the "nanny state" trying to stop me protecting my own property?

April 2011

Memorandum submitted by Brian Griffiths (PF 46)

I run a small business and have limited parking available to my customers who I depend on.

Previous to engaging the services of a clamping firm my car park was always being used by motorists and other traders who had business elsewhere.

Consequently my customers could not park and this severely handicapped my business.

I would have had to give up the business if I had not been able to warn other motorists that they would be clamped if they used my car park.

It would be impractical to install and operate a secure barrier and it would be impractical to issue penalty tickets which may or may not get paid.

I just wanted to have the use of my own car parking for my customers and to be able to carry on my business.

For the last three years I have engaged a clamping firm who would charge a maximum £80.00 release fee.

Signs are prominently placed and no vehicle has ever had to be clamped and I am still in business and paying the government hard earned taxes.

Please do not ban clamping firms in total but instead consider more stringent regulation to get rid of the "cowboy clampers".

April 2011

Memorandum submitted by a member of the public (PF 47)

PROTECTION OF FREEDOMS BILL, SECTION 8.

In order to protect personal privacy, this submission has been made anonymously but identifying details have been submitted to the scrutiny Department. The comments relate to section 8, Protection of Freedoms Bill, criteria for eligibility to consider disregard of a conviction for Gross Indecency.

BACKGROUND

In 1977, I pleaded guilty to a charge of Gross Indecency brought by a homophobic police officer in Mill Hill who boasted the record for such convictions in his area. Standing on milk crates by a small fanlight window, he waited until two men had entered the facility and then shouted "Right, that's it . . . Gross Indecency!" and ran round to the entrance to arrest myself and another man. There had been no sexual contact whatever, I had walked into the lavatory to use it when this happened and the shock had momentarily paralysed me.

During the arrest process, the officer explained that we should not worry, it happened all the time, local people living nearby had complained and it would just be a small fine. He explained that it would be a very short appearance in Court if we pleaded guilty and the benefit to that was it would not be reported in our local papers, he was sure as he had much experience in this area. The other man was paranoid his wife would find out and even though we did nothing sexual, he would be in an embarrassing situation and said he would pay my fine if I agreed to plead guilty. The fine payment was not an issue but I was also concerned that any suspicion should fall on me as I held a prominent position in the local Church and in 1977, homosexuality was not acceptable behaviour.

It is fair to say that the officer frightened both of us into pleading guilty and we paid £100 fine each. The report together with our names and addresses appeared in both our local papers the following week. My wife and I visited our local MP at the time to see if there was any advice she could give us. Harriett Harman told us she had heard of lots of similar situations with the police but nothing could be done. Since then, until now, I have never been able to do or say anything about my plight. Innocence or guilt is irrelevant as a guilty plea leads to a conviction which is a matter of public record. This Bill is the first time I have ever been able to take any action whatever to try to right a very unfair and discriminatory "wrong". Thank you.

THE EFFECTS OF A CRIMINAL RECORD

Because of the requirement in the Bill to "qualify" for a conviction to be disregarded, I appear not to be eligible for consideration even though I have had to live 34 years suffering the effects of a sexual conviction, the second and by far most punitive punishment after the fine. I have never reoffended, I am not "gay", I told my wife immediately but the proliferation of CRB checks has meant my voluntary life has now ended. Like many, I dare not apply in case a CRB check is required. Other effects include:

(a) I was forced to leave the Princes Trust as a mentor after 20 years service as CRB checks were brought in.

(b) I had to leave my post as chair of Governors of a local Primary School as it was threatened Governors were to be CRB checked. I quashed an attempt by my colleagues to nominate me for an MBE for services to education after 25 years governor service to the school as I do not know if a criminal can receive an honour.

(c) I am unable to work with my wife at our local hospital where she does voluntary work.

(d) I was told by the Diocese of St Albans that unless I sign a document promising not to molest children or vulnerable adults, I would be ex communicated. I must now allow an annual application for a CRB check.

(e) I dare not apply for any voluntary post, I saw one this week as a charity driver for fear of a CRB check being requested at which point, I would be forced to withdraw the application.

(f) I have never been able to bring myself to tell my children what happened to me.

The Eliminating Criteria

There are two criteria listed in the Bill for consideration of an individual's submission to disregard a conviction for Gross Indecency, the second of which is:

> *"Any such conduct now would not be an offence under section 71 of the Sexual Offences Act, 2003 (sexual activity in a public lavatory)"*

I suggest the criteria is unfair and excludes at least half the people eligible prejudicing the aims and objectives of section 8 for men convicted of an offence which no longer exists. The reasons for this are as follows:

1. The rules of arrest have changed dramatically since 1977. In my case, it is likely I would never have gone to Court let alone been prosecuted if the same circumstances of the incident took place today. Today, anyone arrested is entitled to legal representation before and during questioning. Legal advice was not offered to me and I did not think, I was in shock. Today, a solicitor would have explained the true motives of the officer and advised me that I was the victim of police entrapment. There was no entrapment in 1977, police could do as they wished. The protecting rights a person has when arrested today are vastly different yet, the present Bill still excludes me as the incident took place in a public lavatory.

I believe this is against the principle the Bill seeks to change, the right to freedom and suggest that large numbers of people could unfairly fall into this excluded category. If there are safeguards now that were not in place then, surely that begs the question of a conviction being "safe" in 2003 and "unsafe" in 1977 despite it being committed in a lavatory. There is no doubt that everyone convicted of an offense in a lavatory before these arrest rules were established is unfairly excluded from disregard as this clause stands as they were not advised of their rights or offered legal advice.

2. The Police received guidelines after 2003 suggesting that they should "turn a blind eye" to homosexual acts in lavatories. (*Daily Mail*: Friday, 17 October 2008, Page 36—see addendum). The reasons are listed as the offence "impact can be extreme and include humiliation, breakdown of relationships and the "outing" of men living in an opposite sex relationship (heterosexual) and being perceived as "gay". Many of the people who "cottage" do so because they are married, they need this personal form of expression and do not know where else to go.

Addendum

Daily Mail: Friday, 17 October 2008, Page 36 reports on the document "Policing public sex environments" by Michael Cunningham, Deputy Chief Constable of Lancashire.

> *"Police chiefs are being urged to turn a blind eye to some of the more extreme forms of public indecency. Guidelines circulated to senior officers encourage them to ignore 'dogging' and 'cottaging' offenses unless enough members of the public complain. The draft rules issued by the Association of Chief Police Officers say prosecutions should only be considered as a last resort for fear of having an 'extreme' impact on offenders lives."*

3. It is suggested that although the act in a lavatory is still an offence, way back in 1977 when I pleaded guilty, I would not have had any idea of what Laws might prevail in 2003. Thus I would not be able to know that what I was doing would be an offence at a later date. I therefore suggest that some of the 16,000 people it is said who qualify for convictions for Gross Indecency in a public lavatory could choose to go to the High Court to appeal this clause as they could not be aware of what Laws might or might not be made in the future. There may even be case Law covering an offence committed before a Law was made. Is it truly just then not to include these people in the pardon process? Surely, it is fairer to say for anyone who has held a conviction in a public lavatory for more than 20 years should be eligible for pardon if they have not reoffended. They will have suffered enough.

4. The act of homosexuality between consenting adults over 18 was illegal and now is not except in a public lavatory. In 1977, I was arrested for the act. Today, I would be arrested for where it took place so things are not the same now. In 1977, it was not illegal to commit an act of Gross Indecency in a lavatory, it was illegal to commit an act of gross indecency, period. This lends support to the contention that the Protection of Freedoms Act, Clause 8 in 2011 is seeking to put right an injustice, the act, not where it was committed.

5. It is right to give failing applicants the opportunity to appeal the Home Secretary's decision but few people would be able to afford the excruciating cost this would entail. This makes it a laudable provision but not one that would be likely to be taken up especially by someone like me, a 67 year old pensioner, despite

still working part time and there is no way I would apply for legal aid to argue such a case, that would be too public and too expensive for the Government to fund as there are said to be 16,000 people eligible. Right of appeal effectively is not open to me. Perhaps a specially constituted panel where one can appear for oneself in private such as in the County Court would be a cheaper option for the Government and for poorer individuals? In such an environment, a petitioner would be allowed to plead their case.

ALTERNATIVES

If those drafting this Bill truly feel it reasonable to marginalise people who have been punished for 34 years in my case just because of where the act took place, then they will not accept this submission. It would be sad to exclude so many people but instead, an equal opportunity could be given to those people who do not qualify by making them subject to the Rehabilitation of Offenders Act which presently does not extend to sexual offences. The important thing is there should be no reoffending within the Law as it stands today.

The act is no longer illegal between consenting adults, only where it might take place. People who offended as long ago as my conviction was registered, and have not reoffended again, should be allowed the opportunity to be free again without the restraints a criminal conviction and CRB checks imposed. In effect, they are not now criminals, just misguided as to where to be. Rehabilitation could be built into the Freedoms Bill at this stage and would not fundamentally undermine Section 8, indeed, it would be strengthened in that the whole of the 32,000 people many of whom suffered like me before the days when a Police Officer was required to allow you legal discussion before charging you.

CONCLUSION

With the rules and rights of an arrest having changed so dramatically, the requirement of legal representation before charge and new laws such as entrapment now in force, surely it is logical that these will cancel out the need for retaining the lavatory criteria.

To be fair to all the people who could be helped by this measure, a way needs to be found to consider the case of someone who offended in a public lavatory before 2003, for that to be disregarded as opposed to ignored as the Act in it's present form does now. They have also suffered the injustice and humiliation of a criminal conviction for a crime that no longer exists, it is not fair they should be marginalised and denied unrestricted contribution to the community in the present day just because of where the offense took place, they were not to know, the world is a different place.

This is what I believe the authors of this section of the Bill intended, not the exclusion of half those eligible. I would consider it a miracle if this happened for me, to be able to enjoy the rest of my life properly, free, without the daily fear of exposure that follows me around everywhere I go.

PLEASE NOTE

Anyone accused or convicted of a sexual offense even a minor one such as Gross Indecency whether they are innocent or not will not be able to be public regarding their situation if they are not of an open, homosexual persuasion as even today, the stigma is still recriminatory not accepted. This means they are restricted in what they can openly do for friends and family reasons. This submission could only be made anonymously and this fact means that some people will not feel able to make submissions to the Bill and ultimately, the Home Secretary. There needs to be a secure channel for people to apply and this fact taken into account at all stages.

April 2011

Memorandum submitted by the Forensic Science Service (PF 48)

EXECUTIVE SUMMARY

1. The Forensic Science Service (FSS) is the UK's leading forensic science provider. It provides the broadest range of forensic techniques from the crime scene to court room.

2. The use of DNA profiling as an evidential tool has supported many successful prosecutions. The National DNA Database (NDNAD) has facilitated the detection and prosecution of many offenders. The combination of both proved valuable to police in gaining important leads in both current and historic unsolved cases. More people have been exonerated by DNA testing than have ever been convicted.

3. Part 1 of the Freedom Bill introduces a new framework for the retention of biometric data taken from arrestees, which includes the destruction of this either immediately or after a period of time if the arrestee is not convicted. This submission is confined to the provisions concerned with the retention and destruction of DNA samples and profiles.

4. Regarding the destruction of DNA profiles, the FSS believes that:

— The requirement to destroy legacy DNA profiles will be a time consuming, expensive process which carries major resource implications across the Criminal Justice System.

— The requirement to destroy a significantly increased number of DNA profiles each year will necessitate the allocation of additional resources.

— An efficient mechanism for notification of case outcome will be required to ensure the legislation is adhered to and avoid repeats of cases such as AGs Ref No 13. of 1999 and *R v Weir*.

— If DNA profiles are to be deleted from the Forensic Science Provider's (FSP) case file, there is a conflict with the record keeping requirements of the Criminal Justice System.

5. Regarding the destruction of DNA samples, the FSS believes that:

— These provisions will potentially compromise the investigative capability of the Police.

— More people will have to be re-approached and re-tested by Police during their investigations.

— Potential for repercussions for criminal trials if court exhibits and/or evidence of continuity is lost as a consequence of the destruction of a DNA sample.

Scope of the Submission

6. The submission is confined to the provisions in Part One, Chapter One of the Bill in relation to biometric data. In particular, it considers the resource implications and potential consequences of the:

— Mandatory requirement (in s63D) to destroy a DNA profile unless it is capable of retention.

— Mandatory requirement (in s63Q) to destroy a DNA sample once a profile has been prepared from it.

7. The FSS previously responded to the Home Office Consultation Paper entitled *Keeping the Right People on the DNA Database: Science and Public Protection* which preceded the enactment of the Crime and Security Act 2010.

The DNA Profiling Process

Background

8. This section outlines the DNA profiling process including: how a sample is taken, how a DNA profile is obtained and the uses that a DNA profile is put to.

9. The process includes three different stakeholders. These are the:

— Law enforcement authority—usually a police force in England/Wales (LEA);

— Forensic science provider (FSP); and

— National Policing Improvement Agency (NPIA).

10. This section concentrates upon the role of the FSP in this process and only gives brief details of the LEA and NPIA's roles.

The Law Enforcement Agency (LEA)

11. The LEA takes a DNA sample from an arrestee in accordance with the Police and Criminal Evidence Act (PACE) 1984. The sample (referred to as a "PACE" sample) is taken irrespective of whether the case involves DNA evidence. The main purpose of taking a DNA sample when the case does not involve DNA evidence is to facilitate a speculative search of the NDNAD to ascertain whether or not the arrestee may have been involved in an undetected offence.

12. When a subject is arrested, the LEA checks the Police National Computer (PNC) to see if the individual's DNA has been taken previously. If it has, the LEA may choose not to re-sample the person unless the case involves DNA comparisons.

13. A PACE kit is used to obtain the DNA sample and each has a unique barcode associated with it. The process is as follows:

— Two preformed swabs are scraped against the arrestee's cheek lining to remove cells.

— The swabs are placed into two barcoded tubes provided and are referred to as "buccal scrapes" (known as A and B scrapes).

— A kit datacard is completed by the LEA and includes personal details of the arrestee.

— The buccal scrapes and the datacard are sealed inside a tamper evident bag.

14. In cases involving DNA comparisons, the LEA may need to take DNA reference samples from other persons to be eliminated (complainants, witnesses, family members). Such samples are referred to as volunteer samples and can only be taken with written consent. They are not automatically loaded to the NDNAD (most are never loaded). Further written consent from the subject would be required to load their profile onto the NDNAD.

The Forensic Science Provider (FSP)

15. The testing of PACE kits is contracted to a FSP. The FSP must be an accredited supplier of the NDNAD and be an approved supplier under the National Forensic Framework Agreement (NFFA).

16. The FSP receives the DNA kits usually as part of a consignment containing many such kits from arrestees and volunteers. The tamper evident bag is opened and one of the scrapes (the A scrape) is removed for testing. The tamper evident bag (containing the remaining B scrape and the data card) are placed into long term frozen storage.

17. The outcome of the process is a DNA profile which is an alphanumeric string identified only by the kit barcode. This is a relatively rapid process and profiles are obtained within a matter of days from submission to the FSP.

18. The DNA profile is transmitted electronically by the FSP to the NDNAD.

19. In addition to loading on the NDNAD, the DNA profiles from both PACE and volunteer kits are routinely provided to scientists (within and across FSPs) to facilitate comparisons of DNA profiles in a specific case for corroborative and investigative purposes.

20. It is normal practice for the scientist to print a copy of the DNA profile and include it in the case file specific to that investigation for future reference or comparisons. Although the DNA profiles are identified only by a barcode, other paperwork present in the case file provided by the LEA will identify the subject to whom that barcode relates.

21. The case files are a legal necessity and the scientist will rely on those records for testifying in court and for disclosure purposes. They are kept for the period of time required according to ACPO's Memorandum of Understanding (up to 30 years dependent upon the offence) in case there is an Appeal or a notification of a review by the Criminal Case Review Commission (CCRC).

22. The FSP keeps or generates the following materials as part of the DNA analysis process:

— Two cheek swabs (buccal scrapes—known as A & B)—one is used to generate the profile (A) and the second is stored in a freezer (B);

— Kit datacard (includes the unique bar code and the subject's name, date of birth and sex together with details of the arresting officer);

— Actual DNA profile submitted to the NDNAD;

— Interim electronic data which is created during the sample analysis (amplification and PCR stages specifically);

— Records held in case files.

23. Potentially, DNA profiles are held in two separate places at the end of the DNA analysis process:

— As a record on the NDNAD—an electronically searchable repository held by the NPIA and;

— In operational case files held by individual FSPs which though individually retrievable, DNA profiles held in these files are not searchable.

24. The following table outlines which of the items outlined in 22 and 23 have personal data linked to them and the potential to delete or sever these:

Item	*Description*	*Includes Personal Data*	*Linked to personal data*	*Possible to destroy*	*Comment*
"A" scrape	Cheek swab used to generate the DNA profile	No	Yes via bar code to kit datacard	Physically destroyed during processing	
"B" scrape	Cheek swab retained and stored in freezers. Potential for retest should the case be subject to criminal review or upgrade samples due to the introduction of new technology	No	Yes via bar code to kit datacard	Yes	
Kit datacard	Completed by the officer when taking the sample—includes unique bar code, name, date of birth and sex	Yes	Not applicable	Yes	Destroying the kit datacard severs the links to A and B scrape, interim electronic data and DNA profile

Item	*Description*	*Includes Personal Data*	*Linked to personal data*	*Possible to destroy*	*Comment*
DNA Profile	Alphanumeric string of numbers loaded to the NDNAD	No	Yes via bar code to kit datacard	Yes	Destroying the kit datacard severs the links to A and B scrape, interim electronic data and DNA profile
Interim electronic data	Electronic files generated throughout the profiling process	No	Yes via bar code to kit datacard	No	Destroying the kit datacard severs the links to A and B scrape, interim electronic data and DNA profile
Records held in case files	Printed copy of anonymous profile	No	Yes, via bar code to a copy of either the kit datacard or information provided by the LEA	Yes	

The NPIA

25. The NPIA is the custodian of the NDNAD. It is responsible for the running and maintenance of the hardware, software and data that comprises the NDNAD, including the administration of computer records and the handling of enquiries from both LEAs and FSPs.

26. The NDNAD is linked to the PNC and updates the DNA status on an individual's record when the DNA profile is loaded to the NDNAD. The status shown on the PNC is one of the following:

— DNA taken—awaiting profiling;

— DNA profiled—confirm loading to the NDNAD;

— DNA confirmed—person is convicted; and

— DNA destroyed—the profile is deleted (according to the Exceptional Case Procedure).

WHAT IS MEANT BY DESTRUCTION OF DNA PROFILES (S 63D)?

DNA profiles

27. As it stands, the Bill does not provide a clear definition of what is meant by the destruction of a DNA profile, this could mean deleting a single DNA profile from the NDNAD, or it could mean deleting the DNA profile and all associated materials held by FSPs. In addition, it is not clear if the legislation is applicable to FSPs as well as the police.

28. As outlined in paragraph 22, the FSP keeps or generates a number of materials throughout the process. It is possible to destroy the cheek swabs, the kit datacard and the actual profile submitted to the National DNA Database with the appropriate procedures in place.

29. However, both the interim electronic data and the printed copies of DNA profiles associated with case files are not easily destroyed. The reasons for this are outlined in paragraphs 30–40.

Destruction of DNA profiles held in casefiles

30. In its current form, it is not clear if the legislation is applicable to the DNA profiles which are held in the FSP's case files. The actual DNA profile held within the case file does not include any information that would identify an individual but it can be linked to other details in the case file from which it would be possible to do so.

31. If s 63P(2) does extend to FSPs and to hard copies of the DNA profiles held in case files, the destruction of the records will be a complex, time-consuming and expensive process. It will also need to ensure that an accurate audit trail is maintained.

32. There is no automated system to interrogate the case file system to identify the specific files which hold a subject's DNA profile which would require additional resource within FSPs to perform this.

33. The removal of the paper copies from case files would mean that the integrity of the file has been compromised. In addition, it conflicts with ACPO's Memorandum of Understanding and the CPS' guidance for experts to record, retain and reveal.

34. It is important to note that the majority of these DNA profiles are held within case files belong to volunteers who have given their express permission for their DNA profile to be held for the purpose of a specific investigation. Most of these are never loaded to the NDNAD.

Destruction of interim electronic data

35. In s63P(2), the Bill states that "no copy may be retained by police except in a form which does not include information which identifies the person to whom the DNA profile relates." Clarification is required to understand whether this section extends to the FSPs as well as to the police.

36. If this section does apply to FSPs as well as police, the interim electronic data complies with the requirements as it completely anonymous and is not linked to any personal information about the individual following the destruction of the DNA profile from the NDNAD and the kit datacard (see para 24). In addition, it would not be searchable.

37. If this clause does not extend to FSPs, it is not possible to destroy the interim electronic data relating to an individual DNA profile for the reasons outlined in paragraphs 38–40.

38. Interim electronic data is generated as part of the DNA analysis process. PACE samples are processed in batches and there are 96 samples per batch—80 of which are live DNA samples and 16 are quality controls. This is standard across all FSPs and not unique to the FSS.

39. The interim electronic data for a single sample is inextricably linked to the other samples processed as part of the batch. Effectively, it is like a negative generated from traditional photography processes. It is not possible to remove one person from the negative without destroying the entire negative.

40. Deleting the interim electronic data of all samples within the batch has potential to create quality and continuity issues at a later stage should, for example, one of the other samples becomes subject to a criminal trial.

Resource Implications of the Destruction of DNA Records (S 63D)

Destruction of legacy profiles

41. In its current form, it appears that the Bill will be applied retrospectively to legacy profiles (s 63D). This section assumes that destruction includes the profile, the A and B scrapes and the kit datacard.

42. The FSS estimates that it holds over 650,000 (as of 2008) samples relating to those who have been arrested, their profile loaded to the NDNAD, but not convicted. The FSS holds the largest proportion of such items as it has been the main provider since the development of the NDNAD in 1995.

43. It is estimated that the destruction of these samples (excluding the interim electronic data and paper copies in case files) would cost several million pounds.

44. This estimate includes the production of an audit trail to support the deletion of each item (eg the date of the deletion, who deleted the profiles, the witness and how it was deleted).

45. If the Bill requires the destruction of the interim electronic data and paper copies in case files (paragraphs 27–40), considerable investment would be required by the FSP. This would be needed to develop and implement the new technology required to delete individual electronic files from the batches as well as staffing costs to locate DNA profiles in the case files.

Destruction of profiles in the future

46. Currently, only a few hundred DNA records are deleted from the NDNAD each year through the Exceptional Case Procedure. If the provisions are implemented as outlined in the Bill, it is anticipated that the number of DNA profiles subject to deletion procedure will increase significantly to either tens or hundreds of thousand each year.

47. This scale of increase would mean that FSPs would have to allocate additional resource to administrate the deletion of profiles as required.

48. In addition to the costs associated with the destruction of legacy profiles (paragraph 43), an annual cost would be incurred for the deletion of profiles added to the NDNAD in the future. This cost is estimated to be in the region of several hundred thousand pounds.

49. An effective mechanism is required to ensure that all parties (LEA, FSP and NPIA) are informed of the outcome of a case in a timely manner to ensure that the deletion takes place at all necessary points.

50. If this does not happen, there are potential issues for the Court. For example, if a profile is not deleted when it should be and a match on the NDNAD is generated against it at a later date. The Court is left with a dilemma about the admissibility of the DNA profile. Examples of this have been seen previously: AGs Ref No. 3 of 1999[87] and *R v Weir*.[88]

[87] Attorney General's Reference No 3 of 1999 [2001] HRLR 16.
[88] *R v Weir* [2001] 2 Cr App R 9.

Potential Consequences of the Destruction of DNA Records (S 63D)

Record keeping

51. If the record of a profile is to be removed from the case files, there are potential issues related to the integrity of the case files and the provision of adequate audit trails if the case is subject to a criminal trial, a future appeal or a cold case review.

52. As part of the judicial process, defence scientists will be employed to scrutinise the case files. If the record is deleted, they would not be able to check that the individual had been excluded based on the profile obtained at the time and may request an additional sample is taken for re-testing. Under these circumstances, the person is not obliged to provide a DNA sample.

Cold case reviews

53. The FSS has worked with more than 38 police forces in their reviews of historic offences and has helped to secure convictions in over 220 cases. Scientists at the FSS worked on over 600 cold case reviews between January–June 2010.

54. The destruction of DNA profiles following acquittal or after timelines suggested in the Bill mean that some cold cases may not have been solved.

Potential Consequences of the Destruction of Samples after Preparation of the DNA Profile (S 63Q)

55. The immediate destruction of samples provided after the preparation of the DNA profile could potentially compromise the investigative capability of the police and have serious repercussions for the conduct of criminal trials.

56. Where a volunteer has provided a sample to support an investigation, but not given permission to load their profile to the NDNAD, and the samples have been destroyed after the preparation of the profile. The samples would not be available:

— additional testing potentially required during the life of the case;

— as a court exhibit for re-test by the defence if required;

— to demonstrate continuity throughout the investigation; and

— for upgrade if new technology is implemented and the case is reviewed in future.

57. The immediate destruction of samples would destroy all evidence of continuity for the specific case. For example, the FSS currently receives over 1,000 requests per month for datacards to demonstrate continuity of evidence to the defence. It is likely that some of these datacards will be deleted as part of the proposals and would not be available for the defence or to be inspected in the future. This could potentially allow defence teams to question the continuity of the case and require further re-testing to re-eliminate the person for defence purposes.

58. In a small number of cases, new DNA technology may be used to upgrade a reference profile held as part of the case file at a later date in the investigation to eliminate the individual (for example, as has been seen with the upgrade of SGM profiles held on the NDNAD to SGM plus). If the samples have been destroyed, this would not be possible and the individual would have to be retraced, a new sample obtained and retested. This would result in additional costs and time to the police investigation.

59. It is anticipated that the number of cases falling into the situation described in paragraph 52 will increase with the forthcoming introduction of new DNA technology (NGM). The European scientific community has been developing NGM which includes additional DNA markers to mitigate the risk of false (adventitious) matches. There is now a consensus across Europe about the use of the additional markers and the UK will be expected to embrace this technology to remain in step with Europe. The introduction of this technology is already underway.

60. The section states "nothing in this section prevents a speculative search, in relation to samples to which this section applies, from being carried out . . ." The meaning of the term speculative search needs to be clearly defined. Across the industry, the term a speculative search refers to a one off search of the NDNAD as opposed to a profile being loaded to the NDNAD. However, it is unclear whether these proposals authorise the temporary addition of a PACE sample to the NDNAD if notification of the outcome is received after which it may (or may not) be deleted.

About the Forensic Science Service

61. The FSS is the UK's leading forensic science provider with approximately 60% of the market. It provides the broadest range of forensic techniques from the crime scene to court room. The company is organised into national crime streams dealing with violent and volume crime, drugs, sexual offences, DNA. Between April 2009 and April 2010, the FSS handled over 90,000 cases.

62. The FSS has pioneered every major breakthrough in the field of DNA analysis worldwide. It developed and implemented the world's first NDNAD. It was responsible for the management of the NDNAD, under license to the Home Office, until November 2009 when the custodianship transferred to the National Policing Improvement Agency (NPIA).

62. The FSS is a Government-owned company. In December 2010, the Minister for Crime Prevention announced the Government's decision to close the FSS by March 2012.

April 2011

Memorandum submitted by Ms Edye (PF 49)

I understand that you are now considering the implementation to ban clamping. I fully support this decision, as there are so many unscrupulous operators within the industry.

I also believe that there is very few reasons why a vehicle should be clamped. Penalty notices have been extremely effective in deterring illegal parking. I feel the power to clamp should only be given to the Police. Disabling a vehicle can cause so much heartache and suffering, for often a simple oversight.

I appreciate that you may receive numerous correspondence in favour of retaining clamping but I feel passionately that clamping should not be seen as a "cash cow" and should be a tool for the Police if needed.

April 2011

Memorandum submitted by the Deputy Chief Constable of Northamptonshire Police (PF 50)

1. I write to you as Chair of the ACPO—Covert Investigation (Legislation and Guidance) Peer Review Group (PRG). This committee was constituted as a result of the review of the Regulation of Investigatory Powers Act 2000 (RIPA) in 2004. The Group draws on the practical experience of all Covert Authority Bureaux and Authorising Officers within the Police Service and wider Law Enforcement Agencies (LEAs) through a national consultative structure. The PRG also draws expert advice form the National Police Improvement Agency (NPIA) Covert Advice Team and advises a Steering Group chaired by Trevor Pearce—Director of SOCA, on the technical implementation of covert legislation. I also chair the RIPA Strategic Liaison Group, which brings together experts on RIPA from the Home Office as well as representatives from the Office of the Surveillance Commissioners (OSC) and the Interception of Communications Commissioners Office (IOCCO).

2. My written evidence concerns two aspects of the Bill only—namely part two, chapter one—Regulation of CCTV and other surveillance camera technology and the appointment of a Surveillance Camera Commissioner.

3. Section 29 stipulates the preparation of a code of practice. The accompanying consultation on the code of practice relating to surveillance cameras makes it clear that the code will also cover the use of Automatic Number Plate Reading (ANPR). The consultation document states in its opening paragraphs that it is concerned with the overt use of systems such as CCTV and ANPR in public or semi public places where people can generally either see a camera or are informed about its presence. It does not cover covert surveillance techniques which are legislated for through the Regulation Of Investigatory Powers Act (RIPA) 2000.

4. ACPO welcome the intended demarcation between the use of overt CCTV linked to ANPR regulated by the proposed CCTV commissioner and conventional surveillance regulated by the Surveillance Commissioner. At the present time there is a divergence of view between ACPO and Surveillance Commissioners over the application of the Regulation of Investigatory Powers Act 2000 to this policing tactic.

5. The ANPR database is built using a range of overt CCTV cameras. Some cameras are specifically designed to solely capture number plates. Other installations include simple overt town centre CCTV cameras panned and zoomed to capture number plates when not in use for other purposes. According to how the cameras are zoomed they may also take pictures of the whole car and occasionally front seat passengers. Any views through the windscreen are momentary and haphazard. The view depends on the depression angle of the camera, reflections, state of the windscreen, use of sun-visors, height of the occupants, type of vehicle or obscurity caused by other traffic. Police cannot predict the type of CCTV which will capture the number plate read as it is of course dependent on where the vehicle goes.

6. The product of CCTV has for many years been regulated by the Information Commissioner who considers the images to be data, thus falling under the Data Protection Act. There are various principles within the Data Protection Act, chief of which are to keep the data secure and to only use it for certain purposes. One specific purpose is to prevent and detect crime. From this it can be seen that the use of ANPR data derived from CCTV presently falls to the regulation of the Information Commissioner.

7. The OSC have also taken an increasing interest in ANPR technology. Their current advice on this subject is as follows:

7.1 "Tracking the movements of a specific vehicle or person over a protracted period or distance, when no action is taken to stop the vehicle or individual when first sighted, is capable of being directed surveillance".

7.2 "The private life of a car driver is not interfered with because the registration number of his vehicle is recorded by ANPR while he is travelling on a public road. That is because the registration plate is a publicly displayed object. But it is not adequate to say that this is so because the occupants of the car are in a public place: they are but they are ignorant of the technology which is capable of identifying them and their movements or the extent to which the data may be retained and used. Because ANPR is now capable of producing clear images of the occupants of a car, as well as of its registration number, private life may be interfered with. If the occupant is in a private vehicle it may constitute intrusive surveillance if data that is recorded for potential later use is capable of identifying the occupants".

7.3 "Tracking the movements of a specific vehicle or person (persistently or intermittently over a protracted period or distance, when no action is taken to stop the vehicle or individual when first sighted, is capable of being directed surveillance and an authorisation should be obtained. If details of persons or vehicles are placed on a list requiring that an investigating officer be notified or a record is made of the location or movements of the person or vehicle or that vehicle or person is subjected to focused monitoring to build up a picture of the movements of the vehicle or person an authorisation would be expected".

7.4 This advice encourages the Police and other Law Enforcement Agencies to acquire a Directed Surveillance Authority under RIPA when intending to research the ANPR database to obtain a list of camera sites, which a specific car may pass, as part of a proactive intelligence gathering operation.

8. Finally the OSC give this advice on the review of historical data (which is applicable to the ANPR database.)

8.1 "Sections 48(2) of RIPA and s31(2) of RIP(S)A define surveillance as including 'monitoring, observing or listening' which all denote present activity; but present monitoring could be of past events. Pending judicial decision on this difficult point the Commissioner's tentative view is that if there is a systematic trawl through recorded data (sometimes referred to as data-mining) of the movements of a particular individual with a view to establishing, for example, a lifestyle, pattern or relationships, it is processing personal data and therefore capable of being directed surveillance if it contributes to a planned operation or focused research for which the information was not originally obtained".

8.2 "The checking of CCTV cameras or databases simply to establish events leading to an incident or crime is not usually directed surveillance; nor is a general analysis of data by intelligence staffs for predictive purposes (eg identifying crime hotspots or analysing trends.) But research or analysis which is part of a focused monitoring or analysis of an individual or group of individuals is capable of being directed surveillance and authorisation may be considered appropriate".

9. The ACPO PRG would suggest that:

9.1 No private information (within the meaning of Article 8 ECHR) is acquired by the acquisition of a series of number plates.

9.2 Other databases such as police intelligence or driver vehicle licensing need to be used to associate the number plate with a subject.

9.3 Such databases are already subject to the Data Protection Act.

9.4 The use of such data is currently within the purview of the Information Commissioner and covered by the Data Protection Principles.

9.5 The most important principle in this context is the accumulated data must be kept secure but can be used to prevent or detect crime.

9.6 The use of ANPR cannot be described as surveillance in any ordinary sense of the word as the logging of vehicle numbers is haphazard and could not be used to plot a route taken by a subject. Its use to accurately confirm who was travelling in the vehicle at any one time is by no means assured.

9.7 The requirement to use a directed surveillance authority or worse an intrusive surveillance authority under RIPA, to access the ANPR database is overly bureaucratic and will severely obstruct the use of a legitimate policing tool whilst providing no additional safeguards.

9.8 The Police service would welcome a code, which confirms that the use of this tool does not acquire private information and thus sits outside the scope of RIPA.

10. It can be seen that Police and LEAs use of CCTV and ANPR now exists in a confused regulatory landscape. The two existing laws, codes, advice and guidance—(RIPA & DPA) already overlap and are now to be joined by a third law, code, commissioner and regulatory framework.

11. The PRG are completely content for the Government to impose a regulatory regime, which balances intrusion into a citizen's ECHR Article 8 rights against societies right to be protected from crime. Any oversight regime however must recognise and resource the bureaucratic burden which is imposed as a

consequence. The RIPA review of 2004 estimated that there were 270 police officers and 165 Police staff permanently employed on the administration and authorisation of RIPA at a cost at that time of £40 million. During this period of austerity we are anxious not to add to this sum unnecessarily.

11.1 The PRG would ask for the law to provide absolute clarity between the responsibilities of the regulators mentioned OR as all three regulators are concerned with the State's engagement with ECHR that consideration be given to their simple amalgamation into a Privacy Commission in the interests of efficiency.

April 2011

Memorandum submitted by the Local Government Group (PF 51)

About the Local Government Group

1. The Local Government Group (LG Group) is made up of six organisations that work together to support, promote and improve local government. The six organisations are:

(a) The Local Government Association (LGA).

(b) Local Government Regulation.

(c) Local Government Improvement and Development.

(d) Local Government Employers.

(e) Local Government Leadership.

(f) Local Partnerships.

2. The LGA is a cross-party and politically led voluntary membership body. Our 422 member authorities cover every part of England and Wales, and together they represent over 50 million people, spending around £113 billion a year on local services.

About This Submission

3. The LG Group is submitting this written evidence to the Public Bill Committee, in conjunction with the Welsh Local Government Association (WLGA), and the Convention of Scottish Local Authorities (COSLA).

Summary of Evidence

4. The LG Group welcomes this opportunity to comment on the content of the Protection of Freedoms Bill, and highlight issues of concern to members of the Public Bill Committee assigned with the task of scrutinising the draft legislation.

5. The Bill covers a broad range of local government activity and will therefore have a significant impact on local authorities and the vital role they play in keeping local communities safe. The LG Group and the WLGA are therefore keen to ensure that the proposals within the Bill achieve the government's objectives without imposing new burdens on councils or unintentionally restricting councils' abilities to protect their communities and the individuals living in them. The LG Group also supports the localist principles underlying much of the Bill's provisions.

6. We are keen to ensure that CCTV regulation does not overburden councils and we believe that the new Code of Practice for surveillance camera systems could be a useful resource if it is genuinely a single source of guidance and good practice. We are concerned however that new data burdens are not placed on councils, and are also concerned at the potential for confusion from having both the Surveillance Camera Commissioner and Information Commissioner regulating CCTV. It is also important to remember that at most councils operate 3.3% of all CCTV in England and Wales (see paragraph 16). In Scotland, CCTV provision is predominantly managed by local authorities.

7. The LG Group believes councils should only use covert surveillance as a last resort, and in a way that ensures public confidence. We do not believe however that councils have used the Regulation of Investigatory Powers Act (RIPA) to snoop. Rather using surveillance is often the only way in which councils can ensure criminals are brought to justice. Whilst the LG Group is not therefore concerned at the provision to have a magistrate sign off the use of RIPA powers, it is important that council officers are able to apply to carry out surveillance as they can do when applying for a warrant, rather than someone who is legally qualified having to make the application.

8. Councils' powers of entry are used by councils to protect local residents and businesses from harm across a wide range of statutory responsibilities. Local authorities are unable to enter a private residence without a court order or the owners' permission and only routinely have the power to enter business premises to collect evidence. We feel that any proposed repeals, additional safeguards or a removal of their existing powers of entry could mean that councils were not able to fully protect their communities and perform their enforcement role.

9. We are seeking clarification about the provisions in the Bill restricting wheel clamping and whether this will impact on councils' ability to clamp drivers parked on council housing estates. We also have concerns about the increase in Criminal Records Bureau fees, and the fact the Bill does not appear to address inconsistencies in the legislation around the publication and re-use of data.

10. The LG Group is also urging Government and Parliament to use the Protection of Freedoms Bill to address a gap in the regulatory framework, to ensure enhanced CRB checks are completed for all taxi and private hire vehicle (PHV) drivers on grounds of public safety, something fully supported by the recognised taxi and PHV trade associations.

CCTV Regulation

11. In the LG Group's view CCTV is an important tool in tackling crime. Use of CCTV evidence by the police is common place in establishing the course of events, identifying suspects and eliminating people from their inquiries, as well as being used in court. There have been a number of high profile cases where CCTV has been instrumental in bringing criminals to justice including in the Jamie Bulger case, the 21 July 2005 bombings in London and the murder of Ben Kinsella. Further instances where CCTV has been used to tackle crime are set out in the appendix.

12. The LG Group is not aware of any specific study into the cost effectiveness of CCTV, but there are a number of studies into how useful it is. A Scotland Yard study from 2008[89] revealed that in 90 murder cases over a one year period CCTV was used in 86 investigations, and helped to solve 65 cases as it either captured the murder on film or tracked the movements of the suspects before or after the attack. The usefulness of CCTV is also supported by research[90] conducted by the Public CCTV Managers Association between January and April 2010 with 10 councils which showed that on average over the period of the survey CCTV evidence was used in the investigation of 100 offences per council, and the footage identified the offender or suspect in 59 offences per council. Overall the decision whether to use CCTV is a matter for councils, their partners such as the police and local people to decide if it is the most appropriate measure to reduce crime.

13. There is already a substantial amount of good practice amongst local authorities around the use of CCTV. However, the LG Group believes that the new statutory Code of Practice introduced in the bill for surveillance camera systems could be a useful resource for all authorities if the Code is genuinely a single source of guidance and good practice.

14. It is however, essential that any new data collection burdens on councils are avoided. We are also concerned that some of the issues the Code seeks to address, such as whether it is advisable to move to common technical standards for cameras, have already been considered as part of the work on the 2007 National CCTV Strategy and valuable effort will end up being duplicated.

15. Though there is no bespoke regulatory framework for surveillance cameras, local authority CCTV is already regulated by the Data Protection Act and the Information Commissioner. The Information Commissioner produced a comprehensive code on using CCTV in 2008. The work of the two commissioners will need to be carefully co-ordinated if councils and the police are not to get contradictory rulings on what procedures and guidance they should follow.

16. Council operated CCTV accounts for only a small part of the total number of surveillance cameras in operation in England and Wales. The recent research undertaken by the Association of Chief Police Officers (ACPO) and published at the start of March 2011 estimated there are 1.85 million cameras focused on public spaces. The same study estimates that 33,500 CCTV cameras are operated by local authorities. Even if councils operate the number of cameras organisations like Big Brother Watch assert they do, at the most council operated CCTV accounts for 3.3% of all cameras. The LG Group therefore believes that regulation should be brought in to oversee those CCTV cameras which are used by private sector operators to observe public space.

17. In Scotland, where local authorities manage most CCTV provision, a new National Users' Group on CCTV has been established, to consider best value, outcomes and performance. These Scottish dimensions need to be factored in at a UK level.

Regulation of Investigatory Powers Act (RIPA)

18. The LG Group believes that councils should only be using covert surveillance as a last resort, and in a way that ensures public confidence. We also believe that the majority of councils have used covert surveillance responsibly, and have not used it to snoop. Rather it is sometimes the only way that they can protect public safety and ensure criminals are bought to justice. Any usage is always recorded by the council involved. Councils are already subject to both internal and external oversight, including being inspected by the Surveillance Commissioner and Interception Commissioner's offices that provide an independent scrutiny role, and report direct to the Prime Minister each year.

[89] *Daily Telegraph*, 1 January 2009.
[90] Public Space CCTV Evaluation Pilot.

19. RIPA provides safeguards to ensure that where councils in England and Wales (Scotland having its own legislation covering this use of surveillance) undertake directed surveillance or use covert human intelligence sources (CHIS), their usage is always recorded and fully transparent. RIPA also provides similar safeguards in England, Wales and Scotland when councils access communications data. Furthermore, RIPA regulates councils in a manner that is compatible with the European Convention of Human Rights and Fundamental Freedoms, which is incorporated into domestic law by the Human Rights Act 1998. Councils cannot intercept communications data, meaning they cannot tap or listen to telephone conversations or read emails or mail.

20. The government has indicated that councils (in England and Wales) will only be able to apply for authority to use surveillance where the offence meets a serious crime definition. The government's intention is that an offence will have to carry a sentence of six months imprisonment or more for it to be defined as a serious crime. This change will mean councils will no longer be able to use surveillance to tackle some issues, such as littering and dog fouling, which have attracted public concern over the last few years. The LG Group understands these concerns and the government's desire to respond to them, and there are other means by which councils can address these problems.

21. The one area where meeting a serious crime definition would have posed significant problems for councils would be in using test purchasing to tackle sales of alcohol and tobacco to children. We are pleased therefore that the government has agreed to exempt offences related to sales of alcohol and tobacco to juveniles from having to meet the serious crime threshold.

22. The surveillance that is used will ensure that councils are putting more benefits cheats behind bars, anti-social behaviour rates go down and would-be fraudsters will think twice about cheating the system. Surveillance also helps councils to protect people from crimes such as illegal lending by loan sharks, stopping the importation of illegal and dangerous toys that could kill children, crack down on child labour gangs and prevent rotten meat from being sold in markets and endangering public health.

23. While the LG Group does not object to the government's proposal that councils (in England and Wales) will have to apply to magistrates courts to authorise the use of covert surveillance techniques, we believe the following issues need to be addressed:

— An officer of the council, rather than someone legally qualified, must be able to apply to the court to authorise the activity, as council officers generally can do when applying for warrants. If this is not the case this will impose an additional cost on councils and the officers using covert surveillance already have the expertise and knowledge of the legislation to be able to make the application appropriately;

— There should be an allowance for an immediate response in the case of any urgent issue; and

— Where appropriate applications by councils should be heard in private to prevent on-going operations being undermined by reporting in the media.

24. We assume that the current monitoring requirements placed on councils (in England and Wales) under the Home Office Code of Practice would be discontinued or placed instead upon the Magistrates' Court.

25. Due to the two pieces of legislation for regulating the use of surveillance in Scotland, which includes RIPA and the Regulation of Investigatory Powers (Scotland) Act (RIPSA), changes in the Bill will only apply to the accessing of communications data in Scotland by councils. This will mean that to access communications data Scottish councils will have to apply for the Sheriff for authority to do so, but will not have to do so to use directed surveillance or CHIS. COSLA believes the creation of a dual system like this is unhelpful and the changes in legislation should not apply in Scotland.

Powers of Entry

26. Councils use powers of entry to protect the public across a wide range of statutory activities including child protection, trading standards, environmental health, enviro-crime, housing, licensing, planning, benefit fraud and animal health. Powers of entry are essential in order for councils to carry out their statutory responsibilities and to seek evidence to prosecute offenders, thereby protecting individuals, local communities and businesses from harm.

27. Much of the existing legislation already contains safeguards to ensure that the existing powers of entry are not used inappropriately. For example, where premises are used solely as a private dwelling place, council officers can only enter these domestic premises with the consent of the occupier, or when a warrant to enter has been obtained from a magistrate. Council officers do not currently have, and have never had, a routine power of entry into a premise used solely as a private dwelling place.

28. Local authorities only routinely have the power to enter business premises to collect evidence. Without such a power of entry onto business premises council officers would not be able to carry out their basic day to day functions of protecting the public and their local communities. Officers would also not be able to act in a swift manner where necessary.

29. Powers of entry include for example the ability for an authorised officer of a food authority (or council) under the Food Safety Act 1990, at all reasonable times, to inspect any food intended for human consumption which has been sold or is offered or exposed for sale; or is in the possession of any person for

the purpose of sale or of preparation for sale; where, on such an inspection, it appears to the authorised officer that any food fails to comply with food safety requirements. This power of entry is essential to ensure that public health is protected and the public do not suffer from food poisoning.

30. Of those powers proposed for revocation under Schedule 2 of the Bill, the LG Group believes the powers under the Older Cattle (Disposal) (England) Regulations 2005 and those under the Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006, should be retained. Details on these regulations, and comments on others detailed under Schedule 2, can be found in Appendix 4.

31. As and when the Secretary of State considers repealing, revoking or amending any power of entry, local government must be involved in the considerations and consulted adequately to ensure informed decisions are made.

Wheel Clamping

32. Councils are not seeking to take on responsibility for running private car parks, or license publicly available private car parks, or for additional powers in relation to clamping. However, we have concerns that the Bill as drafted will prevent councils from clamping vehicles parked on their own housing estates, which on estates close to stations that suffer from commuter parking problems could make enforcement of parking restrictions more difficult.

33. Clause 54 of the Bill seeks to make it an offence to immobilise, move or restrict the movement of a vehicle "without lawful authority" on public or private land. Councils will, in our view, retain the ability to clamp vehicles on the public highway or in their own car parks due to existing legal powers which confer lawful authority on them to do so.

34. We are concerned though that councils will not be able to clamp vehicles parked on private land, in particular on their own housing estates. Currently councils can clamp drivers parked on council housing estates as the drivers are assumed to have agreed to being clamped when they park there. The Bill though states that this agreement can no longer be assumed. This would suggest councils could no longer clamp or tow away any vehicle parked on a housing estate or private land. From the explanatory notes to the Bill it appears the only way a vehicle parked on a housing estate could have its movement restricted would be by the use of a barrier to block the vehicle from leaving. The actual wording of Clause 54 (3) suggests however that it would be lawful to clamp a vehicle on private property where a barrier is present. It would be helpful if the government could clarify how they envisage Clause 54 operating in practice.

35. If councils are to be prohibited from clamping vehicles on their own housing estates then the LG Group would like to see the regulations the Secretary of State can make under clause 55 to include provision for councils to remove and dispose of illegally, obstructively and dangerously parked vehicles on their own housing estates. An alternative would be to allow effective enforcement of parking charges. However it is not clear whether the provisions in Clause 56 and Schedule 4 would allow councils to recover unpaid parking fees without having to go through the costly and time consuming process of the small claims court. Again government clarification of how they see these provisions working would be helpful.

Release and Publication of Datasets held by Public Authorities

36. The LG Group supports the principle of greater transparency in the public sector, but does not believe that this should place an additional burden on local government. We also believe that a clear legislative framework around the publishing of data is needed.

37. There are already inconsistencies in the law on publishing data such as whether transparency is more important than being able to charge for information, and also inconsistencies between national and European regulations. The provisions in the Bill will not, in our view, resolve these inconsistencies and we understand a number of government departments and non-departmental public bodies have similar concerns. We are of the view that the government needs to start discussing with all interested parties how the Bill can address these inconsistencies, and simplify legislation in this area, rather than add to its complexity.

Vetting and Barring Scheme/Criminal Records Bureau

38. The Group believes the Government's proposals to be broadly helpful. Although they potentially increase the risk by reducing the amount of vetting, we believe it to be a positive move if this means everyone is more individually vigilant rather than relying on vetting.

39. The LG Group believes the administration of criminal records could certainly be made more straightforward, efficient and cost-effective. We agree that matters could be simplified and made more efficient with one comprehensive system and hope that this is the result of the draft legislation proposed.

40. It is concerning in the current economic climate that the merging of the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) to form a streamlined new body is being funded by an increase in CRB applications—for instance enhanced check applications will from 6 April 2011 increase from £36 to £44, an increase of 22%. This represents further financial pressure on already stretched council budgets.

Enhanced Criminal Record Bureau Checks for Taxi and PHV Drivers

41. Despite the increase in cost detailed above, the LG Group would like to see the Protection of Freedoms Bill used to address a gap in the regulatory framework, to ensure enhanced CRB checks are completed for all taxi and private hire vehicle (PHV) drivers.

42. The CRB recently notified councils that Enhanced CRB disclosure should only be required for drivers who transport children and vulnerable adults as part of a contract to or from schools or hospitals (which constitutes "regulated activity"). The Group believes that Enhanced CRB disclosure for all taxi and PHV drivers is essential on grounds of public safety.

43. Enhanced CRB disclosure contains additional information to criminal convictions which is important in determining whether an applicant can be considered "fit and proper" to transport vulnerable persons. This includes information on alleged serious sexual assaults, rapes, terrorist activities, kidnapping, organised crime and drug dealing. Often there are instances where an individual has not been convicted of an offence but there are multiple accusations which are of sufficient concern to investigate further. There are often drivers on bail or facing charges related to offences that they have not notified councils about. Without this information which is presented as part of Enhanced CRB disclosure, the local council would not find out about the subsequent convictions until the standard CRB is renewed (potentially three years).

44. The recent cases of John Worboys, Derrick Bird and Christopher Halliwell highlight the position of trust a taxi and PHV driver has, as well as the vulnerability of many passengers. The recognised taxi and PHV trade associations are fully supportive of Enhanced CRB disclosure for all drivers. The LG Group therefore urges Government to legislate to allow councils to request Enhanced CRB disclosure from all taxi and PHV drivers.

45. Relevant case studies have been included in Appendix 3.

APPENDIX 1

CCTV Case Studies

When the LG Group gave oral evidence to the Protection of Freedoms Bill Committee on Thursday 24 March 2011, the Chairman requested that the Group include evidence within our written submission of the positive use and effects of CCTV. As a result, please find below a selection of recent examples covered by the media highlighting multiple instances of CCTV being used successfully[91] to protect the public.

March 2011

CCTV footage of violence in Taunton
http://www.somersetcountygazette.co.uk/news/8909499.David_Black_jailed_CCTV_footage_of_violence_in_Taunton/

Attack Caught On Camera—SKDC CCTV team assist police
http://www.southkesteven.gov.uk/index.aspx?articleid=3322&formid=10

Police officer convicted of assaulting teenager
http://www.bbc.co.uk/news/uk-england-london-12789689

February 2011

Gang of teenagers caught on CCTV tormenting Frodsham pensioners
http://www.chesterchronicle.co.uk/chester-news/featured-stories/2011/02/17/gang-of-teenagers-caught-on-cctv-tormenting-frodsham-pensioners-59067-28183950/

Man who pushed bin on Hampshire railway line is jailed
http://www.bbc.co.uk/news/uk-england-hampshire-12512246

CCTV catches Mersey bus drivers using mobile phones at wheel, skipping stops and running red lights
http://www.liverpoolecho.co.uk/liverpool-news/local-news/2011/02/23/cctv-catches-mersey-bus-drivers-using-mobile-phones-at-wheel-skipping-stops-and-running-red-lights-100252-28217249/

January 2011

Arrest after CCTV of bike thrown on live rail
http://www.bbc.co.uk/news/uk-england-hampshire-12186236

Four sentenced for Pontarddulais silver band thefts
http://www.bbc.co.uk/news/uk-12249568

[91] Should the Committee like to receive further case studies, please contact Tom Coales in the LGA public affairs team on 020 7664 3110 / thomas.coales@local.gov.uk

2010

CCTV assists hundreds of incidents in Gravesend town centre
http://www.gravesendreporter.co.uk/news/cctv_assists_hundreds_of_incidents in_gravesend_town_centre_1_764847

Graffiti taggers made to pay for their crime
http://www.thanet.gov.uk/news/latest_press_releases/taggers_caught_on_cctv.aspx

CCTV "helps solve six crimes a day"
http://www.thisislondon.co.uk/standard/article-23910070-cctv-helps-solve-six-crimes-a-day.do

APPENDIX 2

Case Studies on Enhanced CRB Checks for Taxi and PHV Drivers

Please note, details such as the local authorities, dates, names of drivers etc are not included in these examples as such information is confidential, and therefore the records are destroyed by the authority. Further examples can be supplied upon request.

Example 1

One applicant's Enhanced CRB Disclosure came back with minor convictions and information from the local Police. That information showed that he had been arrested for "grooming" a 14 year old girl with learning difficulties over a two year period. He had sent her nude photographs of himself and when the Police interrogated his laptop computer they found one image of a child (cat one) and four images of children (cat four). It was also found that he regularly trawled child pornography websites. This matter never went to court but was instrumental in the council refusing to license him.

Example 2

A driver received a caution for taking an elderly customer to an ATM for two years and stealing a total of £5,000 from her over that prolonged period. Because of the CPS directive to reduce the burden on the courts this was dealt with by way of caution by the police and this information was never disclosed to the council by the driver. It was flagged up on the Enhanced CRB with further background information added by the Chief Officer of Police. Based on this information the council revoked the licence.

Example 3

An individual was arrested as part of a group rape of a young girl in a vehicle. Despite a used condom with his DNA profile being found at the scene, he was discharged on grounds of insufficient ID evidence. This information was highlighted as part of Enhanced Disclosure and warranted enough concern by the council to refuse the licence.

Example 4

A driver had been arrested on suspicion of rape, but no further action was taken by the police. The Chief of Police disclosed in the additional information on the CRB check that in the course of the criminal investigation the licensee had admitted to sexual contact in his vehicle with a female drunk passenger who was travelling alone. Whilst this was not proven through criminal prosecution to be rape, the Council's Regulatory Committee considered the conduct not to be appropriate for a fit and proper licensee, and his licence was revoked.

Example 5

A driver was refused on intelligence provided by Police that showed he had acted inappropriately on three occasions in an 18 months period when acting as a PH driver in another council area. On these occasions he put a lone female in the front passenger seat and then found an excuse to lean across her and touch her indecently. He was arrested each time although never convicted. However the licensing authority felt that he had shown a pattern of behaviour that could put lone females at risk.

Another example was where the authority received intelligence that a potential driver was being investigated for a series of indecent assaults and rape on girls where he acted as a photographer for a model agency took them back to his "studio" and indecently assaulted them or raped one on one occasion. The licensing authority refused him a licence on that basis and later that year he was in fact convicted of rape.

Example 6

We had a taxi driver that assaulted a lone female on the way home. After a long investigation the prosecution was eventually dropped by the CPS due to insufficient evidence. The driver therefore appeared before our Licensing Committee and the Police were in attendance to give evidence on a number of other incidents, again where the victims had refused to make statements. In addition this particular driver had received a previous warning for inappropriate conversations with female passengers. Taking all of this information into account the Licensing Committee revoked the licence.

The driver then applied for a taxi licence at a nearby council and again at (at least) a further two other local authorities. Fortunately the additional information supplied by the Police on the Enhanced CRB resulted in this being flagged up to respective licensing authorities. Eventually the man settled in one area and appealed to both the Magistrates and Crown Court in order to get a licence. Both the Police and the local licensing authority attended the latter and again it was refused.

APPENDIX 3

LG Group Analysis of Schedule 2

When the LG group gave oral evidence to the protection of freedoms bill committee on Thursday 24 March 2011, the chairman requested that the group include analysis in our written evidence of schedule 2 of the protection of freedoms bill on "Repeals etc of Powers of Entry".[92] Only regulations the Group feels are of relevance to local government, or those the Committee referenced at the evidence session, are commented on below.

Older Cattle (Disposal) (England) Regulations 2005 (S.I. 2005/3522S.I. 2005/3522)

This is an important piece of legislation to protect the food chain and human health in relation to BSE ("mad cow disease"). Councils often take enforcement action and prosecutions in relation to this legislation, to help ensure older cattle which present more of a BSE risk do not enter the food chain, and so the LG Group believes the powers of entry in relation to its enforcement need to be retained.

Gas Appliances (Safety) Regulations 1995 (S.I. 1995/1629S.I. 1995/1629)

The LG Group does not believe that revoking the power of entry under these regulations would affect the powers of trading standards officers to enter known or suspected manufacturing premises.

Environment Act 1995

The powers to be revoked in regard to this piece of legislation relate to domestic waste and are not therefore for the LG Group to comment on.

Salmonella in Turkey Flocks and Slaughter Pigs (Survey Powers) (England) Regulations 2006 25 (S.I. 2006/2821S.I. 2006/2821)

The LG Group wishes to highlight a potential implication of revoking these regulations—without the powers of entry given to local government by these statutory instruments, local authorities will not be able to complete salmonella-related surveys as requested by the European Union. Government must be aware therefore that by revoking this power, local government will not be able to comply with European legislation.

April 2011

Memorandum submitted by Mike Matthews (PF 52)

Public Comments on the Freedom Bill

Ref: restricts the scope of the "vetting and barring" scheme for protecting vulnerable groups and makes changes to the system of criminal records checks.

Most of the public replies you receive will undoubtedly come from people like myself, who have had to fight tooth and nail to get our reputations back. My stories should be salutary lessons why amendments made to the information processed should be strictly controlled.

I am an ex-teacher who has a special interest in crb reforms, being victim of the enhanced crb debâcle with limited right to appeal beyond the ICO, and unlawful use of enhanced crbs to filter staff used by a former employer.

I have never been convicted of a criminal offence. I have no warnings, cautions or reprimands. However, I have a large cancerous growth on my character—my enhanced crb. This growth states I was charged but found not guilty of downloading indecent images. It makes no reference to the reporting of sites I made and the context in which the images appeared—they were pre-cached without my knowledge. Since then, I have had ISA clearance to work with children. However, the trauma of what I went through meant I could never consider working with kids again. I am now a successful adult tutor with the reputation I once had in the primary sector, but with a big stigma attached to my character by the ecrb disclosure.

[92] http://www.publications.parliament.uk/pa/bills/cbill/2010-2011/0146/cbill_2010-20110146_en_20.htm#sch2

I have asked the police to amend my enhanced crb, but the Chief Constable of Leicestershire, Simon Cole, has repeatedly refused stating there are no grounds to, even when the evidence is presented to him. He has denied that I made reports to the IWF about paedophilia even when the pre-trial Court hearing acknowledged the reports could be attributed to me. I am having to go through the ICO to get this looked at and hopefully amended, and a filial lawyer is taking up my case.

Furthermore, I used to work for Working Links, who sacked me because of these allegations appearing on my enhanced crb, even though I had an excellent work record and I did not work with children. Working Links had, like many firms, applied for blanket enhanced crbs and in the end, I got them to pay money to five charities helping ex-offenders for me desisting from a press campaign. In the meantime, they had suspended me and made me have a medical to see if I was of fit mind to work with children! Can you believe it? I worked with adults, I made a huge difference to their job prospects and the company acknowledged this, but I had to undergo a punitive investigation where my suitability to do the job came into question, all because they had unlawfully put on the application "Working with children" . . . and even if I had, the ISA had cleared me! No matter, once they see things on your enhanced crb, they make prejudicial judgements. It changes, affects, ruins lives!

I also work in an adult sector where firms who fund adult courses insist on enhanced crbs even though there is no contact with children, and they dictate the status of what a vulnerable adult is, not the law!

They say the unemployed are *per se* vulnerable! Why don't they just say all students are vulnerable !

It is imperative that the legislation you draw up considers the following:

Soft evidence is banned.

If not, soft evidence is used only if the ISA raise concerns over working with children or vulnerable adults.

Firms cannot apply for blanket enhanced crb checks, and if they do, they are financially penalised.

It is imperative that we protect the most vulnerable in society, especially children. I could not agree more. However, the legislation the Labour Party drew up was too draconian, lacked balance and effectively punished people like me with no stain on our character. The pre-trial hearing I attended in 2008 made reference to the honourable nature of my reporting to the IWF; my good character; my decency. No mention of that when the ecrbs come into play! Working Links lost the East Midlands contract and if the DWP had know the extent to which they were breaking the law, they are lucky to have even got the morsels of the Future Jobs programme they have recently. I thank Andrew Robathan for the support he gave me to get Working Links to think again about how they use crb checks, though I have no proof they have changed as they said they would. Nevertheless, it condemned a good person like me to agony and despair that should not have happened.

The police state they have a "duty" to report soft information on enhanced disclosures. How can that be just, when someone has clearance from the ISA, so their comments are irrelevant, aren't they? Soft "evidence" has, and will continue, to blight the careers of many. FYI, I was deemed an inspirational teacher, and my Ofsted-observed lesson one of the top three in 200 inspections, yet I could not set foot near a school with the comments on my ecrb! This must be stopped, as it is hard enough getting men into teaching.

Whatever you do, keep protection in but get rid of soft evidence. If you are innocent you are innocent!

If the ISA say you are not barred, why should soft evidence bar you?

April 2011

Memorandum submitted by British Irish RIGHTS WATCH (BIRW) (PF 53)

INTRODUCTION

1. British Irish RIGHTS WATCH (BIRW) is an independent non-governmental organisation that has been monitoring the human rights dimension of the conflict, and the peace process, in Northern Ireland since 1990. Our vision is of a Northern Ireland in which respect for human rights is integral to all its institutions and experienced by all who live there. Our mission is to secure respect for human rights in Northern Ireland and to disseminate the human rights lessons learned from the Northern Ireland conflict in order to promote peace, reconciliation and the prevention of conflict. BIRW's services are available, free of charge, to anyone whose human rights have been violated because of the conflict, regardless of religious, political or community affiliations. BIRW take no position on the eventual constitutional outcome of the conflict.

2. We welcome this opportunity to submit written evidence to the Protection of Freedoms Bill Committee. We will respond to four aspects of the Bill. First, the proposals on the collection and retention of biometric information. Second, amendments to the authorisation of surveillance powers under the Regulation of Investigatory Powers Act 2000 (RIPA). Third, the permanent reduction of pre-charge detention to 14 days. Fourth, the proposals regarding stop and search without suspicion.

3. The Bill is a missed opportunity in some respects. For example, the Bill could have addressed the harmful, degrading and discriminatory effect of "Mosquito" devices on young people, and the administrative detention of foreign nationals suspected of involvement in terrorist activities. The Bill goes

some way in rolling back certain of the draconian powers which have undermined the fundamental rights and freedoms of many people. There is still an opportunity to strengthen key parts of this Bill to provide a fuller and stronger protection for civil liberties.

The Regulation of Biometric Data

4. BIRW has always argued that the retention of DNA of all those arrested for or charged with a minor offence but never convicted is wrong. We therefore welcome proposals to remove this information from the database of biometric information in line with the judgment of the European Court of Human Rights (ECtHR) in *S and Marper v UK*.[93] However, we note that the Bill proposes that the biometric information of those charged but never convicted can be retained for a period of three years and then extended for a further period of two years by a District Judge. In addition, the Bill proposes to retain the biometric information of a child receiving a non-custodial sentence for a period of five years. Finally, the Bill proposes a separate scheme in relation to material retained for "national security purposes". A National Security Determination would be a decision of a senior police officer that it would be necessary for material taken in connection with an offence to be retained on the database for reasons of national security. A Commissioner for the Retention and Use of Biometric Material would be appointed to review all such Determinations.

5. We reject the proposed retention of biometric data of those charged but never convicted for a period of three years with the possibility of extension to up to five years. This material must be removed from the database and destroyed in line with the practice in Scotland. The proposed review by a District Judge would become routine in practice, and an unnecessary administrative burden to the courts. Further, to retain this data on the basis of a police officer's construction of the meaning of the phrase "national security" is dangerously discretionary. Even though a Commissioner would review these police determinations, no criteria for such review has been provided. To retain on the grounds of undefined national security grounds the biometric information of those charged but not convicted is wrong in that it assumes suspicion and offends the right to privacy under Article 8 of the Convention. It also fatally undermines the presumption of innocence, which is part of the bedrock of our legal system.

6. Regarding the retention of the biometric information of children we argue that there is a presumption that such information should be removed from the database at the age of 18 unless there are compelling reasons to retain, for example the seriousness of the offence.[94]

Surveillance under the Regulation of Investigatory Powers Act 2000

7. BIRW has always had reservations to the use of covert surveillance powers under the Regulation of Investigatory Powers Act 2000 (RIPA). We welcome the proposal to have such covert surveillance powers scrutinised by the judiciary. Such powers are often incompatible with Article 8 of the Convention and are not exercised proportionally.

8. Do we need to have intrusive surveillance of public places and transports, data on travel, phone calls and Internet use in order to protect people from terrorism? Reluctantly, our answer to this question is: yes. States have a right to defend themselves against terrorism, and, indeed, a duty towards their citizens and residents to do so. Surveillance and the interception of communications are a form of intelligence-gathering, which is essential to combat terrorism, whether it is perpetrated by religious fundamentalists or extremist animal rights campaigners. Modern technology is available to terrorists and it is unrealistic to deprive law enforcement agencies of those same technologies.

9. However, the use of such techniques can only be justified if they are used for the only legitimate purposes served by intelligence-gathering, which are the prevention and detection of crime. They should not be used to build databases on people who are not involved in terrorism, and records engendered in the course of combating terrorism that involve innocent persons should be destroyed at the earliest opportunity.

10. Such techniques should be employed in such a way as to respect as far as possible human dignity, decency and the right to privacy. To take a bad example from Northern Ireland, strip searching in prisons has been used, and is still used, in inappropriate situations, such as before and after legal visits or "closed" visits, where the prisoner has had no contact with another person. It has also been used to humiliate male and female prisoners. Body searches and searches of baggage at airports and elsewhere should be conducted with due regard to the rights of the person being searched to physical integrity and privacy.

11. Particular care should be taken not to stereotype particular people or communities as "terrorist suspects". Not only is this insulting to the vast majority of law-abiding people in the world, but it is counter-productive, in that terrorists are likely to avoid using those who fit such stereotypes, and communities who are stigmatised may be more likely to shield suspected terrorists rather than co-operate with the police.

12. Techniques of mass observation and searching should be kept under review by independent monitors to ensure that they are proportionate and human rights compliant.

[93] See http://www.bailii.org/eu/cases/ECHR/2008/1581.html
[94] A child is defined as being under 18 in UK domestic law as opposed to under 17 in international humanitarian law.

13. Where surveillance or interception is to be used, a case must be made for its use; a proper authorization procedure must be put in place (which should include refusal of authorization); and people who suspect they have been wrongly made the subject of such techniques should have access to a meaningful avenue for challenging their use. In the United Kingdom, such safeguards are inadequate. While the interception of communications etc is governed by the Regulation of Investigatory Powers Act 2000 (RIPA), a person who believes, for example, that his or her telephone is being tapped without cause, can make a complaint, but the only outcome of the complaint is that s/he will be told that the authorities cannot confirm or deny that the telephone is being tapped, but can assure the complainant that, if it is being tapped, then the tapping is in compliance with the law. There is no mechanism for having the interception stopped.

14. Recently in Northern Ireland it emerged that a lawyer was suspected of involvement in domestic terrorism. It would appear that at least one interview room used for private consultations between lawyers and their clients had been bugged for a number of months, with the possibility that every lawyer who used that consultation room had been bugged. Not only did this action on the part of the police violate Principle 8 of the United Nations Basic Principles on the Role of Lawyers, which forbids interception of lawyers' communications with their clients, but it also violated the Police Service of Northern Ireland's own code of conduct on the relationship between the police and lawyers. If information gathered in the course of such interception was used by the prosecution, then the defendant's right to a fair trial may have been violated.

15. The Bill proposes that no authorisation to obtain or disclose communication data can take effect until a magistrates' court has made an order approving the grant or renewal of authorisation. In addition, in relation to directed surveillance and covert intelligence sources, any such authorisation must not take effect until judicial approval has been obtained. Under RIPA originally, there was the possibility of self-authorisation "especially in cases of small organisations, or where it is necessary to act urgently of for security reasons."[95] This has now been renewed in as much as that the magistrates' court will only renew an authorisation if there is confirmation that there has been a review of the use of the Covert Human Intelligence Source (CHIS) and the information previously obtained.

16. The new regulatory regime will lead to transparency and accountability secured through independent judicial scrutiny. However, "in the interests of national security" remains intentionally opaque and open to a wide spectrum of interpretation and for creeping discretion. We also note that the Bill does not extend to covert sources appointed by the police force as opposed to a local authority, which is in effect a self-regulatory regime of authorisation. There must be provision for prior judicial authorisation of undercover policing operations.

Pre-charge Detention in Terrorist Cases

17. We welcome the reduction of the maximum period of pre-charge detention in terrorist related offences from 28 to 14 days. We note that there are two stand-by Bills designed to enable pre-charge detention back to 28 days for a three month period in the event of a national emergency. We have made submissions to the relevant Committee on these two Bills.

18. However, we maintain that 14 days is still too long to be detained without charge, and that there is no evidence to suggest that such periods of detention are needed. For those detained in relation to terrorist offences, there should be no difference in the period of detention as provided under the Police and Criminal Evidence Act 1984. A period of up to four days should be sufficient to investigate and bring charges in all forms of offences. The 14 days period is still much longer than in many other democratic states and is incompatible with Article 5 of the Convention in that it undermines the right to liberty of the person. Further, if this period of detention is going to be within a police station we would raise further objections on the basis that police stations are not designed for the long-term detention of suspects.

Stop and Search Powers

19. BIRW welcomes the repeal of sections 44 to 47 of the Terrorism Act 2000 following the ECtHR judgment in *Gillan and Quinton v UK*.[96] However, we remain concerned that the Bill does not ensure that intrusive powers to stop and search without individual suspicion would only operate where strictly necessary to prevent acts of terrorism. The Bill provides for provisions to take place without suspicion in particular designated areas. The Bill will limit designation to circumstances where a senior police officer reasonably suspects an act of terrorism will take place and where such authorisation is necessary to prevent such an act. There is no detail in the Bill in relation to either the size of the area designated within an authorisation or the duration of such an authorisation. Whilst we welcome the higher threshold before an authorisation can be granted, we maintain that this should only be given where it is reasonably believed necessary to prevent acts of terrorism (according with Gillan). The Bill provides the executive with extensive discretion to maintain the length of an authorisation without Parliamentary scrutiny. This is clearly wrong in that it reserves unfettered power to the executive at the cost of accountability to Parliament. These provisions resemble the "kettling" powers given to police, in that innocent people going about their daily business will

[95] RIPA 2000 section 43 subsections 6–7. This would therefore regulate the activities of a CHIS, a person who, under direction from a local authority, establishes or maintains a personal or other relationship in order to covertly use the gained from the relationship.

[96] See http://www.bailii.org/eu/cases/ECHR/2010/28.html

inevitably get caught up in stop and search operations. There is also the risk that certain areas will be more likely to be designated, creating suspect communities and harming relationships between, for example, Muslim communities and the police.

Conclusion

20. We welcome some of the proposals on the collection and retention of biometric information, stop and search without suspicion, restrictions on disproportionate and intrusive surveillance powers and the permanent reduction of pre-charge detention to 14 days. However, a Bill with such an impressive title should provide much stronger protection for our liberties. We urge those debating the Bill to seek its transformation into a powerful and useful tool for ensuring that where the state interferes with individuals' lives in these critical areas, it is only in ways that respect and protect human rights.

April 2011

Memorandum submitted by Genevieve Lennon (PF 54)

Introduction

1. This submission relates to proposed power to "stop and search in specified locations" under section 60, Protection of Freedoms Bill 2010–11. The proposed power to stop and search constitutes an extraordinary invasion of the "old and cherished tradition" that people should go about their business without being accosted by the police unless they are reasonably suspected of having committed, or being about to commit, an offence.[97] It reverses the norms of risk allocation by treating a location and all persons within it as potential risks and permitting pre-emptive action against them on this basis, instead of assigning the risk to specific people on the basis of their behaviour.

2. The key focus of this submission is whether the new power addresses the concerns raised regarding its predecessor, the Terrorism Act 2000 (TACT), section 44.

3. "Section 44" shall be used to refer to the power as it existed prior to the Remedial Order 2011. "Section 47A" shall be used to refer to the power currently in force.[98] "Section 43B" shall be used to refer to the power proposed under the Protection of Freedoms Bill. Given the similarities between section 43B and section 47A, reference will also be made to the Code of Practice (the "Code") currently governing section 47A.[99]

4. This submission draws upon research towards a PhD at the Centre for Criminal Justice Studies, University of Leeds, into the use and impact of section 44, which included semi-structured interviews with, inter alia, officers from the Metropolitan Police Service and British Transport Police and members of Police Authorities, but its focus is narrower than that of the PhD. This submission also draws upon a submission to the Macdonald Review on counter-terrorist powers.

Background Principles

5. The power to stop and search must be governed by clearly defined proportionate legislation, and be authorised and exercised in accordance with human rights, in a manner which provides for accountability, both legal and democratic. Section 43B, as a counter-terrorist power, must additionally be of proven efficiency and effectiveness in contributing to the Government's CONTEST strategy. Failure to adhere to these standards will result in legal action against the police and undermine the general counter-terrorist strategy and the community's faith in and cooperation with the police, itself key to successful counter-terrorism, with a consequential detrimental effect on other counter-terrorist powers and operations.

6. The extraordinary nature of section 43B means that its authorisation and exercise warrants intensive scrutiny. This is underlined by the damage that the perception, let alone the reality, of the discriminatory use of section 44 against certain sections of the community, notably British Muslims, has had on community-police relations.[100]

Objectives of Section 43B

7. The Code to section 47A explicitly excludes intelligence gathering and deterrence as sole bases for an authorisation. The *Macdonald* Report gives the example of searching cars for suspect devices, however, this type of preventative action does not hold up in relation to stops of person, which accounted for the vast majority of section 44 stops.[101] My research concluded that the major objectives of section 44 were

[97] *R (Gillan) v Commissioner of Police of the Metropolis* [2006] UKHL 12 [1] (per Lord Bingham).
[98] TACT, section 44 as amended by the Prevention and Suppression of Terrorism: The Terrorism Act 2000 (Remedial) order 2011, SI 2011/631.
[99] Home Office *Code of Practice (England, Wales and Scotland) for the authorisation and exercise of stop and search powers relating to section 47A of Schedule 6B to the Terrorism Act 2000* (HMSO, 2011).
[100] Home Affairs Committee *Terrorism Powers and Community Relations* (2004–05, HC 165–1).
[101] Lord Macdonald, *Review of counter-terrorism and security power: a report by Lord Macdonald of River Glaven QC* (Cm 8033, 2011) 4.

disruption and deterrence and intelligence gathering.[102] This suggests that section 43B will be virtually obsolescent or has radically different objectives from section 44, although what these may be is entirely unclear. If the only justification for section 43B is in relation to vehicular stops then the power should be limited accordingly. If it is to deter and disrupt then there should be an open debate about whether these are legitimate ends and, if so, the accompanying Code should be changed. In any event, the objectives of a power of this nature should be openly stated.

The Authorisation Process

The Trigger

8. Section 43B(1) alters the authorisation "trigger" in two ways. First, the authorising officer must consider the authorisation "necessary", rather than "expedient", to prevent acts of terrorism. Second, there is an additional requirement that the authorising officer "reasonably suspects" that an act of terrorism will take place. This potentially strengthens oversight via judicial review, however, there is no reference to the imminence or otherwise of the act of terrorism which is "reasonably suspected" nor is there an explicit requirement that the act of terrorism relates to the authorisation area.

Ministerial Confirmation

9. The requirement of ministerial confirmation of the authorisation application is largely unchanged, with the exception that the Minister may now substitute a more restricted area.[103] This is therefore subject to the same two criticisms made in relation to section 44. First, there is a near-total lack of transparency: there is no public data relating to the number of authorisation applications, nor the number rejected nor approved. The sum total of information regarding these applications is a couple of sentences in the Independent Reviewer of Terrorism Legislation's annual reports. A Freedom of Information request to the Metropolitan Police Service prompted a review of section 44 authorisations by the Office for Security and Counter Terrorism which identified, in June 2010, 40 occasions on which section 44 was deployed on the basis of an unlawful authorisation. Such a disclosure should not haphazardly depend on Freedom of Information requests. Of these 40 unlawful authorisations, thirty were confirmed by the Secretary of State, which leads into the second point, that there needs be greater scrutiny over the authorisation process.

Geographical and temporal limits

10. Section 43B reinforces the internal limits upon the power by requiring that the temporal and geographical limits to the authorisation be no more than is necessary to prevent the act of terrorism, thereby providing statutory bite to the recommendations previously contained in the NPIA's *Practice Advice on Stop and Search in Relation to Terrorism* and the Home Office Circular.[104] In addition, the current Code explicitly prohibits "rolling" authorisations, although it is unclear how this will be enforced given that forces can apply for new authorisations once the old one has expired.

11. There continues to be no requirement of transparency regarding what temporal and geographical limits forces avail of.

"Short-term" authorisations

12. Authorisations not confirmed by the Secretary of State within 48 hours lapse, but this does not affect the legality of any actions taken in the interim. Therefore, "short term" authorisations may be made which do not require Ministerial confirmation. One positive that could be drawn is that they encourage forces to use the power for a short period, however, the use of "short-term" authorisations which evade oversight should be curtailed.

Community engagement

13. The Code accompanying section 47A states that Home Office forces should notify non-Home Office forces when an authorisation is in place which covers overlapping areas, and *vice versa*.[105] In addition, the authorising force should notify the relevant force's Police Authority or equivalent.[106] This is a improvement which will increase the ability of communities to hold forces to account for their use of the power. It should, however, be a requirement not an option.

[102] Lennon, G *Policing terrorist risk: stop and search under section 44, Terrorism Act 2000* (PhD thesis, University of Leeds, forthcoming).
[103] TACT, schedule 6B, [7(4)(b)].
[104] TACT, section 47A(1)(b)(ii-iii); Home Office *Circular 027/2008: Authorisations of Stop and Search Powers under Section 44 of the Terrorism Act* (Home Office, London 2008); NPIA *Practice Advice on Stop and Search in Relation to Terrorism*.
[105] Home Office, *Code of Practice (England, Wales and Scotland) for the authorisation and exercise of stop and search powers relating to section 47A of Schedule 6B to the Terrorism Act 2000* [3.6].
[106] *Ibid*.

THE EXERCISE OF THE SECTION 43B

The object of the search

14. The object of the search is evidence that the vehicle is being used for terrorism or the person is a terrorist.[107] This is only slightly more circumscribed than under section 44 as most objects found on a person or in their belongings that could be used for terrorism will prompt the suspicion that that particular person is a terrorist. Therefore, the officer's discretion remains virtually unfettered within the authorisation area.

Questioning persons stopped and searched

15. My research on section 44 revealed that some officers questioned persons stopped. While "chit-chatting" to a person stopped to put them at their ease can be seen as good practice, neither section 44 nor section 43A gives officers the power to question a person who has been stopped.[108] One officer interviewed in the fieldwork stated that on one occasion she was asked by SO15 to make a note of mobile phone numbers, which she did.[109] While it can be argued that citizens are under a civic duty to assist officers in detection and prevention of crime,[110] this is very dubious ground to which the retort "if they don't want to talk to you they won't" is insufficient.

Stop and search forms

16. The Code to section 47A states the minimum information that must be included on the stop form. This is an improvement, given the wide variance in the amount of detail inputted by officers under section 44.

USE OF SECTION 43B AGAINST PROTESTERS AND PHOTOGRAPHERS

17. The use of section 44 against photographers and protesters has been flagged as a concern.[111] While there may have been legitimate reasons to deploy section 44 at some public assemblies or against some photographers, the lack of transparency over the precise deployment of the power made it extremely difficult to judge whether it was used in legitimate circumstances or not.[112] There have been no changes recommended which would make it easier to determine whether or not section 43B is being used in inappropriate circumstances.

RECOMMENDATIONS

18. Section 43B(1) should include an explicit requirement that the act of terrorism is "imminent"' and that it relates to the authorisation area.

19. The Secretary of State's role in confirming authorisation applications should be replaced by a judicial authority. There is precedent for such judicial oversight in relation to extensions to pre-charge detention subsequent to arrest under section 41, Terrorism Act 2000.[113] While it might be argued that stop and search is of a "lower order" that does not require such intensive oversight, the European Court of Human Right's comments on Article 5 in *Gillan v UK* suggest that a section 44 stop does involve a detention, albeit ordinarily a short one.[114] In addition, the practically unfettered nature of the discretion bestowed to individual officers by the absence of reasonable suspicion and the broad nature of the object of the search point to this being an extraordinary power that warrants intensive safeguards.

20. Data on authorisations of all UK forces—whether Home Office or not—should be published annually subject to a time lag. The number of authorisations should be broken down by force, number applied for, number approved, number modified by geographical area or duration and number rejected. The temporal limit of each authorisation and whether they were for the maximum geographical limit should be noted. In terms of the geographical limit, this information could be broken down further by broad percentages (eg 25% of the force area). The number of stops carried out under each authorisation, broken down in the usual manner, should be published. None of this information reveals sensitive data which might hamper police activities or enable would-be terrorists to spot "patterns", although for this reason no details of the dates to which authorisations pertain should be revealed.

21. Section 43B should be amended so that an authorisation for up to 48 hours lapses if not confirmed within 24 hours. This would retain operational flexibility to authorise the use of section 43B at short notice and encourage forces to submit applications for temporally short authorisations sufficiently in advance to be confirmed but should dissuade forces from using "short-term" authorisations as a means of evading oversight. Data should be published annually on the number of "short term" authorisations which were not subject to prior ministerial confirmation, broken down by force.

[107] TACT, section 47A(4).
[108] Stone, V and Pettigrew, N, *The views of the public on stops and searches* (Home Office, PRS (Paper 129) London 2000).
[109] Lennon (above n 6).
[110] PACE Code C, 1K.
[111] Eg Liberty, *Casulty of War: eight weeks of counter-terrorism in Rural England* (Liberty, London 2003); JCHR *Demonstrating respect for rights?* (2008–09, HL 47–1) and (2008–09, HL 47–II).
[112] Home Office Circular 012/2009 *Photography and Counter-terrorism Legislation*.
[113] Schedule 8, para 33(3). Non-derogating control orders issued in pursuance to section 3(1)(a), Prevention of Terrorism Act 2005. See also: *Brogan v United Kingdom* (1988) 11 EHRR 117 (Application number 11209/84).
[114] *Gillan v United Kingdom* (2010) 50 EHRR 45 (app no 4158/05) [57].

22. The Code accompanying section 43B should require, not suggest, that forces notify each other and the relevant Police Authorities.

23. Forces should be required to include in their annual reports the forms of community engagement availed of in relation to section 43B.

24. PACE, Code A should be amended to require officers to inform persons who are stopped and searched that they do not need to answer any questions unrelated to the search itself.

25. I suggested to the Macdonald review that the data on authorisations should be broken into broad types. On the basis of my research into section 44, appropriate categories would include: high risk site/CNI; night-time economy; intelligence operation; public assembly; photography; sporting fixture and behaviour (short of the reasonable suspicion required for section 43, Terrorism Act 2000). This would provide a degree of transparency vital to functional accountability which would make it would be easier to hold police forces to account. For example, if it transpired that a force carried out 90% of its section 44 stops at "public assemblies", then this would suggest an abuse of the power, and the infringement of EHCR Articles 10 and 11, which should prompt a review by the relevant Police Authority or the IPCC. Most of these categories relate to deterrence or disruption and, as noted above, section 43B cannot be authorised for these objectives. The list should therefore be refined after the patterns of use of section 43B become evident.

April 2011

Memorandum submitted by Jon Fassbender (PF 55)

General Background information on CCTV

In specific relation to the use of CCTV, whilst the intention of the Bill appears to be a better balance between the operational use of video surveillance systems and privacy concerns, in practice this is a fairly complex matter, given that significant areas of CCTV usage will be outside the scope of the Bill in its current form (and any of the other less than effective legislation already in place).

Likewise, the wider debate in society (or what little there has been thus far) has chosen perhaps understandably to concentrate on the privacy concerns through misuse of surveillance technology, but rarely if ever focuses on the positive civil liberty related aspects of video surveillance systems, if used appropriately and responsibly.

1. Whilst specialist CCTV has been in use in the UK for almost 50 years, larger retailers have been using video surveillance since the late 1960's, and Town Centre CCTV in it's present guise has now been around for over 25 years.

2. Since an earlier academic guesstimate placed the number of CCTV cameras in use in the UK at around the 4.2 million mark, the same unsatisfactory figure has been repeated *ad nauseum* by the worlds media ever since; as indeed has the whimsical suggestion that the average UK citizen is captured on CCTV 300 times a day.

3. The most recent 1.85 million figure proposed by DCC Graeme Gerrard based on research carried out in Cheshire, whilst adopting a far more sensible and detailed approach to determining a more accurate figure, is probably still not entirely representative of the true picture. For example, Cheshire Constabulary's estimation of 29,700 cameras being operated by Local Authorities, is at odds with the figure obtained by the organisation Big Brother Watch, which determined using Freedom of Information requests that there were around 59,753 being operated by 418 Local Authorities (which responded), to their survey carried out during 2009.

4. Nobody really knows how many CCTV cameras are in use throughout the UK, but given that the earlier 4.2 million figure was an enthusiastically inspired guesstimate that undoubtedly over estimated the level of deployment at that point in time, equally the current suggestion of 1.85 million does not in my opinion sufficiently reflect all types of cameras currently being used. On the basis that CCTV cameras have been installed (and replaced when obsolete) on a rapidly increasing scale since perhaps the mid 1980's, it may be reasonable to suggest that if four million were taken simply as a figure for discussion, a similar suggestion that perhaps 150,000 cameras in total are being operated by Local Authorities, would imply that less than or possibly around 4% of the CCTV cameras in use in the UK, will be subject to control under the proposed Bill.

5. Whilst there is no suggestion at present of any licensing arrangement for CCTV, it's worth considering that the average homeowner needs to obtain a licence to watch their favourite episode of *Neighbours* on their TV, but they don't require a license to set up a security camera and watch their next door neighbours . . . on CCTV.

6. Cameras designed specifically for ANPR use, are generally "passive" units optimised to one specific task (ie capturing vehicle license plates) and are therefore relatively efficient for that singular purpose (that's not to say that they don't have an achilles heel). Public Space Surveillance (PSS) cameras are generally deployed as "active" remote control Pan, Tilt and Zoom units, that are required to cover a large area, and as such generally operate at a fairly low level of efficiency.

7. CCTV cameras are normally profiled to fulfill one or more of four discreet functions; namely Deterrence, Incident Monitoring, Site Management and Evidential Recording (DISE). Deterrence and Evidential Recording are essentially "passive" functions that do not require the intervention of an Operator, whilst Incident Monitoring and Site Management are invariably "active" functions, that do require a human interface.

8. The term Public Space Surveillance (PSS) is now widely accepted to cover installations such as Town Centre CCTV schemes. However, it is important to consider that privacy and civil liberty concerns are as much about an individual being captured on private security cameras, whether they are covering public or privately owned and managed spaces. Whether video recorded on a high street, in a corner shop or in the back of a taxi, the same concerns could apply, and the same questions about how the video recordings will be stored and managed arise.

9. Public acceptance and support of CCTV does tend to vary according to the type of technology; for example, anecdotal evidence suggests that whilst overall support for PSS cameras is still relatively high, cameras used for traffic enforcement (issuing Penalty Charge Notices for minor infractions), and "Talking" CCTV, are far less positively regarded.

10. Emerging video surveillance technologies, such as Body Worn Video (BWV), Video Analytics (including facial recognition systems) and "Listening" CCTV, are less widely publicised and therefore not readily understood by a wider audience; nor indeed are their implications in terms of privacy and civil liberties.

11. A huge percentage of PSS cameras are normally left set on producing wide field "contextual" views, which are generally unsuitable for the purposes of Forensic Surveillance. Given that few if any are routinely supported by audio technology, an Operator is essentially deaf to any sounds being made in close proximity to an individual camera (often located many miles away from the Control Room), and so is unable to respond. It's also worth considering that an average PSS Camera Operator may be responsible for monitoring dozens, or even hundreds of cameras, with efficiency generally reducing, as the camera load increases.

12. Whilst specialist police units such as the Metropolitan Police's VIIDO department are constantly improving the way they recover and manage CCTV recordings, fundamental issues with basic recorded quality and data retention continue to cause major issues, with the vast majority of recorded "product" still regarded as unsuitable for court use.

13. Before privacy safeguards can effectively be built in to the design and operation of a CCTV system, it is vitally important that the operational objectives are correctly profiled and understood. Image quality is actually far more important in terms of addressing civil liberties concerns, than most people would actually consider.

That aside, it's perhaps worth quickly mentioning that at least a couple of research projects are currently being undertaken around the globe, to look at ways of effectively masking the identity of recorded Data Subjects, but with the facility to switch off the facial obscuration if the images are later required for investigative purposes.

14. It is important to separate the often made misnomer that an area is "covered" by CCTV, particularly with Local Authority operated PSS systems, when in fact it is much more accurate and appropriate to suggest that it is "coverable"; given that a remote control camera can only point in one direction, at one time.

Interesting to mention in passing that I previously wrote ". . . the generally held assumption that a strategically placed pan/tilt/zoom camera can be used to offer sweeping coverage of a relatively large area conveniently overlooks the obvious point—that you can really only look in one direction at one time . . .. The use of fixed high quality cameras will also tend to be more in keeping with public concerns about the potential infringement of civil liberties"—those comments were published in an article in the *Municipal Journal*, 5–11 August 1994!

15. Whilst deterrence is still frequently regarded as a prime motivation for deploying CCTV, in practice, there are two common levels of habituation, that mostly negate any potential deterrent capability. Firstly, "temporal" habituation occurs after a CCTV system has been in place for a reasonable period of time, so the initial novelty quickly wears off, and unless positive results are publicised on a regular basis, the presence of the cameras generally fails to maintain the desired effect over any prolongued period.

16. "Generational" habituation is something which the UK is now the proud pioneer in developing. Whereas the specifiers and developers of early "Town Centre" CCTV schemes considered deterrence to be the primary desired objective, now a quarter of a century down the line, the next generation have grown up with CCTV as a normal part of the landscape, so generally don't have the same emotional responses to the presence of video surveillance cameras. Interesting to note that countries which are now rapidly deploying CCTV (the US for example) are convinced of the deterrent effects of surveillance cameras, in much the same way as UK practitioners were assured back in the late 80s and early 90s.

17. The concept of enhancing "Deterrence through Detection" (DtD) based on the high profile publicising of successful use of CCTV, has yet to be effectively applied or tested in the UK (or anywhere else as far as I'm aware).

18. Where Town Centre or PSS cameras are required to provide some tangible level of deterrence to crime or Anti Social Behaviour, it's somewhat ironic that either small discreet pan and tilt cameras, or fully functioning dome cameras are frequently selected, as their design tends to blend in with the town landscape. Less visual prominence almost always equals less deterrent capability.

19. Counter Terrorism is still one of the most crucial objectives for CCTV, and yet most Public Space systems are not designed or in any way optimised for this vital role.

20. There has been a paucity of research into the effectiveness and optimisation of CCTV usage in the UK, although other countries are beginning to invest in identifying exactly what works well, and what doesn't. Where the UK's pioneering work could have been used as a basis for becoming world leaders in terms of practical expertise, unfortunately that does not appear to be a key objective.

21. Likewise, there has historically been insufficient investment in providing adequate advisory services and technical support for CCTV Operators, particularly Local Authority officers who have frequently been tasked with delivering a technological deployment, that they often don't fully understand.

22. Wider compliance with the Data Protection Act is not always as committed as perhaps it should be. Whilst a significant percentage of CCTV operations are not required to comply, where they are there is often a less than enthusiastic commitment amongst many private system operators.

23. Whilst much of what little CCTV research that actually exists suggests that the technology is less than proven in reducing crime, the fact remains that if applied correctly and with the most appropriate techniques, the potential for crime reduction and significant improvements in trial resolution within the Criminal Justice System, have barely been scratched.

24. The concept of local community based "passive" "Safety Net" CCTV being deployed for crime reduction purposes is rarely if ever considered, when "active" PSS schemes are generally promoted as the only viable solution; that despite the fact that "active" systems may cost typically five times the equivalent of a more efficient "passive" solution.

25. Whilst the debate about potential overlaps between the remit of a "CCTV" Commissioner and the "Information" Commissioner have already been touched upon, it's worth mentioning that there is plenty of scope for other regulatory mechanisms to be discussed and considered, for example "lay" oversight panels for Local Authority CCTV schemes, an Inspectorate to ensure compliance and operating standards are maintained, and the potential benefits of licensing individual CCTV cameras, premises and monitoring facilities.

Protection of Freedoms (PFB) Committee—Comments on Oral Evidence

Q34—Mr Michael Ellis MP addressing DCC Graeme Gerrard—*"there is a proposal in the Bill for increased regulation of surveillance cameras, and I would like to know whether you see a need for that, and what your views are generally. It is also a recognised fact that we will have a code of practice for the development and use of surveillance cameras in the provisions of the Bill. What are your views on that, and on the appointment of a surveillance camera commissioner?"*

The use of CCTV in the UK has been long overdue for regulation, in fact I think I first had published my suggestion of the need for some form of Public Surveillance Inspectorate (jokingly called OFCAM) way back in 1995. DCC Gerrard is absolutely spot on in highlighting the concerns that relate to CCTV being used outside of the accepted "public" domain, this being systems mostly operated now as Public Space Surveillance (PSS) by Local Authorities. Generally speaking, most PSS CCTV systems are already managed in accordance with some form (although not necessarily standardised) Code of Practice, and are to a greater degree managed within the requirements of the Data Protection Act.

The significant concerns are mostly related to non PSS CCTV operation, which possibly accounts for 90–95% of CCTV cameras currently in use, and which will apparently not be subject to the provisions of the proposed Bill.

Q38—*Again, DCC Gerrard has highlighted a key issue, which is that as would be expected given the ratio of PSS to privately operated cameras, the everyday problem for investigating officers is the lack of recorded image quality, or as is more often the case, simply the complete lack of (!) Evidential Quality images from privately operated video surveillance systems; again something which is outside of the scope of the proposed Bill.*

The issue of precise UK operated camera numbers, whilst not really significant in itself, has already been mentioned in the previous section of these notes.

Q39—*DCC Gerrard quite correctly raises concerns that regulating the use of ANPR technology will require a more insightful approach, given that the technology and techniques adopted differ significantly from conventional CCTV operation.*

Q41—*Mr Vernon Coaker MP's question about a potential conflict between the Information Commissioner and the proposed Surveillance Camera Commissioner is very apposite. In terms of introducing some form of effective regulation of CCTV, although the two Commissioners roles will differ, there will undoubtedly be far more potential for the "Camera"' Commissioner to prove effective in purpose, than simply using the Data Protection Act (which was never originally intended to regulate the use of CCTV) as the primary regulatory tool. The two areas must be kept separated, as put simply, there is a very real potential for conflict of interest, between basic data management and some more significant operational issues.*

Q45—*The question from Mr Tom Brake MP very succinctly highlights the necessity for any proposed legislation, to cover all CCTV Operators, and not just the relatively tiny percentage of cameras that are managed in the PSS environment.*

Q152—Ms Isabella Sankey representing Liberty, suggested that *". . . The Data Protection Act 1998 and the Human Rights Act 1998 apply to most CCTV cameras in terms of the use and processing of images, but the principles in those Acts were not designed to deal with the sophisticated types of CCTV that we now see on the streets."*

The second part of her comment is absolutely correct, both pieces of legislation were never primarily designed to regulate CCTV, however, the first part of her comment is in my opinion fundamentally wrong. The vast majority of CCTV cameras currently in use are not required to comply with the legislation for a number of reasons.

For example, privately operated "passive" CCTV systems are not required to adhere to the Data Protection Act (DPA), and this has previously been acknowledged by the Office of the Information Commissioner. Likewise a significant number of domestic or residential cameras are exempt (under Section 36), even if they are monitoring public space. Wide field view images (also sometimes referred to as "contextual" images) which are unable to identify a Data Subject, are likewise not covered by the Act. In practice, it's quite possible that perhaps 20–30% of cameras currently in use would in some way be governed by the DPA, and a much smaller percentage subject to any aspects of the Human Rights Act.

Ms Sankey's subsequent comments about the perception of CCTV being out of step with the reality are again very valid. However it's important to put the research mentioned into context. Simply researching the outcome from what has been done, does not in itself provide any useful insight as to whether an alternative outcome could have been achieved, if the task were approached in an alternative way.

The current measure of whether CCTV works or CCTV doesn't work, is based solely on the premise that what has been done historically was the correct application of technology. It is my opinion that far more effective use of CCTV could have been achieved, almost certainly at lower cost, if a more appropriate use was made of both technology and techniques.

Q153—*Dr Metcalf very correctly highlights the lack of proper laws to govern CCTV, and highlights the need for ". . . much better regulation of how CCTV can be established and used"*

Mark Stubbs very correctly raises the issue of what should or shouldn't be subject to regulation. The definition of Public Space Surveillance has tended somewhat towards simply resting on the use of video surveillance by Local Authorities in public spaces, and yet privacy and civil liberty concerns are as equally valid in private space which the public have access to. A simple example might be a local authority operated PSS camera that overlooks the street area directly in front of a London Underground station, when compared to one of the many thousands of cameras that are hidden from view, but monitor the general public as they pass through the "Tube" system below street level.

Tim Maloney mentions an interesting point about how "it is very difficult to quantify the effects that CCTV and ANPR might have on the prevention, detection and investigation of crime". As it happens, it need not be that difficult to carry out the research, but of course it would cost money, and thus far very little useful and insightful research has been carried out in the UK.

Q154—*Mr Vernon Coaker MP mentions that the public generally don't complain about CCTV, but then that does raise two points worthy of consideration. The vast majority of the public do not actually know anything significant about CCTV, only what they read in the press and media. Those members of the public who do complain (and I regularly receive complaints on this specific issue) are often being victimised by Neighbours from Hell that fit their own CCTV cameras up to keep watch on their neighbour victims. This is an increasing problem, and apart from any notional benefit that might in theory be afforded by the Protection from Harassment Act, there is little other legislation that can provide any assistance in this situation.*

On the issue of whether too many commissioners spoil the broth, I would suggest that given the highly complex and technical nature of CCTV, the subject of regulation should ideally be placed upon a specific body that has adequate expertise, to address the significant number of issues that are all intrinsically interwoven with the basic arguments surrounding civil liberties. The Information Commissioner is already tasked with matters relating to data and freedom of information, and the objectives of CCTV regulation would almost certainly be better served by a bespoke solution.

Ms Sankey usefully raises the "nothing to hide, nothing to fear" argument, but that unfortunately is a mantra much used by those with least knowledge, on both existing and future CCTV technologies.

Q157—*In response to Mr Steve Baker MP's excellent question, I would have to disagree with Ms. Sankey's suggestion about simply limiting the numbers of CCTV cameras. It actually makes little difference whether there are two hundred thousand CCTV cameras working perfectly or 90% of two million cameras not working well at all, other than the fact that the latter costs a significant sum, and has the additional by-product of creating disenchantment amongst the wider public. Cameras that are failing to perform correctly do no one any good, save for the very slight possibility that they might have some minor value as a visible deterrent (and the CCTV Industry continues to maintain employment).*

Setting quotas on cameras will probably not do anything positive, that isn't going to happen anyway given the potential for reductions in numbers under the current "austerity" climate. Decisions on deploying PSS CCTV cameras should be based on appropriate problem analysis and profiling, and be justified on defined deliverables, and not simply because it seems like a good idea.

Dr Metcalf stated that "The starting point is that CCTV is a form of public surveillance. It should be discouraged, because surveillance is an interference with privacy". In practice, that argument does not for example, relate to the proof of innocence that CCTV can provide during investigations, and indeed the limited number of documented cases where surveillance camera footage has actually resulted in suspects being freed from detention.

In the real world, criminals and terrorists are just as likely to shop in supermarkets and newsagents as anybody else, so the real test of whether CCTV is appropriate in a given location, is whether it's presence can fulfil a number of defined criteria, and whether it's technical quality and management, makes it both "fit for purpose" and appropriate under the circumstances.

Dr Metcalf's further observation about the public perception of CCTV, is reasonably based on both media reporting, the artistic licence employed in numerous TV dramas, and to some extent, the positive promotion of technology by what is now globally, a very significant industry.

Mark Stobbs comment about "article 8" unfortunately overlooks the obvious, which is only a relative small percentage of CCTV cameras would currently be influenced by the Human Rights Act.

Tim Maloney's comment "The aim of any legislation should be to strike a balance between the interests of the individual in terms of privacy and the interests of society in terms of the prevention of crime." is both succinct and accurate.

Q158—*Mr John Robertson MP raised the interesting example of the James Bulger CCTV image (1993) which was credited with providing assistance to investigating officers; and yet more recent high profile cases, for example the identification of the bomber David Copeland, was actually impeded due to the very poor quality of PSS CCTV footage, that failed to assist in his speedy apprehension, and thereby prevent the final attack that tragically resulted in the deaths of three people in the Admiral Duncan Pub (1999).*

Q164—*Mr Gareth Johnson MP's question actually relates to a couple of very important points. Firstly, as previously mentioned, an individual's CCTV privacy concerns shouldn't really be relevant to who specifically owns an individual camera; so for example, consider a section of roadway covered by a local authority's remote control camera, alongside an open piazza abutting the pavement, which is monitored by a privately operated property managers remote control camera.*

In this situation, the same person could be viewed by both public and privately owned cameras at the same time, but from different angles—different operators, same potential for privacy concerns?, which incidentally should both be subject to the placement of advisory signage under the Data Protection Act.

The second issue relates to technology; a CCTV camera need not necessarily be fixed on a pole or a wall. Body Worn Video (BWV), including cameras that are capable of transmitting images to a control room whilst the wearer is moving around, are in a technical sense, little different from a camcorder held to the eye—but they are a technological reality. Any member of the public can buy a BWV camera for a few hundred pounds, and record anyone they want at any time, with little legal recourse. Likewise, the increasing availability of miniature covert cameras, whether secreted in sunglasses or jewellery, belts, or a whole myriad of other disguises, are already available for purchase at relatively low cost.

Q169—*Mr Michael Ellis MP suggests that " the establishment of codes of practice might well have a salutary effect on such companies, in terms of their conduct with CCTV cameras?"*

Whilst most PSS CCTV schemes are already operated under individual *Codes of Practice*, likewise private operators have been able to adopt/adapt their own COP; if I recall correctly, there was a model COP published by the CCTV User Group back in 2008.

Q283—*The Information Commissioner Mr Christopher Graham rightly highlights the fact that there are many issues in addition to data protection, that relate to CCTV. Equally his comments on the public's wider concerns are very valid, but for obvious reasons do not relate to CCTV cameras that are exempt from the Data Protection Act.*

Q284—*Mr Graham's pragmatic answer clearly confirms that there is more to the subject of regulating CCTV than simply the sum of two halves. Likewise Mr David Smith has highlighted the lack of complaint / enforcement protocols in the proposals.*

Q286—*The areas of responsibility in terms of regulating CCTV and data/privacy are quite separate, and whilst a "CCTV Commissioner" could in theory have total responsibility, perhaps at some future point in time, at present it would perhaps best be left that each commissioner does what they do best, hopefully with some degree of harmonious interaction.*

Q289—*Mr David Smith's comment ". . . if the cameras do not work, we are not concerned, because cameras that do not work cannot intrude on someone's privacy" is an extremely welcome and significant statement, given that this precise point has been argued by experts for quite some years now. If a CCTV camera/recording is incapable of identifying a Data Subject, then it does not have to comply with the Data Protection Act.*

His further comment about lack of CCTV camera performance possibly leading to a false identification (or by implication failing to correctly identify an innocent individual) does indeed have significant privacy implications, but that is fundamentally a technical issue which I don't think is really addressed by the proposed legislation.

Although Mr Smith's comment that CCTV Operators have an interest in "cameras that are efficient", in practice very few are actually set up to perform at an optimal level (ANPR cameras are actually a very good example of technical / operational optimisation). The wider lack of image performance is more to do with lack of knowledge, and less to do with lack of desire.

Q392—*Councillor Lawrence's suggestion that Local Authority CCTV camera numbers perhaps only equate to around 3% of the global number currently in use throughout the UK, is certainly not an unreasonable suggestion to make. Without splitting hairs, it's almost certainly below 5% of the total irrespective of how the estimates are arrived at.*

The Councillors observation that any regulatory proposals should equally apply to privately operated cameras are in my opinion absolutely right. Personally I would take the argument a stage further, and suggest that not only private CCTV cameras that cover public spaces, but also private cameras that cover private spaces, that the public have access to . . being recorded on a camera in a public library, a petrol station, or a restaurant all amount to much the same implication in terms of an individual's privacy.

Q394—*Mr Dave Holland stressed that CCTV use by Local Authorities ". . . is around safety and around traffic zones and so on.". In practice, whilst it is useful to define the operational objectives for a CCTV camera/system, that in itself does not relate to privacy concerns.*

Q400—*Councillor Lawrence makes reference to "re-deployable" CCTV, which as a technique is undoubtedly useful in some situations.But in terms of providing a deterrent effect to criminal activity, it is generally more likely to cause a temporary displacement, in other words it briefly sanitises an area, and when removed the problem (or other problems) return to fill the vacuum.*

In terms of privacy, there is little distinction between re-deployable cameras or any other type that are currently in use.

Q403—*Relating camera numbers from one location to another, unfortunately creates a bit of a smokescreen. In the US, comparing the very limited uptake of CCTV in San Francisco, against the fulsome embrace of technology in somewhere like Chicago or Lower Manhattan, is equally as unhelpful as comparing the Shetland Islands with Alaska. The Department of Homeland Security grants for video surveillance technology in the US, have been huge compared to recent spends here in the UK, and yet the interesting point is that our cousins across the water haven't really taken the trouble to learn from our experiences here in the UK.*

Mr Michael Ellis MP very usefully observed "There is the suggestion that because a CCTV camera is present it will always catch everything that happens, it will always be facing the right direction, it will always be working, it will always be focused correctly and the images will be of good enough quality".

In terms of Public Space Surveillance, the time honoured approach of placing a remote control camera on a pole and saying that the area is covered by CCTV, is quite frankly nothing more than a nonsense. It would be far more accurate to say that the area is "coverable" given that the camera will only ever be looking in one direction, at one time.

My earlier calculations on PSS camera efficiency, would suggest that on average, a Town Centre CCTV Camera (generally costing between £15–25k each) will in practice function at something between 2.5–6% efficiency overall. I have long referred to this type of CCTV system design as "lottery surveillance".

The publics widely held "feel good" factor generated by the presence of the cameras, relates to an expectation, rather than a cold hard measure of performance.

Q407—*Mr Tom Brake MP enquired as to whether any more detailed research has been carried out on the cost effectiveness of CCTV. In recent years, very little research has been carried out here on the deployment of CCTV, despite the huge sums spent on the technology. It is a subject now which generates a lot of interest globally, but whereas the UK could easily be at the forefront of applying and operating systems to maximum efficiency, and with due regard to civil liberties, this has regrettably not been the case.*

Q440—*Mr Andrew Rennison is absolutely correct in stating that with an almost complete lack of any previous useful research, nobody knows for sure exactly how many CCTV cameras are currently being used in the UK.*

Something approaching an accurate figure would only really become apparent if there was a requirement to licence the use of individual CCTV cameras, something which I personally would be in favour of.

Interesting to note that even back in November 1999, the then Home Office Minister Mr Charles Clarke informed Parliament that "Information on the number of police, public sector and private operators of CCTV systems currently in operation and the number of cameras currently in use is not held centrally".

Q442—*Mr Rennison commented "A lot of the cameras I described as being in quasi-public ownership are in shopping centres and areas to which the public have free and ready access. Is there any real difference between those and local authority-owned cameras?" I would agree entirely with that observation.*

Q447—*Again, Mr Rennison's suggestion that both public and private CCTV operation should be viewed equally in terms of regulatory objectives, is entirely sensible and appropriate.*

Q451—*Mr Tom Brake MP asks an interesting question relating to CCTV effectiveness; the suggestion based on previous research that cameras in car parks are more effective, is actually relevant to two specific factors. Firstly, historically most car park CCTV deployments have used "passive" systems, where fixed cameras are optimised to a specific task (in much the same vein as ANPR cameras have one solitary objective). Also, car parks by their very nature are somewhat controlled environments, so it's generally easier to make good use of lower cost technology, in order to achieve results.*

Agreed that some up to date useful research is now very long overdue.

The reference to MegaPixel cameras is interesting, as the technology does indeed promise certain benefits, and yet some manufacturers are designing their products to be more attractive to purchasers, whilst negating the potential improvements in technical performance. CCTV cameras work very well when they are optimised to a specific task; if the objective is to broad, then generally speaking they are far less efficient, and somewhat peculiarly, some MegaPixel (high resolution) camera manufacturers are stretching the capabilities of their cameras at the expense of potential quality benefits.

Q453—*The concept of developing CCTV as the next "forensic discipline", actually holds enormous potential in crime reduction. From where we are now, it's probably fair to say that in terms of reaching the objective of using video surveillance as a post event form of forensics, we've barely scratched the surface.*

Q461—*Steve Jolly referred to previous research that suggests CCTV is failing to reduce crime; purely in a literal sense that is probably correct. What the research fails to show is how the outcomes may have differed if CCTV technology and techniques had been applied correctly in any given situation.*

A simple analogy might be to relate CCTV to vehicles. If someone were setting up a public transport system for the very first time, it would perhaps be more effective and efficient to use double decker buses, rather than two seater sports cars. Firefighters would almost certainly prefer a proper tender rather than a milk float, and most people would find it a lot easier to collect their weekly shopping in a family saloon, instead of using a seven ton truck; they are all vehicles, but they don't all perform the same task. So it is with CCTV; using the right tools in the correct way, would produce significantly different results to those which have been mostly negatively highlighted, in previous research.

Mr Jolly's comment that "If we are going to consult the public, we need to ensure that the public are properly informed, not misinformed" may sound blindingly obvious, but it is an extremely valid point.

Q462—*It isn't in itself sufficient to debate or discuss whether CCTV should be applied at a given location, without a more extensive profiling of the operational objectives, and the most appropriate technology and techniques that would fulfil them.*

Q463–4—*I vaguely recall having my review of the document "Looking Out for You" published at the time back in 1994—unfortunately the situation has scarcely improved since then.*

Q469—*Mr Gareth Jones MP very succinctly made the point that if CCTV is used effectively and appropriately, it can cover both sides of the privacy argument admirably. That is perhaps the singular key point about using CCTV in the context of civil liberties; it's capacity to prove innocence before guilt where just, and the capacity to identify guilt and bring justice, before the civil liberties of other individuals are in any way compromised.*

Q474—*Much is written about ANPR cameras being fixed on road networks, but little is ever mentioned about mobile ANPR units, and indeed the use of the technology by private organisations/contractors. Vehicles are routinely clamped (often for lapsed Tax discs) by mobile unmarked units equipped with ANPR systems, which is clearly in breach of the Data Protection Act. As with many aspects of the argument, it isn't simply about the technology or it's capabilities, but more often the way it is used/misused.*

Final Brief Comments and Conclusions

The previously published "National CCTV Strategy" usefully highlighted a wide range of issues that needed to be addressed. In fact it could be argued that much of what is currently being discussed, should ideally have been addressed many years ago, before most of our current problems had become a matter for concern.

There is now an opportunity for significant steps to be made in the future management and improvement of CCTV usage, although it will require some very careful planning if all concerns are to be addressed within a reasonable timeframe.

Whilst the current proposed legislation sees CCTV considered as part of an overall basket of privacy related concerns, my personal preference would undoubtedly have been to observe the development of a standalone piece of specific legislation, that addresses a wide range of issues affecting the current use (and misuse) of CCTV, whilst also ensuring that privacy and civil liberty concerns are included as an integral part of the design and operation of systems, rather than simply as an add on consideration.

Whilst much attention has previously been focussed on privacy concerns, particularly in relation to the misuse or inappropriate deployment of CCTV, the fact remains that correctly profiled and operated video surveillance can prove hugely beneficial in addressing a wide range of everyday issues. The debate should really be less about how many cameras are actually being used, and more about how well they are fulfilling their intended purpose; provided of course that the purpose has been properly defined from the outset.

April 2011

Memorandum submitted by the Public and Commercial Services Union (PF 56)

Background

On 11 February 2011 the government published the outcomes of the reviews that it commissioned in October 2010 into the proposed Vetting and Barring Scheme (VBS) and the Criminal Record Checking (CRC) regime in England and Wales.

Within the Protection of Freedoms Bill, chapters 1 and 2 of Part 5 of the bill propose changes to the way the Vetting and Barring Scheme and the Criminal Records Bureau operate, through amendments to the Safeguarding Vulnerable Groups Act 2006 and Part V of the Police Act 1997.

Each review made key recommendations which are summarised in annexes A and B.

PCS represents 86% of staff at the Criminal Records Bureau (CRB) as well as staff at Independent Safeguarding Authority (ISA).

PCS Response to Recommendations

Having now had time to consider the recommendations our response is set out below:

1. PCS recognises that there is always room for improvement in the provision and delivery of services and welcomes these reviews of the current CRC regime and services and the previous plans for the VBS.

2. While we welcome some of the key recommendations of these reviews, such as tighter monitoring and policing of eligibility, some of the findings of the reviews amount to a disproportionate response to some of the legitimate concerns raised by members of the public and others about the current CRC regime and VBS proposals.

3. For example, in the independent review of the current CRC arrangements, Sunita Mason, makes reference to the "Your Freedom" website as a source of some of the key issues or concerns about the current CRB service and arrangements. However, she fails to mention that there were only 186 complaints about the CRB or the VBS proposals on the "Your Freedom" website. This also ignores the CRB's customer satisfaction and public approval ratings, which were well in excess of 90% in independent Ipsos/Mori surveys conducted in 2010.

4. PCS is also concerned that by focussing too much on the concerns of a small number of unsatisfied individuals, it is ignoring the wider public good that these systems exist to deliver and is potentially increasing the risk to the safety of children and vulnerable adults that these systems are designed to protect.

For example, we believe the proposal to scale back eligibility for CRCs, so that they are no longer available for under 16s or, in certain instances, they are no longer required for certain voluntary positions, creates a serious risk that persons with serious criminal convictions might be placed in positions of trust without the necessary safeguards and checks having been conducted.

5. PCS is also concerned about the potential scope and pace of some of these proposed changes and believes that introducing too much change too quickly could seriously jeopardise the current safeguarding arrangements and services. We will, therefore, be calling on the government to think again about some of these proposals and, if necessary, asking MPs to ask questions and table amendments to the Protection of Freedoms (PoF) Bill that is currently passing through parliament to prevent or mitigate some of the proposed changes.

6. PCS is also concerned that, at a time when the government is purporting to reduce the burden on the taxpayer, businesses and public finances, it is has recently tabled proposals (SI 719/2011) to increase the fee for an enhanced CRC by £8 with effect from 6 April 2011 (from £36 to £44), an increase of 22%. This increase will not bring any clear or immediate benefits or improvement to the service and has been introduced without any prior equality impact assessment or consultation with key stakeholders or customers.

Clauses in the Protection of Freedoms Bill

PCS has concerns relating to specific clauses in the Bill which are detailed below with proposed amendments:

Clause 63 of the Bill seeks to restrict the definition of a "regulated activity" relating to children, to only those roles which involve close and regular unsupervised interaction or paid roles in specified settings such as schools and children's homes

These amendments ignore the ability of people who work in supervised or voluntary roles to build significant relationships with children. For example, somebody working as a volunteer children's football coach would no longer need to be subject to vetting and barring under these arrangements.

Proposed Amendment—Remove this clause and retain current provisions.

Clause 66 changes the criteria used to determine if somebody should be placed on the ISA barred lists. It restricts the Independent Safeguarding Authority's ability to place somebody on the barred lists unless they are, have been or might in the future be engaged in a regulated activity

If this criteria is applied as drafted, it could mean that many people who are unsuitable to work with children will be exempt from inclusion on the barred lists

The Government have also previously confirmed that barring information will only be revealed for roles classed as a regulated activity, meaning employers will have no access to the barred status of those in non-regulated activities which nevertheless involve close contact with children and the vulnerable.

Proposed Amendment—Remove this clause and retain current provisions

Clause 78(1)(aa) introduces a minimum age of 16 for applicants applying for a CRB check

We do not believe this is consistent with the legal age of criminal responsibility in England and Wales ie 10 years old. We believe that this proposal could lead to some serious, relevant convictions being missed, particularly in the case of positions such as fostering and adoption and for home-based occupations.

Proposed Amendment—Remove clause and retain current provisions.

Clause 79(2) seeks to place a limit on the amount of time that police forces have to respond to requests for non-conviction information on applicants

The independent review of Criminal Record Checking carried out by Sunita Mason and published on 11 February recommended that this time limit should be 60 days.

Whilst we recognise that delays can lead to inconvenience and hardship for applicants, we believe that this will bring little benefit to employers or applicants as it will lead to incomplete checks being issued and creates the potential for recruitment decisions being made by employers before all relevant information is known.

It could also lead to the possibility that Police will release more information than necessary through "common law" powers, as they will be eager to remove any liability or risks that this deadline will create. This will only lead to less transparency and consistency for applicants.

Proposed Amendment—Remove clause and retain current provisions.

Conclusion

PCS very much welcomes these reviews and fully recognises that there is always room for improvement in the provision and delivery of public services. It also recognises and agrees that there is always a proper place for reviewing the scope and balance of public services between an unnecessary intrusion into the private lives of individuals and the wider public good of protecting children and vulnerable adults.

However, we are concerned that through the recommendations of these reviews and the government's response, the balance is tipping too far and that some of these recommendations represent a disproportionate response to exaggerated problems and shortfalls in the current arrangements. It will, therefore, be looking to engage constructively with the government and the Home Office/employer locally and nationally to work through the detail of these proposals and seek to amend or mitigate what it perceives to be any negative effects on the jobs of our members or the value, quality and integrity of the services they provide.

Annex A

Overview of Criminal Records Review Recommendations

— I recommend that eligibility for criminal records checks is scaled back (recommendation 1);

— I recommend that criminal records checks should be portable (transferable) between jobs and activities (recommendation 2);

— I recommend that the Criminal Records Bureau (CRB) introduce an online system to allow employers to check if updated information is held on an applicant (recommendation 3);

— I recommend that a new CRB procedure is developed so that the criminal records certificate is only issued directly to the individual applicant (recommendation 4);

— I recommend that the Government introduces a filter to remove old and minor conviction information from criminal records checks (recommendation 5);

— I recommend the introduction of a package of measures to improve the disclosure of police information to employers (recommendation 6);

— I recommend that the CRB develop an open and transparent representations process and that the disclosure of police information is overseen by an independent expert (recommendation 7);

— I recommend that where employers knowingly make unlawful criminal records check applications the penalties and sanctions are rigorously enforced (recommendation 8);

— I recommend that basic level criminal record checks are introduced in England and Wales (recommendation 9); and

— I recommend that comprehensive and easily understood guidance is developed to fully explain the criminal records and employment checking regime (recommendation 10).

Annex B

Overview of VBS Recommendations

(a) A state body should continue to provide a barring function to help employers protect those at risk from people who seek to do them harm via work or volunteering roles.

(b) The Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) should be merged and a single Non-Departmental Public Body or Agency created to provide a barring and criminal records disclosure service.

(c) The new barring regime should cover only those who may have regular or close contact with vulnerable groups.

(d) Barring should continue to apply to both paid and unpaid roles.

(e) Automatic barring should apply for those serious offences which provide a clear and direct indication of risk.

(f) Registration should be scrapped—there should be no requirement for people to register with the scheme and there will be no ongoing monitoring.

(g) The information used by the state barring body (currently the ISA) to make a barring decision should be serious in nature.

(h) Criminal records disclosures should continue to be available to employers and voluntary bodies but should be revised to become portable through the introduction of a system which allows for continuous updating.

(i) The new regime should retain current arrangements for referrals to the state barring body (currently the ISA) by employers and certain regulatory bodies, in circumstances where individuals have demonstrated a risk of harm to children or vulnerable adults.

(j) The current appeals arrangements should be retained.

(k) The state barring body should be given a power to vary review periods in appropriate circumstances.

(l) Services relating to criminal records disclosure and barring provisions should be self-financing. We recommend the Government consults on raising the cost of the criminal records disclosure fee to cover the costs incurred.

(m) The new system will retain two offences; it will continue to be an offence for a barred person to work with vulnerable groups in regulated activity roles. It will also be an offence for an employer or voluntary organisation knowingly to employ a barred person in a regulated activity role.

(n) Finally, the Government should raise awareness of safeguarding issues and should widely promote the part everyone has to play in ensuring proper safeguarding amongst employers, volunteer organisations, families and the wider community.

April 2011

Memorandum submitted by ACPO Disclosure of Criminal Convictions Portfolio (PF 57)

1. Summary

1.1 This paper is submitted by Commander Simon Pountain of the Metropolitan Police Service in his capacity as the holder of the ACPO Disclosure of Criminal Convictions Portfolio. It supplements the oral evidence provided to the committee by ACPO on 22 March 2011.

1.2 The submission is in respect of Part 5 of the Bill, and in particular Chapters 1 and 2 of Part 5. As these chapters represent the legislation required to give parliamentary backing to the recommendations of both the Vetting and Barring Scheme Remodelling Review (DfE, DoH and Home Office 2011); together with elements of the review of the criminal records regime in England and Wales by Sunita Mason (Phase 1 Report, *A Common Sense Approach*, 2011); the submission focuses on the recommendations of those reviews rather than a line by line commentary on the Bill itself.

1.3 ACPO would wish it to be recorded that it welcomes the UK Government's proposals to develop a simpler and more proportionate approach to the safeguarding of vulnerable groups. However there are concerns about some of the specific details of the changes which are set out in this paper. ACPO is nonetheless convinced that the revised scheme is a good step towards achieving the government's aim of "scaling back the scheme to common sense proportions", and that the removal of elements of the existing scheme, such as Registration, Controlled Activity and Continuous Monitoring, does not result in a safeguarding gap.

2. Police Service Issues

2.1 ACPO is disappointed that, despite close involvement in both reviews, there are two significant omissions from the Bill:

(i) Police Service exemption from "Regulated Activity";

(ii Police access to the two "Barred Lists".

2.2 *Police Service exemption from Regulated Activity*

2.2.1 The Police Service had previously (successfully) argued that both its officers and staff should be exempt from the (registration) requirements of the existing scheme. The justification for this is that the police vetting regime that applicants to the service undergo prior to appointment (officers), or employment (staff), is far more stringent and intrusive than the checks that are able to be conducted by either the CRB or the ISA as part of their checking procedures.

2.2.2 Incorporated within the police "Recruitment Vetting" standard are detailed checks on the applicant including consideration of all (not just "relevant" as in Part V Police Act disclosures) conviction and non conviction information. Furthermore an assessment of any financial vulnerability is undertaken. Additional checks are also undertaken both on close family members and on associates. Finally, for officers and PCSOs, the police Recruitment Vetting standard will soon incorporate Biometric Vetting such that candidate's DNA and fingerprints will be speculatively searched against the unmatched crime scene marks database to establish if they are suspected of involvement in any as yet unsolved crimes.

2.2.3 The draft Bill makes no provision for any exemption from Regulated Activity for the Police Service. This is likely to result in personnel fulfilling police roles that fall within the revised definition of Regulated Activity being compelled to obtain the enhanced disclosure certificate plus barred list status check. This again potentially places the Police Service in the situation where it will have to pay an external agency for the privilege of checking police owned information. This can neither be considered efficient nor effective by any objective measure.

2.2.4 It is accepted that provisions within the Bill, specifically at Clause 76(3), will provide the ISA with the power to provide the police with information for the purposes of recruitment to the Police Service in addition to the existing grounds (and thus would permit the police service to check an applicant's barred

status); and further that Clause 72(7)(a) provides that the Secretary of State may disapply the requirement to check the barred lists in respect of persons of a prescribed description (which may include those within the Police Service). However ACPO would argue that these provisions do not go far enough in the unique case of the Police Service which itself owns the majority of information upon which the entire employment vetting system under both Part V of the Police Act, the Safeguarding Vulnerable Groups Act, and the Protection of Freedoms Bill are based.

2.2.5 ACPO therefore recommends that the Police Service and its associated functions are included within the list of those specifically excluded from Regulated Activity under Clause 63 of the Bill. Clearly any engagement in Regulated Activity by police officers or staff outside of their police remit would be regarded in the same way as any non police person engaging in Regulated Activity, and so subject to the same processes.

2.3 *Police Access to the Barred Lists*

2.3.1 As stated at (2.2.4) above, Clause 76(3) of the Bill effectively provides a power to the police to request the barred status of an individual by extending the power under s50(a) of the SVGA. Whilst this enables the Police Service to incorporate a barred lists check as part of its recruiting process, access to the barred status of an individual for the purposes of the prevention and detection of crime is still considered by ACPO to be inadequate through this provision.

2.3.2 In order to ensure that any safeguarding gaps are plugged, and that offences created by section 7 and section 9 of the SVGA are a credible deterrent, police access to the barred status of an individual MUST be available immediately in real time on a 24/7 basis rather than via a slow time application to the ISA. ACPO preference would be for this information to be available via a marker or flag on the Police National Computer.

2.3.3 The example has previously been cited of a uniformed police patrol checking the driver of a minibus containing children outside of office hours. That officer needs to know there and then if the driver is barred from working with children, both in order to take the necessary enforcement action, but more importantly to ensure the safety of those children by removing the barred individual from that activity. Otherwise there is a real danger that the Safeguarding Vulnerable Groups Act, as amended by the Protection of Freedoms Bill will become a "toothless tiger".

3. Review Specific Issues

3.1 *Vetting and Barring Scheme Remodelling Review*

3.1.1 Recommendation (b)—Merging of CRB and ISA

In its submission to the Review, ACPO questioned the need for the existence of two organisations. Merger of the two should reduce costs, and improve both the efficiency and effectiveness of the combined business processes.

The interpretation of the Government Protective Marking Scheme by the ISA has resulted in difficulties in communication of information with other stakeholders including the Police Service and the CRB. The insistence that all ISA operations are conducted at CONFIDENTIAL level has proven to be problematic and at times obstructive. Both the Police Service and the CRB assess similar information to be of RESTRICTED level. ACPO therefore recommends that for operational expediency the merged organisation adopts the information security standards of the CRB rather than the ISA.

3.1.2 Recommendation (c)—Scope of the VBS

ACPO supports the view that the scheme should be aimed at those whom have the opportunity and present the greatest risk. The definition of the terms "regular" and "close contact" is critical. A number of police roles would satisfy this criterion and so the police service is again in danger of being in a position where it may have to pay the CRB/ISA for a check of its own records for its staff and officers deemed to be engaged in Regulated Activity (See 2.2 above).

3.1.3 Recommendation (e)—Automatic barring restriction

Under Clause 66 the barring decision will not be made unless the individual is, or has been engaged in Regulated Activity, or might in the future be so engaged. ACPO is concerned as to how the ISA will be aware of whether or not someone committing an auto bar offence satisfies any of these criteria and so should be added to the lists.

3.1.4 Recommendation (h)—Portable Enhanced CRB disclosure certificates

ACPO suggests that the revised VBS should be also incorporate the functions of non Part V Disclosure regimes such as the Notifiable Occupations Scheme which will otherwise be under pressure to expand to fill the perceived space left by the contraction of the VBS. (See also comment at 3.2.2 regarding disclosures being made based on employment sector in future as opposed to the current and more narrowly defined "Position Applied For").

3.1.5 Recommendation (i)—Retention of referrals processes

There needs to be clarification of the provisions surrounding referrals, as if not previously engaged in Regulated Activity there is an inference that the barring decision will only be taken at the point at which an individual enters Regulated Activity, in which case the non Regulated Activity Provider referral processes leading to consideration of a discretionary bar, would be meaningless. (See also 4.2 below).

3.1.6 Recommendation (m)—Offences

There are enforcement issues with the existing S7(1) offence insofar as there is a defence under S7(3) that effectively requires the State Body (currently the ISA) to prove that the notice of barring was received by the individual. This has proved problematic providing the opportunity for a fabricated defence, and so the offence needs to be amended so as to be made absolute, or a provision inserted such that "service of the barring notice by first class post to the subject's last known address" is deemed to be good service for the purpose of S7(3).

The offences under S9(1) and S9(2) require that the person committing the offence knows that the individual is Barred from the relevant Regulated Activity—if there is no longer a statutory obligation to check if a person is barred (being replaced by a duty to check) then there is arguably an in-built incentive not to check the barred lists so as to preclude the commission of S9 offences.

3.2 *Criminal Records Review*

3.2.1 Recommendation (1)—Scaling back of eligibility

ACPO fully agrees with the rationale in respect of CRB checks for those less than 16 years old. In respect of the wider scaling back of eligibility, there may be a tendency for demand to create its own supply and thus encourage a shift towards non Part V disclosure regimes such as the Notifiable Occupations Scheme (NOS). The use of police common law powers does not incorporate the same tests of proportionality, relevancy, necessity and accountability as those contained within Part V. The NOS is currently subject to Home Office review, and the view of ACPO is that it too should be significantly scaled back in a similar fashion, such that:

— there is no longer a presumption to disclose,

— that the list of bodies eligible for notifications is significantly reduced, and most importantly,

— that NOS disclosures are only made in cases of pressing social need.

All other employment vetting disclosures should be made via the Part V route.

3.2.2 Recommendation (2)—Portable Enhanced CRB disclosure certificates

The disclosure of other relevant police information is determined by considering the "Post Applied For" and determining the relevancy of the information in respect of that post. A more portable enhanced CRB certificate may result in more information being disclosed in order to accommodate the range of roles for which the applicant could use the certificate. This is an issue that has been highlighted by the Scottish PVG scheme whereby the "sector" is defined at a relatively high level as being "children" or "protected adults" and so police disclosures will need to be made against that broader backdrop. This is likely to result in a greater volume of information being disclosed about an individual.

3.2.3 Recommendation (4)—Certificates to be issues directly to the individual

The provisions within the Act to enable direct disclosure to the Registered Body/Employer without the knowledge of the applicant have not been widely used and arguably have at times been misused. There will however continue to be exceptional circumstances where disclosure to an employer/registered body will be necessary in order to afford immediate protection to children/vulnerable adults. It is envisaged that a redefined Notifiable Occupations Scheme would provide the necessary route in such cases of "pressing social need".

3.2.4 Recommendation (6)(d)—60 day timescale for police information

The SLA between ACPO and the CRB already provides for target turnaround times. ACPO is concerned that if there is a presumption that there is nothing relevant to disclose if the police have not made a decision within 60 days, then relevant information could be excluded thereby increasing the risk to sector in which the applicant is intending to work/volunteer.

3.2.5 Recommendation (6)(f)—use of the PND to identify police information

The PND is not the panacea that will facilitate the regionalisation (or nationalisation) of the police input to the Part V disclosure process. In determining disclosures of relevant police information, disclosure unit staff will frequently look beyond the information held within databases that will feed the PND. It is not unusual for the case file to be scrutinised and officers' notebooks examined. If required the OIC or SIO will be contacted in person and asked to provide further details. This would be cumbersome and convoluted if the decision maker was remote from those providing the information on which the decision is made.

There may be some legal liability issues to be overcome, for example who would bear the liability for the disclosure?— The Chief Officer making the disclosure or the Chief Officer upon whose information the disclosure is based?

3.2.6 Recommendation (9)—introduction of "Basic" level checks

ACPO supports this and suggests that basic checks should be made available to a wider arena for the purposes of employment vetting.

It would appear that there will in fact be four levels of check available:

— Basic,

— Standard,

— Enhanced, and

— Enhanced and Barred List Check.

The Bill makes it clear that only those engaging in Regulated Activity will be subject to the fourth and highest level of checking. There is a perception (articulated by the NSPCC) that this creates a safeguarding gap as it affords the opportunity for a barred individual to work or volunteer in a role that whilst not being Regulated Activity nonetheless affords access to children. ACPO does not agree that this creates a safeguarding gap as applicants for such roles will still be the subject of an enhanced CRB certificate which will disclose much of the information upon which any barring decision would have been taken thereby providing sufficient background to enable the employer/voluntary organisation to make an informed decision regarding the appointment of such an individual.

4. Other Issues

4.1 The new definition of regulated activity excludes many people who are supervised whilst working with children and those working with 16–17 year olds in education, faith and sports settings. As the current school leaving age is 16 this would seem appropriate as 16 and 17 year olds are at liberty to undertake full time employment, thereby being in an environment in which they will not be subject to any safeguarding measures anyway. However the DfE plans to increase the school leaving age to 18 from 2013 which would arguably lead to an inconsistency of approach and the possible creation of a risk that potential abusers may gain and exploit positions of trust in respect of 16 and 17 year olds within an educational setting be it a school, sixth form college or other establishment.

4.2 Under Clause 66 individuals can only be considered for being placed on the barred lists if they are, have been, or might in the future be engaged in Regulated Activity. There is logic in this approach insofar as there seems little point in the State Body expending effort and resources in considering the barring of someone that has not, and never will be engaged in Regulated Activity. However this does then raise the question as to the operation of the Auto-bar process and the referral processes. Furthermore there may be individuals who currently feature on the barred lists as a result of the ISA's structured judgement process and who under the revised provisions will need to be removed—this may present a serious reputational risk for all stakeholders involved in the safeguarding arena.

4.3 Clause 80 of the Bill enables CRB checks to be portable: If an applicant subscribes to updating arrangements, employers will be able to check online to see if new information has been generated since the CRB certificate was issued and thus application should be made for an updated certificate. This process will need to be carefully modelled to ensure that minor and irrelevant changes in the individual's history, or indeed in the police non conviction information, do not result in changes to the online status and the consequent needless application for another certificate.

4.5 ACPO is conscious that the scope of both reviews was limited to the Vetting and Barring Scheme as defined by the Safeguarding Vulnerable Groups Act 2006; and the Criminal Records Bureau disclosure regime provided under Part V of the Police Act 1997. There are however other disclosure regimes in operation such as, the Notifiable Occupations Scheme, CAFCASS, and the demands of the professional bodies such as the General Medical Council, the Nursing and Midwifery Council, the General Teaching Council etc to require police information held in respect of individuals. ACPO would highlight that these schemes do not appear to be subject to the same degree of regulation as the VBS and CRB disclosures and would urge that their continued existence is urgently considered. The inferred powers of professional bodies to demand sensitive personal information without the consent of the individual must be drastically curtailed. Otherwise there is a danger that in the face of the perceived constriction of the VBS and CRB regimes, demand will seek out an alternative supply through these unregulated channels.

4.5 ACPO is aware that the Notifiable Occupations Scheme, which relies on common law powers, and has its roots in the 1950s when there were no structured disclosure regimes in existence; is subject to a separate Home Office review. ACPO would wish to see a significant constriction of this scheme such that it becomes the channel to facilitate "urgent pressing social need" disclosures (akin to the Police Act s113B(5) disclosures) rather than the current, and entirely disproportionate, presumption to disclose based solely upon an individual's occupation and/or membership of a professional body.

April 2011

Memorandum submitted by David Wells (PF 58)

1. I submit these observations as a personal view although they have been formed as part of my role as Lead Countersignatory for Lions Clubs International.

2. Lions Clubs International Multiple District 105 has17,000 members in 900 clubs across the six legislative areas of GB.

3. Under our constitution all clubs are autonomous. However at present all CRB checks are returned to a central location and I deal with any issues. It is very rare for any issues to be referred to the individual club. The reason behind this is that most clubs contain family and friends of the applicant.

4. Officers within the organisation tend to change every 12 months, this also means that it becomes difficult to contain sensitive information within a small group.

5. I welcome the scaling down of the legislation. The legislation proposed by the Labour Government would have caused the organisation considerable issues relating to ensuring that every club kept within the law.

6. Under the proposed legislation the amount of members requiring registration will be vastly reduced, as not many of our members have any more then occasional contact with vulnerable persons, and then usually a carer will be present.

7. Our policy for CRB checks is that they are required for one to one unsupervised contact with vulnerable persons.

8. The issue of CRB Certificates being only sent out to the applicant would cause the organisation an administrative nightmare. Whilst I commend the idea behind giving the individual the freedom of when and where to produce the certificate, it is feared that we will have members leaving the organisation rather then produce a certificate to their club. This is because, as previously outlined, they would be unhappy to produce any certificate which contains any history to family/friends. It may also lead to inconsistency in dealing with individual issues, leading to employment decisions being made which may be open to challenge. This part of the proposed legislation leans heavily towards Business Employers or those charities who have a Human Resource Department.

9. Our issue would be best solved by giving the applicant the option of having a copy of the certificate sent to a particular location. This should be easy enough to achieve by just inserting the registered bodies number in a particular place on the form.

April 2011

Memorandum submitted by the General Social Care Council (PF 59)

1. The Protection of Freedoms Bill contains provisions that will amend the powers and functions of the Independent Safeguarding Authority (ISA) under the vetting and barring scheme. This briefing outlines the GSCC's views on these provisions and some of the important matters that need to be considered.

About the General Social Care Council

2. The General Social Care Council (GSCC) was established under the Care Standards Act 2000 as the regulator of the social work profession and its education in England. We protect the public by requiring high standards of education, conduct and practice of all social workers.

3. The GSCC ensures that only those who are properly trained, able and committed to high standards practise social work. We do this by maintaining a compulsory register of social workers and issuing and enforcing a code of practice for the profession. The GSCC has the power to impose sanctions on social workers who do not meet the required standards of conduct. Where public protection warrants it, an independent panel of the GSCC can remove them from the register following a full investigation and hearing. Social workers who have been removed from the register are no longer able to practise social work legally in England.

4. The GSCC also regulates and promote high standards in social work education by approving the quality of social work qualifications offered by universities.

Background

5. The GSCC is currently subject to duties under the Safeguarding Vulnerable Groups Act 2006 (SVGA) to refer information to the Independent Safeguarding Authority. As a result of being under these duties, and through working with other professional regulators subject to similar duties, a number of major concerns have arisen about the legislation underpinning the Vetting and Barring Scheme. These concerns remain following the government's review of the scheme. These concerns are:

— that the basis on which the ISA decides to bar an individual is very broad and unclear;

— that the circumstances in which regulators should to refer information to the ISA is unclear; and

— that the mechanism for exchanging information about barring decisions is problematic and uncertain.

6. As a result of this, the GSCC considers that the Protection of Freedoms Bill 2011 provides an important opportunity to make further amendments to the Safeguarding Vulnerable Groups Act to address these concerns. It is important that these changes are made in order to improve public protection and to make it clear to the public the respective roles and responsibilities of professional regulators and the Independent Safeguarding Authority.

Clause 66—The basis on which the ISA decides to bar an individual is very broad and unclear

7. Health and Social Care professional regulators collectively regulate approximately 1.4 million individuals in the United Kingdom. This is likely to be a substantial proportion of those individuals who are also engaged in the "regulated activity" which is overseen by the ISA.[115] As a result, there are significant concerns in the social care sector about the overlap between the role of the professional regulators in preventing unsuitable individuals from working with vulnerable adults and the role played by the Vetting and Barring Scheme.

8. This potential for overlap arises because the ISA can bar an individual for either causing "harm" or demonstrating the potential to cause "harm" to a vulnerable person.

9. Harm is not defined in the legislation and so the ISA has wide discretion in terms of who to "bar". An individual whose professional incompetence has caused harm or could have caused harm to a vulnerable person could be removed from working with vulnerable adults and children by the ISA. A registered professional could be barred for example, for inappropriate administration of medication by a nurse, poor administrative procedure in a social work setting, or even misdiagnosis by a doctor.

10. The GSCC consider that such areas of professional incompetence should be dealt with by the professional regulator and not by the ISA. Where the professional regulator can mitigate the risk to vulnerable people through removing a professional from their register the GSCC considers that there is no need for the ISA to bar such an individual. Introducing this principle in the legislation would make clear to the general public and the 1.4 million registered professionals the different roles played by the ISA and by professional regulators. It would also prevent the ISA and professional regulators making decisions on the same cases and hence avoid a duplication of effort.

11. The GSCC recommends that an amendment is made to the SVGA to the effect that where the professional regulator can mitigate the risk to vulnerable people through removing an individual from their register, there is no need for the ISA to bar that individual.

12. If such an amendment cannot be made, the GSCC would like to seek an assurance from Ministers during the debate on Clause 66 that the ISA will not be expected to bar an individual where professional regulators have mitigated the risk to the public.

13. In addition, the ISA has the power to bar an individual even if that individual has not engaged in any harmful activity.[116] This is known as the "harm test". This is a very controversial clause which appears to allow the ISA to prevent someone from working in regulated activity even if they have not engaged in any form of harmful behaviour, but there is some evidence that they may pose a risk of harm. No guidance has been issued as to how and in what circumstances an individual could be barred for failing to meet this test.

14. This approach should be contrasted with the approach taken to professional regulation, where professionals are made aware through guidance and Codes of Conduct the activities that they should not engage in if they are to remain registered. Professional regulators, unlike the ISA, are also required to publish their decisions and the basis on which they were taken.

15. In order to provide greater public confidence in the decisions taken by the ISA it is recommended that the "harm test" is removed from the SVGA. The circumstances in which an individual can be barred from working in regulated activity without having engaged in harmful behaviour remains unclear.

16. If such an amendment is not made the GSCC recommends that Ministers set out during the debate on Clause 66 the specific circumstances in which the "harm test" would be applied.

17. Further, in order to ensure transparency about the decisions taken by the ISA it would be useful if the ISA was obliged to provide a summary of the types of cases which have led to barring decisions each year.

[115] The total number of people regulated by the following health and social care professional regulators is 1.393 million. The General Social Care Council, the General Medical Council, the Nursing and Midwifery Council, the General Chiropratic Council, the General Dental Council, the General Optical Council, the General Osteopathy Council, the Health Professions Council, the Pharmaceutical Society of Northern Ireland and the Royal Pharmaceutical Society of Great Britain. All of these regulators are subject to the same duties as the GSCC under the SVGA. Source GSCC own figures and Council for Healthcare Regulatory Excellence. https://www.chre.org.uk/_img/pics/library/100806_Performance_review_report_2009-10_tagged _ 1.pdf)

[116] Safeguarding Vulnerable Groups Act 2006 Schedule 3 Para 5.

Clause 74—The basis on which Professional Regulators refer information to the ISA

18. The GSCC, like other professional regulators, remains under a duty under the SVGA to refer information about unsuitable individuals to the ISA. The government proposes that this duty should now be a power to refer information.

19. However, the types of cases which professional regulators should refer to the ISA remains unclear as a result of the tests set out in the legislation. These tests remain unchanged as result of the government's review of the scheme. The SVGA requires the GSCC to refer information to the ISA where an individual has caused harm or has the potential to cause harm and it "thinks" that the ISA "may" consider it "appropriate" to bar an individual.[117]

20. As noted above there is no definition of harm in the legislation and so potentially all of the cases of misconduct and impaired fitness to practice which the regulators deal with should be referred to the ISA. However, to do this would cause significant difficulties for the ISA in terms of the volume of referrals and would lead to a duplication and overlap of regulatory responsibilities.

21. As a result, the GSCC has been basing its decision to refer information to the ISA on the principle that where we have mitigated the risk to vulnerable people through removing an individual from working as a social worker or applied another sanction a referral is not necessary. Only in those cases where the GSCC cannot mitigate the risk of harm is a referral required.

22. The GSCC have an agreed an approach with the ISA to referrals which is based on this principle as this has emerged as the only practical way of taking referral decisions. It would be useful, however, if the SVGA could be amended to state that where regulators consider they have mitigated the risk of harm to vulnerable people they are not expected to make a referral to the ISA. To do so would make clear to the public the respective roles and responsibilities of the ISA and professional regulators in protecting the public.

23. If such an amendment cannot be made it would be useful if Ministers could provide a clarification during the debate on Clause 74 that professional regulators are not expected to make a referral to the ISA if they consider that they have successfully mitigated the risk to vulnerable people.

Clauses 71 and 74—The mechanism for exchanging information about barring decisions is problematic

24. A key function of any barring system is that any decision taken by the central barring authority (the ISA) should be communicated to other regulatory bodies in order to protect the public and to ensure that unsuitable individuals do not gain access to vulnerable individuals.

25. The current Sections 43 and 44 of the SVGA place duties on the Secretary of State and the ISA to notify professional regulators of any decision taken to bar an individual who is on their register. Unfortunately, these provisions have not been enacted. The result of this is that the GSCC has discovered that a number of our registrants have been barred by the ISA and we have not been notified by the ISA about this.

26. This failure to share information about barring decisions causes significant reputational damage to professional regulators and undermines confidence in the Social Care Register. The GSCC is clear that only those individuals who are qualified and suitable to work as social workers should appear on the Social Care Register. If the register contains individuals who have been barred by the ISA without the GSCC knowing about this, this significantly undermines our ability to fulfil our statutory duties.

27. The GSCC therefore supports the requirements on the ISA and the Secretary of State to notify regulators of barring decisions and the reasons behind these decisions. However we are greatly concerned about the fact that these changes will not be introduced until the Protection of Freedoms Bill receives Royal Assent. In the meantime, there is the continued possibility of the ISA barring a social worker and the GSCC not being informed about this. It would be useful if Ministers could set out how information exchange between regulators and the ISA is expected to work during this interim period.

28. However, whilst supporting this amendment a number of key concerns remain about how this information exchange will work under the new arrangements.

29. Clause 74 (3) requires the ISA to notify professional regulators if it "knows" or "thinks" that an individual may be a registered professional. Unless the ISA is able to identify that an individual is registered then they will not know who to notify and the information exchange will not work. Bearing in mind that professional regulators collectively regulate around 1.4 million people, it remains unclear how the ISA will "know" or think that an individual is a registered professional.

30. It would be very useful if Ministers could clarify how this process for exchanging information will work during the debate on this clause.

31. A further concern for regulators is the possibility that they may be charged a fee to find out barring information about individuals. Under Clause 74 (5A) regulators can apply to the Secretary of State to be notified about whether an individual is or has been barred. Under Clause 71, applying to the Secretary of State for such information requires the payment of a fee.[118]

[117] Section 41 Safeguarding Vulnerable Groups Act 2006.
[118] Protection of Freedoms Bill (page 53 line 35).

32. Bearing in mind that professional regulators collectively regulate 1.4 million individuals accessing information about registered individuals from the ISA or Secretary of State could have a significant cost for professional regulators. It could also act as a disincentive to seeking information about barred individuals.

33. The GSCC would therefore like an assurance that it will not be charged a fee in the future to access information about whether social workers have been barred by the ISA.

April 2011

Memorandum submitted by the Sport and Recreation Alliance and the Child Protection in Sport Unit (PF 60)

THE IMPACT OF THE PROTECTION OF FREEDOMS BILL ON SPORT

1. The Child Protection in Sport Unit (CPSU) is a partnership between the NSPCC, Sport England, Sport Northern Ireland and Sport Wales. The Unit was founded in 2001 to work with UK Sports Councils, governing bodies and other organisations to help them minimise the risk of child abuse during sporting activities. The unit does this by providing sports organisations with information and advice on safeguarding issues and developing and promoting standards for safeguarding and protecting children in the sports sector.

2. The Sport and Recreation Alliance is the national independent voice for sport and recreation, representing over 320 member organisations including the national governing bodies. Our members account for 151,000 sports clubs catering for some 13 million participants, and the Alliance exists to protect and promote the role of sport and recreation in healthy and active lifestyles, to encourage a policy and regulatory environment in which sport from grassroots through to elite level can flourish, and to provide high quality services to help its members to continually improve and progress.

3. We are united by the belief that sport and recreation organisations should ensure safe environments for children. We are keen to work with Government to ensure that the right balance is struck, allowing sport and recreation organisations to continue to provide safe environments for children at the same time as not being over-burdened with systems that do not help achieve that aim.

4. Sport and recreation organisations are an integral part of society and millions of children participate in sports clubs on a regular basis. Sports clubs rely on volunteers to operate and it is vital that sport and recreation organisations have access to clear information about whether these volunteers pose a risk to children or vulnerable adults. Whilst there is at present no legal requirement for CRB disclosures in sport and recreation organisations, it is clear that members and the wider public have an expectation that the people who volunteer and work in roles with children or vulnerable adults have been judged to be suitable by the sport and recreation organisation. There would be a devastating effect on sport and recreation organisations if parents lose faith in the ability of organisations to safeguard their children.

5. Overall, we welcome proposals from the Government to reform the vetting and barring arrangements and in particular the introduction of portable CRB checks which will make it easier for volunteers working across a number of different organisations to do so without unnecessary burdens. However, there are some proposals that we feel need more consideration, specifically in relation to sport and recreation organisations:

DEFINITION OF REGULATED ACTIVITY AND ELIGIBILITY

6. We recognised and appreciate that the Government has had to limit and reduce the number of people who are legally required to be "vetted" and as a result the definition of "Regulated Activity" had to be changed. We welcome that there will still be mandatory vetting for people in "Regulated Activity", however we do have significant concerns as a sector about: how the boundaries have been defined for "Regulatory Activity"; and about the vetting tools that will be available for organisations who want to get assurances about individuals who are not in "Regulated Activity".

SUPERVISED ACTIVITY

7. Clause 63 of the Protection of Freedoms Bill exempts many positions from "Regulated Activity" simply because they will be classified as "supervised". We do not feel that "supervision" is the right benchmark for mandatory checks. Regardless of whether an individual is supervised in a sport setting, it is still possible for them to have regular and intense contact with children. Sport takes place in a variety of environments which includes school settings, leisure facilities (local authority and private) and a variety of outdoor spaces. As referenced earlier sport presents an anomaly in the sense that it is not recognised by the law, yet public expectation often places demands that are higher than the legal requirement.

8. Where the term "supervision" is being used, it needs to be clear what this means. Sports organisations will generally risk assess roles in terms of their eligibility for checks. We support attempts to make the definition of "supervised" clearer and to ensure that it is based more on whether an individual is able to build a relationship of trust with a child and not on whether they are working alongside another individual. In sport and recreation it is very difficult to create a definition for "supervision" that would capture all instances where an individual might be able to build up a relationship of trust with a child. An Assistant Coach might be deemed to be "supervised" by the Head Coach but they may still be responsible for taking a group of

children to a different part of the pitch to work on specific training drills or tactics. Equally even in a more controlled environment of a sports hall, an Assistant Coach will still have the opportunity to build up a relationship of trust with children and it would be impossible to argue that because a Head Coach is leading a session that they could control the environment completely.

9. Sport and recreation organisations need the definition of "Regulated Activity" to include all individuals that are able to build up a relationship of trust with children, in order to meet public expectation of the safeguards required to take on certain roles. For example, the Rugby Football Union had two club committee members who were on sex offenders register. While not holding roles that gave them unsupervised contact with children, their position within the club provided the opportunity to build up a relationship of trust which could be exploited with these children. The Amateur Swimming Association have similar examples including an honorary president who had been caught by police for contacting a female swimmer aged 13 and pretending to be a boy of the same age; he was caught in a police sting and placed on the sex offenders register as a result.

10. We make two proposals. The first is that the definition of "supervision" is tightened up to include a reference to "close and constant" supervision. This would work more on a risk based approach and ensure that unless supervision was of the nature where an individual working with children was being watched constantly that they would meet the requirements for "Regulated Activity". This would therefore recognise the opportunity to form positions of trust in sports organisations. The second proposal is that the Government recognise the 'specificity' of sport that the EU frequently appreciate and exempt the "supervision" requirement from sport completely. This would mean that any individual working in close and frequent contact with children in sport will meet the "Regulated Activity" requirements regardless of whether they are supervised.

Eligibility for Checks beyond "Regulated Activity"

11. Noting that the Government want to reduce the number of people legally required to be checked, we appreciate that the line needs to be drawn somewhere and it is inevitable that some individuals working in sport and recreation organisations will not meet the requirements for "Regulated Activity". We are concerned as a sector that we may still want to "check" individuals working outside of "Regulated Activity" as a result of knowing our environment and the risks that certain roles present. We are unclear whether we will have access to the same "vetting" tools for an individual outside of "Regulated Activity" as we would for an individual captured by "Regulated Activity" and if the "vetting" tools are different, if they will allow sport and recreation organisations to make the judgements they are expected to make about the suitability of individuals.

12. We again make two proposals for consideration. The first is that the "vetting" product which is developed and becomes a legal requirement for individuals working in "Regulated Activity" is made further available to individuals not working in "Regulated Activity" as optional. This would ensure that organisations are still given the responsibility of raising the requirements for safeguarding beyond the legal requirement where appropriate. The second proposal is again that the Government recognise that sport and recreation organisations are an anomaly and they have remained self-regulated because they are the best placed organisations to make judgements on where the risk is present in their environments. An exemption is granted for sport and recreation organisations to be able to use the "vetting" tools in the way they deem appropriate regardless of whether an individual meets "Regulated Activity" requirements or not. In some ways, trying to make "Regulated Activity" fit all sport and recreation organisations is impossible and therefore it would be sensible to allow sport and recreation organisations the discretion they deserve as a self-regulated sector to make decisions about the risk presented in their own environments.

Issuing of Single Disclosures

13. Clause 77 of the Protection of Freedoms Bill proposes that only one disclosure is released directly to the applicant to allow the applicant to dispute information and to have it removed prior to the disclosure being viewed by a recruiting organisation. We understand this perspective and that in a regular recruitment setting there would be an appropriate juncture for the individual to share with their prospective employer their disclosure.

14. However in sport and recreation organisations there can be a less formal structure and less opportunity for the "handing over" of this information. In addition the infrastructure of many sport and recreation organisations relies on the centralised management offered by a national governing body. The centralised management by an NGB ensures consistency across a sport (from club to club); that decisions are made by an experienced individual; and that a club level volunteer is not over-burdened with information about individuals they know on a personal level that will affect their relationships and ultimately may influence their judgements. Where an individual needs to share their disclosure with the organisation in sport, this will mean sending it to the national governing body rather than giving it to the club. We are seeking assurances that identity verification will be possible where a centralised national governing body structure needs to operate.

15. However, ultimately we have real concerns that within the informal sport setting national governing bodies will be forced to chase individuals for their disclosures and this will create an administrative burden at the same time as allowing an individual to work with children when they may not be suitable. Our concern is that if an incident occurs whilst a national governing body is chasing an individual for a disclosure, that the national governing body will be liable. We appreciate that a system may be developed to ensure that an organisation will only need to chase the disclosures that have content on them. Whilst we have been told that this represents only a small number of disclosures, in sport and recreation organisations we have a spread of disclosures with content on, ranging from 3% per year in one sport to 15% per year in another. For sport and recreation organisations to continue being responsible and rehabilitating individuals into society appropriately the organisation needs to see the disclosure as soon as possible and we advocate that the single disclosure to the applicant is amended in the Bill to allow for the two disclosure system that operates currently to be retained. The percentage of errors made on CRB disclosures is not enough to justify the percentage increase in the work required by a national governing body to chase up disclosures with content.

The following national governing bodies of sport would like to express their support for this submission:

1. Lawn Tennis Association
2. British Judo
3. British Rowing
4. Volleyball England
5. The Football Association
6. Badminton England
7. England Netball
8. British Canoe Union
9. Amateur Swimming Association
10. British Water Ski and Wakeboard
11. English Golf Union
12. England and Wales Cricket Board
13. British Fencing
14. Archery GB
15. Snowsport England
16. Rugby Football League
17. England Squash and Racketball
18. Baseball Softball UK
19. British Weightlifting
20. England Hockey Board
21. UK Athletics
22. English Women's Golf Union

The following county sports partnerships would like to express their support for this submission:

1. Cambridgeshire and Peterborough Sports Partnership
2. Northamptonshire Sports Partnership
3. Lincolnshire Sports Partnership
4. West of England Sport Trust
5. Shropshire, Telford and Wrekin County Sports Partnership
6. The Humber Sports Partnership
7. Kent Sport
8. Coventry Solihull and Warwickshire Sport
9. Active Dorset
10. North Yorkshire Sport
11. South Yorkshire Sport
12. Sport Cheshire
13. Dudley Safeguarding Children Board
14. Active Cumbria
15. Active Norfolk

16. Cheshire and Warrington Sports Partnership
17. Active Sussex
18. Cornwall Sports Partnership
19. CP Sport England and Wales
20. Team Beds and Luton
21. Lancashire Sport Partnership
22. Hertfordshire Sports Partnership

April 2011

Memorandum submitted by the NSPCC (PF 61)

This briefing sets out the NSPCC's position on a number of amendments which will be considered by the Protection of Freedoms Bill Committee on 3 May 2011.

AMENDMENT 131

Clause 63, page 45, line 45, leave out subsection (10).

What does the Bill propose?

Clause 63 of the Protection of Freedoms Bill revises the definition of Regulated Activity, ie those positions covered by vetting and barring arrangements.

Subsection 10 of Clause 63 exempts people who work closely with 16 and 17 year olds from Regulated Activity (unless they are providing personal, social or health care). This means these people would not be covered by vetting and barring arrangements: Employers will not have to CRB check people who work in these positions, and even if they do, they will not be told if the individual is barred by the Independent Safeguarding Authority (ISA.)

What difference will this amendment make?

This amendment removes the proposed exemption, so that work with 16 and 17 year olds is treated in the same way as work with young children when defining Regulated Activity.

Why does the NSPCC support this amendment?

The NSPCC strongly supports this amendment because there is compelling evidence that 16 and 17 year olds are vulnerable to abuse from adults who work closely with them. This is particularly true in sport settings where young athletes develop closeness and levels of trust with coaches, which can be exploited by those who groom them with the intention of developing a relationship. It is therefore important that adults who gain positions of trust with these young people are properly checked. Under the United Nationals Convention on the Rights of the Child, 16 and 17 year olds are still children and deserve the same level of protection as other children.

AMENDMENTS 148 AND 149

Clause 76, page 63, line 19, after "officer" insert ",

(d) any prescribed purpose".

Clause 76, page 63, line 19, at end insert—

"(4) After section 50A(1) of that Act insert—

"(1A) ISA must, for use for any of the purposes mentioned in subsection (1), provide to any chief office of police who has requested it information as to whether a person is barred.

(1B) ISA may, for use for the purposes of the protection of children or vulnerable adults, provide to a relevant authority any information which ISA reasonably believes to be relevant to that authority.

(1C) ISA must, for use for the purposes of the protection of children or vulnerable adults, provide to any relevant authority who has requested it information as to whether a person is barred."

(5) After section 50A (3) of that Act insert—

"(4) In this section "relevant authority" means—

(a) the Secretary of State exercising functions in relation to prisons, or

(b) a provider of probation services (within the meaning given by section 3(6) of the Offender Management Act 2007).

What does the Bill propose?

Section 50A of the Safeguarding Vulnerable Groups Act 2006 gives the ISA a power to provide any information to a police officer for the prevention, detection and investigation of crime and the apprehension and prosecution of offenders.

The Protection of Freedoms Bill adds a paragraph to Section 50A, to give the ISA a power to provide the police with information for the purpose of recruitment to the police service.

What difference will these amendments make?

Amendment 148 gives the ISA the power to provide information to the police for any prescribed purpose.

Amendment 149 creates an obligation for the ISA to provide barring information to the police on request, and also gives the ISA a power to share relevant information with the Secretary of State exercising functions in relation to prisons, and with probation providers. Prison and probation services would benefit from knowing that an individual has caused harm to children or vulnerable adults, so that this information is taken into account in the rehabilitation and management of offenders.

Why does the NSPCC support these amendments?

The NSPCC supports any moves to enable and encourage the ISA to share information with the police and other relevant organisations who can help keep children safe.

At the moment, there are individuals who are barred from Regulated Activity because they are judged by the ISA to pose a risk to children or vulnerable adults, but who are not known to the police. Roger Singleton, Chair of the ISA has estimated that one in five people who are barred by the ISA have "not been near the police".[119]

It is important to ensure that when there are concerns about an individual that are significant enough to lead to a bar that these concerns are passed to the police. This would ensure that police are able to alert employers to concerns about an individual in the non-conviction information on a CRB certificate. It would also enable the police to be alert to and manage any risks and individual may pose.

AMENDMENT 166

Clause 70, page 53, line 28, at end insert—

> "(4) The sponsor of any individual engaged in Regulated Activity as listed in the Safeguarding Vulnerable Groups Act 2006 will be informed as to whether that individual is on a barred list held by the Independent Safeguarding Authority."

What does the Bill propose?

Under the proposed reforms, an employer or voluntary organisation who employs someone to work in Regulated Activity will only find out that that individual is barred when they receive their CRB certificate. This CRB certificate will first be sent to the individual, who must then share it with their employer. If an individual is barred whilst already in employment, the employer will not find out about this until another CRB check is carried out.

What difference will this amendment make?

This amendment suggests that employers or volunteering organisations that provide Regulated Activity (here called "sponsors") will always be informed when an individual who works in, or applies for, a regulated position in their organisation is barred. This would mean they do not have to wait until a CRB check is carried out and the individual shares their CRB certificate.

Why does the NSPCC support this amendment?

The NSPCC supports this suggestion because it ensures that organisations know instantly when someone is barred and take necessary steps to prevent that person from working in Regulated Activity.

AMENDMENT 167

Clause 63, page 44, line 10, leave out subsection (5) and insert—

> "(5) After paragraph 1(2) insert—
>
> "(2A) Work falls within this sub-paragraph if it is any form of work, other than any such work which—
>
> (a) is undertaken on a temporary or occasional basis, and
>
> (b) is not an activity mention in paragraph 2(1) disregarding paragraph 2(3A) and (3B) (b).".".

[119] Evidence given to the Protection of Freedoms Bill Committee, 21 March 2011.

What does the Bill propose?

Under the vetting and barring arrangements, nearly all work in some "prescribed settings" such as schools counts as Regulated Activity. Sub-section 5 of clause 63 exempts some people in these settings.

Sub-section 5 distinguishes between paid and unpaid employees in prescribed settings. It proposes that paid work in prescribed settings that is undertaken as part of a contract for occasional or temporary services should be exempt from Regulated Activity, unless it is an activity described in paragraph 2(1) of schedule 4 of the act. It also proposes that similar temporary or occasional unpaid work in prescribed settings should also be exempt from Regulated Activity, and also says that unpaid work should be exempt from Regulated Activity if it is supervised. This means that, for example, a paid teaching assistant working under supervision with children in schools may be included in Regulated Activity, but an unpaid assistant in a similar post would not.

What difference will this amendment make?

This amendment removes this distinction so that paid and unpaid work are treated the same. Unpaid staff in schools will not be exempt from Regulated activity simply because they are supervised.

Why does the NSPCC support this amendment?

The NSPCC welcomes this amendment. Decisions about thresholds for vetting and barring should be made on the basis of risk and volunteers are no less likely to harm a child than paid employees

Amendments 168–173

Clause 63, page 44, line 23, leave out "day to day" and insert "close and constant".

Clause 63, page 45, line 28, leave out "day to day" and insert "close and constant".

Clause 63, page 45, line 38, leave out "day to day" and insert "close and constant".

Clause 63, page 44, line 23, leave out "day to day" and insert "regular and direct".

Clause 63, page 45, line 28, leave out "day to day" and insert "regular and direct".

Clause 63, page 45, line 38, leave out "day to day" and insert "regular and direct".

What does the Bill propose?

Clause 63 of the Protection of Freedoms Bill exempts many positions from Regulated Activity simply by virtue of them being supervised on a "regular, day to day" basis.

Regulated Activity relating to children no longer includes any supervised teaching, training or instruction of children or the provision of care or supervision of children, by a person who is being supervised by another. The only exceptions to this are certain types of personal care or health care provided to children, or where activities are carried our by a paid person in a specified place such as a school, childcare setting, children's home or children's centre.

If supervised activity is exempt from vetting and barring arrangements, this means individuals who work in these positions do not have to be CRB checked, and that barred individuals can work in these positions.

What difference will these amendments make?

These amendments tighten up the definition of supervision, so that instead of "regular, day to day" supervision being sufficient for exemption from Regulated Activity, supervision must be either "close and constant" (amendments 168–170) or "regular and direct" (amendments 171–173).

Why does the NSPCC support this amendment?

The NSPCC strongly believes that people who work with closely children on a frequent and regular basis should be covered by Regulated Activity unless they are under close supervision, which is sufficient to ensure they are not able to harm children. "Regular, day to day" supervision is not sufficient to keep children safe.

It is difficult to define in one sentence on the face of the Bill, the nature of supervision that would be acceptable for someone exempt from Regulated Activity. We can articulate clear examples of what we believe should and should not be Regulated Activity:

— An expert speaker who goes to Scout Groups to deliver sessions on a particular issue, and who works with the whole group with a Scout leader watching over the session need not be in Regulated Activity, since the Scout leader is able to watch what he is doing all the time, and he or she cannot develop close relationships with particular children.

— An assistant football coach who coaches a group of children for significant periods of time on a pitch that is away from where the main coach is working should be in Regulated Activity, since no one is directly supervising his interactions with the children, and he has the opportunity to develop close relationships which could be exploited.

It is difficult to define a clear threshold that allows us to distinguish between these cases, but it is clear that the current requirement of "regular, day to day supervision" is not sufficient since the assistant coach in the example above is under regular supervision from his main coach. "Close and constant" or "regular and direct" supervision are more satisfactory. The NSPCC prefers the phrase "close and constant" supervision, because we believe that individuals who are left alone with children in their work should always be CRB checked.

Whatever definition is used on the face of the Bill, clear guidance will be needed to support employers and volunteering organisations to understand what counts as supervision.

May 2011

Memorandum submitted by Wiltshire and Swindon Activity and Sports Partnership (PF 62)

THE IMPACT OF THE PROTECTION OF FREEDOMS BILL ON SPORT

1. The Wiltshire and Swindon Activity and Sports Partnership is one of 49 County Sports Partnerships (CSPs) operating across England. CSP are networks of local agencies committed to working together to increase participation in sport and physical activity. Partners include National Governing Bodies of Sport and their clubs, schools, local authorities, sport and leisure facilities, primary care trusts and many other sport and non-sporting organisations. CSPs are led by a strategic board supported by a central team of professional staff who provide leadership, co-ordination and structures which allow people and organisations to work more effectively together.

2. Sport organisations are an integral part of the community of Wiltshire and Swindon and thousands of children participate in sports clubs on a regular basis. Sports clubs rely on volunteers to operate and it is vital that sports organisations have access to clear information about whether these volunteers pose a risk to children or vulnerable adults. Whilst there is at present no legal requirement for CRB disclosures in sport and recreation organisations, it is clear that members and the wider public have an expectation that the people who volunteer and work in roles with children or vulnerable adults have been judged to be suitable by the sport and recreation organisation. There would be a significant effect on sport and recreation organisations if parents or funding bodies lose confidence in the ability of organisations to safeguard children.

3. Overall, we welcome proposals from the Government to reform the vetting and barring arrangements and in particular the introduction of portable CRB checks which will make it easier for volunteers working across a number of different organisations to do so without unnecessary burdens. However, there are some proposals that we feel need more consideration, specifically in relation to sports organisations.

4. *Definition of Regulated Activity and Eligibility*

5. We recognised and appreciate that the Government has had to limit and reduce the number of people who are legally required to be "vetted" and as a result the definition of "Regulated Activity" had to be changed. We welcome that there will still be mandatory vetting for people in "Regulated Activity", however we do have significant concerns about: how the boundaries have been defined for "Regulatory Activity"; and about the vetting tools that will be available for organisations who want to get assurances about individuals who are not in "Regulated Activity".

6. *Supervised activity*

7. Clause 63 of the Protection of Freedoms Bill exempts many positions from "Regulated Activity" simply because they will be classified as "supervised". We do not feel that "supervision" is the right benchmark for mandatory checks. Regardless of whether an individual is supervised in a sport setting, it is still possible for them to have regular and intense contact with children. Sport takes place in a variety of environments which includes school settings, leisure facilities (local authority and private) and a variety of outdoor spaces.

8. Where the term "supervision" is being used, it needs to be clear what this means. Sports organisations will generally risk assess roles in terms of their eligibility for checks. We support attempts to make the definition of "supervised" clearer and to ensure that it is based more on whether an individual is able to build a relationship of trust with a child and not on whether they are working alongside another individual. In sport and recreation it is very difficult to create a definition for "supervision" that would capture all instances where an individual might be able to build up a relationship of trust with a child.

9. Sport organisations need the definition of "Regulated Activity" to include all individuals that are able to build up a relationship of trust with children, in order to meet expectation of the safeguards required to take on certain roles.

10. We would support the two proposals made by the CPSU and Sport and Recreation Alliance submission to the public bill committee

Issuing of Single Disclosures

11. Clause 77 of the Protection of Freedoms Bill proposes that only one disclosure is released directly to the applicant to allow the applicant to dispute information and to have it removed prior to the disclosure being viewed by a recruiting organisation. We understand this perspective and that in a regular recruitment setting there would be an appropriate juncture for the individual to share with their prospective employer their disclosure.

12. However in sport organisations there can be a less formal structure and less opportunity for the "handing over" of this information. In addition the infrastructure of many sport organisations relies on the centralised management offered by a national governing body. The centralised management by an NGB ensures consistency across a sport (from club to club); that decisions are made by an experienced individual; and that a club level volunteer is not over-burdened with information about individuals they know on a personal level that will affect their relationships and ultimately may influence their judgements. Where an individual needs to share their disclosure with the organisation in sport, this will mean sending it to the national governing body rather than giving it to the club. We are seeking assurances that identity verification will be possible where a centralised national governing body structure needs to operate.

13. However, ultimately we have real concerns that within the informal sport setting national governing bodies will be forced to chase individuals for their disclosures and this will create an administrative burden at the same time as allowing an individual to work with children when they may not be suitable.

May 2011

Memorandum submitted by Liberty (National Council for Civil Liberties) (PF 63)

Chapter 1 Part 2

Regulation of CCTV and other surveillance camera technology

Clause 29 of the Bill requires the Secretary of State to prepare a code of practice including guidance about the development or use of surveillance camera systems and the use or processing of information obtained by such systems.[120] The Bill provides a non-prescriptive, non-exhaustive list of issues which the guidance may address including considerations to be taken into account when deciding whether to use surveillance cameras, the appropriate types of system or apparatus to use and where cameras should be located.[121] Under the provisions of the Bill, whilst preparing her code, the Secretary of State must consult with a number of named authorities, including the Association of Chief Police Officers, the Information Commissioner and the newly appointed Surveillance Camera Commissioner.[122] The resulting code must be approved by both Houses of Parliament, and if the Secretary of State wishes to amend it that amendment too must be passed by Parliament.[123] The Bill requires that the code be published and that all of a list of "relevant authorities" including policing bodies and local authorities must have regard to it.[124]

Clause 34 requires the appointment of a new Surveillance Camera Commissioner, charged with encouraging compliance with the surveillance camera code, reviewing the operation of the code and providing advice about its requirements.[125] The Commissioner is required to produce annual reports about the exercise of his functions.[126]

Background

Liberty has never opposed the targeted use of CCTV cameras where it can be shown to be necessary and proportionate. It is undeniable that in certain limited well placed locations the use of CCTV cameras can be of assistance in crime detection (although research has not demonstrated any discernible link with crime prevention). But to date the use of such technology, which is ever changing and increasingly intrusive, has largely taken place outside of formal regulation.

It is nearly 14 years since the then Home Secretary, Michael Howard, made the initial decision to commit substantial sums of public money to set up hundreds of public sector surveillance systems throughout the UK, making use of the untested medium of closed circuit television. The original aim was to establish public systems as a crime prevention and detection measure, run principally by local authorities, or through partnerships with the police, with an emphasis on public safety: "to reduce crime and the fear of crime".[127]

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[120] Clause 29(1)–(2).
[121] Clause 29(3), with the full list including guidance about technical standards for systems or apparatus, standards applicable to persons using or obtaining apparatus or processing information collected, access to or disclosure of information obtained and procedures for complaint or consultation.
[122] Clause 29(5), the requirement of consultation also extends to persons appearing to the Secretary of State to represent the views of the persons likely to be required to have regard to the code, Welsh Ministers, the Chief Surveillance Commissioner and such other persons as the Secretary of State considers appropriate.
[123] Clause 30–31.
[124] Clause 33, with "relevant authorities" listed at Clause 33(5).
[125] Clause 34(2).
[126] Clause 35.
[127] *The Impact of CCTV: 14 case studies*, Home Office Online Report 15/05, 2005.

A frenzy of public investment followed in parallel with the expansion of CCTV in the commercial sector. This trend gathered force under the Labour Government, and the UK is now one of the world leaders in CCTV use.[128]

Initially, as a result of concerns about civil liberties expressed by local councillors and organisations such as Liberty, the emerging industry relied upon voluntary codes of practice, published first by the Local Government Information Unit, and later by the security industry. The revision of data protection law provided the opportunity for the introduction of a code of practice, published in 2000 by the Information Commissioner and revised in 2008.[129] With data protection requirements being the only applicable domestic law, and interpretations of the European Convention on Human Rights still emerging, the progressive expansion of CCTV in the UK has relied more on stretching the boundaries of what is acceptable to the public and politicians, than on meeting any testing regulatory standards. The provisions of the Protection of Freedoms Bill, which make few substantive prescriptions as to the content of a proposed code of practice for surveillance camera systems, do little to assuage our concerns.

Two prominent and recent examples of the misuse of surveillance technology bring into sharp focus the need for firm and comprehensive regulation. West Midlands Police's controversial CCTV and automatic number plate recognition (ANPR) scheme, Project Champion, aptly demonstrates the divisive, damaging and counter-productive impact of disproportionate and ill-targeted surveillance operations. The scheme involved the installation of hundreds of cameras (overt and covert) in two areas of Birmingham targeted because of a high proportion of Muslims residents. The project was falsely sold to the local Muslim community as a general crime prevention scheme when it was purely a counter-terror measure.[130] Following Liberty's intervention, a review of the scheme was established and the report which resulted, authored by the Chief Constable of Thames Valley, Sarah Thornton, acknowledged that the scheme had dramatically undermined confidence in police legitimacy.[131] The report flagged up the particularly damaging impact of these measures in the context of a counter-terror project where the need to maintain public support is especially strong. Needless to say members of the community were left feeling alienated and distrustful of the authorities.

The case of Geoff Peck is a striking example of the misuse of images captured by surveillance camera systems. Mr Peck was captured on a local council's CCTV system attempting to commit suicide by cutting his wrists. The images were made available to media outlets and as a result, scenes of the suicide attempt were broadcast by Anglia Television and later "Crime Beat", a BBC series on national television with an average of 9.2 million viewers.

These extreme examples aside, surveillance technology can have a chilling effect on individuals, inhibiting people from taking part in public activities and preventing them from behaving freely in, or entering spaces covered by CCTV cameras. The presence of a large number of cameras and the sense of being continuously under surveillance, increases the risk of this reaction. There is a need for clarity over the purpose and scope of individual schemes, to avoid imposing unnecessary restrictions on behaviour, something in which everyone has a common interest.[132] Unnecessary surveillance may also have an adverse impact on freedom of movement.[133] Failures of technology, inadequate public understanding, and the need for safeguards and protection systems become more important as technology becomes more sophisticated.

AMENDED SCHEME

Clause 29, page 19, line 27, delete Clauses 29 to 36 and insert—

"Privacy duties

29 Surveillance camera systems privacy duties

(1) All public or commercial surveillance camera operators falling within the scope of subsection (2) must ensure that:

(a) they are registered with the Information Commissioner,

(b) every operational surveillance camera system located in an area to which the public have lawful access is clearly signposted,

(c) no surveillance camera is positioned in such a way that it can capture images from inside a private dwelling,

(d) no surveillance camera system is positioned in such a way that it can capture images from toilet areas or any room or area used primarily for dressing or undressing,

[128] http://www.ico.gov.uk/for_organisations/data_protection/topic_guides/cctv.aspx

[129] *CCTV Code of Practice: Revised Edition 2008*. Issued by the Office of the Information Commissioner: http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/ico_cctvfinal_2301.pdf

[130] Project Champion Review: p 46.

[131] Thames Valley Police's Project Champion Review: http://www.west-midlands.police.uk/latest-news/docs/Champion _ Review_FINAL_30_09_10.pdf. See in particular the foreword to the report.

[132] *A Report on the Surveillance Society*, Surveillance Studies Network, ICO 2006, at 45.2.2 It is argued that, "albeit an individual value and a human right, privacy is also a common value because all persons have a common interest in a right to privacy even though they may differ on (its) specific content".

[133] *Opinion 4/2004 on the Processing of Personal Data by means of Video Surveillance*, Article 29 Data Protection Working Party, 11750/02/EN WP89.

(e) no surveillance camera system is positioned in such a way that it can capture images of school premises without the express permission of the Information Commissioner,

(f) no image captured by a surveillance camera system shall be disclosed any person, save for law enforcement agencies, without the express permission of the Information Commissioner,

(g) the viewing of live images on monitors is restricted to the surveillance camera operator unless the monitor displays a scene which is also in plain sight from the monitor location,

(h) the viewing of recorded images is restricted to the surveillance camera operator and takes place in an area to which others do not have routine access,

(i) a maximum time period for the retention of images is set and approved by the Information Commissioner,

(j) a maximum number of surveillance cameras can be operated is set and approved by the Information Commissioner.

(2) For the purposes of this Chapter, a public or commercial surveillance camera operator includes:

(a) any public authority as defined at section 35(6) below; or

(b) any company as defined at section 35(3) where any of the surveillance camera systems under the control of the operator is so positioned as to capture images of areas to which any employee or member of the public has lawful access at any time.

Surveillance camera systems regulations

30 Regulations for public surveillance camera operators

(1) The Secretary of State must, by regulations, for the purpose of—

(a) protecting individual privacy,

(b) safeguarding against misuse of surveillance camera systems, and

(c) ensuring proportionate use of surveillance camera systems, make regulations with respect to the development or use of surveillance camera systems, and the use or processing of images or other information obtained by virtue of such systems by public authorities.

(2) Regulations made under subsection (1) above are known as Public Surveillance Camera Systems (Statutory Duties) Regulations.

(3) Such regulations must, in particular, include provision about—

(a) considerations as to whether to use surveillance camera systems;

(b) types of systems or apparatus;

(c) technical standards for systems or apparatus;

(d) locations for systems or apparatus;

(e) the publication of information about systems or apparatus;

(f) standards applicable to persons using or maintaining systems or apparatus;

(g) standards applicable to persons using or processing information obtained by virtue of systems;

(h) access to, or disclosure of, information so obtained and

(i) procedures for complaints or consultation.

(4) In the course of preparing public surveillance camera systems (statutory duties) regulations, the Secretary of State must consult—

(a) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, subject to the duty to have regard to the public security camera systems regulations as the Secretary of State considers appropriate,

(b) the Association of Chief Police Officers,

(c) the Information Commissioner,

(d) the Chief Surveillance Commissioner,

(e) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, affected by breaches of the public surveillance camera systems regulations,

(f) the Welsh Ministers, and

(g) such other persons as the Secretary of State considers appropriate.

(5) The obligation to make surveillance camera regulations is to be exercised by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) An obligation imposed by the public surveillance camera systems (statutory duties) regulations shall be a duty owed to any person who may be affected by a contravention of the obligation by any person operating a surveillance camera system subject to any provision to the contrary in the regulations and to the defences and other incidents applying to actions for breach of statutory duty. A contravention of any such obligation shall be actionable accordingly.

31 Regulations for private surveillance camera operators

(1) The Secretary of State must, by regulations, for the purpose of—

(a) protecting individual privacy,

(b) safeguarding against misuse of surveillance camera systems, and

(c) ensuring proportionate use of surveillance camera systems, make regulations with respect to the development or use of surveillance camera systems, and the use or processing of images or other information obtained by surveillance camera operators not falling within the definition of a public authority set out at section 35(6) below.

(2) Regulations made under subsection (1) above are known as Private Surveillance Camera Systems (Statutory Duties) Regulations.

(3) Such regulations must, in particular, include provision about—

(a) considerations as to whether to use surveillance camera systems,

(b) types of systems or apparatus,

(c) technical standards for systems or apparatus,

(d) locations for systems or apparatus,

(e) procedures for complaints or consultation.

(4) In the course of preparing private surveillance camera systems (statutory duties) regulations, the Secretary of State must consult—

(a) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, subject to the duty to have regard to the private security camera systems regulations as the Secretary of State considers appropriate,

(b) the Association of Chief Police Officers,

(c) the Information Commissioner,

(d) the Chief Surveillance Commissioner,

(e) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, affected by breaches of the private surveillance camera systems regulations,

(f) the Welsh Ministers, and

(g) such other persons as the Secretary of State considers appropriate.

(5) The obligation to make surveillance camera (statutory duties) regulations is to be exercised by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) An obligation imposed by surveillance camera systems (statutory duties) regulations shall be a duty owed to any person who may be affected by a contravention of the obligation subject to any provision to the contrary in the regulations and to the defences and other incidents applying to actions for breach of statutory duty, a contravention of any such obligation shall be actionable accordingly.

Additional functions of the Information Commissioner

32 Specific duties

(1) The Information Commissioner shall have the following additional functions—

(a) considering limits set by public or commercial surveillance camera operators on the maximum number of surveillance cameras operated by any one operator, and

(i) where satisfied of the proportionality of the scheme, granting approval,

(ii) where not satisfied of the proportionality of the scheme, substituting a proportionate maximum figure,

(b) considering limits set by public or commercial surveillance camera operators on the maximum length of time for which images captured by a surveillance camera system can be retained, and

(i) where satisfied of the proportionality of the scheme, granting approval,

(ii) where not satisfied of the proportionality of the scheme, substituting a proportionate time limit,

(c) enforcing compliance with the surveillance camera systems privacy duties,

(d) reviewing the operation of the surveillance camera systems privacy duties and the private and public surveillance camera systems regulations,

(e) providing information and advice about the surveillance camera systems privacy duties, including advice on compliance, breach and the consequences of breach,

(d) compiling a register of all public and commercial surveillance camera systems operators required to register with the Commissioner under section 29(1)(a).

33 General duties

(1) It shall be the duty of the Commissioner to promote the following of good practice by surveillance camera systems operators and, in particular, so to perform his functions under this Act as to promote the observance of the requirements of this Act and the private and public surveillance camera systems regulations by surveillance camera systems operators.

(2) The Commissioner shall arrange for the dissemination, in such form and manner as he considers appropriate, of such information as it may appear to him expedient to give to the public about the operation of this Act, about good practice, and about other matters within the scope of his functions under this Act, and may give advice to any person as to any of those matters.

(3) The Secretary of State may pay in respect of the Commissioner's new functions any expenses, remuneration or allowances that the Secretary of State may determine.

(4) The Secretary of State may, after consultation with the Commissioner, provide the Commissioner with—

(a) such staff, and

(b) such accommodation, equipment and other facilities, as the Secretary of State considers necessary for the carrying out of the Commissioner's functions under sections 32 and 33.

34 Reports by Commissioner

(1) As soon as reasonably practicable after the end of each reporting period—

(a) the Commissioner must—

(i) prepare a report about the exercise by the Commissioner during that period of the functions of the Commissioner as set out at sections 32 and 33 above, and

(ii) give a copy of the report to the Secretary of State,

(b) the Secretary of State must lay a copy of the report before Parliament, and

(c) the Commissioner must publish the report.

(2) The reporting periods are—

(a) the period—

(i) beginning with this Act first coming into force, and

(ii) ending with the next 31 March or, if the period ending with that date is six months or less, ending with the next 31 March after that date, and

(b) each succeeding period of 12 months.

Interpretation

35 Interpretation: Chapter 1

(1) In this Chapter "surveillance camera systems" means—

(a) closed circuit television or automatic number plate recognition systems,

(b) any other systems for recording or viewing visual images of objects or events for surveillance purposes,

(c) any systems for storing, receiving, transmitting, processing or checking images or information obtained by systems falling within paragraph (a) or (b), or

(d) any other systems associated with, or otherwise connected with, systems falling within paragraph (a), (b) or (c).

(2) In this Chapter "surveillance camera operator" means any body or individual responsible for the operation of a surveillance camera system. In the case of surveillance camera systems operated by or on behalf of a public authority or a company, the public authority or company and not any private individual shall be the surveillance camera systems operator.

(3) In this Chapter "company" has the meaning given to it at section 1(1) of the Companies Act 2006.

(4) In this Chapter "Information Commissioner" has the meaning given to it at section 6(1)–(2) of the Data Protection Act 1998.

(5) In this Chapter "Tribunal" refers to the "Information Tribunal" the constitution of which is outlined at 6(3)–(5) of the Data Protection Act 1998.

(6) In this Chapter "public authority" has the meaning given to it at section 6 of the Human Rights Act 1998.

(7) In this Chapter "good practice" means such practice in the operation of surveillance camera systems as appears to the Commissioner to be desirable having regard to the need to safeguard individual privacy and includes (but is not limited to) compliance with the surveillance camera systems duties and the public and private surveillance camera systems regulations;

(8) In this Chapter—

"the Chief Surveillance Commissioner" means the Chief Commissioner appointed under section 91(1) of the Police Act 1997,

"processing" has the meaning given by section 1(1) of the Data Protection Act 1998.

Enforcement

36 Enforcement of the surveillance camera systems privacy duties

(1) If the Commissioner is satisfied that a public or commercial surveillance camera systems operator has contravened or is contravening any of the surveillance camera systems privacy duties set at section 29 above, the Commissioner may serve him with a notice (in this Act referred to as "an enforcement notice") requiring him to take or refrain from taking, within such time as may be specified in the notice, such steps as are so specified in a manner so specified.

(2) An enforcement notice must contain—

(a) a statement of the specific surveillance camera system privacy duty or duties which the Commissioner is satisfied have been or are being contravened and his reasons for reaching that conclusion, and

(b) particulars of the rights of appeal conferred by section 41.

(3) Subject to subsection (4), an enforcement notice must not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(4) If by reason of special circumstances the Commissioner considers that an enforcement notice should be complied with as a matter of urgency he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (3) shall not apply but the notice must not require the provisions of the notice to be complied with before the end of the period of seven days beginning with the day on which the notice is served.

37 Cancellation of enforcement notice

(1) If the Commissioner considers that all or any of the provisions of an enforcement notice need not be complied with in order to ensure compliance with the surveillance camera systems privacy duties to which it relates, he may cancel or vary the notice by written notice to the person on whom it was served.

(2) A person on whom an enforcement notice has been served may, at any time after the expiry of the period during which an appeal can be brought against that notice, apply in writing to the Commissioner for the cancellation or variation of that notice on the ground that, by reason of a change of circumstances, all or any of the provisions of that notice need not be complied with in order to ensure compliance with the surveillance camera systems privacy duties.

Request for assessment.

(1) A request may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any surveillance camera system operated by a public or commercial surveillance camera operator for an assessment as to whether it is likely or unlikely that the surveillance camera system has been or is being operated in compliance with the surveillance camera privacy duties.

(2) On receiving a request under this section, the Commissioner shall make an assessment in such manner as appears to him to be appropriate, unless he has not been supplied with such information as he may reasonably require in order to—

(a) satisfy himself as to the identity of the person making the request, and

(b) enable him to identify the surveillance camera system in question.

(3) The matters to which the Commissioner may have regard in determining in what manner it is appropriate to make an assessment include—

(a) the extent to which the request appears to him to raise a matter of substance, and

(b) any undue delay in making the request.

(4) Where the Commissioner has received a request under this section he shall notify the person who made the request—

(a) whether he has made an assessment as a result of the request, and

(b) to the extent that he considers appropriate, of any view formed or action taken as a result of the request.

39 Information notice

(1) If the Commissioner—

(a) has received a request under section 38 in respect of any surveillance camera system operated by a public or commercial surveillance camera operator, or

(b) reasonably requires any information for the purpose of determining whether the public or commercial surveillance camera operator has complied or is complying with the surveillance camera systems duties, he may serve the public or commercial surveillance camera operator with a notice (in this Act referred to as "an information notice") requiring the operator, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the request or to compliance with the duties as is so specified.

(2) An information notice must contain—

(a) in a case falling within subsection (1)(a), a statement that the Commissioner has received a request under section 38 in relation to the specified surveillance camera system, or

(b) in a case falling within subsection (1)(b), a statement that the Commissioner regards the specified information as relevant for the purpose of determining whether the public or commercial surveillance camera system operator has complied, or is complying, with the surveillance camera systems duties and regulations and his reasons for regarding it as relevant for that purpose.

(3) An information notice must also contain particulars of the rights of appeal conferred by section 41.

(4) Subject to subsection (5), the time specified in an information notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.

(5) If by reason of special circumstances the Commissioner considers that the information is required as a matter of urgency, he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (4) shall not apply, but the notice shall not require the information to be furnished before the end of the period of seven days beginning with the day on which the notice is served.

(6) The Commissioner may cancel an information notice by written notice to the person on whom it was served.

40 Failure to comply with notice

(1) A public or commercial surveillance camera operator which fails to comply with an enforcement notice or an information notice is guilty of an offence.

(2) A public or commercial surveillance camera operator who, in purported compliance with an information notice or a special information notice—

(a) makes a statement which he knows to be false in a material respect, or

(b) recklessly makes a statement which is false in a material respect, is guilty of an offence.

(3) It is a defence for a public or commercial surveillance camera operator charged with an offence under subsection (1) to prove that he exercised all due diligence to comply with the notice in question.

41 Rights of appeal

(1) A public or commercial surveillance camera systems operator on whom an enforcement notice or an information notice has been served may appeal to the Tribunal against the notice.

(2) A person on whom an enforcement notice has been served may appeal to the Tribunal against the refusal of an application under section 37(2) for cancellation or variation of the notice.

(3) Schedule 6 of the Data Protection Act 1998 has effect in relation to appeals under this section and the proceedings of the Tribunal in respect of any such appeal.

42 Determination of appeals

(1) If on an appeal under section 41(1) the Tribunal considers—

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice or decision as could have been served or made by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any determination of fact on which the notice in question was based.

(3) If on an appeal under section 41 the Tribunal considers that the enforcement notice ought to be cancelled or varied by reason of a change in circumstances, the Tribunal shall cancel or vary the notice.

(4) Any party to an appeal to the Tribunal under section 42 may appeal from the decision of the Tribunal on a point of law to the appropriate court; and that court shall be—

(a) the High Court of Justice in England if the address of the person who was the appellant before the Tribunal is in England or Wales,

(b) the Court of Session if that address is in Scotland,

(c) the High Court of Justice in Northern Ireland if that address is in Northern Ireland.

43 Prosecutions and penalties

(1) No proceedings for an offence under this Act shall be instituted—

(a) in England or Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) A person guilty of an offence under any provision of this Act is liable, on summary conviction, to a fine not exceeding the statutory maximum."

EFFECT

The proposed new legislative scheme would replace the optional code of practice provided for in the Bill with two parallel schemes.

Surveillance camera systems privacy duties

Proposed clause 29 would enshrine in primary legislation a series of duties to which all public or commercial surveillance camera operators, including companies operating cameras in any area to which the public or their employees have lawful access, would be subject ("the privacy duties"). This scheme would rely on an extension of the functions of the Information Commissioner, as opposed to the scheme proposed in the Bill which involves the appointment of a new Surveillance Camera Commissioner. The proposed privacy duties would be enforced by the Information Commissioner. The privacy duties set minimum standards and provide for conduct which will never be permissible in the context of public or commercial surveillance camera systems, including filming in toilets, changing areas and private dwellings. Other of the duties contain a prohibition which is subject to the permission of the Information Commissioner, for example, surveillance camera systems may not film school premises without the express permission of the Commissioner. Public or commercial surveillance camera operators will also be obliged to set maximum limits on the number of surveillance cameras they may operate and the length of time that images captured by surveillance camera systems can be retained. If the Commissioner considers any figure proposed by the operator too large, he would be able to substitute a lower figure which the operator would not be permitted to exceed. The operator would be able to make further applications, putting forward additional justifications for a higher cap on camera numbers which would fall to be considered by the Commissioner.

Under the proposed scheme the Information Commissioner would have a series of general and specific duties. His general duties would include promoting good practice amongst surveillance camera operators and dissemination to the public of information about the operation of the privacy duties and the private and public surveillance camera systems regulations (Clauses 30 and 31 above). Although he would have general duties to promote compliance with the regulations, for example through the distribution of information, his enforcement activities would be specifically limited to enforcing the privacy duties. The proposed Information Commissioner enforcement regime set out at Clauses 36–43 largely mirrors the model set out in the Data Protection Act 1998 which deals with the failure of data controllers to comply with the data protections principles.

Under the amended scheme, three steps could be taken by the Information Commissioner in his capacity as enforcer of the statutory privacy duties. Firstly, in circumstances where he is satisfied that an operator has contravened or is contravening the privacy duties, he may serve him with an enforcement notice requiring him to bring the surveillance camera systems he operates into line with the surveillance camera systems privacy duties. Enforcement notices must state which of the duties are or have been broken and draw attention to the appeal regime provided for under Clauses 41–42 above. If no appeal is pursued, compliance with the notice would be required within the period in which an appeal can be brought (as specified in the notice). In exceptional cases, the Commissioner could make provision for the scheme to be complied with as a matter of urgency, but no sooner than seven days from deemed date on which the notice was served. A failure to comply with an enforcement notice would be an offence punishable, on summary conviction, by a fine. The definition of surveillance camera operator set out at Clause 35(2) above is designed to ensure that where an individual is operating a surveillance camera system on behalf of a public authority or a company, liability attaches to the authority or company, rather than to the individual agent.

The second step the Commissioner can take is to make an assessment of the extent to which a public or commercial surveillance camera operator is complying with the privacy duties. As with the scheme established under the Data Protection Act, an assessment will be made in response to a request for an assessment which can be made by or on behalf of anyone who is or believes herself to be affected by a publically or commercially operated surveillance camera system. On receiving a request, the Commissioner would be obliged to contact the requester to let them know whether an assessment has been undertaken and if so what view was formed and what action will be taken as a result of the assessment.

If the Commissioner, having received a request for an assessment, requires any information from the operator for the purposes of determining whether she is complying with the privacy duties, he can issue an information notice requiring that the operator furnish him with the information necessary to make an assessment of compliance. The proposed scheme includes a series of requirements as to the information that must be set out in the notice, including particulars of the right to appeal against the issuing of a notice. As with an enforcement notice, failure to comply with an information notice (save where there is a successful appeal or the appeal process is ongoing) or the provision of false information is an offence punishable, on summary conviction, with a fine.

The appeal system under which the issuing of an information or enforcement notice can be challenged is modelled on the system provided for in the Data Protection Act. The relevant Tribunal will be the Information Tribunal and upward appeals will be possible on a point of law.

The Public and Private Surveillance Camera Systems (Statutory Duties) Regulations

Proposed Clauses 30 and 31 provide, respectively, for regulations effective in relation to public authorities and private individuals or organisations operating surveillance camera systems. Unlike the privacy duties scheme which would be enforced by the Information Commissioner and, in the event of non compliance, carries a criminal sanction, breach of the regulations would not have criminal law consequences. The scheme places an obligation on the Secretary of State, after consultation with a number of listed individuals and organisations, including those likely to represent the views of individuals likely to be affected by any breach of the regulations, to draft two sets of regulations. The first and lengthier set are to regulate the activities of public authorities and must contain provisions dealing with a number of aspects of CCTV regulation, including standards applicable to operators. Breach of the regulations would make an operator liable, in tort law, for breach of statutory duty. The Information Commissioner would not be involved in this part of the process; the civil duty owed by the operator would be owed directly to the person affected by a failure to comply with the provisions of the regulations. As with other torts, breach of statutory duty is actionable through the civil courts.

Briefing

Liberty believes that the critical issue of CCTV regulation should be addressed, in substance, in primary legislation to the greatest extent possible. We were concerned that the Bill as drafted fails even to make firm prescriptions as to the content of a non-binding code of practice, instead setting out a series of suggested areas of regulation that the code may address.[134] In contrast to the enforcement powers granted to the Information Commissioner under the Data Protection Act 1998, the Surveillance Camera Commissioner created by the Bill would have no enforcement powers, but would rather have general "soft" duties, including responsibility for "encouraging compliance" and "reviewing the operation of the code".[135]

Liberty's proposed scheme would place clear-cut abuses by public and commercial operators on a statutory footing prohibiting, absolutely, certain types of conduct, such as placing cameras in changing rooms, whilst requiring the permission of the Information Commissioner for others. The privacy duties would apply to commercial operators in addition to public authorities, addressing the largely unregulated use of surveillance technology by the private sector. It is clear that the UK has far too many cameras—and the Protection of Freedoms Bill provides an excellent opportunity to regulate the number of cameras in use. The proposed scheme would place initial responsibility for determining the maximum number of cameras

[134] See Clause 29(3).
[135] Clause 34(2).

to be operated by a single operator with the operator himself, but subject to the approval of the Information Commissioner. This provision is designed to take account of the varying needs of different operators, but provides an additional protection against overzealous companies and local authorities. In the same way the privacy duties would regulate the length of time for which images captured by surveillance cameras systems could be retained.

We are not opposed to the appointment of a Surveillance Camera Commissioner and indeed welcomed the proposal as an additional independent check on the use of surveillance camera systems. For practical reasons, however, we believe that enforcement of the regulation provided for in the Bill could be more effectively undertaken by the Information Commissioner, subject to the provision of necessary additional resources. Obligations surrounding the capture and retention of CCTV images, intersect, at many points, with obligations under the Data Protection Act 1998 ("the DPA") and the Freedom of Information Act 2000 ("the FOIA"), and it is important that there is a coherent and joined up approach to these issues. The disclosure of images, for example, by an operator to a media outlet would raise issues under both the privacy duties outlined above and the DPA, whilst a refusal by a public authority to disclose CCTV images to an individual would engage the FOIA and the proposed privacy duties.

As opposed to the "soft" powers granted to the Surveillance Camera Commissioner in the Bill, the scheme outlined above would introduce an enforcement system comparable to that operated by the Information Commissioner under the data protection regime. A comprehensive appeal system would protect operators against inaccurate assessment, but those operators who do not comply with the privacy duties would be issued with an enforcement notice; failure to comply would result in a criminal sanction in the form of a fine. Under this model, the Commissioner would retain general obligations to promote good practice in the use of surveillance technology and to report on compliance with the privacy duties across the public and private sector, but these functions would be used in conjunction with substantial enforcement responsibilities.

The proposed scheme takes account of the difference between clear proscriptions or requirements which can be set out in primary legislation, and more malleable considerations involving the balancing of different interests and the consideration of locality or industry specific evidence. If implemented, proposed Clauses 30 and 31 would oblige the Secretary of State to make regulations and create a mandatory list of areas which must be addressed. Unlike breach of the code of practice provided for in the Bill, under the scheme proposed above, breach of the regulations would be actionable in tort law as a breach of statutory duty. Because of the nuances and balancing exercises which will likely form a feature of compliance with the regulations, the judiciary will be the arbiter of any dispute between individuals and operators as to the requirements of the regulations in a given situation. A system of regulations brings the scheme into line with areas of, for example, environmental or construction law which place actionable obligations on organisations carrying on activities which can have a serious adverse impact on the general public.[136] Liberty believes that the operation of surveillance technology falls into the same broad category and should be regulated in a similar way.

The proposed scheme recognises the different levels of regulation to which private and public actors should be subject. Whilst Liberty is concerned that the operation of surveillance technology by private actors should not remain in its current, largely unregulated, state the requirements which can be legitimately made of an arm of state must exceed those which can be placed on individuals or companies carrying out private functions. It may not be reasonable, for example, to expect an individual operating a single surveillance camera outside of business or residential premises for the purposes of deterring vandals, to attain accreditation in the use of surveillance technology, whereas there is a legitimate expectation that council employees working on a regular basis with surveillance technology are well trained and supervised.

April 2011

Memorandum submitted by the Lawn Tennis Association (PF 64)

1. The Lawn Tennis Association and the Criminal Records Checks

1.1 The Lawn Tennis Association (LTA) is the National Governing Body for the sport of Tennis in Great Britain. We are responsible for advising and regulating organisations and individuals within British tennis in relation to child welfare and protection. We also provide a national criminal records checking service for individuals involved in tennis, and submitted nearly 5,000 applications to the CRB in the last year.

1.2 We work closely with the Child Protection in Sport Unit of the NSPCC to implement the Standards for Safeguarding and Protecting Children in Sport. Like many other sport, we support the submission made to this committee by the Sport and Recreation Alliance in conjunction with the Child Protection in Sport Unit.

[136] See, for example, the *Building Regulations and The Building (Approved Inspectors etc) Regulations 2010 or the Environmental Permitting Regulations (England and Wales) 2010*.

1.3 The LTA also provides child protection, welfare, CRB and disciplinary/complaints services for the Tennis Foundation, the charitable body that helps to develop and promote community, schools and disability tennis. The Tennis Foundation has a particular interest in the impact that the Protection of Freedoms Bill could have on services provided to vulnerable adults.

1.4 We believe that British tennis has a responsibility to provide environments in which children can play and challenge themselves with enjoyment and safety.

1.5 The safe recruitment of individuals to our sport is an important aspect of this. We also recognise that the provision of these environments requires that volunteers and small organisations are not burdened with excessive administration or intrusive checking and monitoring. The LTA has always taken a balanced approach to CRB checking, actively discouraging organisations from adopting "blanket check" policies, and questioning individual applications where the need for a check is unclear.

2. Introduction and Summary

2.1 We believe that the regime proposed in the Protection of Freedoms Bill for criminal records checks, for the barring of risky individuals from working with children, and for the continuous updating of criminal records information, has the potential to improve upon the current system.

2.2 There are some areas that we believe require modification or clarification to ensure an effective system.

2.3 We believe that the exclusion of supervised activity from the definition of "regulated activity" should apply only to activities where the supervision is "close and constant".

2.4 The current definition of "regulated activity" typically marks the outer limit of the activities that are eligible for criminal records checking. If applied properly, the definition tends to accord with public expectation as to who will be checked. Therefore, if "regulated activity" is to be defined more narrowly, it is critical that eligibility to conduct discretionary checks on those outside regulated activity remains available, and that the provision for this is clarified.

2.5 We also believe that the move to issue disclosure information to the applicant only will create significant bureaucracy, and may disadvantage those that the measure is intended to protect.

3. "Regulated Activity" and the Definition of "Supervision"

3.1 The Protection of Freedoms Bill amends this definition so that supervised activity is excluded from the definition of regulated activity.

3.2 Many tennis organisations work on the basis of having a fully qualified coach, and a number of assistants. Some of these assistants may be qualified assistant coaches, and others will be club volunteers. These assistants will often be "supervised" by the head coach during sessions, but may organise and run activities on separate tennis courts. They will have extensive opportunities to build relationships of trust and authority with children, and might be prominent figures within the organisation. Similar working arrangements apply to officials who cover multiple local events, and to teams of volunteers who supervise and train junior teams at club or county level within the sport.

3.3 We therefore support the proposal put forward by the Sport and Recreation Alliance and by the NSPCC that the exclusion from regulated activity should be for "close and constant supervision". This will ensure that occasional helpers or those with little responsibility are excluded from the mandatory checking and barring system, but that some of those who work with children and have significant authority and trust remain subject to the regulatory framework.

4. Eligibility for Checks Outside "Regulated Activity"

4.1 We strongly believe that criminal records checks should remain available for positions outside regulated activity at the discretion of the deploying organisation. Although the government report on the Vetting and Barring Scheme suggested that this would be maintained, the Bill does not make it clear how this will be permitted. This will be particularly important if the scope of regulated activity is narrowed.

4.2 In practice, the LTA refers to the definition of regulated activity provided in the Protection of Vulnerable Groups Act and associated guidance to define the scope of CRB eligibility. In many cases, this marks the outer limit of the exceptions to the Rehabilitation of Offenders Act. As a result, the proposed exclusion of supervised positions from mandatory checking will also remove the eligibility for discretionary checking.

4.3 In our experience, reference to the current definitions helps to exclude many positions from checking. In her review of the criminal records regime, Sunita Mason provided examples of posts for which checks had been requested that appeared disproportionate. These checks would have been excluded by considering the positions against the current definition of regulated activity. The LTA uses this as the basis for refusing to process many checks. Examples include checks requested for: grounds-workers; adult members of teams including junior players; club treasurers; volunteers assisting with one-off events.

4.4 There are, however, many positions that fall within the current scope of criminal records checking but which are subject to supervision, and hence are excluded from regulated activity by the Protection of Freedoms Bill. We believe that organisations should have the discretion to carry out criminal records checks for such positions, including where supervision of the deployed person is close and constant.

4.5 An example of where this would be relevant is a tennis tournament organiser. He or she might be subject to close and constant supervision when attending an event, remaining within an office with a referee and other adults. But he or she will also possess significant authority, be known and trusted by parents and players, and have access to significant amounts of personal information about the participating junior players, such as their names, addresses, telephone numbers, email addresses, recent tennis activities and club membership. This level of access and trust may warrant criminal record checking, depending on the particular environment within which the individual is deployed.

5. Issuing of Disclosures to the Applicant only

5.1 Clause 77 of the Protection of Freedoms Bill proposes that criminal record disclosures will be issued only to the applicant, and no longer to the Registered Body. We understand that an electronic system will provide rapid confirmation where there is no criminal record, and we welcome this proposal.

5.2 Where there is criminal records information to disclose, the proposed system could undermine safety and create significant administrative difficulty. We also believe that it will have the largest adverse effect on those people that the measure seeks to protect (those with minor or incorrect information on their disclosure).

5.3 In the informal setting of a tennis club, disclosures are often requested when someone moves into a formal role, having already been known for some time. If a criminal record of concern is revealed, the proposal would provide an opportunity for the applicant to delay or obfuscate in providing the information. Local clubs would be placed in an invidious position in pursuing this information.

5.4 Where criminal records information is disclosed, the risks of misuse of this information could be heightened under the proposed system. At present, the LTA receives criminal record disclosures as the Registered Body. We are therefore able to provide support and advice to individual organisations when they receive criminal records information. This prevents the mishandling or misuse of information by small organisations that lack expertise in this area. Under the proposed system, local organisations would need to request the disclosure information directly from the individual, bypassing the LTA's system of support and advice. This creates the risk that dangerous individuals are not properly managed. More frequently, however, we believe that applicants who pose a small or manageable risk will be most disadvantaged by this, since local clubs are likely to be risk averse, lacking the confidence and experience to assess risk closely.

5.5 For those individuals who are applying for LTA positions (such as an LTA accredited Coach or Official), the LTA will be forced into a more risk averse position if criminal records information is disclosed. The LTA has immediate sight of this information under the current system. This allows us to take an informed view of any potential risk. In most cases, this allows us to complete further correspondence and decision-making with the individual without imposing significant restrictions. Under the proposed system, the LTA would not know whether the applicant's disclosure revealed very serious and recent offences, or minor issues. Unless the applicant provides information to the LTA very quickly, we will be forced to assume that there are serious concerns, and to act accordingly. We always seek to maintain a respectful and courteous dialogue with applicants, and we fear that this position could be undermined.

5.6 The proposed system will undoubtedly create additional bureaucracy for individuals and organisations. Applicants will need to arrange for a copy of their disclosure paperwork to be verified and sent on to bodies such as the LTA. There is also an increased danger of disclosure documents being forged or altered, and this will create an increased need for training and specialist scrutiny within our sport. We understand that the government is researching effective anti-fraud measures, and we look forward to the outcome of this.

6. Conclusion

6.1 There are many potential benefits to the system proposed under the Protection of Freedoms Bill, both to the individuals whose rights will be better protected, and to the organisations and applicants who will face a reduced level of bureaucracy. We are committed to supporting these developments and realising the benefits across British tennis.

6.2 The positive aspects of these proposals could be undermined if other aspects create a system that continues to have cumbersome elements, or which does not retain the confidence of the parents, volunteers, children and vulnerable adults who rely upon it.

6.3 We hope that effective solutions to our concerns can be examined in order to make the best use of this important opportunity to reform the current system. The LTA would be pleased to continue to work with government departments and agencies to develop the most effective system possible.

May 2011

Memorandum submitted by the British Security Industry Association (PF 65)

The British Security Industry Association (BSIA) is the trade association for the professional security industry in the UK. BSIA represents the interests of those companies and organisations that manufacture, distribute and install electronic (including CCTV) products and systems, physical security equipment, those who provide security guarding and consultancy services and alarm monitoring and receiving centres who monitor security and safety systems including CCTV systems both in the public and private sectors.

The BSIA welcomes the Protection of Freedoms Bill and the drive by the government to add a regulatory framework on surveillance systems in the UK. We have the following comments to make:

CLAUSE 29—CODE OF PRACTICE FOR SURVEILLANCE CAMERA SYSTEMS

Section 29, sub-section (2)

The term "one or more" is superfluous and should be deleted as the Code of Practice must cover both these topics

Section 29, sub-section (2)(a)

The term "development" needs defining as it is unclear what it means and is open to misinterpretation. The BSIA believes that replacement of the term "development" with the term "deployment" would be more appropriate.

Section 29, sub-section (3)

The BSIA has three proposed changes for this sub-section:

(a) For the code of practice (CoP) to be effective it is recommended that the whole of subsection (3) is moved as requirements into subsection (2). This would mean that the CoP must include guidance on the items detailed in sub-section (3).

(b) The provision listed as "(e)" be removed from sub-section (3) and added to subsection (4) as a new sub sub clause "(c)" with the wording "may include the publication of information about systems or apparatus."

(c) In item "(f)" it is recommended that the applicable persons should also include "designers and installers". This addition is proposed because the designers and installers should be made to design and install CCTV products and systems to meet the applicable standards laid down in the CCTV Code of Practice.

Section 29, sub-section (5)

The BSIA recommends the following additions to the list of persons and organizations to be consulted:

(a) Home Office.

(b) Security Industry Authority (SIA) responsible for the regulation of the private security industry, (including the licensing of CCTV operators).

(c) Home Office Centre for Applied Science and Technology (CAST) responsible for the CCTV Code of Practice.

(d) Industry bodies with surveillance camera expertise (eg the BSIA).

Section 33—Effect of Code

Section 33

The BSIA considers the restriction of the scope of the regulation of CCTV and other surveillance camera technology to just local authority and police operated cameras fails to include the majority of cameras used by the police and justice system. The scope of coverage should be extended to match that considered by the existing Information Commissioner's CCTV Code of Practice pursuant to the Data Protection Act.

GENERAL COMMENTS

1. The proposed Bill is unclear on the relationship between the new Surveillance Camera Commissioner, the Information Commissioner Office and the Home Office/Security Industry Authority as the new Code of Practice will need to take into account the Data Protection Act 1998, and the Security Industry Act 2001 and those that implement them as both these Acts deal with CCTV.

2. One area the Bill does not deal with is the repealing or updating of the planning laws for CCTV. For example, we refer to the *"Town and Country Planning (General Permitted Development) Order 1995, Part 33—Close Circuit Television Cameras"*. This order is antiquated in its requirements, for example *"A.1 Development is not permitted by Class A if- (f) any part of the camera would be less than 10 meters from any part of another camera installed on a building"*. In most buildings nowadays two cameras are located very close to each other at the corner of a building to look down the two sides of a building. This practical solution enables the reduction of cable runs (environment savings) and gives an obvious security solution to building

surveillance. Yet under the "Part 33 Order" this system of installing cameras is not allowed. The BSIA therefore requests that the government add requirements in the proposed Bill to amend the planning laws for CCTV to bring the planning laws up to date.

3. Currently only "contracted" CCTV operators are required to have a government Security Industry Authority Licence (know as a SIA licence) to monitor public space surveillance systems. To gain the SIA licence the operator has to be security cleared and undergo specific CCTV operator training. Where as "in-house" CCTV operators do not require a licence to monitor public space surveillance systems. The BSIA request that all CCTV operators who monitor public space surveillance systems should be required to hold a SIA licence to ensure that they are all trained to the same level and to set the minimum required standard for CCTV monitoring.

4. The registration of all public space CCTV surveillance systems with the information commissioner should be pursued, so that a map of the public space CCTV systems in UK can be obtained. Consideration should also be given of registering all CCTV systems at industrial and commercial premises at a local authority level. This would enable local authorities to evaluate the CCTV landscape in their area to ensues that the deployment of an authority CCTV surveillance system to counter crime or anti social behavior issues, would take into account the CCTV systems already deployed in the local authority area. Domestic CCTV systems should be excluded from this requirement.

May 2011

Memorandum submitted by TMG CRB (PF 66)

TMG CRB is the second largest Umbrella Body in England and Wales, processing in excess of 500,000 CRB applications since 2002 for a wide client base including the Department for Education, Department of Transport, The FA, England and Wales Cricket Board, personnel suppliers and health organisations.

TMG CRB wish to bring the following points to the attention of the Public Bill Committee.

1. Knowledge and Understanding

Lack of detail and precise definitions is leading to differing interpretation and confusion regarding:

- supervision;
- regulated activity;
- management of a mixed workforce of paid and volunteers with the same access to vulnerable groups; and
- confusion between the Vetting and Barring Scheme and CRB reviews.

To successfully implement change our clients need messages that are clear, consistent and easy to understand. To this end, TMG CRB welcome the proposed amendment to the Bill tightening the definition of supervision and volunteers in schools and other prescribed (specified) settings.

Lack of full knowledge regarding the products and services which will be available in the future limits the constructive feedback we and our clients can provide the committee at this stage.

2. Cost

TMG CRB welcomes the intent to keep Disclosures free for volunteers and believes this is critical in safeguarding vulnerable groups. Our clients are concerned that any annual subscription fee would be a deterrent to volunteering. If a fee is to be levied, some organisations would like the option to pay this on behalf of their volunteers.

3. Single Issue Disclosure (I)

The majority of our clients would find the issue of a single Disclosure difficult to manage. In most cases the suitability decision is not taken at local level but at a central hub. Central suitability decision-making is used to ensure consistent and informed decision-making by a trained safeguarding team, compliance with the Recruitment of Ex-offenders Act 1974 and protection of the individual in the local community (sensitive information released on a Disclosure may not make a person unsuitable for their position but can cause challenges if known in the local community where the appropriate skills and training are not in place to manage such information in confidence).This is of particular importance in the voluntary sector. TMG CRB would recommend a delay between the issuing of an applicant's copy and Registered Body copy of the Disclosure to allow for any content dispute. Costs can be minimised by using eBulk or a web-based service for a return of Disclosure results supplemented by the provision of a hard copy of all Disclosures with content.

4. Single Issue Disclosure (II)

For non Regulated Activity, when a CRB Disclosure is used to assess suitability for a role involving significant contact with a vulnerable group, a person may be in post pending a suitable CRB Disclosure. In this instance, an individual may have the opportunity to build a relationship with a vulnerable person whilst in denial that they were in receipt of their Disclosure which, if reviewed by the organisation, may have resulted in their removal from post. Providing the Registered Body with a copy of the Disclosure would negate this opportunity.

5. Single Issue Disclosure (III) Fraud

Fraud A vital part of the Registered Body (RB) administration role is to ensure that a Disclosure has been produced for the correct applicant. This will be even more critical with the introduction of portability. The RB should always carry out a data matching exercise, ensuring the ID check is carried out rigorously and personal details printed on a Disclosure match those on the Disclosure application. We can evidence many cases where a Disclosure has been produced with incorrect personal details including submissions made via eBulk. This includes a case where a date of birth error resulted in a clear Disclosure being produced for an individual who was guilty of murdering a child. Without a copy of the Disclosure, an RB cannot carry out this quality assurance role. The applicant now has a "clear Disclosure" to present to a subsequent employer. Any online update would be based on this erroneous Disclosure.

6. Barred People in Non Regulated Activity

Whilst TMG understands the human rights issues that allow Barred people to work in a supervised capacity with vulnerable groups we would like to express grave concern. Every week we receive Disclosures with apparent histories of grooming and multiple allegations of harm to children but with insufficient evidence to establish a conviction. These are potentially hazardous individuals to employ but when a Bar has actually been achieved and the risk assessed as significant it seems irresponsible to allow access to vulnerable individuals. The risk is that grooming can take place in a very subtle way and the built relationship maintained informally via social media and other strategies when the formal activity has been completed.

7. Disclosures for Non Regulated Activity

TMG is unclear at present what kind of Disclosure will be available for those in non Regulated Activity. To make appropriate and informed safeguarding decisions our clients require an Enhanced Disclosure with a check on the relevant Barred List(s) and non-conviction information for individuals who have significant access to and thus opportunity to form a relationship with vulnerable groups. Standard and Basic Disclosures do not provide sufficient information to enable safe decision-making. There is a concern that those who seek opportunities to harm will use such non Regulated Activity positions as a window of opportunity.

Furthermore, particularly in the voluntary sector, the nuances of difference between Regulated and non Regulated Activity due to the nature of supervision and/or frequency of contact may result in pockets of opportunity for exploitation.

Finally, impact on official register keepers. A government client currently using CRB Enhanced Disclosure to assess "fit and proper" status to work with < 18 year olds for inclusion on an approved register is seeking the continuance of the provision of information currently provided on an Enhanced Disclosure. Information released, including fraud, is used to remove individuals from the register and provides an evidence base for use at tribunal hearings. As a register keeper they are not the Regulated Activity provider. The register includes a mixed cohort of employed and self employed individuals. We understand self employed individuals will not have the same VBS requirements. Continued access to the Enhanced Disclosure will allow our client to continue providing a transparent and uniform "fit and proper" assessment for both cohorts.

8. Recommendation One in the Common Sense Review to Scale Back Eligibility for CRBs

TMG CRB is aware of many organisations currently seeking CRB Disclosures for non-eligible positions. This is often driven by contractual and insurance requirements. TMG CRB welcomes the stance taken to ensure Disclosures are limited to eligible positions to avoid this scope creep. However, for the reasons noted in point 7, our clients have expressed concern that the Enhanced Disclosure may no longer be available for those in non Regulated Activity whose role gives them an opportunity to form a relationship of trust with a vulnerable group.

May 2011

Memorandum submitted by Brookscroft Management Ltd (PF 67)

PURPOSE OF SUBMISSION

To draw attention to the serious consequences of clause 54 of the Bill for residents of privately managed residential property, and to request that the scope of the clause be limited to the prevention of "cowboy" clamping.

SUMMARY

The purpose of this part of the Bill is to prevent the activities of "cowboy" clampers, but it will also deny the rights of thousands of homeowners living in privately managed properties to peaceful enjoyment of their homes, by removing their ability to apply any effective sanctions against rogue parkers. This submission explains the problem based on the experience of one private estate, including the threat faced by such estates and the ineffectiveness of sanctions other than clamping.

ABOUT THE WRITER

I am chairman of Brookscroft Management Ltd (BML), a company established to manage the amenity lands of the Brookscroft estate and to make and enforce regulations to enable residents to enjoy those lands. By far the most important of these regulations controls parking on the narrow roads of the estate. Brookscroft has 96 houses (average value c £220,000), and is part of the Forestdale development in Croydon with 2,000 homes most of which are managed on a similar basis. BML directors are themselves estate residents elected by the owners of its houses to run their management company.

DETAIL

1. Brookscroft was completed in the early 1980s to a plan intended to separate traffic from pedestrians as far as possible. Most houses have garages *en bloc* with access to the houses by footpath. Others have integral garages. Parking problems on the estate increased over the years and BML introduced parking regulations in 1992. However problems persisted despite various solutions tried by BML until, in 2009, an effective parking control contractor was appointed. Since that appointment rogue parking has ceased to be a problem.

2. BML provides 69 parking bays on the estate, which are free to use by residents and legitimate visitors. Some are in dedicated parking/garage areas, but most are along the side of our roads. Because the roads are narrow and have bends the bays are carefully sited to ensure safety. Problems encountered before effective clamping came into force include:

(a) Parking across residents' driveways or garages, thereby denying residents use of their own cars.

(b) Parking on the bends in our roads, causing dangers which would warrant police intervention on public roads.

(c) Parking on footpaths, forcing pedestrians into the road and making access by wheelchair or with a pushchair difficult or impossible (we have a number of disabled residents and families with young children).

These problems led to unpleasant incidents. Two examples are:

(a) A resident with advanced cancer hoped to visit relatives before an operation which he did not expect to survive. He would have had to leave in the early morning but was prevented from doing so because a car had blocked his driveway.

(b) A pizza delivery rider was knocked off his motorbike on a bend made blind and dangerous by cars parked all round it.

Since effective clamping was introduced there have been no such incidents. The parking control service is provided without charge to residents, the contractor covering costs by clamping release fees. Operation of the scheme is carefully monitored by BML to ensure that clamps are applied only in accordance with our regulations and that release fees are reasonable.

3. *Alternative sanctions*. The government suggests that owners of private property will still be able to protect their land by using alternative sanctions if clamping is disallowed. In practice that is not the case. Our parking control contractor started working for us with the intention of ticketing in all but extreme cases. However, it quickly became clear that ticketing was ineffective. If a driver does not pay for the ticket, the cost of pursuing the claim through the courts exceeds revenue from issuing the ticket. Knowing this, rogue parkers simply ignore tickets. Our contractor was thus forced to resort to clamping in the majority of cases. Once rogue parkers realised this, problems all but disappeared within weeks. The second alternative sanction suggested is use of barriers. Unlike commercial carparks, we cannot place barriers across our parking spaces as most are in marked bays on the road. We would have to put barriers at the estate's two entrances, where they would have to be left open nearly all the time to allow legitimate vehicle movements into and out of the estate (we estimate about 400 per day). Barriers would be costly to install and maintain for our residents some of whom are struggling financially. They would be a magnet for vandalism thereby increasing the problems of anti-social behaviour in the neighbourhood (our entrance signs were subjected to arson attacks twice over a short time and we cannot afford to replace them while the risk of further attacks persists).

4. *Other measures*. It is suggested that enabling parking control organisations to pursue vehicle owners as well as drivers will improve the effectiveness of ticketing. In practice we believe it will make little if any difference. In most cases the driver and owner are the same person. Finally, it is suggested that local authorities can use existing powers to provide a parking control service on private land. However, we have been informed[137] that authorities will not be obliged to provide this service and that it is seen as a way of providing effective parking enforcement particularly on land such as hospital or university car parks. In other words, it is not expected to be used to help residential properties. Even if a local authority did offer a service, it would be on a "take it or leave it" basis, since the Bill if enacted would create a public sector monopoly. Our right to tender for a service tailored to the specific needs of our residents would have been removed.

5. *How widespread is the problem*? We do not have the resources to conduct a survey, but we know that a single parking control contractor has 84 private residential clients in Croydon alone. Some of these clients will include hundreds of individual homes. We are also aware of protests raised by private estates in other boroughs. It seems fair to conclude that the problems in Croydon are repeated in boroughs across much of urban England affecting many, perhaps hundreds, of thousands of homes. Before concluding that the interests of all these homeowners were to be ignored, did the Home Office conduct any research into the size of the problem? It should also be noted that the Home Office letter (ref 1) claims that the government recognises that it is important to balance the rights of the motorist to have access to their vehicle, with the rights of landowners to use and control access to their property. However, our residents are motorists too, and are themselves denied access to their vehicles by rogue parkers. In other words, the Bill not only denies homeowners' rights to effective protection of their property, but sets their rights as motorists below those of people who park with selfish disregard for others.

6. *Could these unwanted effects of the Bill be avoided?* We understand that the government claims that schemes involving licensing of clampers and/or limiting the legitimacy of clamping to certain types of land would be costly and complex. We dispute that conclusion and question whether any proper research was undertaken by the Home Office to support it. In our opinion, a self-regulating, self-financing scheme limited to, for example, health sector, educational and residential properties would be easy to establish by means of suitable amendments to the Bill and secondary legislation (the latter to provide legislative backing to a mandatory Code of Practice which could be easily and cheaply kept up to date). The main focus of Part 3, Chapter 2 of the Bill could then be on the banning of cowboy clampers, as it should always have been.

Conclusions

— Based on direct experience of living in and managing a modest private housing estate, I can say with certainty that the anti-clamping provisions of the Bill will bring considerable stress and hardship to residents of our estate and will discriminate unfairly against them compared with residents on adopted roads who pay the same Council tax.

— The sanctions suggested by government as alternatives to clamping are ineffective—again a conclusion based on direct experience.

— The management company I chair will be unable to fulfil its obligation to enforce regulations in the interests of our residents, because the only effective sanction we have for enforcement will be outlawed by the Bill if enacted.

— This memorandum draws on personal knowledge but we have good reason to believe that our problems are shared by many thousands of others across urban England. We have seen no evidence that the Home Office has researched the scale of the problem, nor that it can justify its comparison with Scotland where circumstances are very different.

— We believe that the intended purpose of this part of the Bill can be achieved easily whilst at the same time protecting the rights of residents in their own homes without the cost and complexity claimed by the Home Office.

— The Home Secretary's statement on the European Convention on Human Rights claims that in her view the provisions of the Bill are compatible with the Convention. However the damage which clause 54 of the Bill will undoubtedly inflict on the rights of homeowners to peaceful enjoyment of their homes seems a clear breach of Paragraph 1 of Protocol 1 of the Convention.

May 2011

[137] By letter dated April 2011 from the Direct Communications Unit of the Home Office.

Memorandum submitted by the Association of Directors of Adult Social Services (PF 68)

The Association of Directors of Adult Social Services (ADASS) represents Directors of Adult Social Services in Local Authorities in England. As well as having statutory responsibilities for the commissioning and provision of social care, including the safeguarding of vulnerable adults, ADASS members often also share a number of responsibilities for housing, leisure, library, culture, arts, community services, and increasingly, Children's Social Care within their Local Authority.

Context

The Protection of Freedoms Bill 2011 is a wide ranging piece of legislation which aims to protect individuals "from unwarranted state intrusion in their private lives" and within the context of the roles and responsibilities of council Adult Social Care, ADASS is specifically commenting upon Part 5 of the bill, which specifically deals with Safeguarding Vulnerable Groups and Criminal Records.

Summary

ADASS welcomes many of the measures within the Bill, it takes steps towards a more proportionate and common sense approach to balancing the freedoms of the workforce and ensuring that safeguarding is promoted. However, the changes come at a time when public sector resource is shrinking, particularly in back office functions. It will therefore be essential that any guidance during implementation is clear and takes account of the need for a shared understanding to ensure that all agencies are aware of their respective responsibilities.

Response

1. It is noted that the Safeguarding Vulnerable Groups Act 2006 (which introduced the Vetting and Barring Scheme) has been the subject of two reviews. The current system is currently felt, and experienced, as risk averse and bureaucracy heavy by both applicants and employers.

2. The key role for local authorities in safeguarding vulnerable adults must not be compromised. There is a need to balance individual freedoms and rolling back bureaucracy with appropriate safeguards that ensure that the risk of harm being caused is minimised.

3. The Bill reforms the current definition of vulnerable adults. The amendment means that there is a category of activity which a worker might be engaged in, with or on behalf of, adults which is defined as regulated activity (social work is specifically mentioned). The Protection of Freedoms Bill also removes the section of "controlled activity" from the Safeguarding Vulnerable Groups Act 2006, which focuses in particular on frequency of activity. The amendments made by the bill are felt to be clear and proportionate in this regard. ADASS welcomes assurance that social work and community care will continue to be considered regulated activity. Clearly this needs to explicitly include all care and support activities commissioned through Personal Budgets and Direct payments under statutory duties (currently NHS and Community Care Act).

4. The Bill will therefore result in a reduced number of individuals working (paid and unpaid) in redefined regulated activity to be covered by the scheme. This is welcomed by ADASS as a common sense and proportionate response. Although there is a risk that as the definition of regulated activity changes, some individuals will cease to be covered, and therefore they would no longer be barred from working with vulnerable adults, appropriate local safeguarding systems will mitigate against any risk.

5. The changes to the Vetting and Barring Scheme retain a national barred list. This is welcomed by ADASS. Local Authorities should retain a power, rather than a duty, to make a referral to the Independent Safeguarding Authority. The burden of responsibility in this case should be with the employer. Similarly, the duty for a regulated provider or personnel supplier to check whether a person is barred before commencing regulated activity is welcomed. However, the Bill does not make clear whether individuals employed directly or by non-regulated providers will be covered by the list. Additionally, individuals who are employers via a Personal Budget, Direct Payment or own resources could access the list. This is a major concern for ADASS as individuals organising their own care, or those organising it on their behalf, would not be able to make checks on prospective providers of care and support.

6. A streamlined checking service for those who work "closely and regularly" with children or vulnerable adults is welcomed. Additionally, the portability of checks will reduce administrative burdens and potentially delays in commencing employment. However, the changes appear to be being funded by an increase in the cost of enhanced applications. This will increase costs to Councils at a time when resources are diminishing. At present this cost is unable to be quantified.

7. There are clear moves in the Bill to ensure that individuals take responsibility for their information. Allowing job applicants to see the results of their criminal record check before their prospective employer will allow mistakes to be corrected. It is not clear whether this may lead to delays at recruitment stage which can be costly for employers. On balance, the overall gains from the portability of checks outweigh this.

8. In relation to the alteration of the test for barring decisions, we would query on what basis the decision will be made of whether someone might be working in regulated activity in the future. This lack of clarity could lead to confusion.

May 2011

Memorandum submitted by Dover Harbour Board (PF 69)

SUMMARY

1. Dover Harbour Board (the Board) owns and operates the Port of Dover, which is private property used by the Board to operate one of the world's busiest international ferry ports. The Port of Dover is a significant asset for Dover, East Kent, the South East and the nation. It has enormous national and international importance as one of the UK's main trade gateways with continental Europe.

2. In the interests of security and the safe management of the port operation, the Board operates a proactive policy of immobilising unlawfully parked vehicles, followed by impounding in exceptional circumstances. As such, the proposed provisions of the Protection of Freedoms Bill are likely to have a major impact on existing security arrangements, adopted in line with good practice, at the Port of Dover.

3. Clause 54 of the Protection of Freedom's Bill was designed to combat the issue of rogue clampers. When making the announcement regarding the Bill, the comments made by the Home Office minister, Lynne Featherstone MP, were as follows:

> *"The Government is committed to ending the menace of rogue private sector wheel clampers once and for all. For too long motorists have fallen victim to unscrupulous tactics by many clamping firms. … A ban on clamping and towing on private land will end this abuse and companies who decide to flout new laws will face severe penalties."*

4. The Board has no issue with, and indeed supports, the overall objective of Chapter 2 of the Bill, but remains of the view that the blanket ban does not properly consider the impact on the owners of private property who have legitimate reasons for seeking to enforce parking restrictions on its property in a cost-effective manner, both for the customer and the landowner.

REASONS FOR CLAMPING

5. The Board clamps vehicles for a variety of reasons, most are the same reasons that clamping takes place on council property, ie vehicles parked without valid parking tickets, vehicles that have over-stayed their parking fee or parked in non-parking areas. In addition, the Board also clamp vehicles on behalf of the Port of Dover Police if they are suspect vehicles/recovered stolen vehicles.

6. Vehicles parked in security sensitive areas (eg the limited waiting parking areas at the entrance to the Eastern Docks) will be clamped where they have exceeded the maximum stay. Such vehicles are usually impounded, but depending on operational demands at the time of identification, occasionally it may take up to a day or two to arrange so vehicles are clamped and monitored until such time as they are removed.

7. In addition, the Board's current policy where vehicles have overstayed their parking fee or have no ticket at all is to clamp vehicles then leave them in situ for 16 days—long enough to allow time for those who may have gone away on holiday to return and recover their vehicle. Subsequently, if the vehicle remains on site, it will be impounded and a recovery fee charged.

8. The present charge for a clamp removal is £52.50 plus the unpaid parking fee, plus £7 per day while the vehicle remains on site; the fee for impounding is £157.50, plus the unpaid parking fee and/or a per day storage fee of £5.25.

THE BOARD'S CLAMPING REGIME

9. Far from operating an independent "rogue" activity, the Board adopts an open and transparent parking regime and employs a respected, national contractor, G4S, to undertake a wide range of security duties pursuant to its obligations under the International Ship and Port Facility Security Code (the ISPS Code) as regulated by TRANSEC. One of those duties is to immobilise and/or impound unlawfully parked vehicles on the Board's estate to ensure that the integrity of the Port's security is not compromised.

10. The dock roads, although private, are subject to standard road traffic legislation. They are clearly marked with double yellow lines in no parking areas and signage is displayed confirming key conditions of parking, as well as warnings to offenders that their vehicles may be clamped. The Board's parking terms and conditions are also published on the Board's website. G4S enforces the parking regime under the management and supervision of the Board's Terminal Manager (Compliance).

11. The G4S traffic officers, who are all SIA trained and licensed, are not expected to meet any clamping targets and are actively encouraged to try to locate the driver of any unlawfully parked vehicle to arrange for it to be moved. Clamping and impounding are only used as a measure of last resort.

12. In line with SIA guidelines, there is also an appeals process in place, such that anyone who believes that their vehicle should not have been clamped can contest the fee levied. The Terminal Manager (Compliance) works with the G4S Security Officer Manager to investigate all appeals and provides refunds if the clamping is deemed unwarranted.

13. Parking enforcement at the Port of Dover, including immobilisation and removal of vehicles, is tightly co-ordinated with Port of Dover Police and Kent Police Special Branch as necessary, to ensure that the risk represented by each vehicle is fully assessed before any action is taken.

14. As a matter of interest, the Port of Dover was a pilot port in the MATRA (Multi-agency Threat and Risk Assessment) project, which was jointly sponsored by the Department for Transport and the Home Office. The immobilisation and removal of illegally parked vehicles is one of the counter-measures for the mitigation of the VBIED (vehicle-borne improvised explosive device) threat.

15. Furthermore, TRANSEC is in the final stages of obtaining ministerial sign-off for the designation of the Port of Dover pursuant to the Port Security Regulations 2009, which will require the Board to undertake a full Port Security Assessment. It is anticipated that the current VBIED counter-measures will continue to feature as a vital part of the security threat mitigation plan.

Impact

16. The Board is aware that the Bill only makes it an offence to immobilise or remove vehicles where it is done without lawful authority. However, this caveat does not assist the Board as a review of the Board's constitutional documents has concluded that the Board is only entitled to remove vehicles from its land. It does not have explicit power to immobilise vehicles, most likely because the historic legislation (from late 1950s/early 1960s) did not envisage that as an option.

17. Operationally, immobilisation of vehicles is a more viable approach than immediately removing and impounding unlawfully parked vehicles and is in line with the Board's obligations under the ISPS Code. It is also a cheaper alternative for consumers who will have the opportunity to pay for the vehicle to be released before the costs of a tow truck, etc are incurred.

18. One of the direct results of the change in legislation will be a sharp increase in the number of cases where vehicles are immediately removed from the Board's premises. As the Board will no longer be able to secure vehicles on site by clamping pending removal, the Board will likely have to employ a specialist contractor who can provide a reactive service. This will increase the impound charges noted above in paragraph 8 and will have a detrimental impact on consumers as it will ultimately increase the charges payable to recover their vehicle.

19. The use of parking tickets would not be effective for an organisation such as the Board, due to the inherent risk of non-payment, which would inevitably result in the Board wasting administrative time and tracking vehicle owners through the DVLA etc, chasing payment and perhaps even seeking to enforce payment through the small claims court.

20. Furthermore, the use of a fixed barrier as proposed is not practical given the vast areas of land that the Board controls where there are many legitimate visitors expecting to be able to access and leave freely.

Conclusion and Proposal

21. It is worth noting that the threat of clamping is generally an effective deterrent for many motorists and usually ensures compliance with relevant parking/access restrictions. However, the Bill will remove all landowners' ability to use this threat to good effect and potentially opens the door for motorists to flout the rules. Where the landowner does not have the right to remove vehicles from the land, the motorists may be able to continue flouting the rules unpunished, but for those landowners (like the Board) who have right of removal, the motorist will be hit with higher costs to recover their vehicle. Neither outcome seems quite right in the circumstances.

22. The Board is of the view that in seeking to eliminate the issue of rogue clampers, the Bill has gone to the ultimate position of making clamping on private land unlawful and the potential outcome appears excessive. The Bill does not strike the correct balance between landowners' rights and the rights of motorists. It has potential to leave certain private landowners without an effective remedy, while still not quite meeting its objective of offering protection to motorists and ensuring that they are dealt with in a fair and even-handed manner given its potential to result in more onerous charges.

23. In the light of this information, the Board would strongly urge the Committee to ensure that there is an exemption for "statutory undertakers" such as the Board, ie those private landowners who need to be able to properly enforce parking restrictions on key infrastructure of national significance to ensure maximum operational safety, security and efficiency. The Board respectfully requests that the Bill include an appropriate amendment to Clause 54.

May 2011

Memorandum submitted by the Manifesto Club (PF 70)

While we wholeheartedly support the abolition of the vetting database, and the direction of the government's reforms, it is our view that fundamental problems remain with the Protection of Freedoms Bill. At base, these problems spring from the fact that the government decided to reform the Safeguarding Vulnerable Groups Act 2006, rather than to abolish it.

1. The Freedom Bill Preserves the Essential Mistrust about Everyday Relationships between Adults and Children

In retaining the concept of 'regulated activity'—that is, a certain "intensity" of working relationship with children—the Freedom Bill has failed to reform the mistrustful foundations of the Safeguarding Vulnerable Groups Act. The Freedom Bill retains the assumption that adults' "relationships of trust" and repeated contact with children are potentially abusive and inherently high-risk. As the author Philip Pullman put it, this "assumes that the default position of one human being to another is predatory rather than kindness." This assumption is damaging—it is also untrue, since the vast majority of adults working or volunteering with children are entirely decent and wish only to help them. Public policy should recognise the reality of abuse as an unusual and perverted phenomenon, rather than an everyday reality that is a default assumption.

Recommendation: We call for the scrapping of the concept of "regulated activity"

2. The Freedom Bill Retains the Regulation of the Informal and Voluntary Sector

The Freedom Bill retains the legal obligation for the vetting of volunteers—ie, those working "not for gain". The vetting of volunteers was almost unknown before 2002—and occurs in no other European country—and represents an unprecedented and inappropriate state invasion into informal community relationships. Under the Freedom Bill, it will remain a crime for a father to regularly coach his son's football team without first being CRB checked. This requirement cannot but undermine volunteering, creating unnecessary red tape and putting off potential volunteers.

Recommendation: We call for the abolition of all CRB check obligations for volunteers

3. The Freedom Bill Remains Extremely Complex and will be Impossible to Enforce

By further reforming the concept of "regulated activity", the Freedom Bill has made the question of who must be checked even more complex and obscure. In our five years campaigning against the SVGA, we have frequently noted the confusion and lack of clarity over the question of who must be checked. The exemptions in the Freedom Bill only make this worse, and so the law will be impossible to enforce. For example, the Freedom Bill will require people to be checked if their work with children is "frequent" or "intensive" (which remain as defined by the Singleton Review), except when it is "temporary" or "occasional" (which have not, to our knowledge, been defined). Such categories make little sense in themselves—and even less sense when applied to the messy and irregular world of an organisation such as a boys' football club, which will be tasked with working out which of its coaches fall under the law.

Recommendation: Again, we call for the abolition of the concept of "regulated activity"

APPENDIX

The Manifesto Club's Campaign Against Vetting

The Manifesto Club has been leading the campaign against the vetting database for the past five years, and over that time has built up a national network of volunteers and others who are concerned about the damaging effect of over-cautious child protection rules. Our reports use on-the-ground testimonies and original statistics to chart the spread of child protection regulations throughout community life, and to put the case for a more common sense and liberal approach.

For more information, see: http://www.manifestoclub.com/hubs/vetting

May 2011

Memorandum submitted by the Committee on the Administration of Justice (CAJ) (PF 71)

CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

CAJ welcomes the opportunity provided by the Public Bills Committee (Scrutiny Unit) to submit written evidence on the Protection of Freedoms Bill.

1. Thematic Comments

1.1 *Process*

While CAJ acknowledges the positive step forward this Bill represents in the improvement of human rights respect within counter-terrorism legislation, we encourage a wider re-examination of counter-terrorism legislation applicable to Northern Ireland to ensure that the political commitment to restoring human rights in the United Kingdom includes and acknowledges Northern Ireland. This Bill seems to ignore the long-standing application of specific counter-terrorism legislation to Northern Ireland and the impact this had on the conflict and continues to have on the normalisation process.

As such CAJ is disappointed that the opportunity has not been taken to revoke the provisions of the Justice and Security (NI) Act 2007 (JSA). For example, CAJ has consistently opposed the powers contained within the JSA, which continued non-jury trials in Northern Ireland. CAJ notes that a similar power is available in England and Wales, under the Criminal Justice Act 2003, where there are concerns with jury tampering. Significantly, this power is not available in Scotland. The Protection of Freedoms Bill could have provided an opportunity for the restoration of jury trials in Northern Ireland. We also draw attention to the failure to repeal the stop and search powers under s 21 of the JSA (addressed further in this submission) which we believe are equivalent to the s 44 Terrorism Act 2000 powers, which are repealed by the Protection of Freedoms Bill.

CAJ also notes that, as yet, no witnesses have appeared before the Public Bills Committee in relation to this Bill, from Northern Ireland. We acknowledge that a written submission has been made by the Northern Ireland Human Rights Commission and hope that this will be followed up by the Committee with witnesses from the devolved administration, members of the criminal justice system and civil society. We concur with many of the comments made by the Commission in their submission and those made by British Irish RIGHTS WATCH.

2. Specific Provisions

2.1 *Clauses 19–22: Bio-metric oversight*

CAJ welcomes the oversight that will be provided by the Commissioner for the Retention and Use of Biometric Material, (Clause 20). Our experience has been that such monitoring, especially where post holders have been prepared to engage with civil society, has an important role to play in building public confidence in the work of the criminal justice system. However, we have concerns at the power of the Secretary of State to withhold parts of the Commissioner's report on the basis of national security or public interest (Clause 21), and hope that this power will be exercised with caution. Similarly, we have concerns at the vague wording which allows the retention of bio-metric material on grounds of national security, and hope that the Commissioner's ability to access all relevant information will not be restricted.

2.2 *Schedule 1, parts 1–3 and 6: DNA data and profile retention*

CAJ is currently in the process of formulating our response to the Department of Justice (NI)'s consultation on DNA retention. CAJ has previously argued that Northern Ireland should look to the retention scheme currently used in Scotland. Our submission to the original consultation, carried out by the Home Office in 2009, can be found on our website at http://www.caj.org.uk/contents/375 (copy also appended). In this submission, CAJ highlighted the need to adhere to the principle of the presumption of innocence, the principle of non-discrimination (young black men are currently over-represented on the database); the special protection which should be afforded children under the UN Convention on the Rights of the Child; and the need for balance and proportionality in policy making, in relation to Article 8 of the European Convention on Human Rights (ECHR). Many of these concerns continue to apply to the proposed changes to the DNA data and profile retention scheme. There is also a need for clarity on the interaction between the Department of Justice's Consultation on proposals for the retention and destruction of fingerprints and DNA in Northern Ireland and the proposals contained within the Bill as applicable to England and Wales.

Significantly, Schedule 1, Part 6 of the Protection of Freedoms Bill provides the option for the Chief Constable of the PSNI to retain a DNA profile or fingerprints for the purposes of national security; as noted above, CAJ has concerns at the vagueness of the term "national security" and at the rigour the oversight Commissioner may be able to apply in this context. The retention of data by the police in Northern Ireland is a sensitive issue, with its roots in the conflict.

Subsequently, relevant history should be borne in mind in relation to such power being granted in Northern Ireland and robust oversight and protection measures must be set in place.

2.3 *Chapter 2, Part 2: RIPA*

CAJ welcomes the improvements to the level of authorisation required by Clause 37 to enable access to communications data. This provides necessary additional oversight to the process and allows the decision-making process to be reviewed. This in turn should contribute to the use of the communications data only as is absolutely necessary. CAJ equally views as positive the extension of judicial approval for directed surveillance and covert human intelligence sources (CHIS). The use of CHIS in Northern Ireland is

particularly controversial and has a history of mismanagement and misuse. Additional safeguards can only improve the situation. However, we believe that this Bill provides an opportunity to define some of the loose terms currently used in RIPA, namely the broad circumstances in which surveillance can be set up in the first place. Similarly, we concur with the comments made by JUSTICE on this issue (paras 33–34, JUSTICE Submission on the Protection of Freedom Bill to the Public Bills Committee), which highlights the multiplicity of different authorisation schemes which exist within RIPA, the limited safeguards that this diversity provides and the need to develop a more streamlined approach.

2.4 *Clause 57: reducing the maximum detention period for terrorist suspects*

Contradictory legislation. The UK Government's decision to pursue the development of "potential pieces of legislation" to claw back the advances made with the Protection of Freedoms Bill (specifically Clause 57), is disappointing. CAJ can only assume that the motivation behind the current development of the Draft Detention of Terrorist Suspects (Temporary Provisions) Bills, and by subjecting it to scrutiny by Parliament and others, is to produce more balanced and proportionate legislation, in contrast to that legislation potentially developed in response to a terrorist attack and rushed through Parliament. Based on the experiences of counter-terrorism measures in Northern Ireland, CAJ has long argued against knee-jerk reactions to particular events.[138]

The approach advocated in the Draft Detention of Terrorist Suspects (Temporary Provisions) Bills has its benefits but ignores a number of key issues, including (1) the symbolic danger of having emergency legislation hovering over the democratic arena; (2) the validation that draconian legislation is the correct response to a public emergency; (3) the assumption that this legislation is suitable for the situation for which it is considered; and (4) the denial of more appropriate and currently active legislation such as the Civil Contingencies Act 2004.

CAJ's submission to the Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extension) Bills emphasised the belief that the case for extended detention has yet to be adequately made by the Government and that such detention has a disproportionately detrimental impact on the health, welfare, employment and family of individuals subject to the measure.

Clause 57. The proposal to revert to a maximum pre-charge detention of 14 days (Clause 57) is welcome. However, CAJ expresses disappointment that the reduction of pre-charge detention is only from 28 days to 14 days in this Bill; we encourage the principle that those arrested for terrorist offences should be subject to the same pre-charge detention period as non-terrorist suspects, ie a maximum of seven days.

CAJ, as joint Third Party Interveners in the case of *In The Matter Of An Application By Colin Francis Duffy, C, D1, D2, G And T For Judicial Review and In The Matter Of A Decision Of A Judicial Authority To Grant An Extension Of Detention Under Section 41 Of The Terrorism Act 2000*, advocated the principle that extended detention was not compatible with Article 5 and Article 6 of the ECHR. This, CAJ argued, was because the provision did not allow for an examination of the lawfulness of both the arrest and the detention of a suspect, or allow for bail, the process could take place in the absence of the suspect, and the provisions did not provide a fair trial. This case has recently been given leave to appeal to the Supreme Court.

CAJ believes that the proposed Detention of Terrorist Suspect (Temporary Extension) Bill undermines both the intention behind Clause 57 and Clause 57 itself.

2.5 *Clauses 58–61 and Schedule 6: Stop and search*

General principles. CAJ welcomes the Government's commitment to complying with the European Court judgment in *Gillan and Quinton v UK* (2010). However, while Clause 58 aims to repeal the provisions of the Terrorism Act 2000 (sections 44–47) which granted very liberal use of stop and search powers to the police, it remains worrying that similar powers are still in place in Northern Ireland through the Justice and Security (NI) Act 2007. This leads to the suspicion that this repeal, rather than being part of the Coalition Government's "commitment to civil liberties", is purely in response to the judgment by the European Court of Human Rights which determined that the specific provisions in the Terrorism Act 2000 are in violation of the European Convention of Human Rights.

Section 21 JSA. Our experience of stop and search in Northern Ireland, particularly s 21 of the JSA, has shown this power to be used disproportionately and often unjustifiably. The fact that s 21 of the JSA remains virtually untouched by the proposals in the Protection of Freedoms Bill is of concern. We draw the Committee's attention to the fact that leave has recently been granted for a judicial review of s 21 of the JSA.[139] Section 21 of the JSA has had a significantly negative impact on communities and individuals, who feel unfairly targeted by the police. CAJ continues to monitor the situation, with particular regard to the implications of this power on the right to a private life (Article 8 ECHR) and allegations of harassment of individuals by the PSNI.

Schedule 6. CAJ does not believe that the measures here go far enough. For instance, Schedule 6 replaces the term "officer"' with "a member of Her Majesty's Forces"; it is not clear why this is necessary especially considering the much-reduced role of the army from Northern Ireland. While CAJ welcomes the removal

[138] Committee on the Administration of Justice. *War on Terror: Lessons From Northern Ireland*, 2005.
[139] Please see: http://www.u.tv/News/Derry-man-in-stop-and-search-legal-bid/90eb61a2-dc32-4db3-9adc-da42ef23a583

of this power from the PSNI, CAJ has concerns at it permanent availability to the military in Northern Ireland. This seems to go against the principle of normalisation in Northern Ireland. We are aware that this issue has been considered by the Committee (Committee meeting transcript: 3 May) and believe that this issue should be revisited.

CAJ also draws attention to the breadth of the proposed powers, which we do not believe are proportionate. Schedule 6 (paragraph 4H) provides for the application of stop and search authorisation across the whole of Northern Ireland. It is not clear how this would comply with the criteria of the area being "no greater than is necessary". Schedule 6 (Paragraph 4I) restricts the potential success of a judicial challenge brought against the Secretary of State, in relation to the area which s/he has authorised the powers to cover. Where the authorisation is challenged, the Secretary of State "may issue a certificate that—(a) the interests of national security are relevant to the decision, and (b) the decision was justified". This appears to limit the ability of the judicial challenge to adequately interrogate the reasoning behind the authorisation and indeed, enable the challenge process to have any merits. We advocate that this concentrates too much power with the Secretary of State.

CAJ welcomes the compliance with the *Gillan and Quinton v UK* (2010) judgment in relation to the proposal to repeal s 44 Terrorism Act 2000. This is particularly significant when one considers the fact that the use of section 44 of the Terrorism Act, which provides the broadest search powers, by the Metropolitan Police, increased by 266% between 2006–08.[140] The overuse of this power has been the subject of criticism by individuals, NGOs and with those charged with their oversight (such as Lord Carlile). We concur with the concerns raised in the submission from the Northern Ireland Human Rights Commission regarding the replacement power proposed in this Bill.

Monitoring. CAJ has concerns at the application, development and monitoring of the provisions relating to stop and search (Clauses 58–61). CAJ highlights the danger that these provisions will compete with existing provisions governing stop and search. The prevalence of legislation in this area could potentially mean that neither the police officer nor the individual concerned is really sure of the powers being used and their implications. For instance, there are powers under the Police and Criminal Evidence Act 1984, Terrorism Act 2000 (which contains two powers), Justice and Security (NI) Act 2007 and the proposed powers: each with different thresholds and safeguards.

The inter-connected impact of this proliferation is seen in the monitoring of these provisions, CAJ notes that there is nothing to indicate that this will take into account the community background of those stopped. Similarly, it is important that the grounds for the stop and search are recorded and analysed, to counter the broad wording of the grounds contained in some of the powers. As noted above, each power provides for a different threshold of authorisation, thus monitoring can play an important role in safeguarding the human rights of those subjected to these powers. The need for monitoring and safeguards is connected to the devolution process, which has been concerned with building confidence in local institutions, such as the police. The provision of accountable and transparent services has been part of this confidence-building exercise. CAJ thus advocates that should these measures come into force in Northern Ireland, they should be subject to appropriate, robust and localised oversight.

The proposals in Clauses 58–61 and Schedule 6: Stop and search seem to offer limited differentiation from the current powers available in Northern Ireland, and therefore highlight hollowness of the idea that this Bill represents an improved commitment to human rights and civil liberties. The focus of these proposals is restricted to the Terrorism Act, ignoring additional legislation in Northern Ireland and the current process of normalisation.

2.6 *Chapter 1, Part 3: Powers of entry*

CAJ welcomes both the motivation behind the amendments to the powers of entry and the amendment themselves. The amendment (Clause 39) to repeal unnecessary or inappropriate powers of entry reflect an acknowledgement of the need to balance crime prevention with the respect for private and family life and private property and of the proliferation of potentially intrusive powers. CAJ acknowledges the fact that this legislation offers a more streamlined and proportionate approach to the entry of private property by the police. The additional safeguards to the utilisation of the power of entry are also positive. One criticism of the use of emergency legislation in Northern Ireland, during the conflict, was the limited safeguards and oversight afforded the use of these powers. As such, the commitment to consult before the modification of powers of entry (Clause 43) is an equally positive step.

2.7 *Part 6: The amendments to the Data Protection Act*

CAJ is encouraged by the provisions which allow the expansion of the definition of a publicly owned company, the commitment to the provision of Freedom of Information data in reusable and shareable form and the changes made in relation to copyright provided for in this Bill. However, it is disappointing that public records relating to Northern Ireland continue to be exempt from the reduction, from 30 to 20 years, of the Government's retention scheme.

[140] See Protection of Freedoms Bill Research Paper 11/20, 23 February 2011, pg 33.

As the Public Bills Committee may be aware, truth and justice continue to be somewhat elusive concepts in Northern Ireland, especially in relation to state action during the conflict. CAJ highlights the failure of the Government to engage with the recommendations of the Consultative Group on the Past or indeed any other proposed mechanisms for truth and reconciliation in Northern Ireland and the contribution this has made to a continued legacy of pain and hurt in Northern Ireland. Restricting access to records relating to Northern Ireland, in a manner out of step with the rest of the UK, serves only to entrench this position.

3. Conclusion

The Protection of Freedoms Bill offers a positive opportunity to reinstate those human rights and civil liberties which have been undermined in the past decade. However, CAJ does not believe that this Bill goes far enough, particularly in relation to Northern Ireland. The impact of the continued application of emergency legislation in Northern Ireland is well-known. Despite the Good Friday/Belfast Agreement, normalisation process and devolution, the UK Government seems determined to treat Northern Ireland differently, the recipient of yet more restrictive legislation. This cannot nor should not be a sustainable policy.

May 2011

Memorandum submitted by Dr Richard Fairburn, Director and Lead Counter-signatory, Care Professional Consultancy Ltd (PF 72)

My background and relevant experience are as below:

- Qualified in Medicine 1974, left the NHS in 1981.
- Spent four years in Medical Research in the pharmaceutical industry.
- Nursing home owner from 1986 to 2003.
- Domiciliary care provider from 1994 to 2006.
- Legal background including Masters degree in Human Rights and Public Law.
- Consultant to care providers on regulatory issues since 2000.
- Author of articles in *This Caring Business* on regulatory and other legal issues from 2000 to 2006.
- Set up an umbrella service for Criminal Records Disclosures in 2003. Sold the domiciliary care agency in 2006 to concentrate on developing the umbrella service which has become one of the top 100 umbrella services by volume (2010 figures) with tens of thousands of applications to date.

Summary

Clause 77 of the Protection of Freedoms Bill would repeal the provisions for the registered body copies of Disclosures. The umbrella service and its registered person(s) are an integral part of the loop of protection of children and vulnerable adults. This submission argues that taking the registered person out of that loop is contrary to the interests of all parties.

1. This submission is a plea to reconsider, and either amend or remove clause 77 of the Bill, which would repeal the requirement to send a copy of Criminal Record certificates to the registered person (RP). I am aware that this section has already been the subject of representations to the Committee.

2. An application for a CRB check is made when an applicant (for a relevant post) completes an application form supplied by the umbrella service to the employer. The employer's authorised manager verifies the ID of the applicant according to the documentary rules and sends that application, "tagged" as being from that organisation, to the umbrella service for signature (by the RP) and submission to the CRB. The applicant can neither verify his own ID nor submit an application on his own behest, as a self-employed person cannot vet his own suitability for a post, nor can he submit directly to the CRB. The proposals of the Bill do not alter these requirements.

3. The relationship between the RP and the prospective employer is thus not merely a commercial transaction, but an integral and central pillar of the Disclosure process that must secure accurate and complete information in the application with a minimum of delay. The RP is, for the time being, part of the loop of protection of children and vulnerable adults.

3.1 Under Regulation 7(g)(i) Police Act 1997 (Criminal Records) (Registration) Regulations 2006, where the RP uses the services of (an authorised evidence checker) to verify the identity of applicants, he must "ensure the suitability of (the authorised evidence checker)". In my own service we will accept that verification only from the authorised nominated signatory. Where queries are raised, again they will be dealt with only directly through the nominated signatory. Doubtless other umbrella services have equivalent safeguards against the inclusion of incorrect or even false information.

3.2 The RP checks the completeness and consistency of information, eg excluding the use of documents containing errors or those that do not match the CRB documents list or those out of date or in a previous name. It is no criticism of the busy care home manager that a driving licence used as ID may be in the

previous name, that the photocard may be out of date, that the spelling or syntax of the name may be different from the names given on the application form, that the names as at the issue date may not match the list of previous names, that the address may not have been included in the address history, that the date of birth or title may not be as given on the form, that there may be a middle initial of a name not otherwise declared in the application, and so on. If the RP fails to spot such flaws, not only might the Disclosure be flawed and unsafe, but the care provider may be liable to criticism for employment without a valid Disclosure and consequent breach of the Regulations (with the risk of a fine of up to £50,000 on summary conviction).

3.3 The RP is, similarly, the lead person in queries raised by the CRB or police during processing of an application. The thoroughness of the response may be crucial, eg in searches against names or addresses not initially declared in the application documentation.

3.4 The RP is the first line of defence in checking the received Disclosure for accuracy of content. The scanning of handwritten forms can result in errors and therefore in incorrect searches and unsafe or even void Disclosures.

3.5 The RP takes the lead in chasing applications delayed for a variety of reasons. The CRB has elected not to trace all outstanding applications, instead doing so only when requested by the RP.

3.6 The RP is the recipient of additional information in the rare cases where there is information that the authorities will not wish to include in the applicant's copy, eg where there are serious charges pending or where the applicant does not know he is under investigation or is liable to be arrested in the near future.

3.7 The RP is the only realistic defence against forged Disclosures. The two copy system effectively precludes a black market in forged Disclosures as the employer receives the registered body copy direct from the RP, the RP having received it direct from the CRB.

4. The proposed transfer of "ownership" of the Disclosure from prospective employer to applicant amounts to a dismantling of a central pillar of the application process, and may jeopardise the safety of it, and should not be undertaken lightly. If clause 77 says more about saving the (admittedly significant) cost of sending a second copy of a Disclosure then it is misconceived.

5. The first effect is likely to be that those employers who currently pay the cost of the application will call for applicants to pay for their Disclosures, given that they are not even guaranteed a copy of it. In passing, it should be appreciated that the proposal for updating carries no interest for the employer as it only assists the applicant in his search for the next job.

6. If the applicant does not progress his application for the post with the employer whose form he has completed what will become of the application in process where the applicant still wishes it to be submitted (and may already have made payment to the employer)?

6.1 If the application has not yet been submitted to the CRB then why should the employer not charge for his unproductive time?

6.2 If the application has been submitted but is subject to later queries then there is no statutory duty on the former prospective employer to assist in checking and submitting the information required to complete the Disclosure (ie in underwriting it with all the legal connotations for employment elsewhere). The applicant may indeed have "ownership", but of what? If the employer "drops out" of the process then umbrella services such as mine that will only use information verified by the authorised signatory may have difficulty handling late queries without costly submission and return of original documents.

6.3 The current relationship between prospective employer and RP lends impetus to tracking, tracing and chasing of delayed applications. That will be lost.

6.4 If the RP is taken out of the loop then this will force the CRB to increase its contacts directly with the applicant where queries arise. Some time back the CRB decided that safety precluded direct contact of this kind (and in my view both employers and RPs should be informed when there is a defect in information requiring further enquiry, especially if the applicant is already working in care on the basis of an ISA First check). The CRB later resiled from that position on the grounds that direct contact was easier and quicker. Such contacts are fraught with difficulty and there is no safeguard against false information that has not been verified being mixed in with independently verified data.

7. The opportunity for the RP to check the Disclosure for accuracy of spelling of names will no longer exist. In seven years we have had just a single instance of an applicant who challenged the Disclosure on the basis of the spelling of a previous name. The RP can also detect obvious errors, such as the occasional information on a person with the same name but different date of birth, before it is sent to the employer.

8. A single copy system opens up the possibility of a new black market in forgeries of Disclosures.

9. The informed RP is well-placed to advise on the application of information in Disclosures, in the balanced judgement that is often needed. The RP can alert the employer when the information clearly militates against employment although many RPs (including my service) will not offer to make, or even give definitive advice on, employment decisions. The choice between employment of an applicant who poses a risk, and dismissal on grounds that may not stand up to challenge, can be complex and difficult, but the experienced RP can assist by offering pointers to the decision. How serious is "battery" or "actual bodily harm"? What was the sentence? How old is the information? How long without conviction? Did the

applicant declare the conviction, how is the question on your application form worded? and so on. If the RP does not receive a copy, can he legally (and without the possibility of challenge by the applicant on Data Protection grounds) be given that information by the employer such that the RP's expertise can still be put to good use?

10. There is no obvious replacement for the RP copy where there is additional information outside the Disclosure (which will invariably be serious in nature) and where the authorities would not wish the applicant to know of its nature or even its existence. The incentive for a black market in forged Disclosures could arise from this position alone.

11. What reason is there to expect a teacher who has new and perhaps significant offences to promptly hand over his repeat Disclosure to the school that is carrying out routine re-checking of staff?

12. With the introduction of updating, and with the desire of all to make a single Disclosure forever portable, it becomes ever more important that the first application was safe. If the dishonest applicant can successfully "cleanse" his Disclosure of significant information by withholding relevant personal history, and then maintain it by the updating facility, the potential consequences are quite appalling.

Recommendations

That clause 77 is either removed in its entirety or replaced with a system that will still retain both the prospective employer and the RP in the loop.

One possible alternative to clause 77 is that the applicant would be invited to give consent to the Disclosure being sent to the RP and then to the employer as soon as it is printed. The application form will have to be redrafted in any case to cover the updating requests. A box could be added that would allow the applicant to give that consent (perhaps by signature rather than a cross in a box to avoid difficulties). The default without consent should be issue of the Disclosure to the RP in any case but, say, seven days later. The applicant would then be able to challenge the content and block the issue of the RP copy if he so wished. In practice this would be uncommon and in practice may amount only to an attempt to "cleanse" a Disclosure of correct information. The vast majority of applicants know either that their Disclosure is clear or that the Disclosure will only confirm what is already declared on the job application form. Applicants could be given notice at the time of application as to the inclusive nature of the searches. May I further suggest that the detail of such a system might best be included in regulations after consultation with stake-holders.

May 2011

Memorandum submitted by the General Medical Council (GMC) (PF 73)

Summary

1. The GMC is the independent regulator for doctors in the UK. Our purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. Our duties and powers are set out in the Medical Act 1983 (as amended).

2. In our memorandum on the Protection of Freedoms Bill we focus on Part 5 Chapter 1, which amends the Safeguarding of Vulnerable Groups Act 2006 (the SVGA) and the framework that this provides for the Vetting and Barring Scheme operated by the Independent Safeguarding Authority ("ISA").

3. The GMC has experienced a number of issues in implementing our responsibilities under the SVGA and we therefore welcome the move to address these issues through reforming the legislation. We do, however, have a number of concerns about the Protection of Freedoms Bill which are outlined in this submission.

Background

4. The SVGA introduced an obligation on the GMC (and other regulators) to refer prescribed information to the Independent Safeguarding Authority (the ISA). Section 41 of the SVGA provides, in very general terms, the conditions that must be met before a referral to the ISA needs to be made.

5. Due to the complexity of the legislation and the broad nature of the criteria, we have faced a number of difficulties in implementing the duty to refer under Section 41 of the SVGA. One interpretation of the SVGA would involve referral of all doctors where we have issued a warning or sanction under our fitness to practise procedures, in addition to auto-bar offences. This would capture cases that raise no safeguarding concerns (eg purely clinical cases). We estimate that the resource implications of operationalising our duty to refer on this basis would result in approximately 20 referrals per week, which we consider to be disproportionate.

6. In 2009–10, together with the other health and social care regulators, we therefore raised concerns with the Department of Health and the ISA about the need for clarification of the referral criteria and worked closely with the ISA to develop detailed guidance on the interpretation of the May Bar test and Harm Test. The guidance agreed with the ISA has been helpful and has supported the referral of appropriate cases. A key principle underpinning this guidance is that we will not refer matters that are purely clinical in nature or arise solely from the doctor's competence as a doctor because it seems reasonable to assume in such cases that any action taken by the GMC is sufficient to mitigate the risk of future harm. We have now trained our staff to assess cases on this basis and referrals to the ISA to date have resulted in a decision to bar in less than 50% of cases.

7. Although the Protection of Freedoms Bill replaces the duty to refer with a power, the need for clarification about the referral criteria remains. While we have reached agreement with the ISA about which individuals to refer, it would however be preferable for the legislation to reflect the agreed position. It is therefore a concern for us that the current proposed amendments in the Protection of Freedoms Bill do not tackle this issue.

Harm Test

8. Under Clause 41(2)(c) of the SVGA the GMC has a duty to refer under the Harm Test where there is a risk of harm to a child or vulnerable adult. This provision is however so broad that a strict interpretation would be likely to result in referral of the majority of cases which we receive.

9. The ISA has therefore specified that we should only make a referral under the Harm Test where there has been no act or omission but a doctor has communicated something about their thoughts, beliefs or attitudes to indicate that they pose a future risk of harm directly in relation to children and vulnerable adults. In addition, the ISA have asked us to use the Harm Test to refer Relevant Conduct cases that for technical reasons do not strictly meet the Relevant Conduct criteria because the conduct occurred overseas or we have not concluded our fitness to practise process but we consider the doctor to pose a risk to children or vulnerable adults.

10. In 2010, we assessed all cases with extant sanctions against the relevant conduct and harm test criteria. As a result, we were required to assess almost 600 cases under the Harm Test which did not meet the Relevant Conduct criteria. This exercise to date has resulted in five cases being referred to the ISA which is 0.8% of the cases we assessed. All these cases related to Relevant Conduct which did not strictly meet the Relevant Conduct criteria because the cases related to overseas conduct or cases where we had not completed our fitness to practise process. None of the cases related to harmful thoughts, beliefs or attitudes. This suggests that it may be a more proportionate approach to amend the Relevant Conduct criteria to include overseas cases and cases where we have not completed our fitness to practise process but we believe the doctor poses a risk and to remove the Harm Test which relates to harmful thoughts, beliefs and attitudes.

Disclosure

11. We believe that there are a number of areas within the Protection of Freedoms Bill which relate to the sharing of information between the ISA and the professional regulators that are unclear and which could be clarified during the passage of the Bill.

12. The current Sections 43 and 44 of the SVGA places duties on the Secretary of State and the ISA to notify professional regulators of any decision taken to bar an individual who is on their register, and the reasons for that decision. Unfortunately, these provisions have not been enacted, and will not now come into force until the Protection of Freedoms Bill receives Royal Assent.

13. We are concerned that the current restrictions on information sharing between the ISA and the professional regulators as a result of the delay in implementing these provisions may harm public confidence. At present, through an informal agreement with the ISA, we are receiving notification of barring decisions in relation to registered doctors. On average we receive notification within 45 days although there are some cases which take longer, the oldest being two cases which remain outstanding after 47 weeks. Under current legislation the ISA is not able to provide us with any information about the reasons for their decision, even where this may involve concerns that are unknown to us, and that may impact on a doctor's fitness to practise.

14. We also have a number of concerns about the proposed arrangements for disclosure. Clause 74(3) of the Protection of Freedoms Bill requires the ISA to notify professional regulators if it "knows" or "thinks" that an individual may be a registered professional. We suggest that it may be helpful for the ISA to establish beyond doubt, in all cases, whether or not an individual is engaged in regulated activity prior to making a barring decision. Firstly, this would enable the ISA to seek disclosure from the relevant regulatory bodies and ensure they have access to the full range of information which may inform their decision to bar. Secondly, this would ensure that all interested regulatory bodies are always notified of a decision to bar an individual registered with them, and provided with the reasons for that decision, so that they can take appropriate action.

15. We would be happy to consider ways to facilitate information sharing to support this aim. Where the ISA has not established the registered status of an individual and has therefore been unable to exercise its duty to notify us of a doctor's status, we will need a means of proactively checking the status of our registrants. The provisions in the Bill are unclear about how this might work and we would like reassurance that we will not be charged for making an application for this information. With 240,000 registrants, this would clearly present a significant obstacle to us obtaining that information and could pose a patient safety risk.

May 2011

Memorandum submitted by Lambeth Parking Services (PF 74)

SUMMARY

The London Borough of Lambeth wishes to raise its concerns regarding the introduction of a "Seriousness Threshhold" under Section 30(3)(b) of the Regulation of Investigatory Powers Act 2000 which would restrict the use of Directed Surveillance by Councils to offences attracting a custodial sentence of six months or more. Whilst we have no practical objection to the idea of judicial oversight as envisaged in the Bill, it is the Councils submission that the introduction of the proposed threshold will undo the great strides that it has made in tackling misuse of the blue badge scheme. This note sets out the history of this scheme, the extent of that abuse and the important part surveillance under RIPA plays in tackling this issue.

1. *Introduction to the Disabled Person's Blue Badge Parking Scheme*

1.1 The blue badge scheme is a concession, recognised across the European Union, to make parking easier for disabled persons with mobility issues. Under this scheme, those who qualify receive a badge which entitles them or another to park close to their intended destination (ie shops, hospitals etc) and in many instances, parking free of charge for the duration of the disabled person's stay at that location. In the current financial climate, these features make them a highly valuable commodity, resulting in abuse by inconsiderate individuals, attempting to fraudulently benefit from the free parking concessions.

1.2 Persons with severe mobility problems relying heavily on the scheme to carry out tasks that most of us take for granted, for example grocery shopping, are finding it increasingly difficult to park close to the places they need to access because of high levels of blue badge abuse. Having looked at figures from three inner London Local Authorities (LAs)—Lambeth, Croydon and Wandsworth—where blue badge fraud is being actively enforced, around 40% of cases identified involve use of lost, stolen or forged badges, or badges belonging to deceased persons, with the remaining 60% accounted for through blatant misuse of the scheme by friends or family members of genuine badge holders.

1.3 Each year, LAs issue many thousands of these Badges within the community, and guidance is provided by the Department of Transport on how to correctly use them. A large quantity of badges are issued to vulnerable persons—who are children, or elderly, or may suffer from mental illnesses such as dementia—all of whom are unable to monitor the use of the badge that has been issued for their personal benefit. This allows for carers, friends or family to fraudulently take advantage of these concessions, usually without the badge holder being aware.

2. *Why Blue Badge Fraud is so prevalent*

2.1 Parking charges have been introduced in nearly every town centre and high street across the Country, and the average cost of living has risen dramatically over the past few years. Persons commuting to work in London boroughs are hit hard by the parking charges, both on-street and in car parks, with daily expenses in some authorities costing commuters more than £20. There is also the congestion charge, costing visitors and commuters alike £10 per day, with a 10% discount for persons signing up to the "auto pay" system.

2.2 As the blue badge scheme offers free parking concessions in most boroughs throughout England where parking restrictions are enforced, and permits two cars to be registered for congestion charge exemption, this has unsurprisingly lead to an increase in numbers of person's misusing blue badges belonging to friends and family members—in an attempt to fraudulently cut down on daily work commute costs.

3. *Putting blue badge fraud into context*

3.1 To understand why abuse of the blue badge scheme is such a pressing issue for LAs, it is important to gain clear perspective of the challenge the scheme poses for parking enforcement teams.

3.2 The Road Traffic Regulation Act 1984 (RTRA) was passed to combat certain traffic and parking related offences, and—with particular reference to parking offences—was based on systems in place at the time for a small number of parking contraventions, found in a few authorities, and which at that time were enforced by the Police. The blue badge scheme (originally known as the "Orange Badge") was not as widely recognized as today, and parking was relatively easy to come by, with the inconsiderate or illegal parking associated with disabled bays being viewed as more of a matter of anti-social concern than a criminal

offence. Within the RTRA, however, provision was made for the prosecution of persons who misused the concessions offered under the scheme, although the penalty imposed for this offence reflected the attitude that it was more about tackling inconsiderate parking than setting out to stymie fraudulent misuse of such badges. One would suppose that this was because there was no or little real financial gain in misusing a blue badge at the time the RTRA was introduced, unlike today.

3.3 The relevant section of the RTRA, s 117, states:

Wrongful use of disabled person's badge

(1) A person who at any time acts in contravention of, or fails to comply with, any provision of an order under this Act relating to the parking of motor vehicles is also guilty of an offence under [this subsection] if at that time—

(a) there was displayed on the motor vehicle in question a badge (purporting to be) of a form prescribed under section 21 of the http://www.legislation.gov.uk/ukpga/1984/27/section/117—commentary-c1356344#commentary-c1356344Chronically Sick and Disabled Persons Act 1970, and

(b) he was using the vehicle in circumstances where a disabled person's concession would be available to a disabled person's vehicle,

but he shall not be guilty of an offence under (http://www.legislation.gov.uk/ukpga/1984/27/section/117—commentary-c1887900#commentary-c1887900this subsection) if the badge was issued under that section and displayed in accordance with regulations made under it.]

(1A) A person who at any time acts in contravention of, or fails to comply with, any provision of an order under this Act relating to the parking of motor vehicles is also guilty of an offence under this subsection if at that time—

(a) there was displayed on the motor vehicle in question a badge purporting to be a recognised badge, and

(b) he was using the vehicle in circumstances where a concession would, by virtue of section 21B of the Chronically Sick and Disabled Persons Act 1970, be available to a vehicle lawfully displaying a recognised badge,

but he shall not be guilty of an offence under this subsection if the badge was a recognised badge and displayed in accordance with regulations made under section 21A of that Act.

("recognised badge" has the meaning given in section 21A of the Chronically Sick and Disabled Persons Act 1970.)

Footnote: It is important to point out that the law that governs what constitutes an "offence" under this piece of legislation stipulates that the badge holder must not be present when the vehicle is parked and driven away. Therefore an offence is only "complete" if the driver arrives and parks at a location on his/her own, placing the badge on display, and then returns later to that same location where the vehicle is parked, and drives away on his/her own from that location. Regulation 14 of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000.

3.4 Law makers at the time could not have guessed what a significant role badges would play in society some 25 years later, nor the level of abuse this scheme would experience, and so the penalty associated with this offence was set at the lower end of the punitive scale, (currently £1,000) despite the offence involving calculated and often prolonged systematic abuse of the scheme.

3.5 Parking has seen immense changes since the RTRA was introduced. As a result of the increased number of vehicles on the roads, town centres are more congested and demand for on-street parking facilities has grown exponentially. Controlled Parking Zones spread out to nearly every town centre and high street in the country, with numerous types of contravention codes implemented to account for the growing numbers of offences associated with ever changing road layouts. Pressure on Police resources lead to parking enforcement becoming a low priority, so by means of the Road Traffic Act 1991 (RTA), enforcement responsibilities passed from the Police to LAs, who applied for legal powers to carry out enforcement under the RTRA.

3.6 Coupled with the increased level of drivers demanding parking, was the rising number of badges being issued. This alone created greater demand for designated parking bays to accommodate the growing number of badge holders. Today, as a society, average life expectancy has improved by comparison with 20 years ago, which means we are living longer, but doesn't necessarily mean we stay fit for longer. With illnesses such as diabetes, cancer and heart disease becoming more prevalent, the number of badges issued each year is only likely to increase, putting even greater pressure on Councils to provide adequate parking facilities for badge holders.

3.7 There is a limit to how many bays can realistically be set aside for disabled badge holders within busy town centres and packed residential roads. With this in mind, the scheme extended its concessions, allowing badge holders to park in certain non-disabled parking bays, such as shared-use parking bays (where drivers display a valid resident's permit or pay-and-display ticket to park legally) and pay-and-display only bays, commonly located in town centres and high streets. Badge holders benefit from free parking in both types

of bays, often using pay-and-display only bays, as they are generally located closer to places that badge holders will visit regularly, ie shopping centres, hospitals, restaurants etc. These bays are also perfectly positioned for many members of the public who work in these shops or restaurants, allowing them to park near to work on a regular basis as part of their daily commute. Unfortunately, due to their convenience, these bays have become very expensive to park in, particularly for prolonged periods of time—unless you have access to a blue badge, in which case, a fraudster can obtain all day, charge free parking wherever it is convenient.

3.8 So now Councils have a new pressure on their already limited on-street parking resources. Prime pay-and-display and designated disabled bays fill up with fraudulent badge users commuting to work and on shopping trips, forcing genuine badge holders and other fraudsters to use shared-use bays in nearby streets. This in turn means that resident's vehicles are being displaced—despite paying a premium for resident's permits to park in the street in which they live. Factor in a resident with small children and heavy groceries having to park a block or two away from their home, and you get more and more residents unhappy that they're paying for a service they are unable to benefit from because of inconsiderate fraudsters.

3.9 Of far greater importance is the effect fraudulent parking behaviour has on genuine badge holders. Some persons may be so severely disabled that if they can't park within a short distance of their intended destination, they ultimately have to turn their car around and go home and try again at another time when they might be lucky enough to find a disabled parking bay. What a great inconvenience it must be for more vulnerable members of our community if they are unable to gain access to a GP surgery, pick up medication or buy groceries—things that able bodied people take for granted.

3.10 Responsibility lies with LAs to administer the scheme and ensure that genuine badge holders benefit entirely from the concessions to which they are entitled in order to make their lives easier despite their disability. It is also the responsibility of LAs to ensure that their residents are able to drive on the roads safely, and gain access to parking. As badge concessions go hand in hand with ensuring parking is available, LAs need to make sure they're fulfilling these obligations to the best of their ability, and one vital way of doing so is through tackling blue badge fraud.

4. *What's being done to tackle the problem*

4.1 Approximately eight years ago, LAs like Tower Hamlets and Wandsworth started to take enforcement action on vehicles displaying forged, stolen and deceased person's badges, merely issuing Penalty Charge Notices (PCNs) to the vehicles. Other authorities began to follow suit, but in 2005 the London Borough of Wandsworth became the first authority to actively prosecute an offender for abuse of the scheme under the RTRA. Over the last three years alone, Wandsworth has successfully prosecuted 699 offences, of which 70% related directly to blue badge misuse, and were prosecuted under s 117 of the RTRA.

4.2 A breakdown of blue badge fraud offences prosecuted by Lambeth between 1 April 2008 and 31 March 2011 shows that, of the 500 badge offences prosecuted during this period, badges involved were:

Type of Fraud	*Percentage*
Stolen/Lost	5%
Forgeries	30%
Expired	7%
Belonging to deceased persons	1%
Misused	57%

4.3 National Fraud Initiative statistics recognise badge fraud as one of the highest contributing factors in loss of revenue to LAs. The diagrams have been referenced from their past two reports. Figure 1 shows results of the 2004–05 audit exercise, and Figure 2 the same for 2006–07 and 2008–09 audit exercises (*not printed here*).

4.4 To further substantiate why badge fraud needs to be tackled, let us break down parking costs into a realistic figure to illustrate potential loss to councils. Badges are valid for up to three years, and if parking in the centre of London costs on average £15 a day, that means £75 per week, thus £3,375 annual average for a person commuting to London for work, and over £10,000 over the life span of the badge. Not all persons found misusing a badge blatantly offend to this degree, but if only 10 people in each borough in London were to misuse badges this way, that alone would add up to over £3.3 million in three years, without factoring in the losses incurred through defrauding the congestion charge zone. That excludes the casual fraud by many thousands of people who misuse badges occasionally to go shopping or visit a restaurant or cinema.

5. *Using Legislation correctly*

5.1 Going back to the earlier footnote reference to "complete offences" we see that a substantial level of observation must be done to confirm the necessary aspects of the offence, namely that the badge holder was not present in the vehicle at any point while the badge was being used. There is no other way to gather the level of evidence required to prove an offence than to witness these actions. The suspect must be physically

seen to arrive and depart from the same location where he/she has been parked displaying a blue badge without the badge holder ever being present to satisfy the burden of proof. But gathering this evidence has to be done in a legitimate manner, without breaching The Human Rights Act 1998 in any way.

5.2 This is where the Regulation of Investigatory Powers Act 2000 (RIPA) has been invaluable, as it provides officers investigating badge fraud offences the opportunity to carry out directed surveillance to prove a person is using a badge to which he/she is not entitled, and thereby defrauding the Council and massively inconveniencing genuinely disabled badge holders.

5.3 The value of RIPA is evidenced in its use to identify and prosecute the high level of offences at Wandsworth—70% of all badge fraud offences—and at Lambeth—57% of blue badge related fraud offences. If we put these figures into context based on the estimate of just 10 people in each borough costing local authorities in London alone £3.3 million over three years, it's clear to see the value of tackling this type of fraud throughout the UK, making full use of the RTRA and Section 117 offence to save Local Authorities across the country millions.

6. *In conclusion:*

6.1 In closing, I would refer you to some relevant passages from the Operational Guidance issued to LAs by the Department for Transport (DfT) in March 2008. In that document the DfT identifies several ways in which Blue Badges can be misused and referring to targeted surveillance operations makes the following point:

> *"The most common form of abuse tends to be misuse of the badge by the friends and family of the holder. Where this is a clear problem (and there is a business case for tackling it) DfT strongly recommends that authorities set up a specialist Blue Badge enforcement team to carry out undercover surveillance work. The team can identify suspected systematic abuse and apply for permission to carry out undercover surveillance (under RIPA) in order to build up evidence that can later be used to prosecute the individual in the Magistrates Court."*
>
> Paragraph 9.12 on Page 65 of *Operational Guidance to Local Authorities: Parking Policy and Enforcement*

6.2 Section 117 of the RTRA is a highly valuable piece of legislation targeting a very real type of fraud, which may be viewed as a mere parking offence by some, but ultimately costs LA millions of pounds annually and seriously disadvantages vulnerable members of our community. Without RIPA, this piece of legislation cannot be enforced, making it redundant. In a climate where Council's are under pressure to provide the highest quality of service possible to their residents—while still finding ways of reducing costs and generating income fairly—taking away the ability to conduct covert surveillance to gather evidence that confirms badge fraud, which as mentioned earlier could costs millions each year, seems entirely counter productive. It opens up the floodgates for badges to be abused by able bodied persons, depriving genuinely disabled persons the right to a reasonable standard of life, and allows fraudsters to steal millions of pounds from Councils.

6.3 It is with this pressing issue in mind that we request strongly that consideration be given to creating a "carve out" for directed surveillance operations which target cases of blue badge misuse, so that investigations can continue to reduce this ever present fraud within our communities.

May 2011

Memorandum submitted by Lancashire Clamping Co Ltd (PF 75)

INTRODUCTION

Sections 54–56

1. My name is Trevor Whitehouse. I am the Founder and Chairman of Lancashire Clamping Company Limited, trading as "National Clamps". The Company was incorporated in the UK on 16 October 1989.

2. I am the Inventor and Patent Holder of the Vehicle Immobilisation Device number GB 22 514 16 known as the "London Clamp".

3. I am also the inaugural President of The Parking Enforcement Trade Association and an Honorary Member of the Institute of Parking Professionals

4. After my former business partner was clamped by a Blackpool Guest House proprietor and charged a £50 release fee, he and I sought the Opinion of Keith Thomas of Counsel, who specialised in the laws of Tort and Trespass.

5. Understanding the Laws of *Volenti non fit injuria* and the doctrine of *distress damage feasant* we formed a company, cautious of the deterrent factor, and so we charged £30 per sign per year. This was the birth of the service provider.

6. My business partner and I split in the very first year, but I continued and charged a nominal release fee of £25, being very aware of public opinion. My company still charge £30 per sign per year, and the current release fee is £80, having only been increased from £70 in December 2005. At the peak, prior to the Featherstone announcement in August 2010, my company immobilised 10,000 vehicles per annum and received very little bad press. In 2011 to date, we have towed away just four vehicles and on average we never exceeded 10 per annum,

7. Today all National Clamps staff are screened and vetted to BS7858 standards, and the company operates in over 300 towns and cities throughout England and Wales. National Clamps have an Edexcel approved training centre and two in house trainers, our office procedures are ISO 9001 certified. National Clamps are members of the SIA (Securities Industry Association) Approved Contractor Scheme and a former member of the British Parking Association Approved Contractor Scheme. National Clamps are a founder member of The Parking Enforcement Trade Association.

8. National Clamps have over 800 clients who vary in type and size and most Council and Managing Agents have multiple sites. We issue over 105,000 parking permits at the turn of each year and we estimate there are over 5,000 warning signs on client's premises. National Clamps are perceived as predominant within our field and we have worked hard to earn and sustain a good reputation in the industry.

The Politics

9. Clamping is media heaven and this Committee should not be influenced by emotive headlines which only reflect a small minority of motorists. Those in the car park management industry face conflict on a daily basis but their primary role is to keep out general members of the public who have no right to park on the land, and, secondly, to control the parking on site by those people entitled to use the land.

10. Whether the committee members like "wheel clamping or not", they cannot deny the deterrent value of those signs, and this will never be superseded.

11. Prior to wheel clamping, barriers were used, but were frequently damaged and often out of commission. They are expensive to buy, install and maintain and most of the time are impractical and nothing to do with traffic management. Once inside parking becomes *adhoc*.

12. The Committee would be incorrect to assume that National Clamps revenue is generated by fly parkers. We immobilise vehicles in disabled bays, ambulance bays and pay and display car parks for not exhibiting or exceeding the chosen paid time. Often on campus or hospital sites we clamp for parking on hatched or yellow lines, for not using designated expenses and for parking on pavements.

13. Clamping is now part of traffic management and not just to deter trespassing. It is more a modern solution to a modern problem. Ticket issuing does not deter, it gives the motorist an unconscious attitude "I'll cross that bridge should I come to it" or "I'll talk my way out of it" or "It's not my car". A clamp cannot be denied.

14. In the 18 January 2011 Impact Assessment, one of your committee members said that one group affected by the proposed ban were: "land owners, wider business community: shops and retail areas, offices, residential and industrial premises, medical and educational bodies, and others with responsibility for parking space or land management: will no longer be able to use immobilisation or towing away without lawful authority and will therefore have a reduced range of strategies for removing unwanted vehicles from their land" It is a fact that 90% of our clients never need to use our clampers. Signs where placed where bound to be seen, and clearly and prominently worded provide good car park management. The proposed ban will require the landowner to invest in new equipment such as barrier and ticket machines and personnel to manage the sites, and yet, some Councils have issues with regard to planning permission for barriers etc., as they can cause on road queues and put other motorists and pedestrians at increased risk. Just installing a barrier is the beginning of the costs. Ground works prior to installation to provide electricity and subsequent maintenance and breakdown repairs are all costs the Bill as drafted proposes to lay at the door of the landowner.

15. It is the landowners choice to use a clamping company. They do so, usually after trying other enforcement methods first. Article One, Protocol One of the European Human Rights, clearly states the right to enjoy ones property. Once parked (contrary to each sites specific parking terms), the vehicle is no longer in the possession of the driver or owner. It is now in the hands of the land owner under contract and trespass tort or distress. The doctrine of *distress damage feasant* gives the right of the landowner to seize goods (chattels) and deprive the owner of its use until damages are paid which includes the cost of the debt recovery and a nominal fee. Per His Honour Hirst LJ *"it is not necessary to prove actual damage in support of the remedy of distress damage feasant. The impending threat of damage, namely the presence of a trespassing car, is sufficient: but if actual damage is necessary, the cost of clamping the car constitutes such damage"* (post pp 582G-583B, 584D-E, 585A-B)

16. Lynne Featherstone MP claims "that there is a ban in Scotland and that it is successful". Whilst it is true to say there is a ban in Scotland, to continue to compare Scotland, with a total population of 5.1 million, to England, where the 32 London Boroughs alone have a known population of 7.7 million ignoring the millions that visit or pass through London every year,and questions the assumptions in her Impact Assessment. We have come a long way since the early 90s when the Scottish ban was introduced, but remains

unchallenged, and there are many landowners in Scotland who wish they could employ the services of National Clamps and there are many motorists who, if quizzed, would have preferred being clamped instead of being towed away.

17. National Clamps are concerned that Lynne Featherstone MP is a member of the Public Bill Committee considering, amongst other things, a total ban on wheel clamping. As a champion of this Liberal Democrat policy, she is hardly impartial or, it would seem, open to genuine debate. In an open letter dated 16 September 2010 to the BPA Approved Operator Scheme, Mr Troy, CEO British Parking Association said: *"I also expressed my concerns to the Minister at the absence of any consultation on this issue. Although the last government did a consultation on the issue, they manifestly did not consult on the prospect of a total ban so I think it is bad form to have failed to consult the industry on a total ban and I made this clear to her."*

18. Costas Constantinou, writing in the *Telegraph* 31 August 2010 edition said *"A request was made under the Freedom of Information Act to the SIA in May 2010 to disclose the number of clamping licences. The result is that there are 1,900 licensed clampers in the UK but only 1,200 full and part time currently working. In effect we have a licensed operative for every 600 square miles of land in the UK."* The Impact Assessment states there are "about 1,850 vehicle immobilisers currently licensed by SIA." The Impact Assessment fails to exclude redundancies and the number that got a job and left after they saw the confrontation.

19. A vehicle immobilisation device currently targets the driver whilst a ticket targets the "Registered Keeper". Currently, around 40% of the vehicles ticketed by National Clamps, are not the registered keeper. They are, for example, taxis or company pool cars or delivery vehicles. Whilst the proposed Bill places the emphasis on change from driver to keeper responsibility, there is no legislation that requires a driver of an offending vehicle on private land, to divulge the driver details at the time of the incident. National Clamps issues around 500 tickets a month. 40% take advantage of the discount; a further 11% pay once we have been to the DVLA and acquired the registered details and about 9% pay after we have used a registered debt collection agency. National Clamps average collection of ticket monies is 60%.This is significantly lower than the 75% put forward in the Impact Assessment. The same assessment assumes the police will manage offending vehicles on private land in future. They are powerless, over stretched and under resourced. With the current coalition government requiring huge cutbacks in Police manpower and assets, the proposed Bill does not fit easily with the cutback regime;. in essence the makings for a different type of disaster.

20. National Clamps requested, but were refused the opportunity to give Oral Evidence to the Committee, as were the Vehicle Immobilisers Association. How ironic that two major motorist organisations are granted an audience and not one property owner nor managing agent nor clamping organisation, (being the three group of people who will be most effected by the proposed changes). The British Parking Association has been granted an audience and yet they have their own self indulgent agenda which consists of Licensing and the BPA holding the purse. So too, has the Securities Industry Authority been welcome to give evidence, but their existence under another piece of Coalition legislation is under threat.

21. I attended the British Parking Association Approved Contractor Scheme meeting in Daventry last October. Their master plan is to remove all private companies such as mine and replace them by council enforcement. It is already a legal requirement that before you can access the DVLA you are required to be a registered member of a DVLA Approved Trade Association, and then be a member of their Approved Contractor Scheme. In 2010, this privilege costs my Company £6,980, rising year on year. Many within the Car Parking Management industry are leaving ticketing because they have been priced out. Whilst I was at the meeting of BPA Approved Contractors ie barrier suppliers, car park attendants etc, I asked the following questions: *(1) Who would like to see Vehicle immobilisation and towing away kept if regulated? (2) Who would like to see the release fees capped at £100 or £175 if towed away? (3) Who would like to see a two hour gap between a clamp being applied and a tow truck?* I can report that the show of hands was 100% unanimous in favour on all questions.

Those attending were the cream of the UK parking industry and whilst this was consultation in its crudest form, it was honest and untainted.

May 2011

Memorandum submitted by the Football Association (PF 76)

PART 5 SAFEGUARDING VULNERABLE GROUPS, CRIMINAL RECORDS ETC ONLY

Background

1. The Football Association (The FA) is the governing body for football in England. It takes the lead in providing a framework for English football and is responsible for regulating, promoting and developing the game at every level, both on and off the field. The FA is committed to making football accessible, enjoyable and safe for everyone, regardless of race, religion, gender, sexuality, background or ability, and is also responsible for governing the game in areas such as disciplinary, compliance, refereeing, agents, financial matters and doping control.

2. In preparation for this report, we have read the *Common Sense Review of CRB*, the *Remodelling of the VBS Review*, the proposed amendments to the Act and the explanatory notes.

3. The FA currently has 67,835 teams for Under 18s and estimates at least 680,350 children participated in affiliated football last season. This does not include reserves, or school or private soccer enterprises. At any given moment we have at least 140,000 hands on volunteers in children's football. This does not include the parents who help out on the sideline, or with subs or administration tasks, nor our cohort of Referees or First aiders.The FA also has paid coaches, managers and Referees and knows there are many self employed people making their living from working with children through football.

4. The FA has achieved the Advanced level of the National Standards for Safeguarding and Protecting Children, managed on behalf of sport, by the Child Protection in Sport Unit and the CRB process is one aspect of our safeguarding strategy. The FA has for example had 317,000 people complete its three hour Safeguarding Children workshop and 13,000 Club Welfare Officers complete its Welfare Officer Workshop. Every Club with an under 18 team has a nominated Club Welfare Officer who has an "Accepted CRB" and who has attended both workshops. The FA also has a salaried part or full time Welfare Officer in every County FA and a Case Management Team at Wembley who deal with the most serious of Disclosures as well as referrals from statutory agencies regarding ongoing or newly referred concerns.

5. The FA has been using the CRB service since 2004 initially to retrospectively check our cohort of eligible adult coaches and referees and latterly to support our safer recruitment process. In this time we have conducted 227,800 Enhanced Disclosures through our delivery partner TMGCRB, plus a small number of Standard Disclosures (for Football Stewards). Disclosures continue to be sought at an average rate of 3,100 per calendar month. Some of these are renewals but the majority are for new volunteers. Approximately 15% of these Disclosures have a criminal history of varying degrees and so The FA has significant experience in assessing and managing risk.

6. We receive Disclosures centrally, via TMGCRB. We manage a secure database which enables those with the need and right to know to check if a particular volunteer or staff member has an "Accepted CRB". The FA has used this centralised system to protect individuals from leakage of data into communities and to prevent gossip, local "tittle tattle" and the subsequent risk of damage to reputation and potential labelling of children and families that could occur if criminal records were shared within communities.

Use of CRB's embedded in safer recruitment practice; no evidence of loss of volunteers

7. One County Football Association has enforced CRBs and renewals through an annual registration process. They have, kept detailed records and have analysed the data. At any given moment approximately 7,000 adult volunteers work with children in this County with a turn over rate of approximately 1,400 per season. The "churn" is largely due to parents leaving volunteering as their children leave football. Since 2005, when the project started there has not been any reduction in Clubs, teams or volunteers. This County finds its safeguarding vigilance tends to encourage parents and Clubs to wish to play within their county boundaries. The FA therefore has no substantive evidence of checking as a deterrent to volunteers and certainly none once the culture of safeguarding is understood and enforced.

8. The FA has therefore built up systems to deal proportionately with everything from single youth reprimands through to extensive histories of offending and those disclosures with multiple allegations but no convictions. The FA has identified applicants who are barred, seeking roles in football with children and when we have removed people from the workforce, we have referred to the Independent Safeguarding Authority.

9. The FA believes the size and scope of the volunteer and paid workforce working with children makes it one of the largest providers of children's activities in England, outside of the statutory or regulated child care setting.

10. The FA co operated fully with the original proposals for the Vetting and Barring Scheme and spent considerable time and money on readiness and would hope the Committee recognise that The FA's intent is to abide by the Law and safeguard children.

11. The FA hopes that, whatever changes are finally agreed, Officials will be able to be clear about impact and communicate clearly and effectively within reasonable time frames and through appropriate channels.

Response on the issues

12. The FA has no comment on the withdrawal of ISA registration and broadly welcomes the intent to scale back the scope of the Vetting and Barring Scheme which had begun to attract criticism by its size and scope.

13. The FA welcomes the requirement to ensure a person in Regulated Activity is not barred before commencement in that role. This subtle change is a positive move for children.

Supervision

14. The FA is very concerned by the concept of the supervised volunteer not being in Regulated Activity (Clause 63). There is concern that a "Barred person" should be able to work with children in a supervised capacity and may begin to develop relationships and groom children and their families. Such manipulative individuals will make use of any means to continue to build on contacts made outside of the formal setting. Many children have access to phones and Facebook from a very young age and despite education and the Child Exploitation and Online Protection Centres reporting mechanisms, they may not realise when they are putting themselves in jeopardy. The FA would therefore ask that further thought is given to this and alternatives considered.

15. Pragmatically The FA is concerned that the turnover of volunteers in football means that a "supervisor" may leave suddenly leaving an interim period where a volunteer becomes "unsupervised" or even becomes "the supervisor". Some football Clubs are very small with just two adults taking on all the roles in single team Club.The FA is concerned to ensure activities for children are not suddenly jeopardised by the loss of the "supervisor".

16. The FA notes that placing the burden of formal "supervision" on peers in Clubs could be a deterrent to volunteers.

17. It should be noted that The FA has examples of significant disciplinary action/ISA referrals being taken in relation to people in what would not be deemed as regulated activity eg Chairman, Secretary and general committee roles. These people would not be subject to vetting and barring or CRB checks, they still however pose a significant risk of harm to children.

18. The FA is also aware that the word "supervision" is open to interpretation. The formal supervision arrangements in a specified place, such as a school class room with trained and qualified staff, are not necessarily replicated in grass roots sport. Even within specified places coaches report being left alone with groups of children even though the arrangement is to work under the supervision of the teacher.

19. The FA would welcome greater clarity on the definition and scope of supervision and we endorse Amendments 168–170, tabled by Diana Johnson MP, Vernon Coaker MP, Clive Efford MP and Mark Tami MP at the committee stage of the bill.

Confirmation of continued access to Enhanced CRB disclosures

20. The FA would be partly reassured if the Government confirms that the Enhanced Disclosure is still available for those people who are in supervised activities and otherwise not in the newly defined Regulated Activity but working with children. If this contained relevant criminal history and approved information where relevant this would assist us in reshaping the safer recruitment aspect of our safeguarding strategy.Furthermore if the Enhanced Disclosure could easily be "upgraded" by an online check of the Barred list this would create some safeguards and a quick and easy "upgrade" to Regulated Activity.

21. Linked to this is the significant concern that the Enhanced Disclosure may not be available for those in non Regulated Activity and The FA notes with real concern, Recommendation One in the Common Sense Review to scale back eligibility for CRBs, as we have found CRB's to be a valuable tool in the recruitment process. The FA can provide many case studies to show how critical this safeguard is and how it can prevent inappropriate people from entering children's football.

22. The FA values the Disclosure service and feels it is an essential tool in the Safeguarding tool kit. The FA believes children will be significantly at risk if the Enhanced Disclosure is not available outside of Regulated Activity.

Single issue Disclosure

23. The FA is very concerned about the intent to send the CRB Disclosure to the applicant only (Clause 77). This will lead to significant administrative challenges that will see safeguards reduced and costs increased both in the volunteer community and at national administration level. This is contrary to the "cutting the red tape" mantra of the Government.

24. The FA recognises that poverty, unemployment, language, mobile housing and fractured families all contribute to applicants struggling to complete the Disclosure process. Requiring an additional task from applicants that they return their Disclosure to the recruitment centre for assessment will simply not work. Applicants will sometimes not receive their copies from the CRB or will fail to send their copies in. In the real world copies will be lost and realistically torn up or otherwise destroyed by accident or on purpose. There is a risk that another administrative step becomes a deterrent to volunteering.

25. Gathering in CRBs for risk assessment from across the country, chasing applicants (in the case of The FA, this is quite significant, as whilst the Government is quoting 5% of Disclosures carry content, in reality for The FA, this figure is 15%) and relying on the postal service to do this, increases costs to volunteers and risks of private information going astray in the post. The FA has considered whether local Clubs could collect the information and forward it in but the risk of confidentiality breaches is too high. The FA has a recent example, where a Club Chairman has written to The FA explaining that one of their coaches has declared that they have a criminal record and has shared his Disclosure with the Chairman who stated, "We advised him that even if his CRB was successful, we would have to inform the remainder of the committee

about his history, only then if the majority were in agreement would he be allowed to join the club." This clearly contravenes the CRB Code of Conduct and the individual's rights and is an indication of the risks involved, with the Disclosure only going to the applicant in grassroots sport. Clearly it is a real possibility that children and their families could be ostracised or labelled and excluded if criminal information finds its way into the local communities. Applicants may not wish to continue in their Club if their history is disclosed.

26. There is also a risk that people may be fearful of submitting their records via local Club volunteers, whereas their experience with The FA may have been a positive and inclusive one.

27. This one measure alone could render The FA's careful and comprehensive system for managing CRB's sensitively and appropriately, as unworkable and see this as undermining safeguarding.

28. The FA notes Chapter Two paragraph 4 and the ability of the applicant to Dispute the Disclosure, which is intended to enable applicants to prevent the employer from seeing information s/he wishes to dispute. The FA follows the CRB guidance re Disputes and always waits until the Dispute is concluded before making a final recruitment decision. The FA asks the Committee to consider the option of the applicant having a two week period in which to request such a review, after which the employer could receive his/her copy direct from the CRB. The FA believes this would increase safeguards. We recognise the costs of sending out Disclosures to employers and ask for consideration to be given to a model whereby an electronic response could be given in respect of clear disclosures and the hard copy released where there is content. The FA believes this simply replicates the current e-bulk system and can be managed as it is only for a percentage of the overall applicants.

16–17 year olds and open age football

29. We note the recent revision, that the VBS now relates to those working in regulated activity with U18s. We welcome this set of safeguards in U18 football; however we think this is a disproportionate action in what is effectively our provision for adult football, which is known as "open age", which allows 16–17 year olds to play with adults. We enable this provision because young players have reached levels of maturity and skill which enable them to do so safely; they are ready for a new challenge in terms of their performance and development, or because the only option for participation to them in certain areas, is through "open age" activity. To bring such provision within the scope of regulated activity would create a regulatory burden, which we believe would be disproportionate to the perceived risk.

We would appreciate an opportunity to explore a common sense approach for open age football and we are willing to work with The Home Office to ensure that "open age" football which is essential to the development of football in England is allowed to continue.

Removal of old and minor conviction information; management of additional information and improved quality of information

30. The FA broadly welcomes the intent in Mrs Masons's Common Sense Review (Recommendation Five) to filter old and minor convictions and in particular the removal of Warnings and Reprimands which serve to criminalise young people. We wish to note however, that some offences such as Common Assault may have been against children and hope that sufficient resources would be available to ensure no potentially relevant crime was removed.

31. The FA is supportive of the proposed amendments to the way that Additional Information will be managed, as this can compromise the recruitment process and lead to legal challenge where a post is refused and no reason can be provided. The FA welcomes the package of measures to improve disclosure of information (Recommendation 6) and is delighted to be part of a pilot to support the Quality Assurance process with the CRB.

32. The FA welcomes sanctions on those who seek inappropriate Disclosures, We recognise that this can bring the value of the service in to disrepute and also helps safeguard against CRB "creep".

33. The FA would welcome the introduction of Basic checks in England for the few posts in football that hold children's information or deal with finance and governance and where there is no eligibility for an Enhanced or Standard Disclosure.

34. The FA welcomes the minimum age for Certificates or checks of the barring list to be 16 (Clause 78).

35. The FA is mindful that all responses here pertain to children and not Vulnerable Adults.

May 2011

Memorandum submitted by the Association of Managers in Education (PF 77)

The Association of Managers in Education (AMiE) provides trade union and professional services for over 6,500 leaders and managers in colleges and schools: it is the leadership and management section of ATL, the education union.

The Association wishes to comment on certain aspects of the bill that pertain to schools and colleges of further education.

Biometric Data

1. The proposed requirement to obtain written permission, normally from both parents, before a school or college can obtain and process a child's biometric data is an unnecessarily bureaucratic solution to a problem that does not exist. There is no evidence of abuse or misuse of such systems. In August 2008 the Information Commissioner issued a brief and balanced statement about the use of biometrics in schools. It contains a number of safeguards and while it addresses the issue of parental consent it does not advise that it is necessary to obtain written consent from both parents.

2. AMiE's view is that *Clauses 26 and 27* should be withdrawn and that if some further safeguard is necessary, parents should be given the option to withdraw their child from a biometric system in the same way that they can opt to withdraw them from religious education.

Restriction of the Scope of the Vetting and Barring Scheme

3. *Clause 63*: AMiE welcomes the fact that the government has reversed its decision to exclude children aged 16 and 17 from the protection afforded by the safeguarding legislation.

4. However, it has continuing concerns about the proposal to exclude supervised volunteers from regulated activity. Activity by supervised volunteers working with children or vulnerable adults (eg mothers or grandfathers assisting in a classroom) has been taken out of the scope of regulated activity. It will not be unlawful for a barred person to do it. And because it is not regulated activity even an enhanced CRB disclosure will not show that the person is barred. This is the nub of the problem caused by the two changes: it is reasonable to take supervised volunteers out of the scope of regulated activity so that the activity providers have the professional discretion to decide whether to carry out a CRB check but, by also changing the nature of the CRB disclosure so that it doesn't include barring information if the activity is not regulated, the activity provider isn't given the full picture about someone they think needs checking before being allowed to volunteer. The government is arguing that it will be possible to infer from the information on the certificate whether a person has been barred, but that will not always be the case and, if it is the case, why can't the certificate say so plainly?

5. *Clauses 64 and 65* mean that no activity carried out by further education colleges will come within the scope of regulated activity with vulnerable adults. AMiE is deeply concerned by this as many vulnerable adults with learning and physical disabilities are supported in their difficult lives by their studies in further education. It is essential that they are given the protection of this safeguarding legislation.

6. *Clause 66* alters the test for barring decisions so that a person may only be barred if they have been, are, or might in future be engaged in regulated activity. It is impossible to be certain that someone who is considered for barring will never in the future engage in regulated activity. Indeed, if someone has done something that warrants inclusion on a barred list, it is likely that they will in future seek employment or volunteer for a role that offers an opportunity for further misdeeds, but they are certainly not going to admit their intention to do so. People should be included on barred lists irrespective of their stated future intentions so that they will definitely appear on the list should they at some point apply to engage in regulated activity.

7. *Clause 67* abolishes controlled activity. AMiE has long argued for this and welcomes the change.

8. *Clause 68* puts an end to the proposal to establish the ISA registration database. Again, AMiE has long argued against this and welcomes the change.

9. *Clause 70* deals with the review of barring decisions but it contains no proposals to change the arrangements for appealing against barring decisions. AMiE presented a successful motion to last year's TUC Congress arguing that people should have the right of personal representation, not just written submissions, when appealing against a barring decision. Sunita Mason's Phase 1 Review of the CRB regime in England and Wales recommends "that the CRB develop an open and transparent representations process" (recommendation 7). In the light of this and in the interests of natural justice and human rights, we would urge the government to allow personal representations in appeals against barring decisions.

10. *Clause 76* rather surprisingly includes a provision changing the duty on a local authority to provide information to the ISA that might be relevant to a barring decision to mere discretion to do so. This seems perverse given that the Bichard Inquiry identified the failure to share information between authorities as the major failing leading to the Soham murders.

Changes to the CRB Regime

11. *Clause 77* means that CRB certificates will be issued only to the individual and not simultaneously to a potential employer. AMiE welcomes this change as it allows someone to make representations to the CRB about any inaccuracies in the certificate before it is seen by the employer. The crucial thing will be that this process should take place quickly so that employment opportunities are not lost. Nevertheless, we continue to support the position of ATL that the fee for CRB certificates should be paid by the employer rather than the employee.

12. *Clause 79* also introduces welcome additional safeguards about the information that the police have the discretion to include in CRB certificates. These should also help to protect people from inaccurate allegations.

13. *Clause 80* introduces a very welcome and simple procedure for updating CRB certificates and making them portable. This is so much better that the original ISA registration scheme and AMiE welcomes it wholeheartedly.

14. One final and vital plea concerning guidance:

We have already illustrated in paragraph 4 above the importance of the interaction between changes to the vetting and barring scheme and changes to the CRB regime. It is our understanding that the restrictions to the scope of regulated activity will not rule out the use of CRB checks for some non-regulated activity, principally that which was formerly regulated. The requirements and eligibility to apply for various levels of CRB certificates will be affected by this legislation, by sectoral regulations, and also by existing Statutory Instruments that might or might not be amended as a consequence of the legislation.

Much of the controversy about the current regime has arisen because people have not understood the requirements concerning CRB checks and therefore in many cases interpreted them over zealously.

It is essential that these matters are decided in a coherent and comprehensive way so that all the regulations are clear and consistent. It is similarly essential that the guidance that is to be issued about the new scheme clearly covers all aspects: vetting and barring in respect of regulated activity and CRB checks as they apply to both regulated and non-regulated activity. The guidance must bring together in one place this legislation, the associated statutory instruments, and sectoral regulations. Sunita Mason emphasises the importance of this: "I recommend that comprehensive and easily understood guidance is developed to fully explain the criminal records and employment checking regime" (recommendation 10).

May 2011

Memorandum submitted by the Northern Ireland Commissioner for Children and Young People (PF 78)

Introduction

The Northern Ireland Office of the Commissioner for Children and Young People (NICCY) was created in accordance with "The Commissioner for Children and Young People (Northern Ireland) Order" (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland. Vetting and barring regimes play a key part in the arrangements to protect children and young people from abuse by seeking to ensure that adults who pose a risk to children are not placed in roles, paid or voluntary, which enable them to establish relationships of trust which may be exploited. We therefore welcome the opportunity to comment on the Protection of Freedoms Bill.

The provisions of the Bill relating to vetting and barring arrangements will come into effect in this jurisdiction while the Northern Ireland Minister for Justice has initiated a Review of the Criminal Records Regime which will consider the management and sharing of disclosure information and criminal records checks. This submission therefore relates to the provisions of part five chapter two of the Protection of Freedoms Bill.

The UK Government as a signatory to the United Nations Convention on the Rights of the Child should ensure that the general principles of the Convention, including the paramountcy of the child's best interests and right to life and fullest level of development, are reflected in the provisions of the legislation. We also draw attention to the obligation placed on Government under article 19 of the Convention to take all legislative, administrative, social and educational measures to protect children and young people from all forms of violence, abuse, maltreatment or exploitation. The Protection of Freedoms Bill offers an important opportunity to fulfil this commitment in relation to the vetting and barring scheme.

Restrictions on Scope of Regulated Activities: Children

Young people aged 16 and 17 years old

NICCY warmly welcomes recent commitments by the UK Government to place activities with young people aged 16 and 17 year olds in settings such as education within the scope of the vetting and barring arrangements. This is in line with the definition of a child as set out in the UNCRC and domestic legislation as being up to 18 years of age and recognises that all children and young people across this age grouping should be afforded the same level of protection.

We had raised our concerns about the exclusion of work with 16 and 17 year olds in certain settings from the definition of regulated activity with the Northern Ireland Minister for Health, Social Services and Public Safety and the relevant Assembly Committee in February 2011. We welcomed the commitment given by the Minister during the Assembly Legislative Consent Motion on 21 March 2011 to ensure that working with 16 and 17 year olds would remain within the scope of the arrangements in Northern Ireland.[141] It is positive that UK Ministers have revisited this issue and that this standard of protection will operate for 16 and 17 year olds across Northern Ireland, England and Wales.

Specified roles and settings

The Bill sets out a number of specified settings, including schools, children's homes and children's centres, as being within scope of the vetting and barring scheme and the proposals include the activities of the Children's Commissioner and inspectorate bodies in Wales. In recognition that roles in these areas offer the opportunity for contact with very vulnerable children and young people, the Northern Ireland Minister has committed to the work of the Guardian Ad Litem Agency and inspectorate bodies in this jurisdiction being placed within the scope of the scheme.[142] We are supportive of this move although we are disappointed this has not extended to the activities of the Children's Commissioner in Northern Ireland.

NICCY would draw attention to the importance of ensuring the Bill does not fragment the levels of protection offered to children based simply on the geographical area in which they live. The vetting and barring arrangements should operate to the highest, not the lowest, standard across the jurisdictions and should, for example, place the activities of inspectorate bodies in all relevant jurisdictions within scope of the scheme.

In considering the restricted definition of regulated activity, we note that this excludes the provision of legal advice to children, supervised teaching, training and instruction or the provision of any care and supervision of children by a person who is being supervised by another.[143] It is important to recognise that a number of such excluded positions involve frequent and ongoing contact with children and young people or contact with children when they may be particularly vulnerable.

Such roles which include, for instance volunteers in classrooms and schools and helpers in faith and sporting organisations, are often pivotal to how organisations work with and support children across a range of settings. The arrangements of the vetting and barring scheme should acknowledge that these are trusted positions which enable adults to build close relationships with children who they may seek to harm.

Roles can be placed outside the scope of regulated activity if they are "subject to the day to day supervision of another person who is engaging in regulated activity". We are concerned that the provisions of the Bill must recognise the complex nature of supervision in the context of working with children which is often not fixed or guaranteed. The arrangements for those roles which the legislation understands as being supervised should be strengthened and supervision in the provisions must be robustly defined. We are supportive of the recent submissions to the Committee from the Sport and Recreation Alliance and Child Protection in Sport Unit and from the NSPCC which state that supervision should be outlined as close and constant and regular and direct rather than "day to day".[144]

Indeed, the understanding of supervision in the provisions may in practice distinguish between paid and unpaid work with those in paid employment being more subject to vetting and barring arrangements. It is also of concern that the proposals in principle may lead to an adult that has been barred from taking up a regulated post, such as a teacher, being eligible to volunteer as a teaching assistant.[145] We are not aware of evidence which indicates that children and young people are less likely to be at risk from volunteers than paid staff. Decisions on placing roles within the scope of vetting and barring arrangements must be based on an assessed risk of the role allowing individuals to develop relationships of trust with children which may then be abused. We are of the view that this assessment should apply equally to individuals in positions of trust whether they are employees or volunteers.

Controlled activity

NICCY welcomes the removal of the category of controlled activity which created an additional layer of complexity within the scheme. However, we must reiterate our position that where roles place adults who may pose a risk to children and young people in positions of trust, these should be subject to adequate vetting and barring controls.

[141] http://www.niassembly.gov.uk/records/reports2010/110321.htm#aa
[142] http://www.niassembly.gov.uk/records/reports2010/110321.htm#aa
[143] House of Commons Library (2011) Protection of Freedoms Bill Research Paper 11/20, (London: House of Commons Library).
[144] http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/memo/pf60.htm
http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/memo/pf61.htm
[145] NSPCC (2011) Protection of Freedoms Bill Parliamentary Briefing, (London: NSPCC).

Main Amendments Relating to New Arrangements

Barring arrangements and decisions

It is of great concern, as noted by the NSPCC, that checks for posts outside of regulated activity will provide only limited information leaving employers unable to make robustly informed recruitment decisions.[146] For example, in applying for a volunteer assistant coaching role information provided may not disclose if the Independent Safeguarding Authority (ISA) has barred an individual from a regulated activity post or provide information that ISA, but not the police, is aware of. In seeking to ensure that vetting and barring arrangements operate effectively, it is important that the provisions consider how all relevant information can be shared by all agencies, including ISA, and how this will be made available to employers.

NICCY is also concerned that under the proposals individuals will only be placed on barred lists if they have been, will be, or are likely to be engaged in regulated activity. We have reservations that this high threshold is not appropriate and are unclear how assessments that individuals are not likely to seek to be engaged in regulated activity will be conducted. The provisions may also, in effect mean that concerns about those not in regulated activity, who therefore cannot be barred, will not be shared with ISA. This would not only weaken arrangements to enable early identification of those who pose potential risks to children but also lead to such concerns not being documented or made available to employers if individuals seek future work in regulated activity.

In considering the nature of information contained in checks NICCY recognises that the disclosure of non conviction information is a complex and sensitive area. In our contribution to the Northern Ireland Review of Criminal Records we will address the importance of ensuring that non conviction information and police intelligence is available as part of the disclosure process. In our recent meeting with Sunita Mason who is leading the Review in Northern Ireland, we highlighted the importance of considering how the sharing of information across national borders can be progressed. As the only jurisdiction in the UK which has a land border with another EU Member State we are acutely aware of the need to ensure that all relevant information is shared, for example, police intelligence is currently not shared between Northern Ireland and the Republic of Ireland.

Conclusion

As the Protection of Freedoms Bill continues its legislative passage, debates in relation to the vetting and barring provisions of the proposals must ensure a clear focus is maintained on the protection of children and young people. The legislation must not dilute or fragment the levels of protection afforded to children and must operate to a consistently high standard across England, Wales and Northern Ireland. Government must also ensure that the legislation is supported by the development of statutory guidance to facilitate the implementation of changes across jurisdictions and sectors.

While the vetting and barring scheme must be viewed as only one element in the arrangements to protect children and young people, this should remain a priority in the Government's safeguarding agenda.

May 2011

Memorandum submitted by a member of the public (PF 79)

1. I am the owner of a property in Gorleston, Norfolk, which is a popular, busy holiday location in the Summer and also at other times of the year. There is a chronic shortage of parking spaces throughout the area.

2. The property is situated within a small development in a cul-de-sac. Access to my property and the other 18 properties is via a private road which is owned by the residents and maintained by them. This private road joins a very busy through road forming a T junction. Although the local council, at my request, erected a sign stating: *Private Road—No Unauthorised Parking*, people, both local and holidaymakers still park their vehicles on this private road near to the junction. This unauthorised parking obstructs the vision onto the through road, which I understand is illegal. Blocking of the road in the past has prevented emergency vehicles from reaching residents of the development which could have led to loss of life either from fire or medical reasons.

3. Unauthorised people also park their vehicles in the resident's allocated parking spaces and refuse to move them when asked. This causes tempers to flare and aggression to develop on all sides.

4. I would like to ask how I and the other residents can remove or prevent vehicles parking without permission (not abandoned) from the private road or the privately owned allocated parking areas if the threat of clamping is removed? I feel that cars, trucks and vans will be parking in the location at all hours of the day and night and we will be powerless to prevent it. We already have to endure verbal abuse from some people. The resulting animosity between residents entitled to use their allocated parking spaces and visitors who are not entitled to would escalate. Heated arguments have already occurred and the police have had to intervene.

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[146] NSPCC (2011) Protection of Freedoms Bill Parliamentary Briefing, (London: NSPCC).

5. The hazards have already been stated with regards to the volume of traffic in the area and obstructions to vision etc. The safety aspects also affect children and other elderly residents in the area.

6. Thank you for giving my concerns/evidence your attention and I hope provision will be included in this Bill to deal with the problems I have stated.

SUMMARY

1. How are people to remove vehicles or prevent unauthorised parking on private land, allocated parking spaces owned by other people or private roads if the threat of clamping is removed? The Bill as it is at the moment does not give enough rights to the owners of private land to remove vehicles and who would be financially responsible for this?

2. How long is a vehicle to be left on private land, a private road or left in an allocated parking space before it is considered to be abandoned? Would this lead to a protracted legal process which seems to be happening with illegal traveller sites.

3. How are hazards going to be prevented if people act irresponsibly and leave their vehicles parked on private access roads and obstruct vision onto busy through roads?

4. The aggression of some people when challenged is very frightening and potentially dangerous. How are owners to be protected from this?

May 2011

Memorandum submitted by No CCTV (PF 80)

SUMMARY

1. The Protection of Freedoms Bill does not address core issues of lost personal freedoms or the wider impact that surveillance cameras have on society. The Bill should have been an opportunity for a detailed and informed debate on such issues and how they will affect people's lives—but so far no such debate has emerged. The Bill contains no new thinking—the voluntary code model of camera regulation has been the favoured approach since the 1990s. The Bill purports to protect freedoms and upon closer scrutiny the freedom most protected is the freedom of the state to surveill its citizens. The coalition government have missed an opportunity to begin to restore lost freedoms to the people of this country.

FULL SUBMISSION

2. This submission is focussed on Chapter 1, Part 2 of the Bill—the "Regulation of CCTV and other surveillance camera technology" and briefly the amendments to the Regulation of Investigatory Powers Act 2000 in Part 2, Chapter 2 "Authorisations requiring judicial approval".

3. The spread of surveillance cameras across the country has taken place since the 1990s with little or no meaningful debate. Successive studies, many prepared for the Home Office, have shown that:

— CCTV cameras do not deliver significant returns in terms of crime prevention or detection; and

— the public have a limited and inaccurate knowledge of the functions and capabilities of CCTV.

4. The public's lack of knowledge has been exploited by many decision makers and CCTV has been offered as the solution to a plethora of problems allowing decision makers to "appear to be doing something". Security expert Bruce Schneier summed up this model of decision making in his essay *The Difference Between Feeling and Reality in Security*,[147] Schneier wrote:

> "there are two ways to make people feel more secure. The first is to make people actually more secure and hope they notice. The second is to make people feel more secure without making them actually more secure, and hope they don't notice."

5. CCTV has become the epitome of the latter. Ken Pease in his 1999 study of street lighting[148] wrote:

> "for those exercising stewardship of public money, good evidence about effects should be necessary before money is spent, although one is tempted to ask where rigorous standards went in the headlong rush to CCTV deployment."

6. The Protection of Freedoms Bill was surely an opportunity to ensure that a meaningful and informed debate took place on the use of surveillance cameras, and that evidence based decision making replaced the emotive knee-jerk introduction of CCTV cameras that currently pervades.

7. The Impact Assessment[149] for the Bill states that it was introduced: "to progress the Government's ambition to reduce the burden of the state on its citizens and to restore the balance between the Government's duty to keep communities safe and protecting individual civil liberties".

[147] http://www.schneier.com/essay-213.html
[148] http://www.popcenter.org/library/crimeprevention/volume_10/03-PeaseLighting.pdf
[149] http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/pof-bill-ia

8. In reality the Bill in relation to surveillance cameras has predominantly focussed on the misplaced faith in cameras in delivering community safety and it is hard to see how civil liberties are addressed at all. The Bill merely seeks to further regulate cameras via the introduction of another voluntary code of practice for surveillance cameras to be added to the Information Commissioner's voluntary code, local authorities' voluntary codes and various surveillance industry voluntary codes.

9. Regulation of CCTV via voluntary codes has been viewed as the favoured approach since the 1990s. In parliamentary debates of the time and in the 1994 Home Office report *CCTV Closed Circuit Television: Looking out for you*[150] much emphasis was placed on such codes. The 1994 report stated with regard to local authority codes:

> "In order that CCTV systems are used efficiently, that public confidence is maintained, due attention is paid to issues of privacy and that integrity of systems is preserved, it is crucial that a code of practice is developed."

10. Little new thinking appears to have emerged in the interim and very little attention, if any, has been given to the wider implications of creating a Surveillance State. Most parliamentarians still appear to believe that the debate can be summed up as a simple choice of "cameras or crime". Leaving aside for a moment the ineffectiveness of CCTV as a crime prevention and detection tool, there are constitutional, philosophical and sociological issues that must be explored.

11. Regulation does not address the core issues of removal of personal freedom, anonymity and other rights. All regulation does is to endorse acceptance of CCTV by formalising its "proper use", leaving no room for the rejection of such technology. We share the view expressed by Desmond Browne QC, former Chairman of the Bar Council, that in a country with a strong common law tradition it is the common law principles which govern protection of our privacy that we should all be working to uphold.[151]

12. To understand the impact that cameras have on society we can look back to the work of people like the Social Anthropologist Jane Jacobs who wrote *The Death and Life of Great American Cities*[152] in 1961. Jacobs wrote in relation to the way that towns and cities were being designed in America in the 60s, but her writings have resonance with regard to the over use of surveillance cameras today. Jacobs wrote:

> "The first thing to understand is that the public peace—the sidewalk and street peace—of cities is not kept primarily by the police, necessary as police are. It is kept by an intricate almost unconscious, network of voluntary controls and standards among the people themselves, and enforced by the people themselves."

13. This idea of a community of people interacting and having a sense of natural vigilance is what cameras destroy. Now people abdicate their responsibility to a machine or a faceless watcher that views the world via monitors rather than actually engaging with real people. When people stop interacting in the way that Jacobs describes, that in itself causes the very problems that the cameras are supposedly there to fix.

14. Our way of life in this country for hundreds of years has had at its core certain principles of Common Law and Equity such as the principle that you are free to do anything that isn't unlawful and the fundamental legal principle of "innocent until proven guilty".

15. Rejection of the principles that have underpinned this country in favour of the qualified rights model enshrined in the European Convention on Human Rights has led to an erosion of civil liberties—as new technology that erodes freedoms is allowed to flourish exempted from the supposed protections by virtue of a claimed but rarely proven value in the "prevention or detection of crime". Civil Liberties are meant to protect the citizen from the excesses of the state—but when the state is constantly exempted from measures that are meant to protect citizens then citizens are dangerously exposed.

16. Advances in surveillance technology are creating an electronic Panopticon[153] in which citizens will come to feel that their every move is being recorded and analysed. The effect of this will be to create a society of behavioural uniformity. The law abiding citizen clearly stands to lose the most. As New York Times columnist William Safire put it: "To be watched at all times, especially when doing nothing seriously wrong, is to be afflicted with a creepy feeling. That is what is felt by a convict in an always-lighted cell. It is the pervasive, inescapable feeling of being unfree."[154]

17. We note that the Bill contains provisions to amend the Regulation of Investigatory Powers Act (RIPA), requiring judicial approval for directed surveillance and covert human intelligence sources. We believe that whilst this might slow down the authorisation procedure and discourage the more ludicrous headline grabbing uses of surveillance by local authorities it will do little else. Many of the problems surrounding RIPA stem from the fact that the general public was shocked to learn of the police-like powers that had already been granted to local authorities, which the publicity around RIPA merely highlighted. It is this quasi-police role of non-police bodies that should have been addressed.

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[150] *CCTV: Looking Out For You*, Home Office, November 1994.
[151] http://www.barcouncil.org.uk/news/press/759.html
[152] *The Death and Life of Great American Cities*, Jane Jacobs, Random House, 1961.
[153] The PANOPTICON ("all-seeing") was proposed as a model prison by Jeremy Bentham (1748–1832).
[154] http://www.nytimes.com/2002/02/18/opinion/the-great-unwatched.html

18. The Bill does not address the Automatic Number Plate Recognition (ANPR) camera network that has been constructed across the country by the Association of Chief Police Officers (ACPO). The ANPR network was built despite there being no public debate, no parliamentary debate, no primary legislation and no secondary legislation. This network of cameras represents one of the most radical changes to policing, freedom of movement and anonymity ever seen in this country.

19. In 2009 Geoffrey Cox, the MP for Torridge and West Devon was quoted in a *Plymouth Herald* article about the ANPR network. He is quoted as saying: "It is a Big Brother state which assumes and suspects that everyone, at any time, might commit an offence and so gathers evidence against you in advance. [. . .] It is an unsettling symptom of something that has grown up without peoples' recognition, understanding and assent."[155]

20. The police use of ANPR as a mass surveillance tool is equivalent to an automated checkpoint system that is reminiscent of road blocks instituted by totalitarian regimes to check citizens' papers at a series of internal borders.

21. The Bill merely inserts ANPR cameras along with CCTV into the definition of surveillance cameras in Clause 29(6), such that it will be subject to the proposed voluntary code of practice. This amounts to no more than a confirmation of the current situation.

22. Much of the discussion of surveillance cameras by parliamentarians refers to the widespread public support for CCTV. For instance in the Bill Committee Vernon Coaker MP referred to a memorandum submitted to the Committee by the European Vehicle Security Association (EVSA),[156] when he said: "The evidence put before us by the ESVA shows that the vast majority of the public are happy with ANPR".[157] We hope that the Committee have had time to read the underlying surveys upon which the ESVA based this assertion. As you will have seen the surveys suffer from what Jason Ditton of the Scottish Centre for Criminology termed "skewed contextualising"[158] (whereby the question in a survey and the way it is asked influences the answer). In addition the thesis from which the second survey is derived states that: "Findings in the current study indicate that, although the majority of people indicate awareness of ANPR (ie 66%), they seem to have inadequate understanding of the aims and consequences of ANPR surveillance to make reasonable judgements about ANPR's effectiveness in tackling crime."[159] What this example highlights is that it is all to easy to be misled by surveys that fail to capture the deeper issues at stake.

23. Only an informed public can be vigilant to the dangers of the surveillance state and the introduction of this Bill should have been used an opportunity to inform the public about these issues. Instead much of the discussion has focussed on ensuring "public confidence" so as to facilitate the continued expansion of camera surveillance and this public confidence will then be used to justify such expansion.

24. The content of the proposed Code of Practice for Surveillance Cameras, is not laid out in the Bill in any detail. The Law Society pointed out to the Bill Committee on Tuesday 22 March that: "There is a very limited opportunity for parliamentary scrutiny of those codes, and it seems to us that there ought to be a proper debate about where the balance should be and what those codes should contain."[160] The Bill allows for a surveillance cameras code to be introduced via secondary legislation. The code will pertain to the collection, retention and sharing of personal data, as defined by the Data Protection Act.

25. The 2009 Conservative Party report *Reversing the rise of the surveillance state*[161] states: "Expanding the powers of the surveillance state through secondary legislation vests excessive power with Ministers, and constrains the scope for effective Parliamentary debate and scrutiny. A Conservative government would amend the Data Protection Act 1998 to ensure that any future scheme or proposals extending powers of data collection, sharing or retention must be enacted by primary legislation, to ensure maximum transparency and debate."

26. As one of the first pieces of legislation from a government that promised to reverse the rise of the surveillance state, along with a coalition partner supposedly committed to restoring freedoms, the Protection of Freedoms Bill does not bode well.

[155] http://www.thisisplymouth.co.uk/news/Secret-police-cameras-record-64million-number-plates-year/article-1118535-detail/article.html
[156] http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/memo/pf11.htm
[157] http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/110426/am/110426s01.htm#11042623000049
[158] *Public Support for Town Centre CCTV Schemes: Myth or Reality*, Jason Ditton, 1998.
[159] http://eprints.hud.ac.uk/8760/1/FinalThesis.pdf
[160] http://www.publications.parliament.uk/pa/cm201011/cmpublic/protection/110322/pm/110322s01.htm#11032323000028
[161] http://www.conservatives.com/News/News_stories/2009/09/Reversing_the_rise_of_the_surveillance_state.aspx

ABOUT NO CCTV

27. No CCTV was formed in 2007 originally to campaign against proposed surveillance cameras in East Oxford. No CCTV has expanded into a national/international campaign and information resource on surveillance issues.

May 2011

Memorandum submitted by Antony and Fiona Edwards-Stuart (PF 81)

Aberdeen Park is a private road inhabited by about 300 households and consisting of a cul-de-sac about half a mile long. It is used as a short-cut by pedestrians. It doesn't lead anywhere much but gets a lot of use. Many of the residents are members of the company that owns the road. All residents contribute by a levy towards its maintenance; payment of this levy entitles them and their visitors to park on the road. Because of its location, Aberdeen park has been impassable and/or unusable at certain times in the past, as football fans, commuters etc used it as a free car-park; and residents and more importantly emergency vehicles were unable to gain access. This is why we had to introduce a clamping service, to protect the residents access.

Unauthorised parking is a particular problem on private land, where the owners are responsible for the cost of providing and maintaining the road and ensuring proper access and full usage for those contractually entitled to use it. Private roads cost their owners a considerable amount of upkeep. A legitimate and well-advertised deterrent is essential, especially in urban areas; and this is what most clamping services offer. It is the fear of being clamped that is most effective deterrent. Those few who choose to ignore this possible sanction are often the most persistent offenders who think they can get away with anti-social behaviour.

But employing a clamping company costs the road-owner quite a lot to employ; having had much to do much research on this service, it needs to be emphasised that most landowners who employ clamping as a deterrent pay handsomely for the service and in addition do not receive any revenue from it. Local authorities, by contrast, do receive an income both from authorised parking and from illegitimate parking; it is unjust that private landowners, who receive no revenue from those who use the road, should also be denied any protection from unauthorised parking, which is what the ban will involve.

A private ticketing service, apart from being very intrusive, and expensive to administer, is far more likely to offer opportunities for abuse and exploitation, as well as criminal damage and civil disruption. I suspect it would become unworkable and cause more hostility than clamping.

The other solution, gating the road, seems certain to cause traffic congestion in the main arterial roads, and makes an unhealthy political statement, apart from costing the residents even more.

As it is, we presently pay for the lighting, the cleaning, the maintenance and repair of our road and pavements, which hundreds of non-residents freely use. We are not entitled to residents parking in the rest of the borough, although we pay the local rates in full which contribute to the local roads, as well as road tax like everyone else. We employ the London car Clamping Co to stop non-residents who do not contribute anything towards the cost of the road preventing full access by those that do. There is a civic sense in that. There is no sense in prohibiting it. If there have been problems with rogue or illegitimate clamping services, then deal with the illegitimate elements of the service, by self-regulation or whatever means necessary.

May 2011

Memorandum submitted by the England and Wales Cricket Board (PF 82)

CONTEXT

1. The England and Wales Cricket Board (the ECB) was established on 1 January 1997 as the single national governing body for all cricket in England and Wales. It governs and oversees cricket at all levels, including the professional first class game with 18 professional clubs, and the non-professional game which is structured via 39 county cricket boards. The ECB has approximately 6,500 clubs affiliated to it via the county cricket boards and of these approximately 3,500 clubs have a junior cricket section. In this governing capacity, the ECB is responsible for promoting and regulating the game as well as providing advice on specific matters such as safeguarding children within the sport.

2. The ECB has achieved the Advanced level of the National Standards for Safeguarding and Protecting Children, set by the NSPCC's Child Protection in Sport Unit and the use of vetting checks is part of our overall safeguarding strategy. The ECB, along with many other sports organisations, supports the joint submission made to this committee by the Sport and Recreation Alliance and the Child Protection in Sport Unit. The ECB has also had sight of the submissions made to this committee by the Football Association (the FA) and the Lawn Tennis Association (the LTA) and supports these submissions. This submission is made in relation to safeguarding children only and not in relation to safeguarding vulnerable adults.

3. The ECB currently has over 3,500 clubs with an active junior section and of these, 1,680 have achieved ECB Clubmark accredited club status, and a further 782 are working towards the accreditation. The ECB is committed to providing a safe, friendly and enjoyable experience for children who wish to participate in cricket.

4. Safe recruitment practices are important part of the process for providing the right environment for children to enjoy cricket. The ECB recognises that such recruitment practices must also reflect the capacity of the volunteer workforce to manage the process and to not over-burden them with unnecessary form filling or training which can distract them from their roles in the community. As such the ECB has developed a central system for managing vetting checks as part of recruitment practice in cricket. This provides specialist staff with expertise in safeguarding case management to deal proportionately with the information contained within those checks, and for the suitability of decisions for recruitment to be taken via this system of expertise, so as to prevent local clubs from needing to be trained in assessment of information.

5. The ECB has been operating centrally managed vetting checks since 2004 and in this time has dealt with over 80,000 individuals. The number of individuals requiring checks is increasing year on year and over 17,500 checks were processed in 2010. As such, ECB has experience in handling information and managing risk in relation to many different types of information provided through vetting checks including: young offenders looking to rehabilitate; low level offending; long term offending histories; and those with allegations but no convictions.

6. The ECB and the FA are both committed to operating a proportionate risk assessment based process for vetting those that work with children and therefore welcomes the fact that the review intends to be both proportionate and reasonable. We note that the Sport and Recreation Alliance, the FA and the LTA have identified some key features of the proposed Protection of Freedoms Bill which have the potential to improve the current system, these include the requirement to ensure a person in Regulated Activity is not barred before they start in the role, the continuous updating of criminal records information once a check has been completed, and the legal obligation to undertake checks in particular settings and for particular activities.

7. Whilst the ECB supports the concept of active risk management by organisations and the wish to move away from a risk adverse culture with a reliance on vetting checks, there are a number of concerns with the current proposals that the ECB would wish to highlight.

Specific Issues Relating to the Impact of the Bill

Clause 63 Regulated Activity and the definition of Supervision

8. The ECB shares the concerns raised through the other submissions from the sport sector that the use of supervision as an exclusion from Regulated Activity is potentially very concerning. Supervision can be significantly subjective in application and will vary from setting to setting. The capacity to supervise activities within a contained indoor space will be very different to supervising activities in wide open spaces. There needs to be a clearer definition that identifies the immediacy of the supervision and regularity of its occurrence. Leading junior sessions as head coach may include setting training plans and overseeing the programme as a whole, but may not necessarily include being present at every session that runs, or even keeping every assistant coach at a session within view. It is important to remember that children will learn to trust those they perceive to be in authority and this will include those assisting with junior sessions, particularly those who frequently help out with that child's sub-group at a session.

9. The ECB supports the recommendation made by the Sport and Recreation Alliance and the Child Protection in Sport Unit to revise the definition of supervision to include a reference to close and constant supervision.

10. The ECB, like many sports, encourages both past and present players as well as parents to become coaches. This would usually involve recommending assisting at junior sessions to ensure that they feel coaching is right for them. The ECB is concerned that by using the phrase "supervised" to remove people from vetting checks, that there is an opportunity for individuals to regularly engage in junior sport and potentially groom children and their families without any opportunity to make risk based assessments on their suitability.

11. The ECB would further support the submission made by the FA which highlights that supervision can be interpreted broadly even within specified places, where coaches report being left alone with classes and groups of children even though the arrangement is to work under the supervision of the teacher.

12. The ECB would welcome further consultation on the definition and scope of supervision, followed by clear guidance specifically providing examples in a number of settings including the sports and voluntary sector.

13. The ECB supports the comments from Sir Roger Singleton's original review of the definition of Regulated Activity that once parents are not directly involved in the decision as to who supervises their children and an organisation makes that choice for them, then there is a role for vetting checks.

ACCESS TO VETTING CHECKS FOR ROLES THAT MAY SIT OUTSIDE THE REGULATED ACTIVITY DEFINITION

14. If there was a commitment from Government that the Enhanced Disclosure (or any equivalent replacement) remained available for those individuals who are in activities working with children but who do not fit within the Regulated Activity definition, this would provide some comfort to the ECB.

15. The ECB recognises that the Government needs to ensure that checks are only requested for those that work closely with children and as per the submissions made by the other sports bodies, the ECB supports the sanctioning of organisations inappropriately asking for checks for individuals such as bar staff, tea ladies and ground staff at clubs who merely happen to be present at the same time as juniors but with no responsibilities for them.

16. The ECB would support the proposal made by the Sport and Recreation Alliance that sport specificity be applied in relation to certain roles being eligible for vetting checks even though they do not fit the Regulated Activity definition.

Clause 77 Single Issue of Disclosure

17. The ECB understands that the basis for the change to only one disclosure being issued to the individual applicant, without a copy being sent to the relevant recruiting organisation, is that it provides an opportunity for the applicant to dispute content before the recruiting organisation sees it. Whilst the ECB recognises that this is an important principle, the ECB has experienced only a very small number of disputed checks and would suggest that the bureaucracy burdens that a one disclosure system would create for the overall system would mean that this would be a disproportionate response.

18. If only one disclosure was produced then most sports would not have the mechanisms in place for a local transfer of that disclosure and its content. The expertise to manage content locally would need to be developed and this would involve creating and running new training programmes for all our cricket clubs.

19. The type of centralised management that ECB currently runs also protects the individual applicant from having their background being part of local club discussions, unless there is a clear need to know, based on statutory authority protocols, that disclosure is both proportionate and necessary. This prevents relationship damaging local gossip and inappropriate inferences being drawn from any content in the disclosure being seen, which may not be relevant to safeguarding children.

20. A single disclosure would also require the ECB to chase the individual for a copy of the disclosure in order to assess the content and consider its relevance to safeguarding children. Given the variance in the service levels currently provided by police forces to the CRB system, this would be incredibly time consuming to identify when a disclosure had been issued and to send reminders if the applicant did not respond promptly. This may add weeks to a risk assessment process, which may in some cases already take some time to complete. This would further draw attention to a disclosure with content at a local level, particularly if the proposal for more immediate confirmation of clear disclosures goes ahead.

21. Sport is recognised by Government as a vehicle to assist with rehabilitating individuals with an offending history and the ECB would suggest that the worry that those in your immediate community may potentially access your record as part of the recruitment process would deter many from seeking a fresh start.

22. The system needs to provide an operational step that enables the recruiting organisation to be provided information after a set period of time which allows for a challenge to be raised. The recruiting organisation should receive either confirmation of a clear disclosure or a copy of a disclosure of content and thus be able to provide a timely recruitment process that doesn't prejudice the individual.

IN CONCLUSION

23. The ECB recognises that the revisions to the Vetting and Barring Scheme, through the creation of the relevant Protection of Freedoms Bill clauses, have been drawn up with the intention of simplifying and clarifying who should be vetted before working with children, and how that will be done, and remain supportive of that key principle.

24. The ECB wishes to support the development of a system that is effective as well as efficient in safeguarding children.

25. However, we feel that particularly within the voluntary sector, some of the proposed changes, such as portability of a disclosure, which would be beneficial to child safeguarding, will be undermined by the problems created by the issues raised in this submission.

26. The ECB is willing to provide any further information or participate in any on-going consultation if this will assist in the development of a clear effective system to safeguard children.

May 2011

Memorandum submitted by Mrs S J Lyth (PF 83)

S38 Judicial Approval—In Favour of an Amendment

The Bill states that upon receipt of the application the magistrate can either approve or quash the authorisation. I have reproduced below the relevant part of the Bill below.

> "(3) Where, on an application under section 32A, the relevant judicial authority refuses to approve the grant of the authorisation concerned, the relevant judicial authority may make an order quashing the authorisation. "

I have re-read the Bill but cannot find any powers given to a magistrate to amend the authorisation should they agree in principle to the authorisation but where they want to change or reduce the parameters of the authorisation to, for instance, bring it to a more proportionate level.

So for example, where it is proposed to use too many surveillance devices, too intrusive a device (eg powerful zoom lens on a camera or other video equipment), too many officers or vehicles, or some other such matter the court can reduce the level of the surveillance. If there is an error that needs correcting the court can correct it.

If every time the court disagrees with the authorisation that came before it they can only make an order to quash it, in some cases, it will necessitate some unnecessary administrative delays when it is quashed, sent back and resubmitted in an amended form.

I have been unable to find a rule amongst the Civil Procedure Rules that would assist; and the legal officer or court clerk who advises the magistrates would most certainly follow the letter of the law in the proposed Act rather than try to skate outside the law using alternative or general rules. If the the magistrate did make amendments and the covert surveillance or use of CHIS proceeded under the amended authorisation, the court order, and thus the authorisation and the authorised activity could be challenged later as having been done unlawfully. It would not in these circumstances be "saved" by section 27 RIPA.

That is surely not what the LGA had in mind when they lobbied Parliament for a smooth administrative process?

When an authorising officer authorises covert surveillance ie "directed surveillance" in this instance, he/she must set out clearly in the authorisation, *inter alia*, the parameters within which those undertaking the surveillance should operate. The length of time is one of those parameters. In short, the parameters include the who, when, what, how and where; namely the practical limits of the task.

An Example

So, for instance, the surveillance may be of a person suspected of benefit fraud in order to see where they go when they leave their home of a morning. Let us assume that the intelligence is that they are working and earning money that they have not declared. (Let us also assume for this purpose that the offence being investigated is one under section 111A (3) Social Security Administration Act 1992 (see Appendix 1) to take it into the realms of crime punishable by over six months to accommodate the second review proposal). It must also be assumed for the purpose of this example, that despite the intelligence there is no way of approaching anyone for whom he is suspected of working for a statement because the identity of the employer is as yet unknown and there are no other overt means of obtaining the information. It must also be assumed that the subject has been approached directly but has denied all knowledge of any employment.

An authorising officer may give an authorisation which allows two officers in an unmarked vehicle to observe the house (at an appropriate time during the morning). He will state the address and approximately where the vehicle would be positioned. He will specify that the vehicle will be positioned a reasonable distance away so as not to attract attention and the officers are to be equipped with the means to create a surveillance log and a digital camera, (which he needs to confirm is in full working order), to obtain photographic evidence. He would authorise them to follow the subject when leaves his house and when he arrives at his suspected work-place. He would authorise them to take such photographs as are necessary to obtain sufficient evidence that the individual looks as if he is in employment. He would make directions about collateral intrusion, for example, he would usually state that they are to take as few photographs involving other workers/people who are not under surveillance as possible except where it cannot be avoided, and that their images are not to be used unless it is necessary and they will only be used for the purpose of this investigation.

He would then have to state the time for the surveillance to commence and the time for it to cease and the statutory requirement is three months. So if it is granted at 10.00 am on Friday 18 March he must state that it will cease three months later—18 June at midnight and not at 10.00 am because Friday 18 March is taken as a whole day. This is the guidance that is generally given by the OSC inspectors. It is a common error by authorising officers to either insert the wrong times and dates.

Quite often acting as an approval authority, the magistrate therefore may find any one of the following:

(i) Technical fault with the time authorised as given by the dates.

(ii) They may ask the authorising officer to confirm whether or not the equipment being used is working correctly—if a statement to that effect has been omitted,—if equipment is not working properly then the exercise will never be proportionate because the product of the surveillance apart from the written surveillance log will be unusable.

(iii) They may want to alter the authorisation to specify when during the day the surveillance is to take place—and want to insert, "at an appropriate time during the mornings" and then the authority may say they want authority to follow the subject from the suspected place of work later in the day in case he goes to another place of work. They may want it left open to enable them to follow him at any time of day—but then you would need to ask if that was proportionate by looking at the intelligence on the file.

(iv) Typing errors and other "slips".

Guidance to Magistrates could be drafted say:

(i) an authorisation can be compared to an insurance policy so if the officers act outside the terms of the authorisation they will not be covered; and

(ii) that if they find themselves having to make extensive or substantial amendments to an authorisation they should consider whether a it must be approved at all, whereas technical amendments or lesser changes that do not affect the substance of the authorisation would normally be acceptable.

I have set out in Appendix 2 an amendment that you may consider suitable to cover this point—it is printed in bold.

APPENDIX 1

"111A Dishonest representations for obtaining benefit etc.

(1) If a person dishonestly—

(a) makes a false statement or representation;

(b) produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular;

(c) fails to notify a change of circumstances which regulations under this Act require him to notify; or

(d) causes or allows another person to fail to notify a change of circumstances which such regulations require the other person to notify,

with a view to obtaining any benefit or other payment or advantage under the social security legislation (whether for himself or for some other person), he shall be guilty of an offence.

(2) In this section "the social security legislation" means the Acts to which section 110 above applies and the Jobseekers Act 1995.

(3) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding seven years, or to a fine, or to both.

APPENDIX 2

32B Procedure for judicial approval

(1) The public authority with which the relevant person holds an office, rank or position may apply to the relevant judicial authority for an order under section 32A approving the grant of an authorisation.

(2) The applicant is not required to give notice of the application to—

(a) any person to whom the authorisation relates, or

(b) such a person's legal representatives.

(3) Where, on an application under section 32A, the relevant judicial authority refuses to approve the grant of the authorisation concerned, the relevant judicial authority may make an order quashing the authorisation.

(4) Where on an application under section 32A, the relevant judicial authority approves the grant of the authorisation, it may make an order granting the authorisation subject to any amendments, conditions or provisions provided that it considers the amendments to be necessary and proportionate and that it has allowed the local authority to make submissions upon those amendments conditions or provisions prior to the order being made.

(4) In this section "relevant judicial authority" and "relevant person" have the same meaning as in section 32A."

May 2011

Memorandum submitted by Wandsworth Borough Council (PF 84)

1. This response to the above consultation is submitted on behalf of Wandsworth Council. The Bill has provided some challenges to local authorities that were not previously anticipated and the response set out below provides some comments on the proposals contained in the above Bill and seeks clarification on Clause 56 and schedule 4 as follows

2. Whilst Wandsworth Council welcomes and would wish to support any move by the Government to deal with rogue clampers, some clarification of the proposals in the above Bill is needed in order to successfully implement proposed alternatives to the current practice of clamping and towing away illegally parked vehicles or those causing a nuisance and obstruction to residents.

3. The provision in Chapter 2 of Part 3 of the Bill which deals with vehicles left on "land", and particularly Clause 54, which makes it an offence to move or immobilise a vehicle without "lawful authority", provides a challenge to local authorities. To ensure that Clause 54 is workable the Council is seeking clarification on Clause 56 Schedule 4 of the Bill; recovery of unpaid parking charges.

4. Clamping on housing estates has been an effective form of parking enforcement and a total ban without an equally effective alternative would deprive the Council and its residents of an important tool to protect housing land and dissuade illegal/nuisance parking.

5. Where parking enforcement is identified as a problem on housing estates, residents are consulted with and vote on whether or not to introduce clamping on an estate as a response and solution to this problem. The Council is reluctant to remove this option from residents without a viable alternative.

6. In 2010–11 the Council clamped 3,245 vehicles on our housing estates, indicating the scale of the parking problem our residents face living on estates which are near to train stations etc and are ideal parking spaces for commuters.

7. The option of ticketing those who illegally park on Council land raises some concerns for the Council in its administration. The main concern for the Council with issuing tickets is the method of enforcement and recovery of charges. Current processes involve lengthy and costly small claims procedures that provide no effective remedy for persistent evaders, and the Council is concerned that this will not act as a deterrent for rogue parkers.

8. The Council seeks clarification of the provisions in the Bill as to how landowners can efficiently, and cost effectively recover parking penalty charges and how they can deal with persistent offenders.

9. The Council has also noted in the Bill the continued provision of the use of fixed barriers to restrict the movement of vehicles on private land. Due to the physical layout of many housing estates including multiple entrances and exits it is not feasible to erect barriers to manage parking. Barriers are restrictive to residents' free movement in and out of their estates, and are inconvenient for visitors, trade vehicles and most importantly emergency services.

10. If councils are prohibited from clamping vehicles on their own housing estates, then the alternative must allow effective and efficient enforcement of parking charges. It is not clear whether the provisions in Clause 56 and Schedule 4 would allow the council to recover unpaid parking fees without having to go through the costly and time consuming process of the small claims court. Clarification on this matter is required.

11. The House of Commons research paper 11/20[162] indicates that "current practice is that a landowner only has recourse to the courts if they make a charge for parking on their land but do not enforce it with clamping. The changes outlined in the Bill would allow landowners to recover parking charges without recourse to the courts, a process which can be time consuming and costly. A full explanation of how this new scheme would work is set out in the Explanatory Notes to the Bill". However, the Bill and explanatory notes are silent on the above assertion contained in the research paper. This new enforcement route must be made explicit if ticketing is to be successful on our housing estates.

12. A preferable alternative would be to use the same method of enforcement as would apply if Council housing land was covered by a Traffic Management Order ie if the ticket was unpaid the Council would simply register the debt at the County Court and then use bailiffs to recover the costs without the need for county court action.

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[162] http://www.parliament.uk/briefingpapers/commons/lib/research/rp2011/RP11-020.pdf

13. Wandsworth Council is clear that clamping is an effective form of parking enforcement on many housing estates. Without an efficient and effective method of recovery of charges for parking offences the Council is concerned that ticketing will not provide as great a deterrent as clamping and is likely to lead to an increased administrative burden on the county courts if there are persistent non payments of parking charges.

14. In conclusion Wandsworth Council seeks clarification on Clause 56 and Schedule 4 to ensure that landowners are given an effective tool to recover parking charges without the use of the small claims court.

May 2011

Memorandum submitted by the Independent Police Complaints Commission (IPCC) (PF 85)

SUMMARY

The IPCC welcomes the development of the Protection of Freedoms Bill, and makes a number of suggestions to inform the development of the Search Powers Code, to ensure stop and search powers are used appropriately.

ABOUT THE INDEPENDENT POLICE COMPLAINTS COMMISSION (IPCC)

1. The IPCC was created by the Police Reform Act 2002 as a Non-Departmental Public Body (NDPB) to deal with complaints and allegations of misconduct against police in England and Wales. It became operational on 1 April 2004, replacing the Police Complaints Authority (PCA).

2. In later years, the IPCC's remit was extended to include the Serious and Organised Crime Agency (SOCA), and the investigation of serious allegations against officers of HM Revenue and Customs (HMRC) and the UK Border Agency (UKBA).

3. The IPCC is overseen by a Board of Commissioners appointed by the Home Secretary. By law, Commissioners must never have worked for the police service in any capacity. They safeguard the IPCC's independence and are the public face of the organisation.

4. The IPCC's remit includes:

— investigative powers: the IPCC may independently investigate cases, oversee police investigations of cases, or decide cases can be investigated locally by the police and without oversight;

— an appeal function: complainants who are unhappy with how the police dealt with their complaint may submit an appeal to the IPCC; and

— the power to direct misconduct proceedings: the IPCC has the power to direct a force to convene a disciplinary tribunal and, in exceptional cases, may direct that the tribunal be held in public.

5. The IPCC also has a statutory responsibility to increase public confidence in the police complaints system. To assist in meeting this responsibility the IPCC has a guardianship function, which consists of four main elements:

— a duty to increase public confidence in the system as a whole;

— promoting accessibility of the complaints system;

— setting, monitoring, inspecting and reviewing standards for the operation of the whole system; and

— promoting a learning culture so that lessons may be learnt from the system.

6. The IPCC endeavours to carry out its work with respect for human rights and aims to ensure effective remedies for individuals whose rights have been breached.

IPCC EXPERIENCE

7. The IPCC would like to comment on the section of the Bill concerned with Replacement powers to stop and search in specified locations and make suggestions to inform the development of the Search Powers Code.

8. This submission is based on our experience of handling complaints relating to police use of stop and search powers, and evidence gathered through our own engagement with communities as part of our guardianship work.

9. Over the past seven years our experience has led us to believe that complaints about stop and search are often not about the stop itself but about the officer's failure to explain why it was necessary, or about the manner in which it was carried out.

10. The IPCC believes that the police must be able to demonstrate that they are using stop and search powers effectively. It is not enough for their use to simply be within the law.

11. Where stop and search powers are used they should be used in a way that demonstrably meets the objectives of fairness (incorporating the requirement for officers to explain the reason for the stop), effectiveness and carrying public confidence (including the need for police commanders to engage with local communities about their use).

12. Since April 2010 the IPCC has worked with the police service to champion these principles, sharing lessons learnt from our work, and working with forces individually to deal with any issues identified. Following this, we published our policy, see Annex A.

The Search Powers Code

13. The IPCC recommends that the Search Powers Code replicates the Code of Practice recently developed for the Authorisation and exercise of stop and search powers relating to Section 47A of Schedule 6B to the Terrorism Act 2000 and should include reference to the following:

Awareness of the code

14. As adherence to the search powers code will form a key part of any investigations into stop and search related matters which are undertaken by the IPCC it is vital that all police forces take steps to ensure officers are aware of the content of the Code and its implications for their work.

Using the right powers

15. Our experience suggests that officers are often unclear about the range of stop and search powers at their disposal, and the grounds for using them.

16. Stop and search powers should only be used by officers who have been trained to use them properly.

Quality of the encounter

17. Before any search of a detained person or vehicle takes place the officer must take reasonable steps to give their identification number and name of their police station to the person about to be searched or to the person in charge of the vehicle.

18. All stops and searches must be carried out with courtesy, consideration and respect for the person being stopped and searched.

Reasons for the stop

19. We believe that any attempt to explain the reasons for the stop and search at the outset can only help to improve the quality of the encounter.

20. At the start of the encounter the officer should:

— inform the person that they are being detained for the purposes of a search;

— explain which power is being used/or provide details of the operation and its purpose;

— explain why the person or vehicle was selected to be searched and explain the purpose of the search; and

— explain what entitlements the person has.

21. Providing the public with as much information as possible will help to improve the quality of encounters and minimise any damage to public confidence.

22. Forces have a key role in educating the public and officers about their rights and responsibilities in stop and search encounters.

Searches in specified areas or places

23. Positive involvement from communities is essential to increase confidence in the police service and the use of stop and search powers. Forces should consider engagement with communities during the planning stage of any significant stop and search operations.

24. Where searches are being carried out in specified areas or places, then the officers involved should be fully briefed. Officers need to be briefed on the nature and justification for operations, so they know what they're looking for, but also so they can provide an explanation to people being stopped.

25. Officers should be provided with a form of words that they can use to explain why people are being stopped and searched.

26. When using stop and search powers, officers should have a basis for selecting which individuals or vehicles should be stopped and searched. This decision should be based on intelligence and in accordance with any briefing received or carried out at random within the parameters set out in the authorisation (for example, the stopping of vehicles at random travelling down a particular road towards a potential target).

Providing a written record

27. Officers should be reminded of the need to record information and provide anyone who is stopped and searched, or whose vehicle is stopped and searched, with written confirmation that the stop and search took place and details of the power used as soon as is practicable.

28. Officers should make people aware of their right to request a written record or a receipt explaining how they can obtain a copy of the record even where this has not been formally requested.

Learning lessons

29. The IPCC's experience suggests that the people who are most unhappy with stop and search encounters, in particular young people and those from black and minority ethnic backgrounds have the least confidence in the police and the police complaints system. This group is less likely to complain and therefore it is important that there are other ways of being able to monitor and judge how these groups, and indeed others, are affected by the use of stop and search powers.

30. Forces may find it useful to seek feedback from people being stopped and searched, and from the local communities most affected to help improve policy and practice in this area.

Annex A

IPCC Policy Regarding Police Powers to Stop and Search

1. *Introduction*

1.1 Police powers to stop and search individuals can have a significant impact—positive, where it is effective and negative where it is not—on public confidence in policing. Given the importance of this area, the Independent Police Complaints Commission (IPCC) has developed a policy on the police use of stop and search powers, based on its experience from cases and guardianship work to date.

1.2 Our experience has identified the following key findings:

— People who are unhappy with stop and search encounters, in particular young people and those from black and minority ethnic backgrounds, have the least confidence both in the police and the police complaints system. Their experience is therefore likely to feed back into negative perceptions of policing.

— Where complaints are made, they are usually handled at a local level and unsubstantiated due to conflicting evidence given by the complainant and the officer, which is likely to lead to greater individual dissatisfaction both with the police and the complaints system.

— There is little evidence to support the effectiveness of prevention, detection or deterrence of stop and search powers, which play into the community perceptions that stop and search is not effective.

— Both the public and the police are often unsure of the powers associated with the different specific stop and search legislation. The confusion can result in an uninformed or even worse, unlawful use of the powers. In some uses of stop and search the police are not obliged to provide individuals with an explanation for why they are being stopped (section 60 of the Criminal Justice and Public Order Act) nor do they need to have reasonable grounds to carry out a stop. However, not all legislative tools used to employ stop and search provide such a wide remit and require the police to have reasonable grounds to carry out a stop and search (section 23 Misuse of Drugs Act).

2. *The IPCC view*

2.1 The IPCC recognises that police powers to stop and search individuals exist and that the police will use them. The IPCC also believes that the use of stop and search powers are highly intrusive and where they are not seen to be fair, effective or carry public confidence may seriously risk undermining individual and community confidence in policing.

2.2 The IPCC therefore believes that it is not enough for the exercise of stop and search powers to simply be within the law. Where stop and search powers are used by the police, they should be used in a way that demonstrably meets the following objectives:

— fairness;

— effectiveness; and

— carries public confidence.

3. *Principles*

3.1 The IPCC believes that exercising stop and search powers in line with the principles outlined below will best promote the above objectives.

3.2 Fairness: the encounter

3.2.1 Each officer who exercises the power of stop and search—whether or not the law requires the stop to be on reasonable grounds—must be able to answer the question: "Why did you stop me?" It is not enough to say "Because I can", or "I don't have to give a reason". The officer should be able to respond by explaining the reasons—for example, the intelligence available or problem profile the officer was provided with. Providing an informed explanation is a basic but critical step in helping to improve the quality of the encounter and ensure that it does not lead to reduced confidence or a feeling of unfairness.

3.3 Effectiveness: purposes of the use of stop and search powers

3.3.1 The IPCC believes that the primary purpose of the use of stop and search powers should be for the detection and prevention of crime. We recognise that some forces use the powers for the purposes of disruption and deterrence. Regardless of the purpose for which stop and search powers are used, the police should be able to demonstrate effectiveness of the powers through regular monitoring, taking into account the volume of complaints, the number of fixed penalties, cautions, arrests and charges arising from stops, the impact on crime profiles and the level and quality of local intelligence-gathering.

3.4 Fairness and effectiveness

3.4.1 Local police commanders need to ensure that the most appropriate powers are used to achieve the policing objectives. They must also ensure that their officers can differentiate between, and have a good understanding of, the different powers available to them. The use of "blanket" powers—such as those in section 60 of the Criminal Justice and Public Order Act—need to be supported by a focused and specific intelligence package, rather than merely referring to ethnic origin or the reputation of an area.

3.5 Public confidence: engaging with communities

3.5.1 The IPCC believes that communities are more likely to have greater confidence in stop and search powers if they are used properly and are demonstrably effective. Local police commanders therefore need to engage with communities to inform people about the use of the powers within their local policing area, and demonstrate the effectiveness as described in point two above. Communities should also be afforded the opportunity to feedback to police their experience of stop and search and to discuss their concerns about crime in their area.

3.5.2 Communities should be aware of the reasons behind any "blanket" powers, such as those in section 60 or section 44 of the Terrorism Act, as described in point three above. Police commanders need to clearly show the purpose of a specific stop and search operation to both the officers and the communities they serve. For example, in the Police and Criminal Evidence Act Codes of Practice the primary purpose of the stop and search power is: "to enable officers to allay or confirm suspicions about individuals without exercising their power to arrest". But we know that the powers are also used to deter and disrupt—the police should therefore be open with the local community about their intentions.

3.5.3 Local police commanders should also use their community engagement opportunities to inform community members about the roles and responsibilities of both the police officer who carries out the stop and search and the individual who is stopped. Clarity about what is expected of both parties means that misunderstandings are less likely to occur.

3.6 Public confidence: handling of complaints

3.6.1 The IPCC recognises that the current complaints system, which focuses on an officer's conduct, does not generally deliver outcomes that satisfy either complainants or the police. Stop and search encounters that meet the principles set out above, and which help to avoid complaints, are more likely to deliver public confidence. Police Authorities should monitor their force's use of the powers and play a proactive role to ensure public confidence is not damaged as a result of that use.

3.6.2 When a complaint is made a significant proportion of complaints about stop and search can be dealt with using Local Resolution. The quality of the resolution as well as the willingness of the police to provide an explanation or apology, as appropriate, and learn from complaints are therefore crucial to public confidence. Where the complaint results in an investigation, this should examine the relevant intelligence and authorisations, as well as the individual officer's knowledge of the powers and process, rather than focusing narrowly on the alleged misconduct.

May 2011

Memorandum submitted by the Amateur Swimming Association (ASA) (PF 86)

Background

1. The ASA is the National Governing Body (NGB) for the sport of swimming, diving, water polo, open water and synchronised swimming in England. We are responsible for 1,200 affiliated member clubs and swim schools advising and regulating clubs and their members on child safeguarding and protection. British Swimming is the performance and excellence arm for all home country swimming associations and shares many staff and resources with the ASA including the ASA Child Safeguarding Polices and Procedures.

2. The ASA currently has 176,119 members and 70% of our membership is made up of children and young people under the age of 18.

3. The ASA has been pro-active in Child Protection/Safeguarding for over 15 years and actively involved in the development of policies and procedures to maintain the wellbeing of members under the age of 18. Since 1994 the ASA has worked closely with the NSPCC to become the first NGB to develop Child Protection Procedures in Sport after the first major case of child abuse was identified in swimming. The ASA appointed a qualified and experienced children's social worker as their Independent Child Protection Officer (ICPO) to manage and develop their case management structure, policies and procedure. In 2002 the ICPO, in collaboration with the NSPCC, produced a study of child abuse cases in the ASA from 1997 to 2001 called "In at the Deep End" which provided a new insight for all sports from an analysis of these cases in swimming. The study identified key messages in practice, which assisted the ASA and other Sports NGBs in developing future good practice and procedures.

4. In 2008 the ASA achieved the NSPCC Child Protection in Sport Unit (CPSU) advanced standard for safeguarding children in sport. The ASA Child Safeguarding Policies and Procedures strive to ensure that we provide a safe and encouraging environment to our young people taking part in the sport.

5. Since 2004 the ASA has acted as a CRB registered body providing a criminal records checking service for our affiliated swimming club and school members and submit approximately 8,000 applications a year. The safe recruitment of individuals into paid or voluntary roles in our sport is of paramount importance and the CRB disclosure vitally supports this process.

6. Together with our colleagues in sport we support the submission made to the Committee by the Sport and Recreation Alliance and the CPSU.

Use of CRBs by the ASA

1. Currently the ASA Child Safeguarding Policy and Procedures requires an enhanced disclosure for all roles either paid or voluntary that involve one to one or group contact with a child capable of building a relationship of trust.

2. Every ASA club has a dedicated trained and often professionally experienced child welfare officer who will assess which roles within their club require a check. This decision will be made based on the structured mandatory ASA CRB Policy that all our affiliated organisations adhere to and from the invaluable knowledge the club welfare officer has of their club environment.

3. The resulting enhanced disclosure certificate is received by the ASA rather than the club, ensuring that any disclosed information is known only to the applicant and the ASA as the recruiting organisation. The ASA assesses an applicant's suitability on a case by case basis with input from the applicant and a secure data-base records whether that applicant is ultimately CRB cleared or otherwise. The disclosure information is only released to third parties with the consent of the applicant ensuring confidentiality of data.

4. Since January 2011 to date the ASA has processed 3,119 disclosures. Of these the ASA has risk assessed 52 applicants due to information being disclosed on the CRB that may affect that applicants suitability to work with children or vulnerable adults.

5. A further number of disclosures containing information which is not relevant for child safeguarding purposes are received by the ASA. Such disclosures are cleared without the need to risk assess the applicant.

Regulated Activity and the Definition of Supervision

1. ASA affiliated swimming clubs will typically consist of a Committee managing the clubs affairs day to day with a designated Welfare Officer for all child welfare matters. The coaching team may consist of a head coach and a number of assistant coaches, teachers and team managers. The coaching team are supported by a team of poolside helpers and chaperones. Some coaches will be paid but the vast majority of the club structure will be volunteers. There is extensive opportunity for all of these roles to build a relationship of trust regardless of whether they are "supervised" on poolside. ASA case history examples include an honorary president who contacted a 13 year old female swimmer pretending to be a boy of the same age and was caught in a police sting and placed on the Sex Offenders Register.

2. The ASA supports the proposal put forward by the Sport and Recreation Alliance and the CPSU that the exclusion from regulated activity should be for "close and constant supervision". Ensuring that those who work with children in a position of trust remain subject to regulatory checking and those who help out only occasionally with little or no responsibility are excluded.

ELIGIBILITY FOR CHECKS OUTSIDE "REGULATED ACTIVITY"

1. The eligibility criteria proposed will exclude many positions within swimming which are currently checked as they will fall outside the requirements of regulated activity. This is of great concern for our Welfare Officers at club level and for the ASA as the recruiting organisation.

2. The ASA strongly believes that CRB checks should remain available for positions outside the regulated activity criteria and should be at the discretion of our clubs and the ASA as a result of knowing our environment and the risks that certain roles present.

3. The ASA supports the proposals put forward by the Sports and Recreation Alliance and the CPSU to allow sport the discretion to make decisions about the risks presented in our environments.

ISSUING OF A SINGLE DISCLOSURE

1. Clause 77 of the Protection of Freedoms Bill proposes that CRB disclosures will be issued only to the applicant and no longer to the Registered Body. We understand the reasoning of this clause in providing the applicant with the opportunity to dispute the information prior to the disclosure being viewed by the recruiting organisation.

2. The recruitment structure within our sport is vastly different from the more formal recruitment process within a Local Authority School for instance with less opportunity for the handing over of information. The ASA strongly believe that this could undermine the safety of our young members and create a significant administration burden on our member clubs and the ASA.

3. The ASA as the recruiting organisation centrally manages the disclosures for our sport ensuring consistency and allowing recruitment decisions to be made by experienced and professional individuals. This ensures the volunteer club welfare officer is not overburdened with information about individuals who they may know personally and which may affect their judgments and opinions of that individual. This would mean that the individual would need to share their disclosure with the ASA rather than their local club.

4. The ASA has concerns over how we would manage receiving copies of on average 8,000 disclosures a year and the administrative burden on our NGB that this would ultimately present. In addition the potential for fraudulent certificates to be sent is most concerning.

5. Typically the disclosure process currently takes around four weeks. We believe that an individual going through the application process and then having to send off their certificate to the ASA under the new proposals will be perceived as to much hassle and dissuade individuals from volunteering in the first place, impacting greatly on our local club network.

6. The delays in obtaining copies of disclosures may allow an individual to work with children when they may not be suitable. We are concerned that if an incident should occur whilst we are chasing an individual for their disclosure that we may be held liable.

7. The ASA supports the Sports and Recreation Alliance and the CPSU in an amendment to the Protection of Freedoms Bill to allow for the two disclosure system to continue to enable our sport to continue being responsible and safeguarding our young members from harm.

May 2011

Memorandum submitted by UNLOCK (the National Association of Reformed Offenders) (PF 87)

ABOUT UNLOCK

UNLOCK, the National Association of Reformed Offenders is an independent charity and membership organisation, aiming to achieve equality for people with criminal conviction previous convictions.

We believe in a society in which reformed offenders are able to fulfil their positive potential through equal opportunities, rights and responsibilities.

UNLOCK'S MISSION STATEMENT

Driven by the needs of reformed offenders, UNLOCK works to reduce crime by helping them overcome the social exclusion and discrimination that prevents them from successfully reintegrating into society.

UNLOCK empowers reformed offenders to break down barriers to reintegration by offering practical advice, support, information, knowledge and skills. It also acts as their voice to influence discriminatory policies, behaviours and attitudes.

Introduction

1. Following the Home Secretary's call for a full review of the vetting and barring scheme in October 2010, UNLOCK was invited, along with a small number of organisations, to attend one of the VBS consultation events. This was followed up with a formal submission,[163] which set out our views. Given the very short timescale between the announcement of the review and submission deadline, we sought to build on a briefing paper that we published in February 2010, which was produced after extensive consultation with our members. Many of our recommendations were incorporated in Sunita Mason's resulting review *A Balanced Approach*.[164] We were also pleased to participate as member of Ms Mason's Independent Advisory Panel on the Disclosure of Criminal Records (IAPDCR) to recommend filtering rules for old and/or minor convictions as recommended in that review.

2. UNLOCK now welcomes the opportunity to submit written evidence to the Public Bill Committee in areas of the Bill which are particularly relevant to reformed offenders, that is:

— Part five, chapter one: Safeguarding of vulnerable groups; and

— Part five, chapter two: Criminal Records.

3. In addition to the provisions currently set out in this Bill, we would advocate that further reform should be included within the scope of the Bill, incorporating a number of issues which are inextricably linked with the areas covered in the Bill as it stands. These issues include:

(i) Reform of the Rehabilitation of Offenders Act 1974 should be included in the scope of the Bill in line with our submission to the Ministry of Justice Green Paper, *Breaking the Cycle*.[165]

(ii) Introduction of a filtering process on standard and enhanced CRB based on the outcomes of the IAPDCR.

(iii) Improvements to the CRB process, including the introduction of basic CRB checks and a reduction in the number of illegal standard and enhanced checks, in line with our submission to Phase 1 of the Criminal Records Review.[166]

Part 5, Chapter 1: Safeguarding of Vulnerable Groups

4. *Clause 63: Restriction of scope of regulated activities: children*

It is not entirely clear what the overall definition of regulated activity will be. It appears that the changes proposed are piecemeal and do not show a new way of thinking about the definition of regulated activity which is disappointing. It is not clear what the overall impact will be on the number of positions covered by the scheme (and therefore what positions will also be exempt from the Rehabilitation of Offenders Act 1974). Defining what should be exempt from the ROA should be an integral part of this Bill, to ensure that the ROA is used as a primary basis, and then only providing exemptions to it where it is absolutely necessary. Furthermore, there is little mention of revising the period definitions, which was one of the reasons which led to such a large number of positions being defined as regulated activity. In addition, clear guidance needs to be produced to provide a better idea of which positions would be regarded as falling within the revised definition of regulated activity, as this definition appears to change little in terms of the number of roles that would fall within it.

5. *Clause 64: Restriction of definition of vulnerable adults*

This clause in itself doesn't appear to change much. The clause which follows (65) appears to have a greater impact as to what will be regarded as regulated activity as it applies to vulnerable adults, as it defines what will change in paragraph 7(1) of Schedule 4.

6. *Clause 65: Restriction of scope of regulated activities: vulnerable adults*

There appears to have been very few positions removed from the definition of regulated activity as it applies to vulnerable adults, and so it is difficult to see at this stage how this will significantly reduce the number of positions within scope of the scheme. Furthermore, subsection 9 removes the period condition, which means that if a certain activity is only done once it will be within the scope of the revised scheme, which appears to drastically increase the potential for positions to fall within this category.

[163] *UNLOCKing Employment*, Recommendations to the Vetting and Barring Scheme Review. http://www.unlock.org.uk/userfiles/file/employment/Recommendations%20to%20the%20Vetting%20&%20Barring%20Scheme%20Review%20November%202010.pdf

[164] *A Balanced Approach—Independent Review* by Sunita Mason: UNLOCK Member Briefing March 2010. http://www.unlock.org.uk/userfiles/file/employment/UNLOCK%20Summary%20of%20Sunita%20Masons%20Review.pdf

[165] UNLOCK response to Ministry of Justice Green Paper: *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, March 2011. http://www.unlock.org.uk/userfiles/file/roa/BTC%20Consultation%20-%20UNLOCK%20response%20March%202011.pdf

[166] *UNLOCKing Employment: Submission to the Criminal Records Review—Phase 1*, December, 2010. http://www.unlock.org.uk/userfiles/file/employment/Submission%20to%20the%20Criminal%20Records%20Review.pdf

7. *Clause 66: Alteration of test for barring decisions*

Only barring those who have, or intend to, work in regulated activity, appears to be a sensible proposal which will reduce unnecessary bureaucracy. However, how "intention of working" is interpreted will be important, as this will impact on who the ISA decides to make a barring decision on. Those who fall within the automatic barring subject to representations will have the ability to make representations before a decision is reached. This is a sensible move and is in line with the issue raised by the Royal College of Nursing in their recent judicial review. However, there is no ability for those convicted of automatic barring offences to make representations, which remains a matter of concern. Furthermore, there appear to be no changes made to the process of representations (ie how they can only be made in writing at the moment).

8. *Clause 67: Abolition of controlled activity*

Whilst the ongoing value of the controlled activity category has long being questioned, it appears that the majority of the controlled activity positions now sit within regulated activity, which is clearly not a positive move, as it brings more positions within scope.

9. *Clause 68: Abolition of monitoring*

The system of continuous monitoring for those working in regulated activity will effectively still be in force anyway since positions regarded as regulated activity will be subject to an enhanced CRB check and an employer will be able to register an interest to keep up to date as to whether the individuals barred system changes.

10. *Clause 69: Information for purposes of making barring decisions*

It is not clear why the test for disclosure of information to the ISA should be the same as that which would apply to an enhanced CRB check. If the threshold for disclosing this information to the ISA was lower (ie more likely that the information is disclosed to the ISA) it could arguably justify a higher threshold for disclosure on the face of a CRB (ie less information disclosed). It is, however, positive to see the ability for regulations to be made which only sends certain conviction information to the ISA, but no detail on what these regulations would be (ie what conviction information wouldn't be sent to the ISA) is provided in the Bill or in its explanatory notes.

11. *Clause 70: Review of barring decisions*

It is a positive move to remove arbitrary time limits before an individual can request the ISA to review their case. However, the circumstances in which the ISA may remove a person from the list is relatively vague. More detail is needed on what threshold a particular case would need to meet before a review would be successful.

12. *Clause 71: Information about barring decisions*

The key element in this process is ensuring that only for positions which are defined as regulated activity is there an ability to request, register and to receive barring information. The test (ie no reason to believe that the declaration is false) doesn't appear to be very rigorous. There needs to be a process which allows individuals to inform an authority of a position which is not regulated activity but where an employer is requesting barring information, so that this information is not provided to the employer. There also needs to be a process which allows individuals to revoke their consent for a particular employer to receive continuous updates.

13. *Clause 72: Duty to check whether person barred*

This will mean that every position which is regulated activity will more than likely request an enhanced CRB check to be undertaken. As a result, what is classed as regulated activity is fundamentally important.

14. *Clause 73: Restrictions on duplication with Scottish and Northern Ireland barred lists*

This appears to be a logical proposal.

15. *Clause 74: Professional bodies*

There is an issue with the ability of a professional body to apply to the ISA on an *ad hoc* basis, as it is not clear whether individual consent would be required before barred list information would be shared.

16. *Clause 75: Supervisory authorities*

This appears to be a logical proposal.

17. *Clause 76: Removal of notification to employer before barring*

This means that, where the ISA is dealing with a particular case, they will no longer notify the employer until a final decision has been made, which is a positive move.

PART 5, CHAPTER 2: CRIMINAL RECORDS

18. *Clause 77: Restriction on information provided to registered persons*

This is a positive move. This puts the individual in control of the information that is disclosed, being able to manage the process of disclosure and ensure that any inaccuracies are dealt with before they are disclosed to an employer. However, there are serious concerns around how this may circumvent the safeguards within the Police Act 1997, ie who will be able to request to see a CRB check. At the moment, the interaction between an employer and the CRB ensures a level of protection, by ensuring that, in theory at least, only positions eligible for such information can be in receipt of it. However, removing this connection risks employers being able to request certificates from individuals without the legal authority to do so, and this will put individuals in a vulnerable situation. There appears to be no safeguards to protect against this.

19. *Clause 78: Minimum age for applicants for certificates or to be registered*

This is a sensible move.

20. *Clause 79: Enhanced criminal record certificates: additional safeguards*

The disclosure of non-conviction information is a contentious issue. It is unclear what practical affect the slight increase in the threshold will have, and it would be useful to see practical examples of where information would have previously been disclosed and wouldn't be now. Furthermore, it is not clear how referring a matter to a different police force to review a case is an effective and independent disputes process. A separate ombudsman-like process would seem to be more suitable for this kind of situation.

21. *Clause 80: Updating certificates*

The principle of continuous updating a CRB checks is logical. However, it would seem to be more effective to allow individuals to receive an online update of their own criminal record, and for the relevant registered person to be informed of this change, to then enable the individual to provide an updated copy of their record online. It appears burdensome to require an individual to re-apply for a certificate, and presumably pay a further fee (currently £36) for something which is already being paid for annually.

22. *Clause 81: Criminal conviction certificates: conditional cautions*

This appears to be a clarification of the process when issuing basic checks to ensure that all unspent information is included on them, which is sensible.

May 2011