

HOUSE OF LORDS  
MINUTES OF EVIDENCE

taken before the  
SELECT COMMITTEE

on the

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Canterbury City Council Bill  
Leeds City Council Bill  
Nottingham City Council Bill  
Reading Borough Council Bill

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DAY THREE

Wednesday 9 November 2011

Before:

Knight of Collingtree, B (Chair)  
Blair of Boughton, L  
Eccles, V  
Glasman, L  
Strasburger, L

Ordered at 2:15 pm: that Counsel and Parties be called in.

1814. **CHAIRMAN:** Good afternoon, everybody. I hope you can hear me. I will speak more loudly if anybody raises their hand to indicate they cannot hear what I am saying, otherwise, having a voice rather like a foghorn, I think you will be all right. There are just a couple of things to say before I come to the formal business, and the first thing to tell you is that we have had the report we asked for from BIS with regard to their views and the amendments which are suggested to be tabled. The way seems to be getting clearer by the minute, in that they now feel that probably the Bills being amended, according to the amendments put forward, it will probably meet the conditions that they were so concerned about with regard to the European law. Now, having said that, before we come on to Mr Campbell-Lloyd, who is in the middle of giving evidence, could I ask Ms Lieven to give the amendments just formally for a matter of record?

1815. **MS LIEVEN:** My Lady, thank you for that. Can I formally introduce to the Committee the four sets of draft amendments, which I think have already been handed around, and say that in substantive terms they replicate what the Committee saw last week; there have just been some minor drafting changes.

1816. **CHAIRMAN:** Thank you very much. Now, Mr Campbell-Lloyd, as you know, the Committee has already heard two hours of evidence from the Petitioners about these Bills and against the provisions they include, that is to say one hour with Mr Casey and you have had one hour. I make clear I have not included in that addition the time of course given to your cross-examination of the witnesses. I am now allocating you a further 1.5 hours to complete your case, including of course calling your witnesses, but there is one proviso. If any of my colleagues, even one of them, feels that you have not had the fair hearing which we are all determined you shall have - if even only one of them feels you have not had an entirely fair hearing - I shall consider that limit again. Having said that, may I make it clear that you now have your 1.5 hours from now to complete your evidence.

1817. **MR CAMPBELL-LLOYD:** Thank you, my Lady. Just for the record, I have only in the last five minutes received this second report of the Secretary of State. It has had no consideration. I believe that it might have been circulated last thing yesterday, but I have not read it, and I will hold any comment on that possibly until the end, if we have had time, but I can make no comment on it at this point.

1818. (After a pause) My Lords and Lady Knight, I would first like to make an apology for presenting my thesis on how these Bills affect street trading and pedlary law. It was not my intention to bore the Committee, but only to make clear the many threads that Counsel for the Promoters chooses to ignore. I am myself only a pedlar, but as an administrator of a website dedicated to pedlary, I have responsibilities to provide accurate information and in particular scrutiny.

1819. At the end of our last session, I had reached the point of presenting how the Bills stand in conflict with the Services Directive. I accept Lord Blair's direction not to read the articles highlighted in the bundle for exhibits 18(a) through to 18(g), and I hope the Committee has now had time to read the 44 questions on exhibit 18(h) to (i) arising from BIS policy formulation and the report from the Secretary of State at exhibits 19(a) to (e). The Petitioners' greatest concerns have been raised by BIS, identifying that LGMPA requires amendment, and further that the Bills require amendment. We have seen a hastily drafted copy of amendments from the Promoters to the Bills, but there is no indication of the Government amendments to the LGMPA. This clearly makes it difficult for your Petitioners to come to a reasonable impact assessment on the Promoters' amendments.

1820. In conclusion, the Petitioners submit that the Bills are wholly against the principles of free self-determination contained in the Pedlars Act, that they are against the principle of exemption for acting as a pedlar in the LGMPA, that they are against the principle of an open, free internal market with unrestricted competition, diversity in consumer choice, social protection and cohesion, the preservation of national historic, social and cultural values relating to human dignity and all that is contained in the Services Directive, recital 40, and transposed into the Provision of Services Regulation 2009. Next, that these Bills are against the principles of spiritual freedom, unrestricted access to economic activity and equality of rights before the law and all that is contained in the Human Rights Act. Lastly, that contrary to Counsel for the Promoters' opinion, put in her opening statement, these Bills do discriminate between those licensed to trade in the street and those certified in the street. Such discrimination is contrary to and engages 9.1(a) of the Services Directive. The Petitioners contend these Bills stand in such powerful opposition to accepted principles that this Committee should not allow them to progress further.

1821. If the Committee is minded to allow these Bills to proceed, then with great reservation, your Petitioners have already prepared textual amendments to relieve some of the burden. These were given in the previous bundle at exhibit 21(a)(3) and 22(a) to (b). Due to the developments that have occurred in the previous two days, for this hearing your Petitioners have revised the earlier submission on textual amendments and I now submit exhibits 23(a) to (d), and if I could have somebody pass these around, please, to each Member of the Committee and I will take one. (Documents circulated) These amendments are essentially the same as earlier, but now accommodate what additional elements have been agreed in principle by all sides. I may be seen to be giving too much ground, but this is because scale and proportion considerations on previous Bills also led to time and distance considerations.

1822. As a template for all the Bills, we can first consider the Reading Bill and turn to clause 2. This is on 23(a), "Interpretation". The Committee have heard in evidence that genuine small-scale pedlars cause no problem and would now be welcome by all Promoters as acceptable traders in the street. Your Petitioners are aware of difficulties in interpreting the expression "house to house" and ask the Promoters to endorse a further meaning under "Interpretation" into the Bill. This is entered in red at line 19, and it reads, "House to house means the trading is ambulant trading and not static trading". The additional qualification at line 23 in red, "Attached to receptacle" is not consistent with the qualification of "equipment" five lines above and it reads, "Receptacle includes for the purposes of street trading as with 'equipment' above".

1823. However, the Petitioners' understanding of the word "receptacle" as inserted by the Promoters' agent is also to include the unwritten indication that these receptacles be enclosed and would therefore limit any goods to

only dimensions of less than 0.5 metres. This is unacceptable to the Petitioners, because it places an unfair burden upon them.

1824. The Promoters have introduced into the Bill the word “services” but without definition. If this is to be clear and consistent with the Services Directive, then the definition is here included again in red text at line 34 and reads, “Services mean any self-employed economic activity”. This is a direct extract from the Services Directive.

1825. One of the difficulties that your Petitioners have in practice is that enforcement officers do not know that a pedlar in law also sells or exposes goods for sale by provisions in the Pedlars Act and the Local Government Miscellaneous Provisions Act. The amendment 4.2(a) at line 10, also in red, “Draws an enforcement officer’s attention to the lawful right of pedlars to also act in this way, but in doing so, may claim the exemption for acting as a pedlar in the LGMPA” and it reads, “The selling or exposing or offering for sale of any article, including a living thing in the street, subject to exemptions in schedule 4, provisions 1(2)”. The same follows in sub-clause (c) at line 15, and it reads, “For supplying or offering to supply any service in the street for gain or reward, subject to exemption in schedule 4, provisions 1(2)”.

1826. I think it is fair to conclude from the Promoters’ evidence that there is consensus that pedlars may trade in the street and not only at houses, as may be interpreted from clause 5, where it refers to, “House to house”. To clarify this and remove any confusion, sub-clause (d) at line 16 clarifies that, “It is regulated traders only that are required to occupy a static pitch allocated by licence or consent” and it reads, “Street trading may only be carried out on a static position allocated by licence on a street”. The sub-clause (e) at line 18 makes clear that pedlary and regulated street trading are different. It reads, “Acting as a pedlar is not street trading”. The Promoters’ evidence provides consensus that pedlars do not trade only at houses, but are welcome in the appropriate scale and proportion to trade in the street. This amendment to 5.2(a) at line 34 helps to overcome the burden of too literal interpretation in construction. It reads, “It is carried out only by means of visits from house to house or any other place as consistent with the Pedlars Act”.

1827. The Promoters’ evidence has led to consensus that scale and proportion will be a suitable limited control on pedlars’ apparatus, as referred to earlier. Your Petitioners will bring forward evidence that such a limitation to a hand-carried briefcase is practically unworkable, but they can accept the amendment found in the Bournemouth and Manchester model, and this is inserted after line 36, which reads, “All items used for any purpose connected with the trading are carried as a pedestrian or in a wheeled vehicle with a carrying capacity of no greater than 1 cubic metre pushed or pulled by him”.

1828. The Bournemouth and Manchester Act has some sections that provide for time and distance to enable limited control to ensure that pedlars move about as they trade. Evidence will be provided that the allocation of

time, that is five minutes before moving on and 12 hours before returning, and distance, 200 metres before returning, in those previous Acts is unfair and there are less restrictive measures available. They propose the following amendments found on exhibit 23(c) at sub-clause 2. These are red amendments. There it says, "A pedlar may not stop on one static pitch for more than 15 minutes before moving unless as allowed by case law and while engaged with trading" and at sub-clause 3, "The pedlar may thus move on if the previous condition is satisfied and should move as possible by at least 20 metres to indicate that he is not a static trader, but a mobile ambulant trader". At sub-clause 4, "Whilst moving from one fixed position to another, he may stop for specific sales and to carry out other allowable activities". These are supported by current statute and case law. At sub-clause 5, "He may not return to a static position that he has previously occupied within one hour unless satisfying all previous conditions".

1829. The sub-clause regarding football tickets then follows at 6, "The trading does not include the trading of tickets". The Bournemouth and Manchester Act made the provision that a pedlar may not move to a position that is within 50 metres of another pedlar. The Provision of Services Regulation 2009 section 22 does not permit quantitative distance restriction between service providers. Eliminating such consideration then fulfills the Services Directive.

1830. The Bournemouth and Manchester Act made provision that a certificate must be displayed prominently by pedlars in Manchester, but pedlars in Manchester became worried that the certificate revealed too much private information and the Chief of Police in Manchester accepted that section 17 of the Pedlars Act was sufficient, that a pedlar show the certificate on demand.

1831. In the Promoters' evidence from Canterbury, Mr Vickers as a witness made clear that seizure at clause 6 introduced the fear factor into the Bill, that is under fear of having further seizures, unlawful traders would not return. The problem is that this broad-brush approach makes potential victims of all lawful pedlars, including your Petitioners. This not fair and nor is it a proportionary response, nor does it meet the Services Directive.

1832. Your Petitioners reject the FPN clause, the fixed penalty notice clause, and rely on the precedent set in the Bournemouth and Manchester Bills at the request of Christopher Chope MP in the other House. To bring consistency to this sort of legislation, your Petitioners do seek deletion of this clause as per the Bournemouth and Manchester Bills.

1833. Your Petitioner on the Reading Bill, we concur with Philip Davies, MP, in the other House in the third reading, 14 January 2011, column 921, "The ticket-touting aspect of the Bill does not meet the requirements of the Services Directive". He continues, "I do not see how the House can pass legislation that we know in our heart of hearts cannot be maintained, justified

and sustained in a court of law, for that be an entirely pointless exercise". He goes on to say at column 922, "I am a member of the Culture, Media and Sport Committee, which had an inquiry into the amount of ticket-touting only last year. We took a huge swathe of evidence from consumers, people involved in the industry and ticket touts themselves, including those who work on street corners and those with websites, as well as the Office of Fair Trading, which has made it clear that it believes the Touting Act is in the best interests of consumers and it has no reason to try to ban it". Your Petitioner cannot understand why the Promoters would fail to mention this to the Committee, that an anti-competition and an anti-consumer clause stands in direct opposition to the principles of the Services Directive. Your Petitioner against the Reading Bill has confirmed that there was no provision in clause 18 under, "Powers of Community Support Officer" for any formal CSO training about genuine pedlars who may be subject to opinions and judgements not based on the correct understanding of law. Your Petitioner asks to be relieved of such unfair burden.

1834. These then are the Petitioners' amendments that fulfil why they consider or what they consider has been achieved by them attending this hearing as progress towards allowing continued trading.

1835. I will now briefly consider the difficulties that Petitioners find in the Promoters' proposal submitted last week.

1836. **LORD STRASBURGER:** Can I just ask you a question? What is the status of these amendments? They are simply you produced these ----

1837. **MR CAMPBELL-LLOYD:** These are considered amendments that we would like to see entered into the Bill as it currently stands prior to the amendments that I will now consider from the Promoters' Counsel. This will make clear and workable the existing LGMPA and the Bill to the satisfaction of the Petitioners.

**1838. LORD STRASBURGER:** So this takes no account of the proposers' proposed amendments?

1839. **MR CAMPBELL-LLOYD:** The account of those proposals I will now address. I believe it does meet the terms of the Services Directive, but we will come to that in time.

1840. **LORD GLASMAN:** This is just for my note. What is the meaning of 'competent'? Why is it put in?

1841. **MR CAMPBELL-LLOYD:** If a CSO has no knowledge of the law, no training in the law, then they have no competence in issuing a fixed penalty notice for an offence, because they have to judge whether an offence has been committed or not, so they need to have competence.

1842. **LORD GLASMAN:** So you do not think by being authorised they would be competent?

1843. **MR CAMPBELL-LLOYD:** No. Not around this, I have no competence qualification.

1844. **LORD GLASMAN:** What, do you set them a test of something?

1845. **MR CAMPBELL-LLOYD:** Well, for example, a parking meter attendant only needs to look at the facts of the matter, "This car has been here for so long". He has conditions that I expect he has to meet. The training of that is very simple, but as far as we are aware, there is no formal training for a CSO officer to implement an offence or a summons for an offence, a fixed penalty notice. It was entered into the Bournemouth and Manchester Bills, which became Acts, on the basis that there was an undertaking by councils, but as we have heard, we do not place much value on that.

1846. So this is the scrutiny of the Promoters' amendments by the Petitioners, and these were the second edition of the amendments handed to us last week, "Under the Services Directive, an authorisation scheme cannot exist unless it is justified by an overriding reason related to the public interest" which I shall refer to as ORRPI. The test is very strict. The Committee has heard that BIS contend that the authorisation scheme for the Pedlars Act does not meet the ORRPI test for two reasons, residency and good character.

1847. Government is consulting on repeal of the Pedlars Act. The Committee has heard from BIS that Government is bound by parliamentary protocol to make no comment on private business, which these Bills are. Your Petitioners contend that private business is therefore a very powerful instrument. BIS can make comment on the National Local Government Miscellaneous Provisions Act, the LGMPA, and they, that is BIS, contend that it must be amended to meet the Services Directive. BIS has not published draft amendments to the LGMPA. Your Petitioners know nothing about them and this is a Morton's fork for the Committee.

1848. Evidence from BIS has now led the Promoters to accept that these four Bills need amendment to meet the Services Directive. Your Petitioners contend that all previously enacted Private Bills are included with this concern. They include Westminster, Leicester, Liverpool, Newcastle, Medway, Bournemouth, Manchester. They do accept that these Acts do not concern this Committee. The Promoters have submitted proposed amendments to four Bills to justify the restriction on pedlars to meet the strict ORRPI test in article 4.8.

1849. Your Petitioners reject the amendments for the following reasons of principle. It is the authorisation scheme for regulating street trading itself, LGMPA, that must be subjected to the overriding reasons related to the public interest test for justification. If it meets that initial test, only then can

justification for the restriction on pedlary be considered, and this is not limited to the pedlar clause, but all clauses, because they all impact on pedlars. The Promoters have not addressed this issue of principle. This is the second Morton's fork for the Committee. The pedlar restrictions have not been significantly changed by the Promoters, but what they have done is cherry-picked a few words of text from the ORRPI article and placed them in the pedlar clause as if to satisfy the Services Directive. Your Petitioners think that what the Promoters have done is no more than window dressing, in spite of Ms Lieven's claim to European expertise and an opinion from BIS, who are in a state of utter confusion about their policy formulations.

1850. If we go into the pedlar clause amendments 1 to 6, they are on page 1 of the draft Promoters' amendments. Clause 5 is the pedlar's clause and there are eight sub-clauses within that. We see that the Promoters want little or no change to restriction on pedlars, but then we turn our attention to clause 7.

1851. **LORD STRASBURGER:** Which Bill are you looking at?

1852. **MR CAMPBELL-LLOYD:** Sorry, these are the draft amendments by the Promoters to the Bill, the second draft amendment.

1853. **LORD STRASBURGER:** Yes. We have got four of them. We have got one for each Bill.

1854. **MR CAMPBELL-LLOYD:** Sorry, the Reading Borough Council Bill, and I expect they are all the same, because there has now been consistency in all four Bills on this particular clause.

1855. **LORD STRASBURGER:** But you are on Reading?

1856. **MR CAMPBELL-LLOYD:** I am on Reading, yes, I beg your pardon. I did not bother with the others, because this is the clause that is consistent throughout. So as I said, if you go into the pedlar's clause, amendment 1 to 6 of clause 5, we see that the Promoters want little or no change to the restrictions on pedlars, but in turning to clause 7, we see a very dangerous potential for these local authorities to be rid of pedlars on any of intentionally vague terminologies, as vague as (a) and (b) that refer to public safety, security and health. It is a well-established concern that these words are widely used and sometimes abused to justify all and any new regulation. No evidence has been submitted that the identified public problem of oversized trolleys has ever caused a single death or a single serious injury. This is the proper measure referred to in article 23.5 of the Services Directive.

1857. **CHAIRMAN:** Could I just interrupt? My understanding is not that the Promoters have tried to say that any of the problems with the size of the conveyance have caused death, but they do say here, "Preventing the obstruction of the highway". I thought we were solely concerned or very

much concerned – I do not think it is right to say that because they have never caused a death, unless you have some other meaning.

1858. **MR CAMPBELL-LLOYD:** I am speaking about (a) and (b).

1859. **CHAIRMAN:** Yes, I appreciate that, but I think one has to go down the whole list.

1860. **MR CAMPBELL-LLOYD:** Oh, I am.

1861. **CHAIRMAN:** You are? Good.

1862. **MR CAMPBELL-LLOYD:** So that covers the points (a) and (b). By striking out clause (c), as they have done here, the Promoters now accept that they have no powers - but previously wanted powers - to impose control on competition under article 1.5, 9 and 10 of the Services Directive. The entry underlined (c), the Promoters choose the words, "Protecting the environment, including the urban environment". Your Petitioners are unsure if the Promoters realise that pedlars and their trading activity form part of the environment that article 4.8 of the Services Directive refers to. What this particular justification leaves out is mention of the overriding reasons related to the public interest justification to retain pedlary, being, "Conservation of the national, historic and artistic heritage, social policy objectives and cultural policy objectives". They have not addressed these. The Promoters have not revealed if they have formulated policies in each of these categories. There are Services Directive article needs to satisfy non-discrimination, ORRPI and consideration of less restrictive measures, but there has been a deafening silence from Counsel for the Promoters in this regard.

1863. The Committee has now heard from the Petitioners how less restrictive measures are available and can be achieved. Your Petitioners are concerned that the Promoters want control not only on fixed material objects, rightly so, but to interfere in historic and cultural life of this country. Your Petitioners are very alarmed that there is scope in such vague terminology to reject a trader who does not conform to approved stereotypes. Europe has already experienced this dreadful social experiment. What the Promoters have not submitted in evidence or by amendment is whether or not the authorisation scheme for street trading under the LGMPA is justified under the Services Directive, nor can they until the LGMPA, through Government amendment, meets the Services Directive.

1864. At 7(d) and (e), we come to the first and only possible justification that the Promoters have for the authorisation scheme itself to continue in the public interest. This consideration of road safety makes sense, because regulation covers all static objects in a public place or on a highway, including licensed trader apparatus. It does not include pedestrians or pedestrian traders and their apparatus. Your Petitioners have made many submissions to BIS to consider article 4 as an ORRPI to justify retention of the

Pedlars Act, amending and strengthening the Pedlars Act, though your Petitioners accept that this is also outside the scope of this Committee.

1865. The Promoters have relied on a set of previous Bills to justify these four, but it is now foreseeable that those previous Bills are not fit for purpose under the Services Directive as they do not meet the strict ORRPI test, again a matter outside the scope of this hearing.

1866. Evidence will shortly follow from the Petitioners that pedlars are being prosecuted since the deadline for Services Directive implementation for acting as a pedlar in Private Act jurisdictions. Your Petitioners contend that faulty legislation has been drafted by agents for the Promoters since 2006 without any regard to the Services Directive, and may constitute a serious dereliction of duty.

1867. They would also ask, Madam Chair, to have BIS give a firm date for amending the LGMPA. They would ask also that the Committee of this hearing reserve judgement on the Bills until such time following statutory instrument amendment to the LGMPA, however long that now takes to complete. BIS is empowered to make representation to the European Commission to request a transitional period to implement the Services Directive throughout all street trader and pedlary law to avoid infraction proceedings by a member of the public.

1868. Your Petitioners are concerned that as soon as the Government brings about amendments to the LGMPA that satisfy the Services Directive, then it can wipe its hands of the responsibilities that it currently has to the public in regard to pedlary. That responsibility then shifts to local government that is not answerable to the EU, but to Her Majesty's Government via the Provision of Services Regulation 2009. What HMG cannot do is avoid infraction proceedings against it by the European Commission on three tests, namely non-communication, non-conformity, complaints of bad application. BIS are in communication with *pedlars.info* in regard to this matter. It will not rest. Your Petitioners have found that most of proceeding matters cannot be raised in lower courts in their defence of acting as a pedlar, and are in consequence exposed to potential victim status by the Bill. These are your Petitioners' initial concerns with the Promoters' proposed amendments.

1869. Having read very briefly through this second Secretary of State report, I have quickly drafted an initial response, which has no bearing on detailed scrutiny. We now have before us a second BIS report that on initial reading appears to be a cover-up of gross errors by BIS. There is an attempt to assist private business before attending to the public interest concerns about national statute upon which the Bills rely. I am somewhat ashamed to witness Parliament being so abused by private business.

1870. Should the Committee call on the Promoters to lodge any further amendments subsequent to this hearing for approval by Counsel for the

House, then your Petitioners humbly request as stakeholders that they be invited to comment to Counsel on those such amendments before they are enacted. They request this because of what has previously occurred without Petitioners' knowledge to the agreed instructions from the opposed Bill Committee handed to the other House, Counsel for the Bournemouth Borough and Manchester City Council Bills. What results in textual enactment is very difficult for pedlars to understand and was agreed neither by the other House Select Committee, nor the Petitioners. That ends my scrutiny argument.

1871. **LORD GLASMAN:** Can I just clarify; are you feeling shamed for the sake of Parliament? Is that your view?

1872. **MR CAMPBELL-LLOYD:** I speak on those who are shamed by what they believe to be an improper process.

1873. **LORD GLASMAN:** So you are speaking for the shamed?

1874. **MR CAMPBELL-LLOYD:** And myself.

1875. **LORD GLASMAN:** And yourself.

1876. **MR CAMPBELL-LLOYD:** We were - as in the Petitioners - unaware, Lady Chair, that you called for a further report to be produced. I believe that was not heard in the end of the Select Committee at our hearing, and I am surprised that it did occur without ----

1877. **CHAIRMAN:** Could I ask what report do you mean, because we ----

1878. **MR CAMPBELL-LLOYD:** We now have before us a second report from the Secretary of State on the compatibility issues in the Services Directive. We were unaware that that report was called for, and I thought perhaps we should have heard that in the last Committee hearing.

1879. **CHAIRMAN:** I think we made it clear that we wanted to have the views of BIS, and it was said publicly here in the Committee. We asked specifically for a report of this kind, because we wanted to know when the amendments came out whether or not it altered the position or whether BIS still felt the same. I do not think there was any muzzling of that kind of information, to my recollection.

1880. **MR CAMPBELL-LLOYD:** I did not understand that it would be part of this inquiry or this hearing. I thought that of course that was called for, but in the fullness of time it may have come. I am pleased that it has come now, but I was not aware of that. What I would say is that it slightly prejudices your Petitioners, because they were not given the same opportunity to have scrutiny of the amendments that they have proposed with the legal arguments that BIS might have considered on those as fulfilling the Services Directive also.

1881. **CHAIRMAN:** When you say “they” do you mean the Petitioners ----

1882. **MR CAMPBELL-LLOYD:** The Petitioners.

1883. **CHAIRMAN:** ---- were not given an opportunity?

1884. **MR CAMPBELL-LLOYD:** To have the same reports on the amendments that they have submitted.

1885. **CHAIRMAN:** Well, I imagine any paper is not secret when it is never ---

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1886. **MR CAMPBELL-LLOYD:** Indeed, but you understand the reason that I think that this is a discriminatory action. I accept that the Promoters have made their amendments, but does the Committee not accept that the amendments that have been submitted by the Petitioners ----

1887. **CHAIRMAN:** I did not know that the Petitioners were going to produce their own.

1888. **MR CAMPBELL-LLOYD:** They were in the exhibit bundle, madam.

1889. **CHAIRMAN:** Of amendments?

1890. **MR CAMPBELL-LLOYD:** Yes, they were in the exhibit bundle.

1891. **CHAIRMAN:** What was?

1892. **MR CAMPBELL-LLOYD:** The Petitioners' amendments were in the back of the bundles that you have.

1893. **CHAIRMAN:** I am not saying we did not know what the Petitioners' views were. I merely said just now that I was not aware that the Petitioners wished to have an opportunity to put their report. Obviously of course you have an opportunity to comment on the amendments. You never suggested to the Committee, as far as I am aware, that you were asking to have your own opportunity. Of course you can submit to us whatever you wish. That was never in doubt.

1894. **MR CAMPBELL-LLOYD:** The opportunity did not arise, because our submission had not begun. All we had heard so far was a submission from the Promoters with their witnesses, so we had never reached the point ----

1895. **LORD GLASMAN:** I understand you are a lawyer and you think this way. We are not. We are politicians, and just to say we are merely ----

1896. **MR CAMPBELL-LLOYD:** No, I am not a lawyer.

1897. **LORD GLASMAN:** I mean, with honourable exceptions, and just to say we wanted to have a view from BIS about compliance. It was a confusion

about compliance, and I am really grateful to you for taking the time to write the report. If we worried about your compliance, we would ask for the same. I am just saying this came up in the course of the Committee. It is just not the case that everything has to be equally balanced and disputed. We have not raised concerns about your compliance, so do not be too quick to condemn and to blame. Try to be fair-minded yourself and realise ----

1898. **MR CAMPBELL-LLOYD:** Thank you.

1899. **LORD GLASMAN:** ---- we are judging the matter, and on the way we make some judgements about what we need, so please just be a little nicer in that way. It would be appreciated.

1900. **MR CAMPBELL-LLOYD:** Thank you. Then I would ask that that occur, that we have some feedback from BIS about those amendments.

1901. **LORD GLASMAN:** Sure, but that is our judgement, I have to say.

1902. **MR CAMPBELL-LLOYD:** (After a pause) That concludes my submission, and I would now like to bring forward my witnesses, and I would call Andrew Carter to come forward.

1903. **CHAIRMAN:** May I at this point remind the witnesses that if they were sworn in during day 1 or day 2 last week, they are still under oath. Please continue.

MR ANDREW CARTER, sworn  
Examined by MR CAMPBELL-LLOYD

1904. **MR CAMPBELL-LLOYD:** You are the Petitioner on the Reading Borough Council Bill. Please confirm your name and address for the Committee.

**(Mr Carter)** My name is Mr Andrew Carter. My address is 8 Meadow Close, Chippenham, Wiltshire.

1905. And you are a pedlar?

**(Mr Carter)** Correct.

1906. How long have you been a pedlar?

**(Mr Carter)** For about 14 years now.

1907. In that 14 years, have you traded door to door?

**(Mr Carter)** Never.

1908. Never. Do you trade in town centres or other places?

**(Mr Carter)** Both, sometimes in town centres, sometimes other places.

1909. Can you perhaps describe to the Committee something about these other places?

**(Mr Carter)** Well, other places will be public places, parks, streets, promenades, esplanades. The work I do is often connected with events. They could be carnivals, festivals, homecoming parades, football matches, rugby matches, so therefore it is not always in a town centre that I work, but often the parades go through a town centre, so therefore I would be trading in a town centre street, but it might be somewhere where they do not even have any street trading regulations, the street might be some back street where the stadium is, so really, that is the best way I can describe 'other places'.

1910. So as the Petitioner against the Reading Borough Council Bill, are you aware of other local authorities that have Private Acts, and what is your understanding of these Acts and how do they affect you?

**(Mr Carter)** Yes, I am aware of the Private Acts. I believe the first Private Act was the City of Westminster Act, but I believe that was 1999 and all other Private Acts that have followed since then regarding street trading and pedlary have been modelled on that. They used that as a template. I say "they", the Promoters' parliamentary agents. So in effect, what was passed under the current Act has been replicated through all other Private Acts, which now include all of the London boroughs, Leicester, Liverpool, Manchester, Bournemouth, Rochester, Maidstone, Newcastle and possibly more, but those are the ones I am aware of. I am also very aware, because I have friends around the country - it is a funny loose network of pedlars - we are all individuals, but the only way we have friends at work is by talking to each other, and I also am aware of how these Acts have basically wiped the streets clean of pedlars. I used to trade in Leicester, I have traded in Canterbury, I have traded in Nottingham, I used to trade in Liverpool, I used to trade in London. I cannot do that no more, and I know people that ---- for example, we will talk about the Royal wedding, when Kate married William this year. I have friends who live in London who decided to go out with a bag of flags. The public wanted them, the nation wanted them. Westminster City Council came out with what I will term 'hit squads'. Vans pulled up, 12 of them jumped out, three on each pedlar, took their stock and then they got prosecuted for the heinous crime of selling flags on Royal wedding day. That is the consequence of these private Bills or private Acts.

1911. Can you explain how the Reading Borough Council Bill in its amended format will affect you?

**(Mr Carter)** In its amended format; well, I believe in its original format they said that a pedlar cannot use a trolley, so ----

1912. Yes, it is now modified.

**(Mr Carter)** Right, it is modified so they are now saying you can use a trolley, but the size, the dimensions would only be 1.25 of a metre, not much bigger than a hand carry-bag that you would go on the airplane with, and they are also saying that you cannot expose or display your goods, and that would be impossible. How can you attract customers or show customers if your goods are not displayed? It is almost like saying, "You can open a shop in the high

street, but you must put the blinds down and not let the public see what you are selling". We are not private shops.

1913. So why do you use a trolley?

**(Mr Carter)** I have back problems. I also have mild arthritis. I am not registered disabled. I do not want to claim benefits. I want to work and I do work. I find that carrying the goods, often the goods I sell - you will see from the exhibits how I trade - they are quite heavy. For example, the bubble swords are full of liquid and you can imagine anything full of liquid is going to be heavy. It would be impossible for me to carry them physically, unless I wanted to end up in hospital. So therefore I need a trolley to be able to not only carry those goods, but to display those goods so that the customers know what it is I am selling.

1914. Could you do that out of a box perhaps strung around your shoulders with the dimensions that the Promoters have suggested?

**(Mr Carter)** No.

1915. So how often do you trade in Reading?

**(Mr Carter)** I would say probably about eight or nine times a year at the moment. About four or five years ago Reading I would say was my favourite town, i.e. I used to go there every Saturday. We used to sell bubble toys. The council officials probably know me. They might not know me. I am not aware. I have never been prosecuted. I have never been stopped. There has never been any confrontation or anything, so Reading to me was a lovely town to work; nice streets, good people. When Reading FC got promoted to the Premier League I did their football parade which they had which went through the town centre. I also worked the Reading half marathon that they have in April and I have worked the streets of Lower Earley for their carnival. So I still go to Reading but not as much as I used to.

1916. **LORD STRASBURGER:** Have you had contact with the officers of the council then?

**(Mr Carter)** Sorry, my Lord?

1917. Have you had contact with the officers of the council?

**(Mr Carter)** I have had my licence checked, yes, but nothing more.

1918. Your certificate.

**(Mr Carter)** Sorry?

1919. Your certificate.

**(Mr Carter)** Sorry, my certificate, yes, I stand corrected. I have had my certificate checked, both by the council and the police. In fact I had an incident about six years ago where a police constable come to me and started screaming, "You cannot trade here you have to get out of town", blah, blah, blah, and being what I would term experienced and knowing what the law states I stood my ground and said, "I am not going out of town.

I am going to carry on trading". He said, "Right, we will see about that", and he ran off. Well, he did not run off he went off in a huff, almost threatening me if I did not. He more or less gave me 10 minutes to get out of town otherwise I would be arrested. He went back to the station. He obviously had a chat to either his Sergeant or his Inspector (I do not know who) and he came waltzing back up the street, almost marching, and my wife said, "Uh oh, here is trouble". He walked up to me. He put his hand up and said, "Mr Carter, my apologies. I was wrong". I was very honoured and felt very relieved that not only had I stood my ground and proved my point but he had the decency to apologise and shake my hand. So, regarding contact with enforcement officers, that is the only contact I have had, yes, my Lord.

1920. Thank you.

1921. **MR CAMPBELL-LLOYD:** Have you ever been told that you have caused an obstruction?

**(Mr Carter)** No, never.

1922. Not ever.

**(Mr Carter)** I must add also I have never been prosecuted. I have never been convicted of street trading or pedlary offences.

1923. **CHAIRMAN:** You are giving your evidence with great clarity. I would like to check one particular point that you said. At the very beginning you said, "I do not trade house to house. I am in the street". We have had some discussion earlier as to I thought pedlars do work and get a licence to trade house to house and we have had some discussion about whether, if they are trading in the street, that was not quite within the permit allowance. But how could you explain that to me?

**(Mr Carter)** I can explain it like this, my Lady. The Pedlars Act states that a pedlar that trades from house to house or door to door or other men's houses. Sorry, I am trying to recite something that I cannot recall, but there is an adjective of "or" not "and". A pedlar is someone who trades from town to town or other men's houses. It has never been contested in any court of law, either at Magistrate level or even in the High Court, Queen's Bench Division. It has never been contested that a pedlar cannot trade in the street. Now, practicality-wise, yes, you used to get your Tallyman knock on the door, and your Mr Cleanings; years ago you used to get people who did knock doors and probably had a pedlar's licence certificate. Today if you were to go round knocking doors, you would find that 80 per cent of the people were not home because they were both working. If you come after 6 o'clock they are about to watch the news, they are about to sit down and enjoy a TV programme and to have somebody – people often moan about these nuisance phone calls. Well, it would be just the same if a pedlar was to knock on doors, you would certainly get a frosty reception from 90 per cent of the population, and all pedlars I know trade in the street. Does that answer your question, my Lady?

1924. Yes.

1925. **MR CAMPBELL-LLOYD:** So you have before us a set of photographs.  
**(Mr Carter)** Correct.

1926. I would ask you to explain, perhaps by reference to the subtitles that you have put on them, the first three photographs please.

**(Mr Carter)** Yes. This is me (quite recently I must admit because I did not realise I would have to go so far as to submit photographic evidence) but I feel for you to see me as I work speaks volumes. I use a trolley. These first photographs I have kitted out with the bubble toy and forms. Now, I can work and do work in a town centre. As I explained, about five or six years ago I was going to Reading often selling bubble toys. These bubble toys actually you see here. But primarily now I sell these on carnival parades. You get the people who are lined up waiting for the carnival and I walk along with my trolley waving the bubbles and hopefully make sales.

1927. **LORD GLASMAN:** What is the on the stick?

**(Mr Carter)** Those are horns, my Lord, bearing in mind a carnival people like to make a noise and wave things around.

1928. Is the stick necessary for your trade?

**(Mr Carter)** Is the stick necessary?

1929. Or is it a luxury addition?

**(Mr Carter)** Well, it is an addition. I would not say "luxury".

1930. It is an addition.

**(Mr Carter)** Thank you for your question, you lightened the mood up.

1931. What would you say the dimensions are of the base of your trolley?

**(Mr Carter)** I would say the dimensions are probably 0.8 by 0.8. I have done a rough calculation and I would say that the cubic volume of that trolley, with the goods on display, is a fraction under a cubic metre.

1932. All right.

1933. **MR CAMPBELL-LLOYD:** So somewhat less than a cubic metre?

**(Mr Carter)** A fraction under, probably 0.9 or something like that, yes.

1934. So you have flags in AC4 and 5, so perhaps you could tell us why these are here.

**(Mr Carter)** Well, some of the events we do are home coming parades. As you are well aware, various regiments are serving – they were first in Iraq and in Afghanistan – now primarily in Afghanistan, and we service the public with flags and hats when they have a homecoming parade. I say "we" because my wife works with me so I use the term "we"; it is almost like she is with me now but she is not but she is at the back of the room. For example GGB,

when there is anything connected with anything that is British, not a National Front march of course but anything that is celebratory I will sell goods like this.

1935. It would appear to be much the same at AC6, 7, 8 and 9 or are they meaning something else?

**(Mr Carter)** Okay, if we look at AC6 and 7. The goods on sale in 6, 7, 8 and 9, correct, are all the same but there is a difference. Well, there is a point I want to make here. If you look at AC6 and AC7 the trolley there is kitted out for sport. What I would say was sport. It could be a football team; it could be a rugby team; it could be England even. On that trolley I have the Gesto hats, and again the horns and the red and white flags. If I were to be working the Reading home coming parade, obviously everything would be blue and white. The colours change depending on the team. When it comes to AC8 and AC9, what I want to show the Committee is size and scale. If you look at AC8, in the foreground you see my trolley and several yards back are people with their pushchairs, prams, call them what you may. They almost look similar in size. In fact, I would say probably the fact that they are several yards back they are probably bigger than my trolley. I wish to point out now and equally at AC9 there is a closer picture. That is just a small pushchair, a chap with his baby, and I want to show the Committee that really the size of the trolley that I use, which is just under a cubic metre, is not that large and would be no different than somebody out shopping with their pushchair, pram or whatever.

1936. As we see at AC10.

**(Mr Carter)** I thought you were going to ask is that my mother. No, it is not.

1937. Much the same as your trolley ----

**(Mr Carter)** Yes, actually what happened there, my Lords, this lady came to me and asked me how much my hats were. I said, "Well, actually, I am not selling today I am just doing a photograph shoot. I said, "Funny thing, you have a trolley just like mine". I do not want to be rude but I could not get rid of her. I think she was a bit lonely and she was chatting away about this and that and the other. I said, "Would you mind if I took your picture because your trolley is the same as mine and this is going to be shown in Parliament". "Oh yes, please."

1938. **LORD STRASBURGER:** Can I ask you, take AC8, is that a day's stock on there or do you have to replenish it?

**(Mr Carter)** It depends, my Lord. It can be if I have a good day. Now you see a pedlar – okay, I do not walk into the town. This has been determined by case law Sample v Hume [1956] 1WLR 1319, that a pedlar can travel to a town by motorised vehicle but their method of trade will have to be pedestrianised.

1939. I am only concerned with how much stock you can hold on there. That is what I am concerned about.

**(Mr Carter)** I appreciate your question and I will try to answer it. What I am trying to say is if that trolley as it was, okay, I probably would have more flags on there, but what it is – I know it sounds daft – the sporting season has finished, i.e. the promotions, the play-offs, the world cup.

1940. You are missing my question. Do you set off for the day with the trolley stocked for the day or do you need to replenish it? That is all I want to know.

**(Mr Carter)** I can replenish it and sometimes if we are having a good day I will replenish it.

1941. All right. That is all I need to know. Thank you.

1942. **MR CAMPBELL-LLOYD:** I am going to flip through to the end of that sequence of photographs and ask you to turn up what has A, B, C and D on it, towards the last page, A, B, C, and D. (After a pause). These seem to be photographs. Have you taken these?

**(Mr Carter)** Yes, I took these.

1943. What town, are they also Reading?

**(Mr Carter)** They are in Reading, yes.

1944. They are scenes of street trading. Perhaps you could explain why you have produced this set of sequence of photographs.

**(Mr Carter)** Because the Promoters have tried to portray pedlars using trolleys from the obstruction point of view. As the Lady Chairman pointed out earlier on, the issue was from the council the obstruction point of view. Now, a trolley is a trolley. It can be moved. You walk along with it. We have there in these photographs fixed obstructions, if I use that word correctly. Okay, they receive planning permission. The Highways department have okayed them but nonetheless those are obstructions fixed in the streets of Reading.

1945. So approved obstructions?

**(Mr Carter)** Approved, but nonetheless obstructions.

1946. Approved obstructions.

**(Mr Carter)** Nonetheless.

1947. All right. I think we can accept that.

#### Examined by THE COMMITTEE

1948. **CHAIRMAN:** Would it be correct to say that B is showing where a formerly traffic used street was no longer permitted by these block things which are there?

**(Mr Carter)** Yes, my Lady. I can remember the day when Reading buses used to go along this street, and in fact they still have a minibus (I think it is called Ready Bus, I am not sure but it is unimportant) that brings disabled

people into the town. But this was a highway with traffic flowing at one point, yes.

1949. So your case is that the council itself puts up obstructions, is that what you are saying?

**(Mr Carter)** Yes, my Lady.

1950. Is C not a bus wait?

**(Mr Carter)** That is my point. That comes on to what I said just now. They do have a minibus that comes in, and I state "minibus" and I think it is for disabled people.

1951. **LORD STRASBURGER:** Is this in Broad Street?

**(Mr Carter)** Correct, my Lord.

1952. **CHAIRMAN:** All right. Thank you.

1953. **VISCOUNT ECCLES:** Would you consider that the creation of pedestrianised zones has been helpful for pedlars?

**(Mr Carter)** Definitely, my Lord.

1954. Therefore there is in general more business in pedestrianised areas than you would have expected just in designated streets previously?

**(Mr Carter)** It depends. You see, I do not work town centres that often. As I said, I work events and if there is a crowd of people they are there because there is an event happening. But when I say that the pedestrianisation helps pedlars, it does not necessarily help in the level of trade but it means you do not have to be dodging buses and cars and taxis when you are crossing the street.

1955. Thank you very much.

1956. **LORD GLASMAN:** Just a question. I know and I recognise solidarity and honour between pedlars, but would you say that your trolley (I am just asking your view) is average, small or large compared to other pedlars? What would be your honest assessment?

**(Mr Carter)** Small to average.

1957. Yes, thank you.

1958. **LORD BLAIR OF BOUGHTON:** Can I follow that on. At some stage in the discussion about this Bill and these Bills, we will get to the size of trolley.

**(Mr Carter)** Thank you, my Lord, what I am ----

1959. No, sorry can I just ask the question, and it is an opinion only and you are not bound by this. There appears to be a discussion going on about a cubic metre. Is it your opinion that a cubic metre would be sufficient for most pedlars to be effective?

**(Mr Carter)** I think it would satisfy the needs of most pedlars.

1960. **LORD STRASBURGER:** What is the attitude of the public to pedlars in your experience?

**(Mr Carter)** Favourable because we do not hassle the public. You get these people who blitz the towns. We call them "chuggers(?)". They are actually charity collectors: Save the Children, whatever, Feed the World, and they come out with their tabards. They are not connected with us. Or they might be mobile phone companies or ----

1961. These are professional charity collectors?

**(Mr Carter)** Yes, they are professional insofar as they are registered charities there with permission. But for example, my local town Chippenham has a small High Street. Six of them will turn up in one day and they are there jumping out on people, "Excuse me, have you got ----" and they are almost putting their boards up to stop you. So these kind of people do irritate the public. Pedlars, I have never seen anybody irritated or ----

1962. How often do you get complaints?

**(Mr Carter)** Me?

1963. Yes.

**(Mr Carter)** Very, very rare, if at all. The complaints I get are from the council, from Licensing Officers, from shopkeepers probably ----

1964. What are their complaints

**(Mr Carter)** Their complaints are that, "You turned up. You are taking money and I have had a tough week and I am not making any and it is not fair".

1965. Do you compete with the shopkeepers?

**(Mr Carter)** If they sell Union Jack flags or bubble toys, yes, but I do not think many of them do.

1966. Okay. Thank you.

1967. **MR CAMPBELL-LLOYD:** Could you perhaps run us through rather quickly because I believe that we have another half hour on my timetable.

1968. **CHAIRMAN:** Something like that. Please go on.

1969. **MR CAMPBELL-LLOYD:** Thank you. Could you take us through why these other documents are in here?

**(Mr Carter)** Yes, there are various letters and receipts. Because all these letters and receipts relate to streets where I could go and trade with my pedlar's certificate. I do not want to sound arrogant but there is nothing unlawful to stop me. But there are times when for example we work for a homecoming parade, say, for the Mercian Regiment in Chester. It costs us a lot of money to go but, yes, we take enough to say, "That was a good day". So I donate to their charity. This is one example. There are other carnivals and regattas where again we trade in the street, but if they did not have the

carnival regatta the business would not be there. So I volunteer. I donate to these people. As you can see, some of them are thank yous; some of them are just straightforward receipts. There is one there saying, "Balloon seller permit". Well, I am not a balloon seller but the carnival people just had these permits made up and went round asking people if they would donate, so you give them £10, £15, £20, and they are very happy. Everyone is happy. I am happy because I can trade. They are happy because we are not just coming in and taking money without giving something back to them.

1970. Thank you. I have a last photograph that I would just like to pass around if I may. (After a pause). I just wondered perhaps if you could identify who this is and whether it meets the scale and proportion that you have started to move towards perhaps, which is something larger than the Promoters would like but actually reaches the 1 cubic metre capacity. I think you need to have a copy.

**(Mr Carter)** No, I have seen it outside.

1971. You have seen this photograph. So can you identify the person in this photograph please?

**(Mr Carter)** Yes, it is Mr Casey I believe.

1972. Mr Casey, and can you tell us whether this is within the 1 cubic metre capacity?

**(Mr Carter)** I cannot give that a definitive answer.

1973. It has the maths on it.

**(Mr Carter)** Oh I am sorry I did not see the picture. In that case, yes, it does. Yes, sorry. That is why I was trying to ---- yes, that is 0.72, yes. As you can see, the trolley does not even come up to Mr Casey's shoulders, so it is not that high, is it?

1974. So it is not really any greater obstruction that those we have seen in the previous set of photographs?

**(Mr Carter)** I would say that is about the size of a large shopping trolley loaded up with shopping coming out from Iceland.

1975. Do you have anything to say with regard to the seizure clauses in the Reading Bill?

**(Mr Carter)** Oh, yes. At the moment if I were to be challenged by the police or a Licensing Officer as to whether or not I am trading illegally I will know if I am trading legally or not because I work within the law. Therefore, if I were accused of trading illegally I would say, "Well, fine, let us go to court and let the court decide". That is justice. If the powers are given to Enforcement Officers who believe you me I have had many experiences of misinformed Enforcement Officers. I will give you an example: Cheltenham. The Licensing Officer there, with the backing I must say of the police who are either ignorant of the law or are completely in misinformation, a pedlar goes to Cheltenham. He will say, "Right, you can walk through this town. You must

not stop. You can only stop if you have a sale, and you have to walk through this street and not come back". That is their interpretation of the law and that is what they tell pedlars. If you fail to do so the police will come and seize your goods. This is a town that does not have a private Bill or Act. This is a town that has the national legislation and that is the information that this particular Licensing Officer is putting out with the backing of the police. I have not been to that town but I have had many people who have told me the same story. Now, that is an abuse. If they are abusing their powers now when they get the power of seizure it will be almost like open season on the pedlars, "Right, you are breaking the law. We are taking your goods. We have the power to do so". I am being emotional but it is really as draconian as that. I am talking as a pedlar and not the legal aspects and all the rest of it. I am talking as a person. The fear of having your good seized itself would stop you from going to that town and trading.

1976. So do you have anything to say with regard to the application of Fixed Penalty Notices in the Bill? Is that a similar threat?

**(Mr Carter)** I suppose they could be not quite so serious, insofar as you are not having your goods (and I might add) and your trolley taken away. So it is not just your goods that is being taken away it is your means of carrying the goods. With Fixed Penalty Notices, personally, I would say if you had a choice, like for example, a parking ticket where you can either pay the £30 within 14 days or you can protest it and go to court to argue your case and then face a higher penalty. I would look at Fixed Penalty Notices in that light as favourable. Just handing out Fixed Penalty Notices without any redress or any opportunity to challenge them, I would not agree with.

1977. **VISCOUNT ECCLES:** I wonder if I could just follow this. What these Bills say is that this cannot happen, seizure and so on, unless the authorised person, council official or a policeman has good reason to believe that you are trading illegally.

**(Mr Carter)** Correct, my Lord.

1978. On this matter of misinformation, it is the test of trading illegally. It is quite tight because if you have your pedlar's licence and you are not, by case law, stationary for more than about 15 minutes, and are moving on, then you are not trading illegally.

**(Mr Carter)** Correct, my Lord.

1979. To what do you attribute this exchange of misinformation because you, I think from your evidence, would say to the council official, "I am not trading illegally and you have no good reason to believe that I am because here is my pedlar's certificate, and I keep moving".

**(Mr Carter)** You are then threatened with the police who will then say, "If you do not go ----" I wish I could call the people who have told me this story because I know them very well and they would then threaten, "If you do not go then we will take your goods". That in itself would be unlawful. It is bully land bluff. Now okay, let us take this scenario and let us just say Cheltenham

was a town where I wanted to work and I had that Licensing Officer, or the police for that matter, come to me and say to me, "You are trading unlawfully because you have to walk through the town. You cannot stop. You have to keep going until you have got a sale", and I say, "No, that is not correct". He would say, "Right". He would call the police. (Let us play this out.) The police would come. They would probably threaten me with arrest. They would threaten me with seizure of my goods. Whether they would carry that out or not, I do not know. But the council would say, "Right, we are going to prosecute". I would say, "Right, okay, prosecute me. We will go to court". Myself I would then go through due process and show my case to the court where the court will, hypothetically say, "Yes, you are not guilty of street trading". But my point is, my Lord, they are already abusing their powers and my fear is if the power of seizure is given to councils, local authorities, they will also abuse that power, except that power will be to take your goods and you have no recourse. Yes, you can wait 56 days to go to the court and then you will get your goods back but if I was a carpenter and I was working on someone's house and they said, "Look, you have not done that job properly", would the Trading Standards come around and take his van and tools away? No. It would be a dispute that would have to go through court proceedings. The power of seizure takes away the court proceedings, in my view.

1980. **LORD STRASBURGER:** Why is there this tension between pedlars and councils?

**(Mr Carter)** There are several reasons. First, they do not get any money from us. They can get anything between £2,000 and £10,000, £15,000 from a licensed street trader who is there every day. They do not have power over us. It is a power thing, my Lord. They resent, they really resent the fact that they have no control over us. It really does get under their skin, "Who are you coming into our town, sticking two fingers up to our street trading laws?" That is why.

1981. **LORD STRASBURGER:** Thank you.

1982. **CHAIRMAN:** Thank you. I think that is very clear.

1983. **MR CAMPBELL-LLOYD:** So you are absolutely afraid of the creeping effect of these private Bills?

**(Mr Carter)** Of course, as I have already said, my Lords and my Lady, the first Bill Act was the Town Act, City of Westminster, and following on from that – I am not going to say in what sequence – basically in Newcastle I believe is the second authority.

1984. We have mentioned those. We have mentioned ----

**(Mr Carter)** Well, basically, under the current terms of those Acts I cannot even go out with a little bag over my shoulder anywhere in Leicester, Liverpool, the streets of London or wherever, and this Reading Bill was submitted in a batch of six. Two have already become law and hence the

four here. I think on the Promoters own admission there was a whole host of local authorities for their own private legislation.

1985. I think Dr Odin(?) had 50 in store but they have all been knocked on the head.

**(Mr Carter)** Yes, so a creeping effect; more than that, an avalanche. It is like a snowball. It starts off small and gets bigger and bigger and bigger and all of a sudden it consumes you.

1986. So is there anything more that you want to add for the Committee?

**(Mr Carter)** Yes.

1987. **VISCOUNT ECCLES:** Nevertheless, what you have told us is that these Bills that would have become Acts of Parliament have reduced the number of places where pedlars are able to trade, sensibly and profitably, but there are also other places where informally and outside the boundary of any private Act that it is very difficult or not sensible to trade?

**(Mr Carter)** Yes, my Lord, that is my submission and there are other local authorities. I have had countless times and I will give an example of Bath. In fact I believe this photograph is in Bath. That is not me, but we will talk about Bath. I had the council Enforcement Officer come to me with two police officers each side of him, and I had my small trolley doing bubbles, bubble toys. He said to me, "Right, you have 20 minutes". His exact words were, "You have 20 minutes to pack up and get out of town". I said, "Excuse me, what do you mean 'Get out of town'?" "Well, what I just told you." I said, "Well, I am trading as a pedlar, I am moving. I am looking for my customers. I have no need to get out of town". "Do you want to go down the station because if you do not move and get out of town. These two constables here will be arresting you and taking your goods." That happened to me and I tried to reason with the police officers and they were having none of it. They were almost, like, working together, "Let us get these pedlars out of here. Back me up, John. Back me up, Charlie". "Okay, yes, come on then. Let us give them some."

1988. **LORD STRASBURGER:** Under what legislation could they do that?

**(Mr Carter)** Under the incorrect interpretation of the (Miscellaneous Provisions) Act or case law. It was a way, my Lord, to bully. It worked. Not with me, but at one time they did have a problem in Bath with so many trolleys and I think I was the only pedlar there that day. Why did I stick to my guns?

1989. I must declare an interest. I live in Bath.

**(Mr Carter)** Sorry. Yes, my Lord, maybe you have seen me there blowing bubbles.

1990. I have not seen that.

**(Mr Carter)** No. Maybe you will see me there with my bubbles. But why did I stand my ground? Because Bath is the nearest town to me, living in

Chippenham and if I cannot protect my own right to trade on my doorstep I might as well throw the towel in. So the point I was trying to say is that the police more or less said, "You have been warned. We will be back in 20 minutes". Well of course my heart went, bom, bom, bom. I do not want palpitations. I do not want to get arrested. I am out to earn a living. But did they come back? Never saw sight or sound. It was a bluff. But how many times would a person stand up to them as I did?

1991. **CHAIRMAN:** Viscount Eccles, I will call you in one moment. It is probably the case that we have listened carefully and have been very concerned actually about what you have said. I think we have the message on that. I know Viscount wants to put a question.

1992. **VISCOUNT ECCLES:** It is just to ask the question, do you consider that there could be national legislation about pedlars which could improve the situation and create social cohesion between the pedlars and the authorities in the towns, or is that a forlorn hope?

**(Mr Carter)** I believe that national legislation can be a good thing, and I also firmly believe that the proceedings here today are being witnessed and national legislation will be based or modelled on what the outcome of your Committee's decision will be regarding these private Acts. I am no fool. I am all for national legislation of what constitutes a person trading as a pedlar. I am not against that because at the moment you can only rely on case law and unless a pedlar knows all the case laws there are, which I must say I know a lot of, and you are able to recite them in the street and counter the false charges that have been put to you by either the police – not so much the police, it is more the council but sometimes the police back them up, the sight of a uniform and all the rest of it. The police are not too much of a problem. It is the council. It is the Enforcement Officers. So I am in favour of national legislation and my concern is that national legislation is modelled so that it will enable us still to trade. That is all I am here for. This is my life, my future, and that is why I am so passionate about what I am telling you, my Lord.

1993. **CHAIRMAN:** Thank you.

1994. **MR CAMPBELL-LLOYD:** Thank you very much. I have no further questions from Mr Casey.

1995. **CHAIRMAN:** I must give Ms Lieven the opportunity to cross-examine should she wish.

Cross-examined by MS LIEVEN

1996. **MS LIEVEN:** Thank you, my Lady.

**(Mr Carter)** Now the work begins.

1997. No, not at all. I am going to ask, if I may, Mr Carter a few questions. I will then have raised the points with the Committee and I will not, I hope, have to ask other witnesses so many questions, but I will not be very long, Mr Carter. I just want to make sure, largely, on a few things that you understand the terms of the Bill. Can I work backwards through evidence, so start with Fixed Penalty Notices? As I understood your evidence, you said you would not have a problem with the Fixed Penalty Notices as long as – let us call them – the pedlar has a chance as to whether to accept the Fixed Penalty Notice or go to court. So it is not a mandatory Fixed Penalty Notice it is a choice of route. Did I understand your evidence right, first of all?

**(Mr Carter)** In a nutshell, yes, and the reasoning (this is my personal point of view) for example, if I park on double yellow lines and I know I have been there for an hour and they have not picked a ticket on or I am not disabled then I will accept a fixed penalty because I am guilty. So okay, “Yes, time is up £30”. “All right.” Equally, if I have been a pedlar and I have been stood there for half an hour or my trolley is outside of the size of what it should be then if I was offered, say, a £60 fixed penalty or go to the court over it, I would say, “Okay, yes, I am guilty. I know I am guilty. Hands up, I will pay the fixed penalty”. But I do not think that to not give the choice is fair.

1998. So can we be entirely clear, you are not a lawyer so you may not have appreciated that out the Bill. These Bills are not desperately easy to read. No Bills ever are. There is a choice. I can absolutely assure you that all the Bills give the choice to the person, “Either accept a Fixed Penalty Notice or wait and see if the council in question will issue proceedings”. The Committee has to trust me on this and then they will have their own legal advice, but if I am right as I understand your evidence you do not have a problem with the Fixed Penalty Notice regime.

1999. **LORD STRASBURGER:** Where is the choice?

**(Mr Carter)** Can I just add, please? I understand the question perfectly. So if the pedlar under this Bill said, “I do not accept a fixed penalty” then the officer will say, “In that case I am seizing your trolley and your goods”. Correct?

2000. **MS LIEVEN:** No, it may or may not happen.

**(Mr Carter)** They will have the power to do that in these Bills.

2001. I will come to seizure in a moment, if I may, Mr Carter. But so far as the Bills are concerned, there is no obligation on the pedlar to accept the Fixed Penalty Notice. They can say to the policeman or the council officer, “No, I am not accepting a Fixed Penalty Notice. If you want to you will have to take me to court”.

**(Mr Carter)** Then what will follow? Right, we are going to seize your trolley and goods. Correct?

2002. I have taken that as far, Mr Carter, as I can. Let us move on to seizure.

**(Mr Carter)** Because I am right.

2003. First of all, do you understand from the Bill that the officer or the policeman can only seize the goods if they have a reasonable belief that an offence has been committed?

**(Mr Carter)** Yes.

2004. Thank you. If they seize the goods if there are no proceedings the goods are returned. If there are proceedings and the person is acquitted then the person can gain compensation if the officer did not have reasonable grounds to believe. So there are compensation provisions within the Bill. Do you understand that?

**(Mr Carter)** Yes, but it is 56 days before you get your goods returned and the point is your implement and your stock is in council or whoever it is seizes your goods possession.

2005. There is a balance to be drawn, is there not, Mr Carter?

**(Mr Carter)** Yes, but there is ----

2006. Mr Carter, could you wait for me to ask the question because it will make things a bit easier. I do understand this is difficult but it is better if I ask the question and then you answer it. We will get on better. You can see, can you not, that there is a balance because no council is going to be keen to seize goods, take somebody to court, get them acquitted, have to pay the costs of the court and then have to pay compensation into the bargain. That is not something a council is really very likely to want to do, is it?

**(Mr Carter)** I would say that most pedlars are not strong or intelligent (I do not mean that derogatively) enough to challenge the council. I now many cases where people have had their goods seized and they have just said, "Oh I have had my stock taken off me. What can I do?" So basically they are not knowledgeable of the law. You are talking about somebody who is confident and knowledgeable of the law being able to challenge that seizure and win their case. Nine times out of 10 the pedlar would just say, "Oh what can I do? It is going to cost me hundreds of pounds to go to court. I will just let my stock disappear". That is the reality.

2007. I just want to follow up on this point, Mr Carter, because I think it is quite important that the evidence has a certain clarity. You know many pedlars who have had their goods seized. Presumably, that can only be seized by the police. That is not seized by local authorities.

**(Mr Carter)** Seized by the police, correct.

2008. Yes, and that must be on the grounds that the police are seizing the material as evidence for criminal prosecution.

**(Mr Carter)** Which they do not have under current law and the rules say you can apply to a Magistrate for the return of those goods and they are obliged to take photographic evidence which would be admissible under the rules of PACE. So, under the current seizure, most pedlars I know who have had their

stocks taken by the police have not even challenged to get the goods back. They do not want to walk into a police station. They do not want to appear in a court. All these things are intimidating. We are talking about ordinary folk, not top notch solicitors being able to fight their cases, and the costs of all this. My point is that seizure, although you state there are provisions most pedlars would not know how to go about it and would just say, "Oh I will just swallow it and I have lost my stock".

2009. So most pedlars would not know that they could go to the Magistrates Court and simply ask for the stock to be returned?

**(Mr Carter)** Yes.

2010. All right. Thank you. Can I then ask you a couple of questions about your Bath photograph please, because it is illustrative of a point?

**(Mr Carter)** Could I make a point? It is not my photograph, but I will comment on it if you want to ask questions.

2011. Do not worry. I am not going to ask about the detail of the stock. This is a trolley which according to the dimensions, yes, only has a cubic capacity of 0.72 cubic metres. Yes. But it has a width of 1.2 metres. Yes. So I am not a mathematician and I am not going to be able to work this out but you could make that trolley very significantly wider, yes, and as long as you keep it nice and thin you can keep your cubic capacity under a metre but have something that could easily cause an obstruction, could you not?

**(Mr Carter)** That is for the Committee to decide whether that causes an obstruction.

2012. Yes. But the simple point is that the cubic capacity does not tell you the level of obstruction it is going to cause because it all depends on how thin you make the trolley.

**(Mr Carter)** Well, if a trolley is thin it is not going to cause an obstruction, is it? If you are going to be stupid enough to turn it sideways to block the flow of people then, yes, I admit maybe some people do but if you are sensible that trolley will be turned in the direction of the flow so it will not cause an obstruction.

2013. But the advantage from the pedlar's point of view, Mr Carter, of making it very wide is that on what you want this Bill to do is to allow a very wide trolley on which can be displayed goods. So there is a significant advantage to the pedlar to make it very wide because you can display more goods on it.

**(Mr Carter)** Do you have a problem with ingenuity?

2014. I would have a problem with obstruction.

**(Mr Carter)** It is for the Committee to decide.

2015. I am right in what I say, though, Mr Carter, am I not ----

**(Mr Carter)** I am not going to agree with you.

2016. ---- there is an incentive on the pedlar to make these trolleys very wide because you can display more goods.

**(Mr Carter)** Well I call that ingenuity in adapting to comply with the law.

2017. All right. We will leave it to the Committee to decide between ingenuity and obstruction.

**(Mr Carter)** Correct. That is my point.

2018. Thank you.

2019. **LORD STRASBURGER:** Ms Lieven, can I ask you a question.

2020. **MS LIEVEN:** Probably not, but I will turn my back. Yes, of course.

2021. **LORD STRASBURGER:** I am looking through the Reading Bill and I am looking for the criteria that a policeman or authorised council officer can use to issue a Fixed Penalty Notice.

2022. **MS LIEVEN:** I think, my Lord, the way it works – and one needs to make sure that you read it with the right set of amendments, which I will not do – in essence clause 12 gives an authorised officer or a constable the power to give a person a notice offering him an opportunity of discharging the liability. So the criteria will be reasonable belief. Sorry, the reason I am sounding hesitant is that I do not have the right set of amendments.

2023. **LORD STRASBURGER:** No, sorry, let us just read the Bill as it stands.

2024. **MS LIEVEN:** Yes.

2025. **LORD STRASBURGER:** The test for seizure is what?

2026. **MS LIEVEN:** The test for seizure, my Lord, is (we need to go back to clause 6) again reasonable grounds now for believing that the person has committed a relevant offence, and the goods can then be seized.

2027. **LORD STRASBURGER:** Has the witness not got a point here, when he is saying that if an officer says he is going to issue a Fixed Penalty Notice and the pedlar says, "I am going to challenge that", the same criteria that the officer is using to issue the Fixed Penalty Notice are the criteria he would use to seize the goods. So what is his reaction going to be?

2028. **MS LIEVEN:** But, my Lord, I think there are two answers to that. My understanding of the way that the Bill works is if the officer said, "I am going to give you a Fixed Penalty Notice" or says, "I am not going to give you a Fixed Penalty Notice" if he has reasonable grounds to believe that an offence has been committed, he can seize the goods in any event, and in all probability would do so if he thought an offence had been committed because your Lordship and your Ladyship have already the evidence that it is the council's view that in many cases seizure is the most appropriate deterrent, and what

Mr Carter says is council officers are seizing quite inappropriately and pedlars do not understand they can go to the Magistrates Court. The other way of understanding the evidence, is that pedlars do not want to go to the Magistrates Court because they would rather take the economic loss of their goods and simply go on and trade somewhere else rather than getting a criminal conviction. So there are two ways to view that.

2029. But in terms of the concern Mr Carter has made about the new powers, the first answer is whether a Fixed Penalty Notice is served or not the officer can if there are reasonable grounds to believe an offence has been committed, seize the goods. So it is not an either/or. If, on the other hand, the kind of abuse of power that Mr Carter suggests has been undertaken, on which I make absolutely no concession, it is impossible to comment, but if there was such an abuse of power then the individual would clearly be entitled to compensation for the loss of the goods.

2030. **LORD STRASBURGER:** What I am driving at is you have two forms of sanction here, which both have identical criteria for determining whether they come into effect. Either the officer could issue a Fixed Penalty Notice or he could seize the goods or he could do both.

2031. **MS LIEVEN:** Yes.

2032. **LORD STRASBURGER:** Which is it going to be?

2033. **MS LIEVEN:** That is going to be a matter for the officer on the ground, but I would submit (I will be told by the others behind me if I am wrong) if the officer has reasonable grounds to believe that the person who is trading, let us call it like that, the officer believes is committing an offence, then there is a perfectly realistic prospect that the officer will say, "I am giving you the choice of a Fixed Penalty Notice and I am seizing your goods" because actually to do otherwise would be rather inconsistent in many cases.

2034. **LORD STRASBURGER:** In effect, the way this is written the officer is duty bound to do both, is he not?

2035. **MS LIEVEN:** No, my Lord, he is not. He is not duty bound. I am no criminal lawyer, and again I am going to look nervously at Lord Blair, but I do not think there could possibly be any duty to take those steps if there was a reasonable belief, but it is perfectly realistic to think that in many instances the officer would take that course.

2036. **LORD STRASBURGER:** Okay. Thank you.

2037. **VISCOUNT ECCLES:** Could I just ask how 6 actually works because 6 "relevant plant(?)" is defined as being under paragraph 10 and paragraph 10 is all about street trading and pedlars with a pedlar's certificate are not street trading. I am not legal, but I do not for the moment understand how 6 picks up pedlars.

2038. **MS LIEVEN:** I am sorry, my Lord, I am looking at the Reading Bill.

2039. **VISCOUNT ECCLES:** Oh I was looking at Nottingham.

2040. **MS LIEVEN:** It is a clause number change. I am sure I understand your Lordship's point but it might be better if we both looked at the same Bill.

2041. **VISCOUNT ECCLES:** I will look up Reading immediately.

2042. **MS LIEVEN:** I will look up Nottingham.

2043. **VISCOUNT ECCLES:** I am guilty of a misreading because I have to say that I did read as 6 and the fixed penalty point as being aimed as street trading as a whole, not just being aimed at pedlars, and therefore there is the complication that legally pedlars are not street traders.

2044. **MS LIEVEN:** My Lord, that involves going back to the meaning of street trading under the Local Government (Miscellaneous Provisions) Act, and if you go back to clause 4 of the Bill the reference there to street trading. The point is that street trading starts by meaning covering anybody who is trading on the street. Then there is an exclusion for somebody who is trading as a pedlar, which is not just a certificate but is also the moving.

2045. **VISCOUNT ECCLES:** It is a certificate and it is case law, is it not?

2046. **MS LIEVEN:** It is certificates and it is case law.

2047. **VISCOUNT ECCLES:** The definition of moving is something which, if you put a really good case in front of Magistrates or a higher court, you might find it was different from this 15 minutes we have all been assuming.

2048. **MS LIEVEN:** You might, my Lord, the nature of the common law is that the case law can change although of course, equally the nature of the common law is that it changes and the legal presumption is that the law has always been the same. So the offence that leads to the reasonable belief in clause 6 is an offence but it can include somebody who purports to be pedalling but is not meeting the law on pedalling, because they would be caught by the definition of street trading. You are only excluded under the Local Government (Miscellaneous Provisions) Act if you are pedalling in accordance with the meaning of the 1871 Act.

2049. **VISCOUNT ECCLES:** I understand that. My problem is that I think I will maybe need to think about it further. But it is quite difficult to believe that, for example, a Community Support Officer, which is mentioned in one of the Bills, would ever be into this subject in enough detail to avoid the sort of problems that we have been hearing about.

2050. **MS LIEVEN:** My Lord, I think there are two answers to that. Clearly, enforcement officers or authorised officers, whoever it is that is working on the

street for the councils are trained in the job of enforcing street trading. So it is not that they are just any council officer who has been plucked out of the council offices, it is although I am conscious that in Manchester and Bournemouth I think an undertaking was given to the Committee as to training, and I have very little doubt that the Promoters would give – I would have to take instructions – but first of all local authorities routinely train their officers and that is just part of their proper processes, but if the Committee are concerned about the level of training of officers then there are ways. The Committee can ask us to give an undertaking similar to Bournemouth and Manchester and I have ----

2051. **VISCOUNT ECCLES:** Which is what happened last time.

2052. **MS LIEVEN:** Which is what happened in the Bournemouth and Manchester Bill.

2053. **VISCOUNT ECCLES:** If we were doing a completely thorough job we would do some post evaluation of how that worked.

2054. **MS LIEVEN:** My Lord, I can only say on behalf of the local authorities I represent that regardless of what one sometimes reads in the press, local authorities are extremely keen not to get the law wrong and to ensure that their officers are acting lawfully and competently. So the Committee can put a fair amount of reliance on the fact that training will happen in any event, but if there is any concern then I can take instructions on giving an undertaking.

2055. **CHAIRMAN:** Thank you, Lord Blair.

2056. **LORD BLAIR OF BOUGHTON:** Yes. Again, this is a difficulty, we are always asking you to give evidence. What I am actually asking you to do now is to consider taking instructions. My concern now is that the seizure – I know you said it is not entirely necessary but frankly seizure is a strong possibility once an officer has decided – at whatever time – a reasonable relief that an offence has been committed. It does seem to me that the Bills are missing a small piece of modern technology, which is sitting in front of us, which is photography. The court would accept that that is a photograph of the matter in question and the 56 day rule seems to impose a serious penalty on traders, and whether or not there is some possibility that at some time there will be changes to this, we could look at the fact that the first step would not be a seizure but there would be photographic evidence, and only in cases of repeated offending that the seizure process came into play, even (several inaudible words), all of those about reasonableness and so on. (several inaudible words). I can quite imagine circumstances where somebody could be extremely obstructive on the first occasion and in the end commonsense (several inaudible words) the reasonableness here by the fact this is not the most serious offence in the world, and the idea that

somebody's goods and chattels are taken away for three months on a first instance, on suspicion, is quite a strong statement, is it not?

2057. **MS LIEVEN:** Yes.

2058. **LORD BLAIR OF BOUGHTON:** It is not for you to answer that but perhaps in the course of other directions that might be something (several inaudible words).

2059. **MS LIEVEN:** Can I say two things. One is those behind me will have heard what your Lordship said and, without me formally asking for an adjournment to take instructions, I am sure they will consider it. The other is I think it is important to be absolutely upfront about this. As I have I hope made clear earlier, the seizure powers are not only for the purposes of evidence they are also for the purposes of forfeiture. Now, that strengthening your Lordship's concern not limiting it, but I do not want there to be any suggestion that I have misled the Committee in that regard. We will think, my Lord, as to whether there is any way of mitigating that impact without making life so complicated that it disappears down its own plug hole.

2060. I was slightly deflected in cross-examining Mr Carter. I think those were all the questions I had. Thank you, Mr Carter. Can I just have a moment? (After a pause). I will take instructions, my Lady, I think, rather than trying to deal with this on the hoof.

2061. **CHAIRMAN:** All right. Ladies, and gentlemen, you may have heard me at the beginning. Poor Mr Campbell-Lloyd could hardly be stopped speaking when he was not speaking, and I am conscious that we have had an extremely valuable witness here and I think we have all been very concerned at some of the things he has said. You have a perfect right at this point to re-examine and because we have asked our questions, I am not going to be too hard and I will give you another half an hour. I do not know how many more witnesses you want to call. Four. I am afraid we shall have to ask you to be a little more brief with them. We have a very strong message already, but I do not want to stop you and you have a right to re-examine or call your next witness.

Further examined by MR CAMPBELL-LLOYD

2062. **MR CAMPBELL-LLOYD:** Thank you very much. Mr Carter, do you have a street trader's licence?

**(Mr Carter)** No.

2063. But you are a trader in the street?

**(Mr Carter)** Correct.

2064. Are you aware of an offence for engaging in street trading?

**(Mr Carter)** Sorry?

2065. Are you aware of the offence for street trading?

**(Mr Carter)** Yes, I am.

2066. That is clause 10 of the Local Government (Miscellaneous Provisions) Act. So, on the issues that we have just been discussing, seizure and NPS can be applied to a pedlar simply because you do not have a licence from the council to be a street trader.

**(Mr Carter)** If they so wish, yes.

2067. That is the degree of concern that we have, and my next witness will bring forward evidence of exactly how that works. So I have no further questions. Thank you, Mr Carter.

2068. **CHAIRMAN:** You have four more witnesses. For proceedings being properly conducted, I must ask any Member of the Committee if they wish to ask any more questions. All right. Thank you.

The witness withdrew

2069. **CHAIRMAN:** If we ask you Mr Campbell-Lloyd, please, bearing in mind what has been said, I propose to give you perhaps 45 minutes, which seems fair, and if you will proceed now to call your witness for the Leeds and Reading Bills.

2070. **MR CAMPBELL-LLOYD:** Thank you very much. I call Ms Naomi Aptowitzer. If you could come to the chair. Thank you very much.

MS NAOMI APTOWITZER called  
Examined by MR CAMPBELL-LLOYD

2071. Could you please confirm to the Committee that you are Naomi Aptowitzer and you live in London?

**(Ms Aptowitzer)** Yes, I do. That is correct.

2072. (After a pause). What is your occupation?

**(Ms Aptowitzer)** I am a consultant, freelance consultant tutor.

2073. A freelance consultant tutor.

**(Ms Aptowitzer)** And suspended pedlar.

2074. But also a suspended pedlar. So you are also a pedlar. So can you tell the Committee the scale and proportion ----

2075. **LORD STRASBURGER:** Could you speak up a little bit.

**(Ms Aptowitzer)** Yes, certainly. Sorry.

2076. I got it all, but ----

**(Ms Aptowitzer)** Okay.

2077. **MR CAMPBELL-LLOYD:** If you could tell the Committee the scale and proportion of your apparatus as a pedlar.

**(Ms Aptowitzer)** Yes, I had a shopping trolley size, which was roughly that wide and about 3 feet off the ground, and about that in depth. It was a standard shopping trolley that you would take through any major High Street supermarket.

2078. So it is less than a cubic metre?

**(Ms Aptowitzer)** Yes.

2079. But larger than perhaps a briefcase that we can see under people's feet?

**(Ms Aptowitzer)** Yes, very similar to the size of that briefcase, a little bit larger than that suitcase.

2080. Okay. Like a baggage suitcase. Could you please tell the Committee what proportions of research you undertook before setting out to trade as a pedlar?

**(Ms Aptowitzer)** I did a little bit of research on line and came across Robert's wonderful website *pedlars.info* and I got some information from that. I also contacted my local police station who were the ones that issued the certificate and they gave me some information.

2081. Did you approach the council or was there no reason to approach the council?

**(Ms Aptowitzer)** No, I did not approach the council at all, no.

2082. Were you ever told by anybody that a pedlar was restricted to be a door to door seller?

**(Ms Aptowitzer)** No, at no occasion was I told of any restrictions whatsoever. In fact, I saw the Pedlars Act and read through it online and saw that you could pretty much go anywhere nationwide in the UK and Wales I believe.

2083. Yes. What did you consider was any restriction on your trading activity? Were there any restrictions?

**(Ms Aptowitzer)** Yes, I remember there were restrictions on selling food, I believe, and other items, and that you had to continue moving and you could only stay stationary for 15 minutes and you were not allowed to set up a static pitch.

2084. So at some point you must have begun trading in London, and could you please tell the Committee what boroughs you worked and what were your experiences in those boroughs.

**(Ms Aptowitzer)** I began trading straightaway in Brent and was very excited, the first day of getting my certificate, my permanency status. I was very happy and proud to be a pedlar. I was really excited, had my goods. I was made redundant from my job and was forced to claim benefits, and I did not want to claim benefits anymore I wanted to be self-sufficient and I wanted to

create a future for me and my family. So I saved up a bit of money beforehand and I purchased some goods, some horns. There was an event on at Wembley so I proceeded to see if there was any possibility of trading in Wembley. So Brent was the borough.

2085. Okay. So you went out and you had an experience in Brent that perhaps has brought you here today.

**(Ms Aptowitzer)** I did.

2086. Could you tell us about that experience?

**(Ms Aptowitzer)** Well, I was moving around the streets in the locality of Brent, Wembley Stadium to be precise, and I was approached on a few occasions for the goods that I had in my possession and people were really interested, and one police, WPC, she was on horseback, saw the items and requested that have I got a licence for them. So I was quite happy and proud to get out my new fresh pedlar's certificate and I passed it up to her, and she took it from me and she said, "Oh that is great. Well, good luck. Hope you sell some". So off I went. Literally, two minutes later I was stopped by two Trading Standards Officers accompanied by two police officers, not Community Officers, two police officers. So the four of them stopped me and inquired about what I was doing. I said that I was walking around and I produced this pedlar's certificate and gave it to them. The officers unfortunately did not want to know. The Trading Standards officer said to me, "Right, you are not a pedlar. I have seen you selling one of your items and I am now seizing your goods". I said, "I am a pedlar" and I showed them my certificate, and he said, "It does not matter". So at that point the two Trading Standards officers began to grab at my goods. I said to the police officers, "Excuse me, they are not allowed to do that. I am legal and I have a legitimate certificate, which entitles me to trade". I had a trolley so I was moving. I was not static at all. A lady came up to me. I did not hassle anybody. They said, "Well, it is nothing to do with us. We are just here with the council to keep the peace".

2087. **LORD GLASMAN:** Can I ask ----

**(Ms Aptowitzer)** Of course you can, yes.

2088. I am very interested to hear your evidence. Note seen. Were they doing this to other pedlars or were you being singled out because you were new?

**(Ms Aptowitzer)** If you allow me to answer hypothetically, afterwards I found out that they had targeted other people as well, so I know it was not just a ----

2089. So it was not a ----

**(Ms Aptowitzer)** But at the time I did not know that they were targeting me or anyone really. I found out afterwards.

2090. **MR CAMPBELL-LLOYD:** So in Brent you stood your ground?

**(Ms Aptowitzer)** Yes, because ----

2091. Trying to defend yourself?

**(Ms Aptowitzer)** Yes, absolutely. I was so proud to have this. People had written in witness statements about my good character and the fact that I worked with young people, or disadvantaged young people and I trained them and educate them in environmental issues, and I was proud to try and raise some money to stand on my own two feet and set up my business and this is what it was going towards. So I did stand my ground, yes, I did, and I wanted to know why they were seizing my goods and he said it was because he did not think I was a pedlar, and I asked for why when I had a certificate and he said, "Because you were not going from door to door or house to house".

2092. I think that is a key point just to listen to because it is an interpretation problem that perhaps you considered that you were going house to house under the expression of the Pedlars Act, town to town which was not (inaudible)?

**(Ms Aptowitzer)** That is correct.

2093. So it was not very helpful that you stood your ground. So then something more must have now happened. What happened next?

**(Ms Aptowitzer)** So they had continued to seize all of the goods that were inside the small trolley and handed me a certificate, a small note, like a receipt for the goods and then they did not prosecute me or say they were going to do anything. They just seized the goods. So he said, "Can you call me next week?" or something. So I called the next week and said, "Can I have my goods back?" and he said, "You can have your goods back as long as you accept a caution", which I questioned and queried. I did not understand why I was given a caution. I did not understand I had done anything wrong. So I sent an email to him, the Trading Standards Officer and his line manager, saying I was unhappy with what had happened, and then I got a letter through saying I was being prosecuted under the London Local Authorities Act for unlicensed street trading for which, I am sorry, but I just was not prepared to accept. As far as I was concerned I was innocent. So I got taken to court and obviously I cannot discuss the details of the case because it is going to appeal, but I did get found guilty of unlicensed street trading on the grounds that I was deliberately going out to trade.

2094. I think the charge was "Trading without a licence".

**(Ms Aptowitzer)** That is correct, yes.

2095. And not being at the door of a house.

**(Ms Aptowitzer)** Yes, so there was no specific rule; there was no demarcation from what house to what house or what distance were you allowed to sell in between somebody's house. You have to only sell on the doorstep of someone's house. There were no clear guidelines whatsoever. I had had no warning. I had nothing at all.

2096. **CHAIRMAN:** Could I just tell you that ---

**(Ms Aptowitzer)** Yes, sorry.

2097. ---- really, the rules confine you to speaking to something that happened in Reading.

**(Ms Aptowitzer)** Right. Okay. No problem.

2098. We have heard very carefully what you have said. Please go on.

2099. **MR CAMPBELL-LLOYD:** The reasons of course that we have to consider what the application of these Bills is that we cannot consider the application in Reading, we have to consider where the Bills have been enacted, and of course that then shows the Committee how they are applied and that is the purpose for Ms Aptowitzer to appear here, to enable us to see what is the implementation of the power of these Bills. So forgive me if I have strayed from the Reading situation, but that inevitably will be the position in Reading should these Bills be enacted.

2100. **CHAIRMAN:** I know we have all heard with great care what has been said, but please try and keep within the rules that do exist.

2101. **MR CAMPBELL-LLOYD:** So is the process of appeal ongoing?

**(Ms Aptowitzer)** Yes.

2102. So you never trade door to door, is that correct?

**(Ms Aptowitzer)** No, I have never traded door to door.

2103. Why not?

**(Ms Aptowitzer)** Just personal safety really, I would not feel comfortable knocking on people's doors and asking them would they want an item. It could be lots of people are not on. Lots of people are always busy. I prefer the idea of trading on the street so I get to see things. I get to witness things. I get to be in an environment where I feel actually more safe because I am around members of the public, and I was also quite inspired by the whole idea of being an entrepreneur and actually mingling with the public in an open public space. You can go down some quite dark alleys and people you meet you never quite know. Do I go to estates? It is just that sort of feasibility. It is Lord Sugar that inspired me in some degree to get out there on to the street, so yes.

2104. Now that you have reached the position with the offence of trading without a licence. If it goes the way the council would like you will end up with a criminal record, and how would that affect your work.

**(Ms Aptowitzer)** Well, sorry to talk about this again but they have found me guilty of that and that will impact hugely on my work, because I work with vulnerable children and vulnerable young adults, so I have to have an enhanced CRB, which means that if they are anything to do with trading I teach business and entrepreneur and I teach that at NCSE level. If it comes down to me not getting a job or getting a freelance contract because of

that on my criminal record, that will have a severe impact on my ability to create my own personal income.

2105. Thank you very much, Ms Aptowitzer. I have no further questions.

**(Ms Aptowitzer)** Thank you.

2106. **CHAIRMAN:** Is there anything you want to ----

Cross-examined by MS LIEVEN

2107. **MS LIEVEN:** My Lady, I will try cross-examine. It might be easier to (several inaudible words) to the Committee.

2108. Ms Aptowitzer, this incident took place in Brent, yes.

**(Ms Aptowitzer)** Correct, yes.

2109. So you are well aware of the fact that in Brent the London Local Authorities Act 1990 has a provision that: (1) the only form of acting under the Pedlars Act 1871, which is exempt from the street trading regime, is trading door to door?

**(Ms Aptowitzer)** I was not aware of that at all.

2110. You are aware of that now that there is an Act in force that applies to Brent, which means that you cannot rely on your pedlar's certificate, except door to door.

**(Ms Aptowitzer)** Right, but first of all I was not aware of that at the time. When I was issued this, the officer, the Sergeant, did not actually tell me. If anything the Sergeant said to me, "You are not going door to door are you?" So that tells you that there are grey areas even within the system's understanding of how this pedlar's certificate should be applied.

2111. I should have made it clear, Ms Aptowitzer, I am not asking you questions about why you were convicted, what happened on the day, whether it was reasonable for the officers to take the steps, I just want the Committee to be absolutely clear about the legal situation. In Brent that Act applied and the other aspect of that Act is that there is an express power of seizure in that Act, seizure not just for evidence but also for forfeiture. I expect that has been explained to you subsequently.

**(Ms Aptowitzer)** It was explained after the fact, yes, and also in terms of the door to door it is like there is national policy, does the national law of the Pedlars Act supersede the local law or which ones come first, and that was never made clear.

2112. I am not here to investigate what happened in Brent but it is really important the Committee understand the legal background to what was happening in Ms Aptowitzer's case. Those are the only points I wanted to make, my Lady.

2113. **CHAIRMAN:** Thank you.

2114. **LORD STRASBURGER:** Can we have a look at the certificate. We have not seen one yet.

**(Ms Aptowitzer)** You are welcome to have a look at what I was given, and the amended date was made by the officer, not me. She made the mistake.

2115. **CHAIRMAN:** Mr Campbell-Lloyd, do you want to re-examine?

2116. **LORD GLASMAN:** Just a note to BIS. If the Pedlars Act of 1871 and 1881 was upheld on the pedlar's certificate. The point being that the 1982 and the London 1990 cut right against it. So what we have is something hugely complicated and which are actually contradictory because the status of the pedlar was what was actually in 1871 continued from 1690(?). The status of the pedlar was a national status and now it is not.

**MR CAMPBELL-LLOYD:** There is an exemption for a pedlar to act under the London Local Authorities Act, the LGMPA, all of these if found to be acting as a pedlar. Now, that is where the difficulty lies. To prove that you were acting ----

2117. **LORD GLASMAN:** That is the law applying in Brent?

2118. **MR CAMPBELL-LLOYD:** That is the law applying in Brent. The exemption exists for acting as a pedlar. Acting as a pedlar is somebody who goes town to town or to other men's houses, just as it says "house to house". That is an exemption but the exemption is not engaged by the Counsel because they are taking Ms Aptowitzer to court because she does not have a street trader's licence. She is not licensed and that is the problem.

2119. **LORD GLASMAN:** What I am raising is it is actually a common mistake -  
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2120. **VISCOUNT ECCLES:** These things have happened not because of amendments to the 1871 Act but amendments to the 1982 provisions?

2121. **MR CAMPBELL-LLOYD:** That is not an amendment. That is the provision in the Act itself, the Local Government (Miscellaneous Provisions) Act, and now we are talking about the possibility of amendments to that to make it clearer, to preserve the protection of an exemption for Ms Aptowitzer to operate as a pedlar in those jurisdictions, but it does not work in practice is the reason that Ms Aptowitzer is here today.

2122. **MS LIEVEN:** This is not a desperately easy area but I think the Committee probably has to be told. The Local Government (Miscellaneous Provisions) Act does not apply in London and never has applied in London. There is a parallel but different statutory regime in London. I have a senior solicitor from Westminster sitting behind me, happily. So I can be confident on that. What is happening in London, I would suggest to the Committee, probably should be rather set to one side.

2123. **MR CAMPBELL-LLOYD:** I have to disagree with that because, to put the record straight, under the Local Government (Miscellaneous Provisions) Act there are eight entries for people who are not street trading, eight different categories. In the London Local Authorities Act there are also several, maybe six or seven, categories reflecting exactly those categories in the Local Government (Miscellaneous Provisions) Act.

2124. **CHAIRMAN:** Could I just say, Mr Campbell-Lloyd, thank you but the Committee will be able to take legal advice because this is a legal judgment. So do not worry about that point. We will cover it.

2125. **MR CAMPBELL-LLOYD:** Thank you very much. My timescale is 4.45?

2126. **CHAIRMAN:** Yes.

2127. **MR CAMPBELL-LLOYD:** Thank you very much. I have no further questions. Thank you very much.

2128. **CHAIRMAN:** Is anyone wanting to say anything else? No. Next witness then.

2129. **LORD STRASBURGER:** I am just wondering if I could have a copy of that? Would you mind if we have a copy of it?

**(Ms Aptowitzer)** No, not at all.

2130. **CHAIRMAN:** Thank you very much. You have been very helpful.

**(Ms Aptowitzer)** Thank you.

2131. **MR CAMPBELL-LLOYD:** I would like to call Mr Frankie Fernando, if I may, back to the witness chair on the Reading Bill and if I could ask ----

2132. **CHAIRMAN:** Yes. Could I remind you, he would be well aware, he has already spoken on the Canterbury and Nottingham.

2133. **MR CAMPBELL-LLOYD:** Yes.

MR FRANKIE FERNANDO, recalled  
Examination by MR CAMPBELL-LLOYD

2134. **MR CAMPBELL-LLOYD:** Mr Fernando, we do have reference to last week. So we know who you are. We have now heard from the Promoter's witness on Reading Borough Council, Mr Jean Champeau, and I understand that you have had dealings with Reading Council and, in particular, Mr Champeau and produced an exhibit A, which is the document that is being passed around for the Committee. (Document circulated)

**(Mr Fernando)** Correct.

2135. Could you please explain the significance of this exhibit to the Committee?

**(Mr Fernando)** Absolutely. When I gave my evidence last week I did not make it clear how I operate. Because we have got over 100 pedlars working for us and I know the councils say they would like control of us, what I try to do is I try to work alongside the councils. The way I try to do this is I give them a call and explain about my business and say, "I would rather book in with you than turn up in your town". I have done this with over 100 councils and, up until today, it only worked with four councils who are willing to work with me. That is Graves End, Dartford, Chelmsford and Hastings, who I have a fantastic relationship with. Probably over the last three or four years I have received 60 emails from each where I have booked in. When we worked in Reading the first time a licensing officer approached my guys. He was very abusive and he said he would call the police. My pedlars then called me. I said, "Let me call the police. Wait for the police officers to come along". So this is what they did. My agents explained to the police officers exactly what we were about. The police officer then came on the phone to me and said, "No, looking at everything, I have seen the paperwork, you have every right to be here". The following day I then approached Reading Borough Council and I said to them, "Look, rather than coming in to your town - you say that pedlars cause obstruction - I am willing to book dates in with you rather than turning up. So if you told me you have XYZ going on in that town today then I will stay away". They did not want to know and that is why the follow-up email. I sent the email to them afterwards because I do not believe it is about obstruction and I think this email shows it.

2136. Thank you. I have no further questions.

2137. **LORD BLAIR OF BOUGHTON:** I have a question. Did you get a reply?

**(Mr Fernando)** They did not bother replying, no. I spoke to Ms Shepev(?) on the phone. They were very rude, very arrogant to me. I said I would follow it up by an email, which I did, and they never bothered to reply.

2138. **CHAIRMAN:** Does anyone else want to say something? All right. Ms Lieven?

2139. **MS LIEVEN:** My Lady, I do not think it is going to help, so I am not going to ask any questions.

**(Mr Fernando)** I am sure you are not.

2140. **CHAIRMAN:** Thank you very much. It was very brief.

**(Mr Fernando)** Thank you very much.

2141. **MR CAMPBELL-LLOYD:** Thank you very much. I would like to call Mr Nicholas McGerr. We have two documents to hand around. (Document circulated)

MR NICHOLAS McGERR, called  
Examination by MR CAMPBELL-LLOYD

2142. **MR CAMPBELL-LLOYD:** Perhaps while that is being passed around I can introduce Mr Nicholas McGerr who has a banner on his desk. Ms Fulton, do we have a nametag for Mr McGerr to assist the Committee?

2143. Mr McGerr, could you please tell the Committee your name and where you live, please?

**(Mr McGerr)** My name is Nicholas McGerr and I live in Somerset, near Glastonbury.

2144. Could you please confirm your occupation and what other activities you do in regard to these Bills?

**(Mr McGerr)** I am a pedlar with a certificate and I also work as a consultant to other pedlars and to people in marketing and business and also I spend quite a lot of time on the Internet because we see parallel issues to deal with in terms of pedlars and pedlary and so on. I seem to be quite informed because I was a Petitioner with the Bournemouth Bill and I was also an Agent for the Manchester City Council Bill. I think people have probably picked up on the background to those particular Bills and now they are Acts, of course.

2145. Could you explain to the Committee why you became a pedlar?

**(Mr McGerr)** It might seem strange to say, but I think it was more or less a matter of principle in as much as I was attracted to it initially through seeing something in a theatre where somebody was walking out on a stage as a pedlar. It was a Dickens play and that was set in Covent Garden in London. I investigated what it was about and found that I could be a pedlar. My personal circumstances do not matter but at the time I did not particularly need to be a pedlar but I felt that I wanted to pursue it in terms of my interest in cultures, in street activities, theatre, music and so on. I thought that was a very social activity with an economic interest and so I started working in Westminster. I then discovered about the Westminster Bill that was coming through, in fact mainly through the local police; the chief superintendent of Charing Cross saying various things to me at various times, asking me questions about the Pedlars Act and my reaction as a pedlar and so on. I started to get wind of what Westminster were proposing and so I followed that through more or less to its completion from being a Bill to an Act. Unfortunately, I did not petition against it because I was not really aware of how one goes about that and I did not notice it in the *London Gazette* or anything else, but when it came into effect I saw the impact it had upon activity in Westminster and how grievous it was. In fact the same ----

2146. **CHAIRMAN:** Could I just draw your attention, Mr McGerr, to the fact that the question you were asked is why did you become a pedlar. We were all hanging on your every word and you veered off on to another subject altogether. Please could you confine yourself in this response to your answering the question put to you by Mr Campbell-Lloyd.

**(Mr McGerr)** Yes, certainly. The particular circumstances I was in at the time, it was about 1998, I was on fairly reduced means and I found out about being a pedlar and I took that up as an occupation.

2147. **MR CAMPBELL-LLOYD:** For how long have you been a pedlar?  
**(Mr McGerr)** Since then.

2148. Since then? So 10 or 15 years, 1999 to now. For how long have you been involved in a consultative role?

**(Mr McGerr)** Prior to that, most of my adult life really in various businesses.

2149. Do you make money from being a consultant?

**(Mr McGerr)** Not currently I am afraid, no.

2150. Have you ever engaged in any other consultation concerning pedlary and perhaps with whom?

**(Mr McGerr)** I have been joined into the BIS consultation which started off as being a consultation about street trading and pedlar laws. I now understand it has been changed somewhat in as much as they have decided to concentrate on the Services Directive, which I have not actually been approached about in any formal way.

2151. The nature of the consultations has extended beyond BIS to other Departments, to other bodies?

**(Mr McGerr)** Yes. It has been mentioned here today that there is an issue here of a clash between statute and essentially the Local Government (Miscellaneous Provisions) Act and the Pedlars Act. That is my interest. I have tried to find out how it is that people can be prosecuted through this process of Private Bill arrangements which stem from the so-called unique Westminster Bill, which more or less has followed through all the others. I cannot quite understand how it is that a Private Bill can have such a public effect, which indeed it is doing. So I have asked my Member of Parliament to ask the Attorney General this question. He fielded the question back to BIS who simply have fielded it back to me saying that it is allowed for, without actually going into detail. However, I do feel there is a detail in this and it is written quite clearly in *Erskine May* that there is a difference between a Private Bill and a Public Bill and I feel that these Bills are not private. They are in fact public.

2152. Is it fair to summarise that your particular interest is in the matters of principle?

**(Mr McGerr)** Yes, absolutely. I think, again, it comes down to this Services Directive issue. I have not gone extensively through it but certainly I have heard enough about it here today and I have picked up many points that Counsel has raised in terms of her Bills conforming with the Services Directive, in fact the current UK provision for Services Regulation. Essentially the European Directive is to do with the social and cultural life of the community. Of course, there is an economic interest in that in as much good social and cultural life leads to good economic activity. It is a *sine qua non* as far as I am concerned and the fact that you wish to destroy that - I say "you", I do not direct this to anybody but "one" does - or if there is a move to destroy the

social and cultural fabric of society then the resulting economic decay is inevitable.

2153. Those principles that are engaged or challenged by these Bills concern you and perhaps they have an effect on the Pedlars Act that you could explain to the Committee

**(Mr McGerr)** I am not sure that I can explain it, Lady Chairman. Essentially my understanding of the Pedlars Act is it is the most magnificent and unique piece of legislation in the British Isles. It is possibly the only statute that actually allows you to step out of doors and go anywhere and meet up with people without hindrance and certainly it came in, as far as I understand, to obviate the difficulties of the Town Police Causes Act which essentially said that if you went up bothering people you were a nuisance, if you went banging on doors you were a nuisance, and the Pedlars Act removed that difficulty. At the same time as that it allowed for a tremendous explosion, well, not explosion but an increase in entrepreneur activity and the survival of probably quite a few livelihoods. Sorry, I have forgotten the question.

2154. **MR CAMPBELL-LLOYD:** Exactly how does it affect the Pedlars Act, but you mentioned the Town Police Clauses Act, is that still the current Act?

**(Mr McGerr)** As far as I understand, yes.

2155. This is to do with disturbing people at their doors?

**(Mr McGerr)** Precisely, and again, I think I can go back to your previous question, this is exactly the clash that we get involved here with these private Bills coming in saying you have to go door to door, and in fact I pick up the Counsel's comment that the London Local Authorities Act, and so on, states door to door. No, it does not. These Bills are now stating directly what their intentions are to force pedlars to go door to door. The original Acts do not say that. They say by means only of going from house to house, only by means of going from house to house. Now that is a matter of interpretation because in the Pedlars Act, in fact one does go to other men's houses, so it is a matter of moving and moving about and going about. These Bills are completely unclear as to what that interpretation is and it has not been brought forward in a court of law as I understand it, and therefore to press ahead with these Bills at this point is raising all these clashes. These Bills clash with the Town Police Clauses Act. They force people to go and knock on doors. They are likely to cause a public nuisance and also they clash against the Pedlars Act, and I know it has been said that this is an amendment to the Local Government Miscellaneous Provisions Act but in actual fact it is a direct move towards altering the Pedlars Act.

2156. So the process that we are involved in here in this Select Committee is for you a conflict between private business and public business?

**(Mr McGerr)** I am not a lawyer obviously but there is certainly clash in terms of these Bills, and yes.

2157. So if I can just go back to the Bills now and I ask if you have considered if there are any principal issues with amending the Pedlars Act through the LGMPA, the Local Government Miscellaneous Provisions Act?

**(Mr McGerr)** Sorry to backtrack on your questions, but you asked me about the consultation. The consultation we have had with BIS, and I am very sorry that they have ignored us to date, early on in Manchester when I was the Petition's agent there, a very large group of pedlars met and had open conference with Durham's researchers and several questions were put forward as to how the Pedlars Act could be improved to bring it up to date. As far as that is concerned, all pedlars were agreed and there are many avenues that could be pursued along those lines for it to remain a public Act. BIS intends to abolish it. If they abolish it then there are no safeguards for pedlars whatsoever. As far as the other Acts are concerned, they threaten the identities of every single individual who is carrying a pedlar's certificate.

2158. Does that have a long term effect on those who might become a pedlar?

**(Mr McGerr)** I think the implications that have been heard today, it is not exactly my evidence, it has been here declared by Counsel and others, the effect of the FPNs and the seizures are likely to increase the level of criminality, and there is reference to this. It is referenced in Hansard, in actual fact, to a Parliamentary committee by a member of Westminster Council who said that following the introduction of the Westminster Act, the level – I cannot remember his exact phrase, but certainly those persons who were avoiding street trading regulations, unlicensed persons, possibly rogues, maybe others, were on the increase and had not diminished, and in fact it had made no impact whatsoever in terms of diminishing illegal street activity. As far as the FPNs and seizures are concerned, this thing about there being a fair balance is a nonsense. Anyone who is caught in that situation, who may or may not have a pedlar's certificate – that is immaterial – is more likely to avoid paying the FPN, to disappear and to carry out some other criminal activities. It is more likely to lead to further criminality. I do not see it as being a good or constructive law in any sense.

2159. **CHAIRMAN:** A warning, Mr Campbell-Lloyd, you have rather just over 10 minutes. I do not know whether you ----

2160. **MR CAMPBELL-LLOYD:** I am aware of that and I am pretty much going to that point. So you achieved some success in opposing the Bournemouth and Manchester Bills in two capacities, I believe. Firstly, you were the Parliamentary agent for Petitioner and indeed you petitioned against the Bill yourself. Were you content with the outcome on the Bournemouth and Manchester Bills?

**(Mr McGerr)** No, fundamentally not. We were asked by the Committee in the other House to put forward proposals, which we did very rapidly. They were accepted by the Committee. Counsel received them. I believe they are still that same document and when that was transcribed into the Bills that then became the Act, several elements were significantly missing, such that,

in fact, I believe it was Judge Manning(?) who had picked up on the fact that pedlars do not have to remain in constant perpetual motion but may in fact proceed through towns and streets and do their business. I did wish that the words, "a pedlar may go from house to house or to trade in the street", should be part of those Bills. In fact when they were written into the Act that was ruled out and again we are back to this door to door business the Council is so keen to pursue, and as far as the other elements are concerned all the various elements of how far you move, how you can move, where you can move, how long you can move and so on, as we have heard, they are challenged within court case precedent. In actual fact those two Bills – and I do not know yet whether there have been prosecutions of anyone – as far as I am concerned looking at it, not being a lawyer, they are unworkable in as much as the word "trading" means, as it does for street trading and peddling, display of goods and wares, and that is trading. That can carry on for any amount of time to have made the possible completed trade of whatever sort. It could be trading Turkish lights, for instance, but there you go. It is another issue.

2161. So were you content or were you able to tolerate the cubic metre capacity?

**(Mr McGerr)** As far as I am concerned, it does not affect me directly but I can see again it is an absurdity. Again it is displaying wares, again we need to define this difference about how you go from one place to another, again it limits the size of objects that can be sold. That is a restraint of trade. I think again it is probably against, well, trading conditions full stop, let alone the Services Directives.

2162. You yourself, how large is the apparatus that you use?

**(Mr McGerr)** I am a mobile pedlar. I tend to carry my goods, a variety of different novelties and things like that, and I enjoy it as I did the first time round seeing people with a tray around their neck and I believe this market — it was cotton bobbins on a tray and I think that was a good lead.

2163. Okay, so you have got ongoing consultation with BIS. Perhaps you could tell us a little about the Service Directive impact of these Bills.

**(Mr McGerr)** Unfortunately I am not really very well versed in the Service Directive but as far as I understand the Service Directive should allow myself and others, obviously, to trade without let or hindrance. I find that most of the conditions that have been put into these Bills actually obviate that completely and they go directly against the Service Directive.

2164. Do you have any concerns about these Bills being heard as one?

**(Mr McGerr)** Yes, again we are back to this unique situation, well if Westminster is so unique, what is unique about Reading, what is unique about Leeds, Nottingham or anywhere else? Of course they are unique, but there again there is a public statute. It is not common law as Counsel has mentioned. It is a public statute and this attempt to subvert it by bundling all

these Bills up as one just so for convenience is an anathema to me. It is not convenient. It is an impertinence.

2165. Are there any illegal brand(?) lights as referred to by Counsel or is everything in these Bills up for wide interpretation?

2166. **CHAIRMAN:** It is very near to being quite irrelevant on this matter. We have been given the instructions. We know precisely where we are and I should confine your remarks to what is relevant, if I might suggest that?

**(Mr McGerr)** Lady Chairman, could I just mention in relation to that, I do not want to prolong it, but it has been heard today in evidence, I think Mr Carter mentioned it and others, which is if pedlars do not actually understand precisely what they are meant to be doing then there are no bright lights. There is just confusion and this is the situation at the moment. Even within the terms of these Bills, for instance, there is no indication as to how direction may be given on the street. You are not allowed to dog tail on the street. I approve of that but there is a notice to say so. But how will the public react when it says — I mean, how are you going to describe a pedlar in a graphic form? We live in a graphic age, not everyone is illiterate. Do you have somebody carrying a large parcel on their back? Do you have somebody with a crate? It is a nonsense. There is no indication by Counsel as to how these Bills could succeed. They are just relying relentlessly upon local authority officers backed by police to come and seize goods, issue FPNs.

2167. **CHAIRMAN:** That will be for us to decide as the Committee.

**(Mr McGerr)** That is my evidence, ladies and gentlemen.

2168. **MR CAMPBELL-LLOYD:** So is a trader, pedlar, going town to town, we have heard in evidence that there is a wish list for pedlars to become licensed traders in a market place or on a street on an allocated pitch. Could you afford to actually purchase a street trader's license within a number of places that you might work?

**(Mr McGerr)** Absolutely not and I have done a little bit of arithmetic. I have heard figures mentioned here today, sorry, not here today but in a Committee, £7,000, possibly up to £7,000 for a street trading license. I believe there is about 400 or so local authorities who are now getting £280,000. I do not have that. I do not have the ability to buy a license in every single possible location in the United Kingdom. That is exactly why the Pedlars Act exists because it is not to tax me as such, and as far as the remuneration that may come from the FPNs and so on, seizures and so on, again that is a nonsense because if people do not pay them and then it is a cost to the community.

2169. **MR CAMPBELL-LLOYD:** It was referred to in the words, "a minor matter", that you can be made criminal and get a CR criminal record. Is it a minor matter that you could end up with a criminal record on the basis of these Bills?

**(Mr McGerr)** Personally speaking I would be utterly ashamed if that occurred to me and I would find my life immensely difficult.

2170. **MR CAMPBELL-LLOYD:** But if you are found guilty of committing an offence, that is the likely consequence in these Bills.

2171. **LORD BLAIR OF BOUGHTON:** I would just question that, and I do not know the answer to this, but I just heard the word, “criminal record”, because illegal street traders sound like a criminal record to me and I just throw that question in as something that you may wish to consider?

**(Mr McGerr)** May I make a comment to it?

2172. **LORD BLAIR OF BOUGHTON:** It is certainly a conviction but then so is a speeding fine but it is not a criminal record.

**(Mr McGerr)** Thank you very much. I am not a lawyer.

2173. **MR CAMPBELL-LLOYD:** (After a pause). So would the first stratagem to repeal the Pedlars Act assist you, if there is a strategy or a formulation?

**(Mr McGerr)** Personally speaking I am a stakeholder with the consultation. I feel that I have been dropped out of the loop to a certain extent. The team heads have changed. The emphasis is now on the Service Directive. The answers I have requested from BIS have not been supplied to me. As far as I understand from what has been put to this Committee, it is going to fall very far short of coming anywhere near of what now exists as the Pedlars Act. In fact they wish to abolish it so I think that says everything.

2174. I think almost finally, could you tell us what you understand to be the meaning of house to house as a pedlar?

**(Mr McGerr)** It is precisely how I understood the Pedlars Act, which is that a person may step out of doors and that a pedlar travels and trades and goes to other men’s houses. In terms of the antiquity of the Act, if you like, that was an expression of movement. The fact that a pedlar is a person who goes about, and that may be from town to town or it may be to other people’s houses, and the essential word is “or” to other men’s houses not “and”, which was put in to the original conference by David Chambers of Westminster City Council where he changed the wording. That has followed through consistently since then.

2175. So what do you make of the fact that pedlars’ choice of profession does not have a professional body to represent and regulate it?

**(Mr McGerr)** Because pedlars are all independent persons, there is no association of pedlary. There is no formal body. There is no corporate body. They are all individuals.

2176. How do you regard your *bona fides* on the certificate?

**(Mr McGerr)** That is my essential *raison d’être*, if I can use a French phrase. It is what gives me meaning in life, that I am an honest person. That I speak the truth as much as I can and that I trade fairly and reasonably with people.

2177. How widespread, in conclusion, is the effect of these Bills, would you say?

**(Mr McGerr)** Well, actually suffering from the disease itself at the moment, I feel that it is a cancer spreading throughout the land.

2178. **MR CAMPBELL-LLOYD:** Thank you very much. I have no further questions.

2179. **MS LIEVEN:** Thank you. My Lady, I do not have not any cross-examination but can I just deal with this offence point. As I am sure you will see I was taking instructions. The offence in question is not a recordable offence. It therefore is not recorded on the Police National Computer and therefore on a Criminal Records Bureau check, I think that is what CRB stands for, it would not show up.

2180. **CHAIRMAN:** Thank you for that amount of information. Mr Campbell-Lloyd is aware, I know, that he may not make a closing statement; that is the rules I am afraid. It is also the end of the period that I allocated as ----

2181. **MR CAMPBELL-LLOYD:** I thought I had three minutes but I will take your point.

2182. **CHAIRMAN:** It was 4.43 and I think you went to 4.43. Thank you very much indeed. We have heard a very great deal which will be very important for us to consider with some care and at this point in proceedings, we either consider asking the parties to wait outside but I understood that there was a right of reply, so we make that quite plain. I am calling Ms Lieven. Apparently, you do have a right of reply apart from what you have previously put to the last witness.

2183. **MS LIEVEN:** Yes, my Lady. My understanding of the procedure is that I do have the right to make a short closing. The other thing I need to address, which I think I should do before I close, is my Lord, Lord Blair's question about seizure. I have tried to take hurried instructions behind me. It may be that after the Committee's deliberation, I need to take further instructions, but can I just explain to the Committee where I understand my clients to be on seizure at the moment?

2184. We are content to amend the seizure clause to place some kind of test on it but it is not by any means easy to formulate that test. Clearly the first criterion is that there should be a reasonable belief that an offence is committed but that is already there. A possibility is a second criteria, and I have not drafted this up but I am just floating ideas before the Committee, is that the individual should have been given a written notice that if he does not move on in say 15 minutes, then the council may seize the goods, so that would be one possibility, and these are cumulative, not alternative. Then the third would be that the individual refused to move on and potentially then the right to seize the goods would kick in.

2185. Now, can I mention two other possibilities? I am very much floating these as possibilities. My Lord suggested a possibility of there should have been a previous offence. The difficulty with that is that we cannot see any practical way that the constable or the authorised officer would know whether there had been a previous offence or not. You could say that the officer reasonably believed there had been a previous offence committed that day but, even then, you do not necessarily have the enforcement officers on the street all through the day, so we would be concerned that could effectively make the seizure power inoperable. If my Lord has any better idea from his own experience, which is infinitely greater than mine in this field, then that is a matter for the Committee to consider.

2186. I had also wondered whether it was possible to have a criteria about you could only seize if it was your reasonable belief there was an obstruction of the highway but those behind me say (and I have to say I know from advising Westminster Council in respect of the protesters outside this House) that the trying to decide whether or not there is an obstruction of the highway is itself an intensely difficult thing. So I had thought that might be an easy solution but I am told (and I have to say I think this is right) it would not be. So that is where we are on seizure. I hope that at least gives the Committee food for thought if not an answer. Now, in respect of ---- I am sorry, my Lord.

2187. **VISCOUNT ECCLES:** I wonder if we could just stay with seizure for a moment. It seems to me that exposing is a pretty difficult point because that would be a cause for a seizure under the way the Bills are drafted; exposing the goods. All of this is related back to wherever we get to about the size of trolleys or other containers and what you can do with those trolleys or containers. I think I am right, at the moment the goods are not supposed to be exposed.

2188. **MS LIEVEN:** Displayed, my Lord. Displayed is the word.

2189. **VISCOUNT ECCLES:** I do beg your pardon.

2190. **MS LIEVEN:** In my submission, displayed is not that difficult because if the goods are being hung (and it was not Mr Carter in the bar photo but it was Mr Carter's photo) if they are being hung like that, then they are clearly being displayed for sale. Virtually in any criminal offence there is an element of judgement but I would not suggest that displayed was a particularly difficult judgement.

2191. **VISCOUNT ECCLES:** It is an issue to me. As you get into the argument about the principal reason why the Promoters want the Bills is because of obstruction and obstruction is primarily created by trolleys the size of small cars, and we can come down then from the trolley size of small cars until we get to, may I say, one cubic metre (just for something to say) and, at that point, we get into what are you allowed to do with your one cubic metre. I think there is an issue, as far as I am concerned, about what you are allowed

or not allowed to do with your one cubic metre and that relates back to seizure.

2192. **MS LIEVEN:** Yes, my Lord; I accept there is an interrelationship. I think all I was disagreeing with your Lordship was the fact on as to whether the question of whether or not somebody was displaying the goods evidentially, I would suggest that is not a particularly difficult thing to do.

2193. **VISCOUNT ECCLES:** I totally agree with that; even if it is a key ring.

2194. **MS LIEVEN:** But clearly there is a judgement for your Lordships and your Ladyship to make as to size and display. My Lords, what I have done (and I hope this is helpful) is I have prepared a very short note of what I am going to say because some of this is quite technical so that it is in front of the Committee. If I try and just read through it in five minutes, and then obviously if any of it does not make sense, the Committee can ask me the questions, but I thought unusually for a Committee, it would be helpful to have a written note so that the Committee can then check back to precisely what we are saying. This is not evidence; it is just to help your Lordships and your Ladyship in the deliberation.

2195. **LORD BLAIR OF BOUGHTON:** It is interesting exactly what Viscount Eccles has said because in all the discussions, one of the few bits that has not been thoroughly explored by the Promoters is what is the problem with display.

2196. **MS LIEVEN:** I can explain that.

2197. **LORD BLAIR OF BOUGHTON:** In other words, I think the Committee, or certainly I would like to understand why were we minded to reduce the size and all the other things that are floating around in this decision; why is it you would say you cannot display? I do not think we have covered that point.

2198. **MS LIEVEN:** My Lord, I did try and cover it but I obviously did not do it clearly enough for which I apologise. The problem with display is relatively straightforward. If you have a limit on the container, the receptacle, the trolley, whatever you call it, of ex size, whether it is dimension or cubic capacity, the reason we are so concerned about display is that once you allow the goods to be displayed, you can have a trolley of one metre by one metre and then you can have display which extends massively beyond the one metre. Do you remember the trolley in Nottingham?

2199. **LORD BLAIR OF BOUGHTON:** Forgive me, Ms Lieven, there is no reason, and I think it is in the BIS submission today, why the receptacle can only be this size and the display can only be that size.

2200. **MS LIEVEN:** That is another possibility, my Lord, I accept that, but my understanding of it (I will be tugged from behind if I have this wrong) is that the concern about display is partly that if you allow people to do that, then

the potential for them stopping and obstructing is greater but it is primarily that you have the receptacle and then you have all the bits tied on to the receptacle. So if the Committee is minded to accept a sized receptacle but to feel that some display is reasonable, then what I would submit is the Committee should then attach a limit on the display. So if, for example, the Committee go for dimensions of 0.75 metres by 0.75 metres, then the display should be limited to the same amount.

2201. **LORD GLASMAN:** Would you not be calling that 'overhang'? So the display is what you see and the overhang is like the pool that we spoke of earlier; just say for our purposes, we call that "overhang" and the face of it is the display.

2202. **MS LIEVEN:** Because if you go back to some of the photos, a lot of the photos that we showed, I suspect you find that buried underneath all that was quite a small trolley in many cases. It is no more technical than that.

2203. **CHAIRMAN:** It was the photograph with all the scarves on that went out (it seemed to me) by about 12 feet. That was very extraordinary; that was the one and it fell over anyway. Lord Strasburger.

2204. **LORD STRASBURGER:** I understand; you have put up a variety of reasons as to why this legislation is required but it seems to boil down to obstruction.

2205. **MS LIEVEN:** I would say obstruction was the primary reason.

2206. **LORD STRASBURGER:** You are talking about obstruction while the pedlar is stationary and peddling rather than moving through the streets.

2207. **MS LIEVEN:** Not necessarily, my Lord, no. If the pedlar is moving, I mean, one of the best photographs is in the Nottingham bundle, NG8. Now, one has a smallish trolley, I do not know what the dimensions are, but underneath that is probably a trolley that certainly has a cubic capacity of less than a metre and one has an enormous overhang on it, to use the Committee's language. Now, if that trolley is stopped, it is causing an obstruction but if it is wheeling through the centre of Nottingham, it is also causing an obstruction in my submission. Now, I think what might be most helpful is if I just went to my note on closing, because I will touch on these issues and then if the Committee has any questions while I am going through it, to save repetition, perhaps that would be the best way of doing it.

2208. I have emphasised in paragraph 1, I am not rehearsing all the arguments or the evidence; clause 4 perhaps we can take quickly because we have dropped that the definitions for extending services because it is not critical for the Promoters, not because there is any concession that there is a breach of the services' Directive which I think is important to say because this Bill is strongly about that. Paragraph 3 in respect of Nottingham and Reading; clause 4 continues to extend the definition of street trading to the purchase of

or offering to purchase any tickets for gain or reward because of the problems with ticket touts in those two areas.

2209. Clause 5 is intended to deal with the problems caused by unlicensed street trading in the four city centres. These problems are largely around what I put in inverted commas, 'traders' selling goods off trolleys, impeding pedestrian access, causing congestion in busy centres and making the environment of those centres much less attractive. So that is the primary issue. There is also an issue with the unlicensed traders directly competing with the licensed street traders which, I would submit, matters for two reasons. Firstly, but particularly, I think you have heard the evidence on this very clearly; all four Promoters have gone to considerable efforts to ensure that the licensed pitches are in places which do not impede pedestrian access and which fit in well with the urban environment. It is impossible to regulate unlicensed traders in the same way and secondly, we do say the competition can be very unfair because, in reality, the unlicensed traders have trolleys which are often as large as the licensed traders but are paying nothing for them, so they get the advantages of the street environment without contributing to it. It is clear from the evidence that the issue of unfair competition is secondary to that of impact on the environment.

2210. Paragraph 5; it is important to appreciate the problems can be caused by people who fall into any of the following legal categories: (a) People trading with a Pedlar Certificate and moving in accordance with the case law, so that is the lawful pedlars at the moment; (b) People trading with a Pedlar Certificate but not moving, i.e. unlawful pedlars; and (c) people trading without a Pedlar Certificate whether moving or not which was called, I think last week, 'rogues'.

2211. The clauses proposed to be amended seek to regulate all those three categories in the following way. If the individual trades with a Pedlar Certificate, moves in accordance with the common law and is not in a designated area, then the existing law prevails and the person is acting lawfully. If he trades with a certificate, moves and is in a designated area, then he can continue to trade so long as he either carries his goods or, and this is the big issue, wheels them in a receptacle below the maximum dimensions. (c) If he is trading house to house in any area, then there is no change in the existing law. So I wanted to set that out so the Committee was absolutely clear as to what this was covering.

2212. The issues that then arise are whether the provisions are justified on the evidence and meet the terms of the services' Directive. As I said in opening, the Directive really, in my submission, codifies the approach the Committee would have to take in any event. Are these provisions justified in the public interest?

2213. The relevant parts of article 9 require that the need for an authorisation scheme is justified by an overriding reason of public importance

and the objective pursued cannot be obtained by a less restrictive measure. As far as the need for an authorisation scheme that regulates street trading is concerned, that I would suggest is manifest. If no such scheme existed, it would be impossible to limit the number of traders, the trolleys, the stalls which could appear in a city centre and that would be clearly unacceptable. So the need for an authorisation scheme is clear.

2214. The next question is whether the form of the authorisation scheme in these four city centres is justified and whether a less restrictive approach would meet the objective. So this probably gets to the core of what this Committee is going to want to discuss. The need for some form of control of those who purport to be pedlars is, in my submission, apparent from the evidence. All four city centres are very busy particularly on Saturdays and before Christmas and particularly in Canterbury at busy tourist times. There is no way of limiting the number of pedlars or, in reality on the present law, the size of their trolleys. The evidence does show they congest the streets, inconvenience pedestrians, impede the police, impede the use of CCTV and, I would suggest, degrade the urban environment but, and this is important for Lord Strasburger's question throughout these proceedings, that is not to say that they entirely block the streets, that a Berlin Wall is set up across Reading, or importantly, that they are the only cause of congestion. We are not suggesting that. There are other forms of congestion on a street but the important point is that there are a number of calls or demands or needs on town centre streets. Licensed stalls, tables and chairs; the photos this afternoon, bus stops, telephone kiosks, public toilets, street furniture, entertainment as in the Leeds' photos, but the one element which cannot be regulated at the moment is the 'pedlars', inverted commas, and their trolleys. So it is very important to understand we are not saying the pedlars are the only cause of congestions and we are not saying they bring the town centre to a complete halt. I do not want the Committee to think I am putting the case that high but we do say they cause a significant obstruction in busy town centres and the fact that they are utterly unregulated is a real problem at the moment.

2215. It is not the case that the Promoters are opposed to pedlars per se but they do strongly feel that in their particular city town centres, they need to have some ability to control those activities, specifically in relation to the trolley. So in putting forward the amendments, the Promoters have sought to address article 9(1)(c) and to set out the less restrictive means of meeting the objective and we tried to do that in two ways: Firstly, by restricting the area to the designated area in clause 5(7) and, at this point, I should say I am not sure Mr Campbell-Lloyd fully understood the way 5(7) works. What it does is those are the grounds; we picked grounds from the Directive which appear to be applicable to the issues we say need to be addressed. Those are the grounds upon which a council can consider whether or not it is appropriate to designate an area. That overcomes the concern expressed by the Committee last week about the Bills being too broad in a geographic sense.

2216. **LORD BLAIR OF BOUGHTON:** Can I just interrupt very briefly on that point? (several inaudible words)

2217. **MS LIEVEN:** My Lord, the answer to that is judicial review and if Canterbury said, "We need to designate the whole of the Borough of Canterbury to prevent the obstruction of the highway", the reality is, of course, the pedlars would not care because outside the city centre, they do not want to trade anyway, but if Canterbury did that, it would be exceptionally difficult, I would suggest. (1) to say that that was rational on domestic grounds of judicial review and (2) to say that it was proportionate within the services' Directive.

2218. The Committee could write in further hurdles to do with that but I would suggest, as a public lawyer, that is not necessary because the protection lies in the services' Directive and the doctrine of rationality. As I said, the Committee could write in further restrictions if it felt that was important.

2219. Secondly, the other proportionate element is to allow only a certain size wheeled vehicle to be used for carrying goods and this is a critical point in respect of the questions today. The Promoters are very keen to ensure that this receptacle is kept sufficiently small and is not used to display the goods in order to prevent the trolleys to allow large displays, thereby simply replicating existing problems. Two points to pull out of that. One is overhang, which the Committee already has, but the other is the concern I tried to put to Mr Carter in cross-examination. The reason we have done it in terms of dimension is that if you allow cubic capacity, what you get in practice is a very large, very thin placard. The Committee have the point.

2220. Therefore, the Promoters believe the amended clause 5 meets the requirement of the services' Directive and importantly, the BIS second report does not disagree with that conclusion although, quite appropriately, BIS leaves the judgement of the evidence for the Committee.

2221. I then briefly deal with seizure, which I think we have probably dealt with enough today. The seizure powers are intended to cover both seizure for the obtaining of evidence but also seizure for forfeiture. Clause 8 requires the items to be returned if, after 56 days, the council has not instituted proceedings. In terms of the proportionality of the 56 days, it is worth the Committee having in mind that the council have to wait for 14 days before starting the process of issuing proceedings. So that is one reason why it is 56 days. The councils need time to consider the evidence and determine whether or not it is appropriate to issue proceedings and that will involve considering whether there is any likelihood of the individual being located and a prosecution being effective because your Lordships will remember the evidence that the traders you have heard from today are the ones who are prepared to turn up in front of a Parliamentary Committee and are, in

subjective terms, highly legitimate. That is not the universal experience of my clients with all the traders they have been dealing with.

2222. We submit that such a seizure power is proportionate particularly given the difficulties of enforcement through the courts and you have heard a lot of evidence on that. The seizure power for the purposes of forfeiture is an appropriate deterrent to what is ultimately an economic offence where current enforcement processes have little effect in deterring the offence. The evidence of all the witnesses was that current enforcement methods are difficult, involved considerable losses of time, are expensive and because the fine are low, generally ineffective in stopping the activity. It is also relevant that there are compensation provisions.

2223. Then fixed penalty notices; the FPN regime provides that where an officer reasonably believes that an offence is being committed, he can give the alleged offender the choice, and I must stress that, the choice of accepting the penalty notice or waiting to see if proceedings are issued. There is no question to answer a point made by Mr Campbell-Lloyd last week; last question of criminalising something by that provision. Equally, this provision does not prevent the individual from declining to accept the FPN and then arguing his case in the Magistrate's Court, so there is no increased penalisation on anyone who is suspected of committing an offence. The benefits are obviously that they allow a much easier form of enforcement for the councils without causing any negative impact on those reasonably believed to have committed an offence.

2224. The last paragraph deals with the Human Rights Act and I must read that out because I should have said it in opening. The Promoters have screened the Bills carefully to ensure compatibility with the Human Rights Act and you remember Mr Campbell-Lloyd referred to article 1, protocol 1; that is under the Convention. In accordance with standing order 38; councils' opinion was obtained way back when the Bill was lodged and he concluded that the Bills are compatible with the Convention. For the reasons set out above, based on the evidence that the Committee has heard, the Promoters believe that the provisions are in the general interest and meet the requirements of the Act.

2225. Very finally, my Lords, my Lady, we should hand in; the Committee asked last week for the letters before action from the authorities that we could get hold of. Canterbury do not have a standard letter but I have copies of the other three to hand up now. Perhaps if I give them to the clerk.

2226. I hope that covers the main issues and I hope it is helpful to have written them down. I do not know whether the Committee have any other questions for me.

2227. **LORD BLAIR OF BOUGHTON:** Again you talked about matters of training. I think you indicated that, as in other cases, those instructing you

would agree to a requirement to, I suppose, go back to BIS or whatever it is to say that training has taken place. I think that training really has to be offered to those not in council employ if police officers and community support officers are included in the legislation.

2228. **MS LIEVEN:** Yes. Can your Lordship just give me a moment? An undertaking was given to the Committee in Bournemouth and Manchester. I am just finding the terms of it. Here we are. That only applies to the training of officers. We obviously cannot give an undertaking on behalf of the police.

2229. **LORD BLAIR OF BOUGHTON:** What you can do is offer to offer it.

2230. **MS LIEVEN:** That is precisely what I was going to say, with respect, my Lord. I am instructed that we are quite happy to give such an undertaking. Perhaps it would be helpful if, while we are outside, we could draft one or the Committee could draft one. Effectively, we will undertake, on behalf of all four councils, that they will provide for the training of their own officers in respect of both the 1982 Act and the relevant local Act and that they will offer such training to all authorised personnel in the employment of the relevant police force, or something to that effect. Obviously we need to cover not just constables but community support officers as well.

2231. **LORD STRASBURGER:** You have just handed out these; what did you call them?

2232. **MS LIEVEN:** They were described as letters before action last week. I am not sure if technically they are letters before action.

2233. **LORD STRASBURGER:** No, all right. I am looking at the Nottingham one.

2234. **MS LIEVEN:** Yes; just give me a moment, my Lord, because I will have lost them. I think they are here.

2235. **LORD STRASBURGER:** First of all, it says it is a criminal offence to engage in street trading. If you read on, you will eventually find that does not apply if you are a pedlar and you are acting as a pedlar but then it goes on to say, "Recent case law has established that a pedlar trades as he travels and goes to his customers rather than blah, blah, blah, therefore, remaining stationary for periods of time in many cases". What does that mean? That is just vague; that officers have total flexibility.

2236. **MS LIEVEN:** My Lord, I do not think I am going to try and defend.

2237. **LORD STRASBURGER:** You handed it out.

2238. **MS LIEVEN:** My Lord, I was not handing it up as evidence in support of my position. I was handing it up because the Committee asked for it. My Lord, I have to say, when I saw this letter this afternoon, I had a very similar

point. I do not think that paragraph is at all clear. I should say it does not give the officers free rein because, of course, the officers are limited by the law but your Lordship is entirely right and I think it is much better that I concede rather than try to argue that that is not a well drafted paragraph and it could easily be improved. In fact, I scored these outside the Committee and I thought the Leeds' guidance, the quick guide to what is and is not acceptable, was pretty good and I would suggest to my clients that they use that as a precedent for what they say.

2239. **VISCOUNT ECCLES:** I think we have asked these questions that are written down during the process of the days and I would not want to get into a critique of them now but I think it is very, very important that if we do want to say something about training, we say that this training is distilled into guidelines which are consistent with the legislation and one could have great fun with those forms but not now.

2240. Could I just say about your paragraph 4; I have a little regret about this because you do, and indeed you and I had an exchange in which we went into the possibility of unfair competition and I think we both agreed that there was the possibility of unfair competition. None of your witnesses have really gone to that point and it seems to me that there is a bit of an atmosphere about the way that councils have decided, looking at the precedence, to instruct themselves and anybody who represents them as to what should be seen to be important and what not, and I think, for example, if there is unfair competition, which you say there may well be in paragraph 4, evidence from street traders would have been of very considerable interest on that point. Anyway, I rest at that.

2241. In the generality of the thing, if there are 4,000 pedlars with certificates, that is one to 15,000 people. I admit some of those people are very small and some of them are very old but, nevertheless, that is the size of the issue. In paragraph 9, your need for an authorisation scheme is manifest. I would have to say, at this stage, yes and no because the question becomes one of what are we authorising and how much regulation do we really need as opposed to how much regulation do we really like and, therefore, want to have? I just make the point that I feel that the Promoters have concentrated their minds on everything should be tidy and regulated and that some of the evidence seems to show that has been quite a problem in that there has been misinterpretation, misinformation, bad relationships and I think the point about social cohesion and people having proper opportunities and liberty being quite important, it is not going to come out of my consideration of these matters. That is really why I come to fixed penalties.

2242. Fixed penalties are okay provided people who hand you the fixed penalty notice really know whether they are right or wrong. I give you a very small personal experience. My wife had a fixed penalty notice and I went to a tribunal and it was cancelled because it was not correct right from the beginning. We would not have bothered, unlike a pedlar, for £60, if it had not

seemed manifestly unjust and we are capable of going to a tribunal. So I do feel strongly that there should be careful consideration of to whom authority given to levy a fine on the spot.

2243. **MS LIEVEN:** Can I just make a couple of points on that, my Lord? First of all, when I say in paragraph 9, "The need for an authorisation scheme that regulates street trading is manifest", what I was trying to get at there is an authorisation scheme for street trading is needed; otherwise you could get endless numbers of stalls in any town centre.

2244. **VISCOUNT ECCLES:** Would that not be self-regulating? Because if people have to make some money and it has to be worth their while to be there, it would never be self-regulating.

2245. **MS LIEVEN:** My Lord, your Lordship and I might disagree on the nature of unfettered capitalism and the degree to which it self-regulates throughout the world but perhaps that might take us on a bit long. I would suggest, but perhaps coming from a different viewpoint from your Lordship, that some kind of scheme is necessary and, therefore, one comes down to the proportionality of what is being suggested but the point your Lordship makes about if you are going to give local authorities and their officers and police support officers powers; such powers of fixed penalty notices and powers of seizure, the Committee needs to have confidence that the law is clear and that those officers will know what they are doing. Of course they will make mistakes and one has to understand that in any enforcement regime, there will always be mistakes. We have all had experience of mistakes made with fixed penalty notices but in order to take steps to minimise that possibility, which is the most one can rationally do, in my submission, a combination of a proportionate scheme which is relatively clear, which is why we did not like the Bournemouth and Manchester amendments of the precedent because they are so complicated, combined with an undertaking as to training, in my submission, is as close to a proportionate response as one can reach.

2246. If I can say something which may sound unduly deferential but is sincerely meant, the benefit of a Committee such as this is that one can properly tease out what is a proportionate response having heard the evidence and having had it tested by a Committee. That is the benefit of this kind of process while there are some other forms of legislative process where you do not get the benefit of that kind of scrutiny. It is obviously for the Committee to decide whether the ultimate outcome is proportionate but, in my submission on behalf of the Promoters, by the discussion of potential amendments last week, by the drafting of them, by the discussion we have had by the consideration of the Committee, you come out with what, in my submission, is a fair and proportionate balance. That is the benefit of this system although sometimes I appreciate that Committee Members do not see it quite like that.

2247. **LORD GLASMAN:** Yes, thank you, Lady Chairman. I wish to commend you in the evidence in the case you have given. I just want to make a point to BIS generally that is of concern which is that the confusion of the guidance is multiplying, not diminishing. So if you look at the Pedlar Certificates that we have here, you know, my children asked me over the weekend, "What do you know about the pedlar?" I said, "Pedlar as in Peddler" you know, as with the feet moving. That sort of thing; not with the hands, with the feet. They kind of had it; someone who sells on the move but here we go. So in the further notes on the Pedlar Certificate from Miss Aptowitzer, "Pedlars travel, traders they travel. A street trader who sells from a portable stand in the street could not claim to be a pedlar" but then if you look at the Leeds' notes, "A pedlar can stop while selling to someone. It is also reasonable to allow a pedlar to stop for a few minutes to demonstrate their wares", so what I am saying is, do you see there is just confusion that has then been multiplied in the guidance that flows right down the food chain? So the pedlars are confused as to this. The police are confused as to their powers. We have lost it all.

2248. Now, I do completely agree with you in your discussion point that anchors on free market capitalism by the way; I want to assure you on that one, but what we have here is that while I do agree with Viscount Eccles about what has been manifest about this period is the lack of concern for conversation in relationships that is going on. So I just wanted to really say what we are getting feels like more confusion in the guidance as to what a pedlar is and I think the 1871 (for what it is worth) the 1871 Act is the best definition I have seen because it stresses the feet; the pedlar moves and has to carry their wares while they move and it is the common law tradition that they stop from time to time. What is happening here is in the Pedlar Certificate, it says they cannot and that is not in the 1871 Act by the way, so I am just raising to council, really not to you, but much more to BIS that there is absolute confusion in the guidance now that is leading to confusion in the conversation.

2249. **CHAIRMAN:** I think the problem here (and I raised it earlier in a private conversation) as I understand it, is all the issuing authorities, that is to say all the towns, cities up and down this country who do sign these special certificates, they do not have the same things on them at all and that is a big worry. We discussed that earlier and it will be undoubtedly one of the things we talk about in the very lengthy, I suspect, discussions we are going to have about this Bill. Would you wish to say anything more?

2250. **MS LIEVEN:** Can I just say on those, two things? I always seem to say two things. The certificates are issued by the police, not by the local authority and your Ladyship is entirely right; I would suggest a significant problem with the 1871 Act is that there is no standard form certificate.

2251. **MR CAMPBELL-LLOYD:** There is. I found it earlier on. It is Form A; Form A does exist as a statutory form. What we see here is a policeman's interpretation with qualifications which is outside the law.

2252. **CHAIRMAN:** Could we be clear on this? Is it correct that every single defective Pedlar Certificate, wherever issued, is covering the same points?

2253. **MR CAMPBELL-LLOYD:** It should be because it is Form A of the Pedlars Act but police jurisdictions determine that they would like to write their own sub clauses into that.

2254. **CHAIRMAN:** So they are not the same.

2255. **MR CAMPBELL-LLOYD:** They are not the same, no. They do not require a photograph; some do, some do not. They do not require very much more detail. Some even ask for nationality which is not required, so there is a Form A and it lives in the Pedlars Act.

2256. **MS LIEVEN:** My Lady, if you look at the powers of it, exhibit 1; I am not asking you to do this now, but the Pedlars Act has a schedule. Schedule 2 has Form A but that is the most basic of forms and the position is that police authorities around the country issue these forms in different forms and with different information on them. In a lot of situations, you have a statutory regulated form which has the same information and the same notes and you do not have that and that clearly does cause a problem. What the Act says is that a Pedlar Certificate shall be in the form specified in schedule 2 to this Act or as near thereto as circumstances admit. So in practice, you can get a wide variety of forms, so I think what I am saying in essence is that I entirely agree with Lord Glasman. The Committee will remember in opening, I said that my clients would be entirely supportive of national legislation; you know, bring it on, and that could deal with this problem.

2257. **LORD GLASMAN:** I am with you. It is just also to communicate the intensity of concern from the pedlars that what your intent is, is to resolve it by abolishing the status of the pedlar in favour of fixed traders and that is a very strong concern.

2258. **LORD BLAIR OF BOUGHTON:** I think it is also worth saying, Chair, and I suppose I am almost giving evidence here, that for the police, Pedlar Certificates are the least of priorities and, therefore, the level of training about them is, I should think, extremely limited and the whole idea that the one person issues a certificate and somebody else in a completely different legal framework enforces it is very strange. I think in terms of this, this is a local authority issue, not a police issue.

2259. **CHAIRMAN:** I think so and it is very much something we will deal with shortly. Did you wish to say anything else at all?

2260. **MS LIEVEN:** I do not need to say anything else, my Lady, no.

2261. **CHAIRMAN:** All right. We have heard a very great deal of evidence about all sorts and conditions which apply to this Bill and those who will have to work under it should it pass in all four of them, I should say. The Committee will obviously need to deliberate before making a decision on whether to allow the Bill to proceed and, if so, in what form? However, we are of course aware that the witnesses would need to travel substantial distances to return to prove the preambles at a later date. In the interests then of convenience, I intend to ask Ms Lieven to prove the preambles of all four Bills but without prejudice to the Committee's decision and I should make it clear that the Committee reserves the right to decide, during its private deliberations, whether some or all of the Bills will proceed. Ms Lieven, would you please prove the preambles now?

2262. **MS LIEVEN:** Yes. Can I have Mr Ellender first? I am going to do Canterbury City Council's Bill first, my Lady. Are you Mark Ellender?

**(Mr Ellender)** I am.

2263. Are you the Head of Legal and Democratic Services at Canterbury City Council?

**(Mr Ellender)** Yes, I am.

2264. Have you read the preamble for Bill?

**(Mr Ellender)** I have.

2265. Is it true?

**(Mr Ellender)** It is.

2266. Thank you. Leeds, please. Are you Gill Marshall?

**(Ms Marshall)** I am, yes.

2267. Are the Section Head of Regulatory and Enforcement at Leeds City Council?

**(Ms Marshall)** Yes, I am.

2268. Have you read the preamble for the Bill?

**(Ms Marshall)** I have.

2269. Is it true?

**(Ms Marshall)** It is.

2270. Thank you. Nottingham. Are you Neil Ehrhart?

**(Mr Ehrhart)** I am.

2271. Are you the Markets and Fair Services Manager at Nottingham City Council?

**(Mr Ehrhart)** That is correct, I am.

2272. Have you read the preamble for the Bill?

**(Mr Ehrhart)** I have.

2273. Is it true?

**(Mr Ehrhart)** It is.

2274. Thank you. Reading, please. Are you Jean Champeau?

**(Mr Champeau)** Yes, I am.

2275. Are you the Senior Licensing Officer at Reading Borough Council?

**(Mr Champeau)** Yes, I am.

2276. Have you read the preamble for the Bill?

**(Mr Champeau)** Yes, I have.

2277. Is it true?

**(Mr Champeau)** Yes.

2278. Thank you.

2279. **CHAIRMAN:** That matter is completed and it is on the record. The Committee will now begin its deliberation on the four Bills before us, and you will appreciate that there is a very great deal for us to consider and I hope you will agree that there has been a very fair opportunity for both the Promoters and the Petitioners to put their case for us to hear. Obviously there are opinions which we have ourselves, and I must say that I think there is a very soft spot in the British mind for pedlars and we have had them throughout our history. I can remember, as a child, my favourite exhibition in the local museum was a pedlar lady with all sorts of things pinned to her dress. She did not have any trolley or anything of that kind but there are many, many points about the things that have been told us that we must consider both for the Promoter because obviously we care about the case that has been made there. I must say in passing that I was a little bit concerned to hear the Canterbury Promoter, or one of the helpers to the Promoter, say that the objective was to drive pedlars out of Canterbury and that rather troubled me because I do not want to drive pedlars out from anywhere but there we are; these are the matters we have to decide.

2280. I am afraid I cannot, at this stage, give you any firm indication of when the Committee's decision will be available. We want to ensure we give fair consideration to all sides of the evidence, to everything that has been said and heard but, of course, without unnecessary delay. I, therefore, propose that once the Committee has made its decisions that it publishes a report. Before publication of that report, I undertake to write to all parties setting out the Committee's decisions on the Bills and I will ensure that my letter to you is appended to the transcript of proceedings. I hope all parties are content with that. I am going to adjourn the public session at this time.

2281. I would like finally, however, to thank all of you very much for attending the Committee. You have been very ready to hear the criticisms that have had to be made about the way these things are done. Many of you have given the most clear evidence to which we have all listened most

carefully and I do thank you very much for the part you have all played in the proceedings of this Committee. So the Committee's public session is adjourned at 5.32 and the Committee will now continue to sit for a short while in Private Session. Please clear the room.

The Committee adjourned at 5.32 pm