

WEDNESDAY 18 JUNE 2008

Present

Goodlad, L (Chairman)
Lyell of Markyate, L
Morris of Aberavon, L
Norton of Louth, L
Peston, L
Quin, B
Rodgers of Quarry Bank, L
Rowlands, L
Smith of Clifton, L

Memorandum submitted by Dr Chris Pounder

Examination of Witness

Witness: **Dr Chris Pounder**, Pinsent Masons, examined.

Q841 Chairman: Dr Pounder, good morning. Welcome to the Committee. It is very good of you to come. We are not being televised this morning but we are being recorded, so could I ask you, please, to formally identify yourself for the record, and if you would like to make a short opening statement, please do.

Dr Pounder: My name is Dr Chris Pounder. I am currently employed by Pinsent Masons solicitors, law firm. I have been in data protection for as long as I can imagine, and I am ready to go, so to speak.

Q842 Chairman: Thank you very much indeed, and thank you very much for the paper which you sent us. Perhaps I could kick off by asking how confident you are that the development of jurisprudence through cases decided in British and European courts, particularly with reference to European Convention rights, can provide effective protection for the personal information of United Kingdom citizens? Is a consistent privacy and data protection jurisprudence in your opinion already being developed?

Dr Pounder: The short answer is I am not confident that Article 8 will provide satisfactory jurisprudence because there are very few cases going to the courts. Those cases that tend to go into the courts primarily involve, as you say, people who have celebrity status, and some of the celebrity status cases involve awkward issues. For example, in the *Douglas v Hello!* case there was a privacy case in relation to one magazine doing a spoiler for another magazine. Article 8 privacy cases I do not think are a satisfactory jurisprudence; it is a sort of celebrity endorsement, but in relation to the other cases, for example, *Marper*, which is to do with the DNA database, I think it is an unequal struggle. Anybody who is trying to take an Article 8 case on has to take on the unlimited resources of the state. For example, in the case of *Marper*, the fees obtained by Marper's team for the whole case, taking it from admissibility to the Human Rights Court was £1,350 whereas on the Home Office side there were 11 lawyers and a leading silk. It is an unequal struggle. What needs to be done, in my view, is a means by which Article 8 cases become more accessible to the public, and it can be done by the Data Protection Act.

Q843 Lord Morris of Aberavon: Is there no legal aid available for persons like Marper?

Dr Pounder: The legal aid budget is very tight and yes, there is legal aid money. In the Data Protection Act there is this word "necessary", necessary, for example, for a statutory function. The word "necessary" has been interpreted by the courts to have the same meaning as "necessary" in terms of Article 8. So if you made an explicit link between the Data Protection Act and the Human Rights Act, you can use a very simple mechanism in the Data Protection Act to take it to the Human Rights Court and it makes it more accessible to members of the public. Yes, there is legal aid, but some of the cases do not qualify for legal aid because the legal aid budget is so stressed.

Q844 Lord Lyell of Markyate: Your written evidence is critical of the weaknesses of the Data Protection Act, and you draw attention to the European Commission's unease about the Act's compliance with the terms of the EU Data Protection Directive. I note you also say at paragraph (g) on page 7 that the Information Commissioner is not a powerful regulator. You point out that he has not all the powers of other regulators. What changes to the Act are required in order to bring it in line with the Directive, and what are the chances of this happening?

Dr Pounder: This might be, in a sense, a red herring, because the European Commission and the Government have disagreements about the Data Protection Directive. In total, 11 articles are under question. What the Commission is worried about, in my estimation, is the meaning of "personal data" following the *Durant* decision, which narrowed the scope of personal data, the extent to which manual files held by the private sector are covered by the legislation, the fact that the courts have assumed that they have an unfettered right to deny subject access in addition to the other exemptions in the Act, and the powers of the Commissioner. I do not know what the problems with the other articles are. There are other reasons for the dispute between the Commission and the Government because no information is being made public. Will these changes come into effect? No, I do not think so, unless the EU start infraction proceedings and the Government, for example, cave in on those.

Q845 Lord Lyell of Markyate: Can I just follow that up? While I was a barrister I paid £35 a year to register for the Data Protection Act, declaring another interest with a very small business running a house in France where we did not sign up and I am sure we were right not to; it would have been a perfect pest and a waste of £35. What is the real problem here? What is the real mischief that the subject is going to suffer, or is it just another bit of bureaucracy? I may say I am very much in favour of the Information Commissioner. I think

he is excellent. What is the real problem with the Data Protection Act? Does it serve a useful purpose?

Dr Pounder: There is no real problem with the Data Protection Act. The real problem is with the structure in which it operates. For example, if you assume that Parliament has a role to scrutinise the executive when it proposes interference with private and family life, you have to assume also that Parliament is informed as to the justification for the various interferences. If you have a Commissioner, for example, a regulator, who has difficulty naming and shaming organisations that transgress the Act, then enforcement mechanism is weak. If you have, for example, a data subject who cannot, shall we say, protect their own privacy, then there is a need to put into the Data Protection Act a right to respect the processing of personal data in accordance with family life, et cetera, in relation to Article 8. That does not disturb the relationship with the press but it does give the ease with which individuals who have a grievance can raise matters with the regulator. So I think it is not the Act that is the problem; it is the infrastructure that supports the Act.

Q846 Lord Lyell of Markyate: The difficulty of enforcing it.

Dr Pounder: The difficulty of enforcing it and also, for example, when Ministers want to propose legislation in relation to interference, the justifications given to Parliament. This lack of scrutiny causing a great deal of unease.

Q847 Lord Norton of Louth: I would like to pick up on the point about the Information Commissioner. You have mentioned in your evidence that the Information Commissioner's Office is too limited in its powers to be an effective regulator. What is it that is missing? What would you do that is specific to the Commissioner?

Dr Pounder: This would be a long wish list but I will limit it to four. The first one, I think, is that the Commissioner has to be given the resources to do the job. At the moment £10 million

is the money that the Commissioner generates, not from public sources but from registration fees. This compares unfavourably with the hundreds of millions of pounds in the budget of the FSA or the Health and Safety Executive or even the Food Standards Agency. So the ability to do the job is important, but in relation to powers, my top three would be the ability to serve what I would call an Article 8 notice, so if there is a Statutory Instrument enacted by Parliament – and, as you know, SI procedures are not particularly strong – then the Commissioner can by notice approach the courts to strike out a Statutory Instrument, and that would give reassurance to those that perhaps when you have primary legislation which has wide-ranging things, like the Secretary of State may by order do something else, that those powers are not misused. The second one is basically the ability to refer matters to Parliament. Can I give you an example? The Audit Commission has a code of practice going out for consultation at the moment. This code of practice will be laid before Parliament. There is going to be a consultation process with the Commissioner. If there is a disagreement, the sort of procedure that I would like to see is that such a code of practice has to be approved by, say, a Statutory Instrument procedure by Parliament. That gives the opportunity for the Commissioner to identify what the problems are and the ability to Parliament to identify and take a view as to what public policy should be. It is that kind of mechanism I am looking for.

Q848 Lord Norton of Louth: So there are powers you would vest in the Commissioner which he does not have at present, and on the resource side, you are talking in terms of giving more resources *per se* but in terms of the specificity of those resources, is one of the problems in relation to the technical know-how that is available to the Commissioner in order to keep abreast of all the changes in surveillance that take place?

Dr Pounder: That might be an issue, but if the Commissioner has resources, he might be able to buy them in. I do understand from what the Commissioner has said publicly that he has

difficulty retaining staff that he has skilled up, and obviously that is part and parcel of the resource issue.

Lord Norton of Louth: That is one of the existing limitations, the nature of those committed resources.

Q849 Lord Rowlands: As you have raised the issue of Statutory Instruments and primary legislation, do you think there could be some value in having a robust privacy impact assessment that any government department drafting legislation would have to, as it were, put that test and publicly announce when that is done, and what for, to identify at the beginning the privacy issues in any Bill or in any Statutory Instrument?

Dr Pounder: Yes, that might help, but privacy impact assessments as currently viewed by the Commissioner are a technique for once you have the project design up and running, to make sure that the project operates within the law and within the data protection regime. Taking a step back, it is justification. I would like, and the Joint Committee on Human Rights has mentioned this, for Parliament to have, say, for example, a Human Rights Memoranda. That is what the Joint Committee on Human Rights want. Also, I am not convinced that the legal advice in relation to a Bill's compliance with human rights cannot be published. The Government published this legal advice in relation to the use of the National Identity Register as part of the Citizens Information Programme. That advice is on the website. If they are publishing that kind of legal advice for, say, the Citizens Information project, it is difficult to understand why it cannot reassure Parliament that essentially it has considered the human rights element practically and this is the legal advice demonstrating how it is compliant with it.

Q850 Lord Rowlands: Would the value of such an assessment right at the beginning in the preparation of a Bill or of an Order at least flag up to anybody interested in parliamentary

terms that they would see that there was an issue or there could be an issue at an earlier stage?

All your evidence suggests we do not see it.

Dr Pounder: No, I am not saying that at all. The privacy impact assessment is a risk assessment, and part of the risk assessment is, I would have thought, what the value is of the interference. For example, if you take the Audit Commission code of practice, it said, “Before we do a data-matching exercise we will do a pilot study.” It does not say that in the code of practice but it could do: that pilot study could identify the costs involved in the interference, the amount of money involved in the interference, how the interference is done, and the outcomes, so that people could see whether or not the interference was worth its weight in gold or whether the data-matching exercise has worked. I agree with you there is an important stage here in making sure that people take account of the risks, but when the Government takes account of the risks, you have an extra step here in relation to legislation which is that Parliament has to scrutinise. If Parliament is to scrutinise what the Government is saying, and Parliament is going to authorise interference, at least the parliamentary authority needs a fully informed debate. Obviously, a privacy impact assessment could form part of that but it is not what the Commissioner thinks a privacy impact assessment is.

Q851 Lord Lyell of Markyate: As we know, Ministers put their name to Bills saying they are compliant with the Convention but you are suggesting that their Department should publish an opinion which indicates that it has considered the issues, the pros and cons, and setting out the legal reasons why it thinks it is compliant. It sounds a good idea to me.

Dr Pounder: Absolutely. I think the Joint Committee on Human Rights has actually expressed that, and from what I understand, the Joint Committee on Human Rights is going “quietly spare” that it has not been done.

Q852 Lord Morris of Aberavon: On the same point, these statements of compliance with the Convention are made. Are there any examples in your field where, the statement having been made, it is found subsequently that they are not in compliance?

Dr Pounder: It is very difficult. Say, for example, the identity card legislation. As you know, it is a paving Bill with wide-ranging powers. The only way to challenge in human rights is, first of all, to have a Statutory Instrument, then somebody to put their head above the parapet to take a human rights case. It is a long way down the chain. If you look, for example, at the *Copland* case, which I thought was “slam dunk”, the *Copland* case was the woman from a West Glamorgan further education college, and her communications were interfered with. The case was well before RIPA, yet it took round about eight to ten years to get to the Human Rights Courts, by which time it is too late. What you need is something more immediate, more accessible. If somebody can raise a valid human rights case, I can go to the Information Commissioner and say, “Look, I think this is unlawful because of so-and-so,” and if the Commissioner agrees, he can start a mechanism that could strike the order out.

Q853 Lord Morris of Aberavon: What you want is an early mechanism to prove the value of the ministerial assurance.

Dr Pounder: Yes, absolutely. There are a lot of parliamentary Committees, certainly the Joint Committee on Human Rights, saying “We can’t perform our scrutiny job if we don’t have this information.” Ministers argue that you do not need to worry about the Statutory Instruments because if they get it wrong, the courts will strike them out, but who is going to put their head above the parapet and when? Ten years down the line. Such litigants are going to put their house on the line against, for example, the unlimited resources of the taxpayer. It is an unequal struggle. There needs to be something far more accessible where these things can be tested. I am quite happy for Ministers to say, “Look, I don’t need to bother Parliament about the detail but if we get it wrong, the SI is going to be struck out” if there is an easy

mechanism whereby that can be challenged. The ability of having that mechanism would mean, I think, that civil servants would be very mindful of the Human Rights Act when they drafted their Statutory Instrument because they would not want the Commissioner to strike it out.

Q854 Lord Smith of Clifton: Dr Pounder, in your evidence you gave a detailed case study of how scrutiny of the purpose of the National Identity Register was in effect prevented by Ministers. You say that this raises a constitutional question about the Government's plans for this database. Without rehearsing the NIR case, could you please elaborate on this view and explain how the case "raises questions about Parliament's ability to scrutinise any legislation effectively"?

Dr Pounder: Just to go into the history, when I wrote that analysis, I became more and more shocked as to the discrepancies between what Parliament was told and what the officials had decided. I do not know whether it is deliberate or not but I just reported the facts to the Department. What is the use of the NIR for a public administration purpose really about? It is about efficient and effective public services, yet Parliament was – how shall I say – not informed as fully as it should have been. If you go back over the years and if you look at, for example, Supergun, Matrix Churchill, the war in Iraq, BAe, what should Parliament be informed of? Those sorts of cases have a problem – it may be trade, it may be national security, it maybe foreign affairs overtones which make it difficult for Ministers to respond. The worry for me is that my evidence on the NIR and public administration is that there is nothing about national security, nothing about foreign affairs; it is about effective public service delivery. There should be no prohibition on releasing information to Parliament. So now we have two extremes. If, for example, it is something like Supergun, one where Parliament is not informed, then essentially, in relation to the NIR uses for public administration, Parliament is not informed – what happens to everything in the middle? That

is the question it raises. That is the reason why I say it does raise this particular question. My own view is that Ministers drip-feed information to Parliament when it is appropriate. For example, in that evidence I showed that there was a written statement prepared just after the General Election which was not published for nine months, a written statement saying the NIR would be used for public administration purposes. Before the Bill came before Parliament, the Government knew that 20 per cent of the business case for the identity card relied upon the use of the database for public administration purposes. They knew that the identity card had to be compulsory to get that 20 per cent. I have not found any ministerial statement, apart from the written statement that was produced after the legislation passed through Parliament. This Constitution Committee was worried about the relationship between the state and the individual in relation to the NIR and published two reports. Did it know that the Government were planning to use the identity card database as an information resource? The other fact of course is David Blunkett had produced two public statements, documents of 150 pages each, which assured members of the public that the database was not going to be used for this purpose. There are lots of constitutional issues around this, and what I would like you to do is not see that evidence as knocking the use of the NIR as a public information resource or a population register. I think there are good arguments for it. What you should look at is how Parliament was informed, if Parliament was not informed, how can it scrutinise?

Q855 Baroness Quin: Just following up the question relating to scrutiny, the evidence in paragraph 17 – this is written in May 2007 – talks about “the next Prime Minister has signalled his intention to grant parliament more powers of scrutiny.” Presumably, the next Prime Minister was Gordon Brown at that point. Has anything happened, and in what context was that commitment given?

Dr Pounder: The draft Constitutional Renewal Bill is now being debated. I think the Prime Minister gave a speech where he said that he was looking at the ability to balance the two. That is why I picked up on that speech saying proposals would come forward, which I assume now is the draft Constitutional Renewal Bill.

Q856 Baroness Quin: Is there anything in there that gives you comfort?

Dr Pounder: No, not on this particular issue. We are talking about general interference and the ability of the executive to be scrutinised. Parliament has to have the information to allow that scrutiny to occur. That is what I am really worried about. I see nothing that requires Ministers to provide information to Parliament. Yes, they will give assurances; yes, there might be problems in producing certain information, but Parliament has committees that deal with sensitive matters and there are always sensitive data procedures. But the fact that information is, shall we say, withheld from Parliament on something as mundane as public administration I think is shocking, to put it bluntly.

Q857 Lord Rowlands: On first reading the appendix to your evidence I thought it was a devastating critique. This is over a year old. Has there been a rejoinder? Have they engaged you in argument or debate on your assessment?

Dr Pounder: No. All I laid out was the evidence. I tried to withhold the comments that I could have made.

Q858 Lord Rowlands: There has not been a response to this?

Dr Pounder: There has not been a response. I do not know whether there has been a miscommunication between the civil servants and Ministers but I think the evidence should be seen as, is this how Parliament is treated for every single thing? It is rather as if Parliamentary management and news management are the same thing.

Q859 Lord Peston: I am still a bit lost on this. Like Lord Rowlands, I was very impressed with the criticisms you offered but, as a long-time supporter of identity cards – and I declare an interest – it seems to me obvious that identity cards, to be of any use, have to be compulsory and the notion of an optional identity card seems to me ridiculous, but equally, I had always assumed that the identity card had both a public sector side to it and a private sector side, because a great deal of a person’s life dealing with private sector matters is establishing who they are. Given that, and ignoring totally the fact that people like me thought it was going to be a simple scheme – and it has got so complex that we all know it is going to be a disaster – what troubles me is this business of Ministers, in a sense, misleading Parliament. Is not the purpose of the register perfectly obvious? What is the Government concealing here? I put this to you to raise the difficulty: what do you want the Government to be saying to us, if you like? What information are they withholding from us?

Dr Pounder: They are not withholding information; they are just revealing it at a time which is very convenient for the scrutiny process. To go back to the Written Statement, it was prepared before the Second Reading of the Identity Card Bill. It could have been issued. Parliament could have debated whether or not the National Identity Register should be used for public administration purposes but that was withheld for some reason.

Q860 Lord Peston: Unless you assume that we, both in our House and in the Commons, are a bunch of complete idiots – which is not an impossible assumption to make – why does someone not just get up and say it?

Dr Pounder: That is the point I am making.

Q861 Lord Peston: There is nothing stopping them. You are criticising the Government. Why is no Member of Parliament in either House getting up and saying “Isn’t it obvious what this is for?”

Dr Pounder: It has been obvious to me for a very long time what the NIR is for but the public statements are completely the opposite. If you go back to the identity card, look at David Blunkett's original paper, asking should we have an entitlement card, it stated categorically that the population register was a different system. The Government said the systems were really quite difficult. I think there is a perfectly good argument for using the NIR as a population register. The point I am making is, let us have that argument as part of the identity card project when the legislation is going through, because that is when the decision was taken to do it.

Q862 Lord Peston: You are really accusing Members of both Houses of not quite doing their own job. Both Houses actually contain some very able people who could take Ministers apart with ease.

Dr Pounder: The obligation on government is to subject to scrutiny. That is the point. Yes, we can argue the pros and cons outside but it is the fact that it is not one instance. There have been a number of instances where Ministers, I should say, struggle to be economical with the truth.

Q863 Lord Lyell of Markyate: I am really trying to get at what you think the mischief is here. I perked up when you talked about Supergun and Matrix Churchill because I had some involvement in those. I do not know whether you can illustrate it with those two examples. Start with Supergun: did Ministers know something or did civil servants know something which they did not tell Parliament about? What is the point that you are making?

Dr Pounder: I cannot go back; I cannot remember Supergun. I would have to get out the Scott Report and thumb through the 20 volumes. The mischief is essentially this. If government say that they are not going to use the National Identity Register as a public information resource, you have to take that at face value, but behind the scenes they decide

they are going to use it as a public information resource, and they prepare written statements to Parliament – the civil servants do this – which are not released for some reason. How can you have an informed debate if that sort of thing is happening?

Q864 Lord Lyell of Markyate: I understand that. Just go on. Do you think we should be frightened if they did both say and use the NIR as a public administration resource? Is that a frightening thing or not?

Dr Pounder: It depends how it is done. If you are going to share information, there are essentially three ways you can do it. The first way is with consent; the second way is by statutory requirement, in which case you do not need individual consent; and the third way is you have a statutory gateway but you allow an easy mechanism to object. Those are the only three ways you can do it. What the Government have done is said, “We are going to share information for public information resource without the consent of the individual concerned.” That is what their legal advice says on the website, on the CIP website, so they have taken legal advice to use the identity card database as a public information resource without the consent of the individual concerned. My belief is this: when can the state interfere with private and family life? Crime is one, national security, there is a whole list, but public administration in my view is not in that list. If Parliament takes a decision to do the latter, then of course we can engage the parliamentary process, but if Parliament is not informed of the decision, lo and behold, it is going to go ahead willy-nilly, using Statutory Instrument powers some time in the future.

Q865 Lord Morris of Aberavon: It is basically a question – and I am not coining the phrase – of the Government being economical with the truth.

Dr Pounder: Very economical with the truth, I think.

Q866 Lord Morris of Aberavon: You improve my question!

Dr Pounder: This is why I am quite keen on, for example, the ability to link human rights and data protection explicitly, so that if these powers are used in a way that some people may feel detrimental... Remember, you can only scrutinise the proposals before you. The human rights is implementation. If the implementation does not mirror, then somebody can easily take a human rights case through the Data Protection Act if you link the two together explicitly, which I think is something that would be very valuable.

Q867 Lord Morris of Aberavon: I am going to take you up on the role of primary legislation and secondary legislation. The Joint Committee on Human Rights criticised the Government's approach to this on data sharing. There is nothing new in this. We have always operated on general clauses to be implemented but if they go well beyond the assurances they gave, that is a matter that is suspect. I have been furnished with a letter from Charles Clarke, who was then Minister of State when the RIPA Bill was going through, where he gave categorical assurances to Bill Cash, MP: "I can confirm even at this stage that such powers will not be available to local authorities." Lo and behold, in 2003 such powers were given to local authorities for the purposes of preventing or detecting crime or of preventing disorder. Whether they have kept to that remit is another matter. Do you share the concern of the Human Rights Committee and what would you do yourself?

Dr Pounder: I do share the concern of the Human Rights Commission. Is it the Human Rights Committee or Commission?

Q868 Lord Morris of Aberavon: It was the Joint Committee on Human Rights in their 40th report.

Dr Pounder: I do share their concerns and I do think they are right. I think Parliament needs to be more informed and more involved. I do worry about Ministers arguing "Don't worry

about these Statutory Instruments. We will get it right and they can be struck out.” For example, in the case of Poole, if there was an ability for the Commissioner to serve, for example, a human rights notice and test whether or not the interference was necessary in accordance with RIPA, the matter can be resolved in that particular way.

Q869 Lord Morris of Aberavon: Is Poole a unique example, or is it one of many? We have had witnesses here, senior officers of local government, and they swear they take a proportionality test, and it is done at a certain level, something akin to a superintendent in the police force. Is Poole a glaring example of something well beyond preventing or detecting crime?

Dr Pounder: Crime is milk bottle theft and murder, is it not? It is proportionality. It is on the cases. Yes, you can have officers assessing proportionality, but who assesses whether or not the officer came to the right balance? It is back to that particular point again. If you have a single point of contact who identifies the balance between the investigator and the interference – interference and non-interference – but that authorisation officer in a sense sometimes makes mistakes, obviously. We are all human, but there is no mechanism apart from somebody taking a case under the Human Rights Act for the way those officers who make the assessment make the assessment in accordance with the human rights obligations. There is no way of checking that simply, cheaply and effectively.

Q870 Lord Morris of Aberavon: We have got the point of the need for a mechanism to check but my earlier question was is Poole a unique example or do you know of any more? It seems to me deciding whether children are going to the right school, or whether the dustbin is only partially open when it should be shut, does not seem to me to be detecting crime or preventing disorder.

Dr Pounder: It could be an environmental crime. I do not know. This is the sort of area where you do need an extra tier of counterbalance.

Q871 Lord Peston: I am sure from listening to this Committee for the last few weeks that we very much take the proportionality point, particularly in the Poole case, which I think we would all agree was disproportionate, but would it not be equally disproportionate to take that particular mistake to court under the Human Rights Act?

Dr Pounder: Absolutely.

Q872 Lord Peston: In the end, is the answer not both to publicise the case in the hope that the point gets across and then to shrug and walk away?

Dr Pounder: That might be the correct solution but let us say, for example, if the individual concerned had been damaged in any way, they would obviously want some kind of redress.

Q873 Lord Peston: Even then, are you sure that is right? You are a lawyer and I am not. My experience of life is that I have been damaged over the years several times when I have felt a grievance, but in the end, you win some, you lose some. That is my attitude to life. We do not want to encourage people to litigate on every occasion.

Dr Pounder: No, absolutely, and the ability to go to the Information Commissioner to ask for an assessment means it might not even get to the courts.

Q874 Lord Morris of Aberavon: It is the mechanism you want.

Dr Pounder: It is the mechanism, the counterbalance mechanism, yes.

Q875 Baroness Quin: In your written evidence you state that a major problem lies in the fact that the public body or Minister responsible for policies, procedures that require interference with private and family life can also establish policies and procedures which

protect the public from over-zealous interference. So you seem to see the problem of Ministers acting as both prosecutor and defender in this domain. How keen are you on the separation of these two roles? How do you see that separation being reflected both in government structures and in parliamentary procedures?

Dr Pounder: I am very keen that the more severe the interference, the wider the separation should be. For example, in the context of, say, national security cases, I would prefer a mechanism via the courts rather than, for example, the Home Secretary signing off on warrants. One of the interesting things with, for example, the communications warrants and things, there are about 2,000 signed each year, and if you look at the parliamentary evidence, Home Secretaries down the ages will say “We take this very seriously.” I am sure they do but if you have 2,000, that is around about ten per day and if you are going to take something seriously, are we saying there is a signing ceremony? Just look at the mathematics of it. My own view is that to have separation, I think the Commissioners should report to Parliament on various issues. For example, the ID Card Commissioner will report to the Home Secretary and the Home Secretary will report to Parliament. I think a much better mechanism would be that the Identity Card Commissioner reports to a Committee of the House, the Committee of the House decides what is published following advice from the Government, the Committee of the House could ask a Commissioner to do, shall we say, an investigation into various things to inform the public debate as to what the correct balance is, whereas at the moment the two things can be quite incestuous. For example, the appointment of a Commissioner: at the moment often the Home Secretary and the Prime Minister appoint the Commissioner. I have no difficulty with that but it might be more balanced if a Committee of the House interviewed people who were recommended by the Commissioner and a Committee of the House appointed the particular Commissioner. It would then be much more clear that Parliament is informed in the process. There are quite a lot of things that need to happen in Parliament.

The other issue is with Statutory Instruments; for example, I would like the ability for Statutory Instruments to be amended, so that if there was something contentious, Parliament can have an informed debate. The whole mechanism is that Parliament has to have the ability to scrutinise the executive. That is, in a sense, the thrust.

Q876 Lord Rowlands: You bring up this business about a potential conflict of interests when the Department is both interfeerer and defender. Would not the best idea be to embed the whole concept of privacy consciousness in each and every Department with privacy officers, the PIAs and the rest of it? Would that not be the best way to cure the problem, not the symptom?

Dr Pounder: I think recent security lapses have shown there is a cultural problem, and there is a government data handling review, from which I understand – it has not been published yet but I understand that each Chief Information Officer of each Department would have the obligation to make sure that basically procedures are followed. The difficulty is essentially whether that becomes a tick-box operation. Say, for example, with privacy impact assessments, you can see it becoming a part of the bureaucratic process: privacy impact assessment, box ticked, done that. It has got to be something more robust.

Q877 Lord Rowlands: When we were in Canada the Canadians did not believe that their Information Commissioner should be both responsible for freedom of information and also privacy; they thought it should be divorced. Do you think there is a problem with the Information Commissioner wearing these two hats?

Dr Pounder: I have never been a fan of him wearing two hats, to be honest. I think there is a conflict. When the Information Commissioner got the FOI-type responsibilities, I was thinking that there was a conflict between the two, and if there ever is a conflict between the

two, there has to be some publicly transparent way of resolving that conflict. That was my own view.

Q878 Lord Rowlands: You are the first witness to say “yes” to that argument.

Dr Pounder: Yes, we are a declining species. I have not been a fan of it – I put it that way – but it seems to work when there is a stressful situation. I do not know what arguments go on inside the Commission but where there is a conflict, the resolution of that conflict has to be in the public domain, and separate bodies would allow that.

Q879 Lord Lyell of Markyate: Could you please explain the recommendation concerning parliamentary scrutiny of secondary legislation as discussed in your second principle, the approval principle? The approval principle seems very sensible on its face, but you go on to say that to strengthen the scrutiny, Parliament could permit a Select Committee to take privacy under its remit. How could this help to overcome the expansion of data collection that results from the current piecemeal approach to legislation? Are there some other measures which might be helpful in this regard?

Dr Pounder: I do not think it would do anything for the expansion, as you mentioned in the question, but it would make it more accountable. Remember, that approval principle follows back behind the justification principle, the fact that government is open in relation to information about its proposals, and then the approval principle is basically for Parliament to challenge the assumptions of government. That is what the mechanism is. If you have that mechanism, then the data sharing arrangements that are contentious would become less contentious if there had been an open debate about the pros and cons of the subject matter. Remember, the other thing that I mentioned was that approval assumes that Parliament has the mechanism to get the information it needs to do the debate, basically, about their particular mechanism.

Q880 Lord Lyell of Markyate: It seems to me to wrap in with your point that one is allowed to collect data for very broad principles, like better public administration: how long is a piece of string?

Dr Pounder: Absolutely. One of the problems, for example, with the Data Protection Act is that it is purpose-orientated, so the principles are relevant to a purpose. If you have a purpose as broad as public administration, then of course, the principle is more or less wished away. What is relevant to the purpose of public administration? When you look at data protection issues, the key thing is not whether the police should get information about terrorists; it is how it is done, and how it is done is in the level of the fine detail. Basically Parliament is not necessarily equipped to deal with this level of detail when it is dealing with the actual legislation. The “how” is the implementation. If Parliament is fully informed, if you have regulators that can report to Parliament about particular issues, then Parliament can scrutinise the “how” as well as the “whether”, if you see what I mean. Of course, the fact that Parliament can scrutinise it may give the thing full legitimacy. If it is done in an underhand way and nobody knows and it comes out from the blue two months later, people say “Hang on a second, what is happening here?” Remember, if people do not trust public authorities, they are not going to provide information to them. They are going to be economical with the truth. If a public authority wanted my telephone number and I did not want to give it, I would give somebody else’s telephone number. That is the sort of thing that would happen, because basically, the public have to trust the public authority, and part of that trust is effective parliamentary scrutiny of the process, which I am not a hundred per cent sure occurs at the moment.

Chairman: Dr Pounder, thank you very much indeed for joining us and for all the evidence you have given, which has been extremely illuminating for us.

Witness: **Professor Janice Morphet**, examined.

Q881 Chairman: Professor Morphet, can I welcome you most warmly to the Committee. Thank you for coming. We are not being televised this morning but we are being recorded so could I ask you, please, to formally identify yourself for the record.

Professor Morphet: I am Janice Morphet.

Q882 Chairman: Would you like to make a short opening statement?

Professor Morphet: It may help the Committee to hear a word about my experience before we start. I have been employed in local and central government for nearly 40 years – 40 years next year – and during that time I have worked for a variety of local authorities – county, district, London borough. I have been chief executive of a small unitary authority, Rutland, and during the period between 2000 and 2005 I was a local government adviser in what is now CLG, working in e-government and working on local government modernisation. By profession I am a town planner.

Q883 Chairman: Could I begin by asking whether you think that the modernisation of local government needs a large expansion in the amount of personal data that is collected and shared between departments? If you do, should this be done on a need-to-know basis and a judgement about proportionality, or do you think collections of data should be widely available to many service departments?

Professor Morphet: I think the modernisation of local government has been about using what is collected better and more efficiently, so I am not sure that I would support the view that it entails an increase in the use of data collection. Perhaps I could illustrate that in a particular way. One of the main responsibilities of a local authority is to provide people with benefits through their arrangements with the DWP, and that information at the moment is collected

separately by different departments inside the local authority. If you look at a modernised local government perspective, what you clearly see is that many citizens are not actually receiving their full entitlements. There are just over 50 different kinds of financial benefit that a citizen could be entitled to, and work that we undertook when I was in CLG demonstrated that 80 per cent of the information required for those applications for benefit was the same. The current system would be that a citizen would have to fill in as many forms for these benefits as they thought they were entitled to, but a modernised local government approach would suggest that you collect the information once and, with the citizen's consent, you see if they are entitled to other benefits. That is the first thing to say. I am not sure if the Committee is aware of something called the "T" scheme, "T" meaning trust.

Q884 Chairman: Please expand.

Professor Morphet: There is a system called the "T" scheme, which is owned by the Cabinet Office, although run independently but certainly linked with them, and what this does is identify perhaps seven levels of risk in terms of their relationship to particular transactions. Most local authorities only get to about level three. If I could illustrate what the levels mean and go on from there, for example, a level zero would be a citizen being issued a library book. There is a very little risk in the loss of a library book. Yes, there is a cost but it is a very low risk. Nevertheless, you have to identify yourself to the local authority before you are permitted to take out a book. Going up the scale, obviously, registering for a service, you might need to provide more information about your identity and that is verified by the local authority. That may be level two. I am just trying to think what might be a level two service. If you are seeking maybe to have a taxi licence, you might argue that that is the middle level. For the upper level, where the risk is highest and where the personal information you have to provide, which is proportionate to the risk of fraud, say, or misuse of public resource, then clearly that is level three. So it goes on to higher levels, which local authorities do not use.

The purpose of these levels is to identify clearly for each transaction in local authorities, and indeed in central government, what kind of risk is proportionate and related to each of these transactions, what kind of information needs to be collected, and what kind of staff training and data handling processes go with this. Local authorities are using this approach, which I think is quite cautious, quite responsible, in terms of their use of information. At the upper level, level three, local authorities are of course governed by the DWP's verification framework. Again, I am not sure if that is something you are aware of. Local authorities are inspected regularly by the DWP in terms of their application of the verification framework. For example, if you live in London and you want to get a parking permit to park your car outside your house, you have to demonstrate to the local authority before you receive that permit that you are indeed a resident and indeed that you own the car. There are two proofs that you have to show. However, for a renewal you only have to confirm that that information is still correct, whereas if you were going back for a financial benefit, where the risk of fraud is higher, you have to show the documents *ab initio*. I hope that explains the kind of system that exists.

Q885 Chairman: Can I just go on and ask whether you think the safeguards against the loss or misuse of personal data by local authorities are adequately developed?

Professor Morphet: The framework which I have outlined to you is used and in force and inspected regularly. I think there are adequate safeguards for those approaches. Clearly, if you look at breaches and information loss in local authorities, I do not think we have had the same kind of issues that perhaps there have been in other public bodies. I think the concern from a local authority's point of view is very much about whether a citizen is being disadvantaged if information is not shared. I am not arguing that information should automatically be shared, but I think there is also a concern that the citizen might be losing out in terms of entitlement and often the citizen does think that the information is shared within

the local authority – that is a commonly understood public perception – but it is not and authorities do keep that information separate unless there is a very specific approach and agreement from the citizen to share it.

Q886 Chairman: Can I ask if you think that the increasing use of information and communication technologies by local authorities presents dangers to individual privacy, or do you think the technologies are designed or could be designed in ways that safeguard privacy?

Professor Morphet: I think the ICT systems that are used by local authorities have really replicated the kinds of systems that we had with paper systems, which I think have these safeguards, because information is not shared. It is held very tightly within the authority and access, say, for example to personal data in social services or children's services now is very tightly controlled. When I was a chief executive, we had an extremely difficult case concerning a family and child protection issues, and certainly I was never allowed to see the case files because they were confidential, and I think those practices are very much steeped in local authority working. I can only speak in terms of local authorities for that, but certainly I have never felt – in fact, I think the danger is almost in the other direction, that people are very frightened of sharing any information and, as we have seen, sadly, with child protection cases, and distressing cases recently, that inability to share and that cultural concern about sharing information has obviously put children at risk. So I think that my view of local authorities would be very much a culture of not sharing information unless there is a very specific code and framework for doing so.

Q887 Lord Peston: My question follows on more or less from everything you have just said. Could we first of all clarify what one should have in mind when we are talking about data sharing? It seems to me there are several possibilities. One is talking about data sharing within an authority, and then there is data sharing between an authority and something else,

and the word “sharing” can either mean you having access to my data or you and me and exchanging data. Could you enlighten us on whether they are all important?

Professor Morphet: I think the three examples you have given are used in different ways. For example, when I was running a local authority, in our Housing Benefit service we did not give housing advice directly; we subcontracted that to the Citizens Advice Bureau, and obviously the staff who then may have needed access to some personal information related to the individual to give that advice had to go through the same kind of training and be subject to the same kind of controls as if they were our own staff. There was no reduction in that standard because another agency was undertaking it for us, and that indeed would be the case. I have had out-sourced services, say, for benefits and the staff who work for Capita or other big companies are subject to the same kinds of standards as your own staff and have to be trained and inspected in the same way. So that is in terms of personal data. If you are thinking about data matching, which is when you are comparing large bundles of information between local authorities, only recently have we been able to look at data matching in any significant way because of IT systems being better. That is primarily used now in terms of fraud, because what is very clear is that those who perpetrate benefit fraud are mainly two types. One is an individual who will just try to commit fraud but there are very organised large-scale frauds going on, and they tend to operate within regions over a large number of authorities. Up to now it has been quite difficult to catch them. You can obviously catch them within a local authority but data matching is helping that, and if you look at the Information Commissioner’s advice, certainly he has covered quite clearly the issue about data matching, which I think covers that point satisfactorily.

Q888 Lord Peston: All of this was leading up to the point that we used the expression in our question whether local authorities receive sufficient guidance on this, but really we ought to be asking do individuals officials receive sufficient guidance? What is your view? If I can

add another bit on that, one often refers to the need to know, but in a way, you do not know whether you need to know until you have tested it by getting the information in the first place.

Professor Morphet: Yes. There are two sorts of examples to think about. I have been primarily talking about benefit cases, where people have to divulge financial information. The training systems for that are very rigorous and they are inspected very closely. The need to know comes into play when you are doing casework around an individual, around a child, say, a child protection issue. There is quite a lot of distrust between organisations, in my experience anyway, at a formal level about sharing information. However, informally some of those conversations go on around a child because of concerns. When I was a chief executive, which is now ten years ago, we introduced social workers into secondary and primary schools because we had concerns. It is now becoming more common practice to have social work practitioners, certainly in large schools, and now associated with primary schools, and if that can go on, trust can be built and sharing information around the child is a more natural event. There are risks; on the other hand, the risks of not taking action are also very great, and I think that ability to take that judgement as a professional is something that is part of your daily tasks.

Q889 Lord Peston: Your view is it has to be done on an individual basis; in other words, if an authority were to say “Our principle in this authority is a presumption not to share” and another authority would take the view “Our presumption is you should share.” That is your starting point. Where would you be on that?

Professor Morphet: I am talking now about individuals, who can have quite complicated lives. A child might live with its mother during the week and stay with its father in another authority at the weekend, and there might be concerns that need to be shared across the border. I would be on the side that, if there were concerns, they should be shared, but obviously in an appropriate manner. Depending on the scale of concern, I think it would be

very important to do so, and particularly in urban areas, where local authority boundaries do not necessarily represent the patterns of movement and where people live, I think it is extraordinarily important that that is managed in a very proactive way, appropriately and to the case.

Q890 Lord Smith of Clifton: Might I ask: you were talking about contracting out to the Citizens Advice Bureau on Housing Benefit, and there are two things here. First of all, the Citizens Advice Bureau is taken generally to be advocates, yet they are exercising an agency function, so there is a real conflict of interest. Secondly, with contracting out to outside agencies, there must be a degree of control loss in terms of training. There are plenty of theoretical articles about the degree of control loss the more you contract out, and there clearly needs to be rigorous training. I am sure it is on paper but who does the compliance on this?

Professor Morphet: On the point about the CAB, I take entirely the point that you make about a conflict of interests, but a number of agencies like the CAB now actually compete for this kind of work. There is a point of debate there, but that is the contract that we had.

Q891 Lord Smith of Clifton: Forgive me, you are just re-articulating the dilemma, not offering us any solutions.

Professor Morphet: I was just going to go on to say that thinking about the training side and how that is enforced, clearly, for many out-sourced contracts the actual out-sourced employees still sit within the local authority buildings and offices, so actually, the training and compliance happens in the same way as it would if they were in-house. Now each local authority has a risk and compliance officer as a requirement. Internal auditors also do systematic checks. DWP inspectors come on a regular and unannounced basis and, if there is any difficulty, they come back, having given you things to improve. Those agencies now use

mystery shopping and other techniques to assess these things. They have IT compliance auditors as well, so now a local authority will have an IT compliance audit, which is precisely looking at the processes for handling data in terms of data quality, whether it is correct when it is inputted. We have all heard of people who have had problems because there have been mistakes. It also looks at the rigour of the internal systems and whether or not they can be breached by people from outside. I am not being glib about it. I think within a local authority it is such a systematic environment – and it is hard to convey that to you, I understand but that is the way it works. Perhaps it is hard to explain but it does happen every day.

Q892 Lord Smith of Clifton: I am happier with your answers on training but coming back to this conflict of interest by co-opting essentially the voluntary sector as agents of the state at a cheaper rate, and I think this is widespread, and not just the CAB and Housing Benefit, and so on, when we talk about citizens' trust in government, I must say if I thought in respect of my Housing Benefit they were not acting as advocates but were more concerned with renewing their contract with the local authority and did not want to cause too much trouble, this does not enhance my trust in the whole process.

Professor Morphet: I think that is a good point and I am not disagreeing with that at all. We did not have a contract with the CAB to actually issue Housing Benefit but they were giving housing advice on homelessness, finding people accommodation and that kind of advice. Nevertheless, even if you are establishing homelessness, you still have to establish the financial and personal circumstances of an individual. So I do understand the point that you are making and I do not know whether CAB still have that contract. This was ten years ago and the contract was extant between 1996 and 2000. Perhaps that has now changed.

Lord Smith of Clifton: I doubt it. Thank you.

Q893 Lord Morris of Aberavon: I think Lord Smith has covered largely what I wanted to ask. The CAB, for whose help I was very grateful as a constituency Member of Parliament, are a voluntary organisation. I am encouraged by what you say about training but how do you know that they train to the same standard as a local government employee?

Professor Morphet: Because they would be trained by the local authority or by the DWP in the same way, and their compliance would have to be subject to the same audit as the local authority. So if you have a contractor undertaking work for you, the local authority has the same obligations as if they had their own staff doing it. Those obligations do not reduce. So, in a sense, if a third party is doing the work for you, the obligation on you is greater to make sure the compliance is there.

Q894 Lord Lyell of Markyate: You were talking about multi-agency partnerships, and I was just trying to think of a circumstance. I am now going to mention a dodgy kind of character who may have more or less dodgy characters around him, probably less dodgy; somebody who is being chased by the child support agency, not paying their ex-wife, who may also possibly be applying for a waste disposal licence, or not applying for a waste disposal licence; may have come up on CCTV cameras as fly tipping; may be working on the black market, which is wife says he is doing to the CSA, whether he is or is not; may be claiming benefit or not, and the wife maybe claiming Housing Benefit, to which she may be entitled because she is being looked at. Those are about six different agencies. To what extent in practice are they actually sharing information today, in your knowledge?

Professor Morphet: If you look at that cluster of circumstances, which in some cases would not be unusual, what would happen is that you would probably look at each of those separately to see whether there was any link between them. So if there is an issue about income and means to pay, and that were related to a claim for, say, Housing Benefit on the part of the miscreant, if you like, I think that cluster of activities about means to pay and

payment and the wife's circumstances would now be looked at together, or are more likely to be looked at together. If you look at fly tipping and applying for a licence, those two things I think may be looked at together because you would want to check if somebody had been prosecuted for dumping before you issued a licence, no doubt. I am not an expert in that but I am assuming that is one of the checks that you might do. I think those two things come together. If somebody is turned up on CCTV, the only reason why, if they have been shown to be fly tipping, that is an issue for Trading Standards or Environmental Health or the police to take forward appropriately to prosecution if the evidence is there, and if the prosecution goes forward, that is no doubt taken into account when a licence is considered but I am afraid to say I do not know the formal position. What I am saying to you is I do not think those two sets of circumstances, which I have grouped into two, would necessarily be connected – only if the fly tipping or the waste management business was actually providing an income which the individual was citing as a means whereby they could or could not support the child.

Q895 Lord Lyell of Markyate: You are painting a picture which seems to be a fairly real one of somebody sitting behind a desk, scratching their head about one or two or possibly three of these issues, but in your experience, at the moment the computer from the CSA is not talking to the computer from the fly tipping cameras, et cetera, so that they all link together.

Professor Morphet: No, I have never seen any evidence of that kind and I could not see any justification for that at all. I could not see why anyone would do that at the moment, or in the future.

Q896 Lord Lyell of Markyate: But at the moment you do not think it is happening.

Professor Morphet: Certainly not, no.

Q897 Lord Rowlands: You may regret mentioning the CAB! In your local authority, if I were a resident, and I came in and said, “Look, I don’t want my personal financial information to be handed over to a volunteer from the Citizens Advice Bureau (a) because I know him or her or (b) I expect my local authority to be my local authority”, would I be prevented from receiving benefit if I refused consent in that case?

Professor Morphet: Certainly not. As I say, they were not providing actual casework on benefits. They were advising on homelessness.

Q898 Lord Rowlands: So the financial side was dealt with entirely by the local authority itself?

Professor Morphet: Yes. I am just saying that, in order to establish that you are homeless, you have to provide some information about yourself, which you might regard as information that you would want to keep secure. It could actually be information not so much about finance but about domestic violence, for example, and that would be the cause of homelessness, and that is something you would want to keep secure as well. There is always a backstop position, so that if you go into a local authority and you do not want to see the adviser who is allocated to you, you can request another one. The increase in local authority one-stop shops and multiple advisers trained provides a much better opportunity for individuals, a bit like going to a GP surgery; you have a choice but you can sometimes choose to go to one individual if you feel they know your case.

Q899 Lord Rowlands: Can I just widen the discussion? What we are beginning to find is, with the increasing ability to create bigger and bigger databases, the temptation and the ambition in some cases has been to try to profile people in a variety of ways, to see whether they are going to be more likely to be criminals or more likely to be at risk, et cetera. Have you come across this? What safeguards do you think are necessary to prevent this growing

database and this greater profiling, which could end up in discrimination or could just be wrong information or out of date information? The bigger the database, the greater the risk.

Professor Morphet: I am not particularly aware of any profiling in use at the moment inside a local authority. I suspect what is more likely to happen is that the local authority would be undertaking risk assessments around certain types of individual or certain types of case. Thinking of an older person, the first time they have a fall is generally a trigger point to think that more problems are going to occur and therefore you might review the kind of support that you are giving to that individual. If you think about fraud, if somebody has been found frauding with one financial fraud, I think you would use that as a trigger point for an investigation to see if there are any other frauds, and that has always been the case actually. We might be better at it now because we have the data. I am still working inside local authorities, and I cannot think of any example of profiling that they might use, although now for large fraud cases in benefits that might be the case, a profile of certain circumstances would bring cases to attention for review. I think it would be triggered by the circumstances of the cases.

Q900 Lord Rowlands: This is very much in the air or is very much being promoted as a concept, the idea of using these databases to try and, as it were, forecast almost people's behaviour. If this goes on from your experience, what sort of safeguards should be built into it?

Professor Morphet: I think it rather depends on the purpose of its use. If you are looking at people at risk, by which I mean that certain families... I am thinking of the case of one particular council in the Midlands that identified that certain families had a cluster of problems when they looked at issues, and compared some information across agencies. These families were clustered on an estate, and there were high levels of truancy, crime, debt, poor health and so on. They had at least some triggers to look at that and when they did, they

found there was quite a strong clustering, and they have been in and targeted that area for a range of initiatives to improve the situation. From that point of view, it is justified, but I do not think you are talking about that. I think what you are talking about is profiling to identify people and pull them out. I think that is a much more difficult approach, unless you have at least two or three good indicators. For fraud I think it is more justified perhaps than anything else.

Q901 Lord Peston: Could you clarify something in your answers to Lord Lyell to some extent to me? Is it an absolute rule that, if data about an individual is to be shared, that individual is always told?

Professor Morphet: There are circumstances when you can share data without telling individuals, and that is when you have concerns about fraud. That has been the case for some time; that is not new. If you have established that somebody has been in a fraud situation, you can then search to see their other transactions with you to see if those have been fraudulent, and already local authorities are enabled to share that information with surrounding local authorities and indeed are asked about it.

Q902 Lord Peston: Is fraud the only example?

Professor Morphet: I think where a child or an individual is in danger is the other key area where you do not necessarily have to ask.

Q903 Lord Peston: The fact is, is it not, particularly if we have these multi-agency partnerships which Lord Lyell asked you about that I may not apply for a benefit or something that I am perfectly entitled to simply on the grounds that I do not want you to tell anybody else about it? Then what you will have done as a matter of social policy is stopped me having a benefit to which I am entitled because I also believe in my individual privacy. Is

that not a very bad thing, no matter what you argue the positive side is? I as an individual am entitled to protection as an individual. Why is that not overwhelming? Take an example: I cannot walk even a yard without being in pain, therefore I have a blue badge; I meet every one of the criteria, but I might take a very dim view if anybody else was told that that was my condition. Equally, I might take a very dim view, since I cannot walk without pain, if I could not have a blue badge. I think my rights here are absolute. I would find it hard to put up a philosophical case even to do with fraud where you should be able to override my rights.

Professor Morphet: I think the kind of instance you cite, travelling on from the points I made, I do not think those points are connected. If you do not wish to apply for benefit or you do not want any information shared about any benefit information you have provided, financial data is not shared unless you explicitly agree to that. However, by the same token, if you look at fraud, Trading Standards will be another area where people behave fraudulently and you could share information between Trading Standards authorities, but I think you are looking at a proportionate risk there because with risk to the public, whether it is the public purse or the public as an individual, that is the line that is taken. That is not new legislation; that legislation has been in existence for many years to enable that to occur.

Q904 Lord Peston: The point I am trying to get over to you is that part of our inquiry is not whether it exists but whether it is getting worse, and the more I listen to our evidence, it seems to me it is getting a lot worse, that people are putting data together on broad grounds, which I can see the efficiency grounds for, yet I remain slightly unconvinced that the right to things like privacy in all this should not be overwhelming.

Professor Morphet: I do not think I would share that view. I think information can be brought together but under the very special circumstances that I have described. The other side is, say, for example, you are in receipt of Attendance Allowance, or you have applied for a free school meal, the question that is properly asked, if your financial circumstances are

such that you have just become eligible for a free school meal, the approach would be “Would you like us to see based on your circumstances whether, firstly, you might be eligible for any other benefit?” but even then, at that point it can be the individual’s responsibility to make those applications. Some authorities would say “Would you like us to prepare the forms for you based on the information and then you can sign them?” but I think at each stage there is a break point so the citizen is in charge of that. The only circumstances where really you would be looking at information is where there is a very considerable risk either around money or about people, so I do not think that has changed.

Q905 Lord Morris of Aberavon: Could I ask how Lord Peston’s privacy is enshrined if he does not want information about his blue badge to be circulated in case he may be claiming Housing Benefit as well? Is it in a code of practice?

Professor Morphet: Any member of staff at a local authority who is entrusted with taking that information is covered by the same verification framework that I was mentioning before, and the processes for taking that information, ensuring its quality, that it is actually correct, how it is used and how it is stored, is all subject to the same audit process that I described earlier.

Q906 Lord Morris of Aberavon: What is the audit process enshrined in?

Professor Morphet: It is enshrined in the DWP’s verification framework and the audit process run by the Audit Commission.

Q907 Baroness Quin: I think my question has been largely eaten up, but there were a couple of things I would like to pick up on. In your answer to Lord Peston just a minute ago, would I be right in saying that actually the only occasions where data is shared without the subject’s permission is when some criminal activity is suspected. Is that right?

Professor Morphet: Or where there is a suspected risk to, say, a child.

Q908 Baroness Quin: That would also probably be, if there was a risk involved, something that was against the law.

Professor Morphet: Yes.

Q909 Baroness Quin: Secondly, in the earlier answer you gave to our Chairman you said that you felt that the culture was against sharing of information between agencies. Am I right in thinking that, despite the Government's attempts over recent years to promote crime and disorder partnerships and inter-agency working, with laudable aims, actually, that has not been enough to overcome the cultural barrier to sharing of information?

Professor Morphet: That would be correct in my view. If you think about each government department that has responsibility appropriate to this area, they provide advice on information sharing directly to their own staff, so if you think about advice in terms of working with children, then DCSF will have advice, but I think from a local authority's point of view, it would be more helpful if that advice were enshrined in the code for the whole organisation. At the moment the advice, say, about children speaks from one government department, one set of officers or officials, so although if you look at the Information Commissioner's advice on a sharing code and you look at the advice from the DCSF, you probably would not see much difference if you were looking at a general level. For those who do not want to share information, they will pull out any nuance or phrase to argue sometimes, I am sad to say, that information cannot be shared. So I think there is quite a long way to go in changing the culture, as Lord Laming frequently points out. I do not think we have moved that far actually.

Q910 Lord Smith of Clifton: Professor Morphet, if you could now turn more to aspects of planning, on which you are an expert as well, has the planning profession formed a view that CCTV can play a positive role in the planning and design process for urban environments? Is there a search for less obtrusive ways of achieving safe and orderly public places?

Professor Morphet: I do not think the planning profession has ever particularly promoted CCTV. It has come from a range of sources, so obviously the public through their crime and disorder reduction partnerships and also colleagues in regeneration who want a secure environment for leisure or for retail environments in what might have been difficult town centres. Clearly, what we know is that CCTV does not seem to act as much of a deterrent, although it does help in catching perpetrators. From that point of view, planning has not particularly promoted CCTV. Planning has promoted good practice in safe and secure design. For example, I sit on the Olympic town planning committee and all the planning applications – not just because it is the Olympics; it would be the case elsewhere – go forward to the police for consideration on those issues, to make sure that a secure environment is being created. We try to ensure that the design is there at the outset, and we also ask specialists in particular cases to double-check that. I do not think the planning profession has been particularly promotive of that but it would be promotive of safe design.

Q911 Lord Smith of Clifton: It has learned from the walkways on various council estates and so on as a result of this.

Professor Morphet: Indeed, that is right.

Q912 Lord Smith of Clifton: The Olympic committee will not require you to run hell for leather in spiked shoes to avoid being mugged! You make this point that the extensive use of CCTV in public places is justified, even though there is little evidence of its effectiveness in crime reduction and public order. It seems to be a sort of comfort blanket.

Professor Morphet: I am sorry. I do not think I said it was justified. I said if you are asking where the push has come from, and yes, I think for some people it is seen as a comfort blanket, and they do feel more secure if they believe that if anything happens to them, the

perpetrator could be caught, but I do not think anyone now particularly believes that CCTV acts as a deterrent.

Q913 Lord Rowlands: When we went to Canada and the United States, our interlocutors were bemused by the way in which in Britain CCTV cameras have been spawned in such numbers. They could not believe they would have got away with it in Canadian or American society. Do you not think there is a need for a tighter process than this? Local authorities just do them off their own bat, do they not? They get a request or a demand, and up they go. We have had evidence saying the Information Commissioner should be involved. What do you think? You said planners are not involved. Do you think somebody should be more involved in this process?

Professor Morphet: Every time you place a camera there is an expectation that someone is looking at what is happening, and there is a cost involved, and I think it would be worthwhile to have a more strategic approach at, say, local authority level to how they are used and why, and the costs of managing them. Clearly, there may be cases where the police may have particular views in some circumstances about this, but I think it would be more worthwhile to have a more integrated approach to thinking about on-street safety, which would include design, CCTV, and the presence of police and other officials. I would certainly be in favour of local authority on-street inspectors who were looking at, say, parking or other enforcement activities on the street.

Q914 Lord Rowlands: Street lighting, for example, might be a better bet.

Professor Morphet: Indeed. I would be in favour of them perhaps being in uniform so that they demonstrated some kind of public presence for the local authority, and so that they would be ambassadors and people would feel more secure when they realised how many publicly paid employees there are on the streets. That could be done through a uniform or

wearing a tabard for a street cleaner or an inspector. So there are ways in which that could be done which would give people more security. When I worked in Rutland, we had the highest fear of crime of any local authority area in the country as measured by Mori, but we also had the lowest incidence of crime. We did not have much CCTV either.

Q915 Lord Rowlands: I do not imagine Rutland as being a centre of crime.

Professor Morphet: Well, it was not. I think if people have no experience at all, their fear levels are much greater.

Q916 Lord Lyell of Markyate: A search for less obtrusive ways of achieving safe and orderly public places: you made the point about public officials wearing tabards. That seems very sensible. Many of us were brought up on a book called *The Territorial Imperative* and that spawned hundreds of closes with curtains twitching, and that is very effective, but can you give us a third example of good public space design?

Professor Morphet: If we are trying to encourage more people to walk and cycle to counter obesity and depression, clearly, footpaths and the way in which planting is used by the side of footpaths is very important, and the height of planting, because women feel unsafe walking by high planting, feeling that somebody could be lurking behind bushes and so on. That is just a question of management and maintenance and thinking about that. There is also an issue that if you can offset some of the planting away from the edge of the footpath, but as we are trying to promote this kind of activity, having safe design for anything for pedestrians or cyclists is important, and perhaps we have not thought about that enough.

Q917 Baroness Quin: In your experience, have local authorities ever reviewed the use of CCTV cameras in their areas and as a result removed or dismantled them?

Professor Morphet: I cannot give you any direct experience of that, no. I think it is all in the other direction. I will not say there are no authorities who have done that but none spring to mind, I am afraid.

Q918 Lord Morris of Aberavon: Professor, the use by local authorities of covert, targeted surveillance arises obviously from the Act, to detect crime or to prevent disorder. I want to ask you in particular about the decisions of senior local government officials and about the proportionality of the use of their powers. Where should the line be drawn? We have heard examples of the use of such machinery for the allocation of schools, which cannot in any event, in my view, be a question of proportionality. It is clearly outside the intention of the Act. Dustbins, whether they are over-full perhaps what they contain, is pushing it a bit in any event. What sort of training or guidance do local authorities officials have in taking decisions regarding covert, targeted surveillance?

Professor Morphet: There are some traditional areas where this has been used. Trading Standards, for example, would be a longstanding example of where officials are trained, for example, looking at market stalls, looking at dumping, looking at the way in which items are made or distributed, car repairs, and that kind of thing. I can think of covert operations, sending children into off-licences to buy alcohol or cigarettes. Some authorities do run covert operations of that kind. Those are more longstanding and I think have public acceptance. The ones that you have described in terms of schools and refuse are much more difficult to deal with. I do not think it needs covert surveillance. Having once been in charge of refuse collection, if I thought that we had a particular problem in a street or with a household, I would send an inspector along with the refuse collection team. I do not think I would make that person covert. I would send them along each week or during the week as part of the normal inspection, because you have people out all the time. I do not think that has to be covert. If I have my staff in uniform, people can see them walking down the street, but I do

think inspection is important if you have a persistent problem, because some persistent offenders in these areas can cause a lot of problems for their neighbours, and the authority gets the complaints, and people feel the authority is not doing its job if it is not dealing with that offender. Thinking about schools, I think this is a very emotive issue in communities. I do not think I myself would go down that line, although I can understand how exasperated some of my colleagues may feel about the extent people will go to to get their child into a particular school. What I would be doing is saying “What is wrong with the other schools?” and in terms of public policy, should we be improving the quality of all schools so that parents do not feel they just have to get their child into a particular school because it has the best key stage two results or whatever. So I would be looking at improving the rest, but what we have to recognise is that at local level this is the kind of issue that will absolutely fill the chief executive’s postbag and that of the local members. I am not defending it because I think I would try other things but, nevertheless, I think locally the pressure in the local press and on councillors can be extraordinarily high over this kind of issue.

Q919 Lord Morris of Aberavon: I understand what you say when you say “I think I would try other things.” I know as a former constituency MP for 40 years or more how emotive these matters can be so I am not quite innocent in this matter. Should the Act be used at all, is the point I made, for this purpose? An Act introduced to prevent or detect crime used for minor infractions, or maybe not infractions at all, of sending children to the wrong school, emotive or not, or lifting the dustbins or whatever, is not within the power of the Act at all. It is a nonsense.

Professor Morphet: As I say, I would be of the same view as you. I would be looking at proportionality there.

Q920 Lord Morris of Aberavon: I am sorry. It is not an issue of proportionality; it is not within the sphere of the Act.

Professor Morphet: I do not know the Act inside out to give an opinion on that but I generally support the line that you are taking.

Q921 Lord Rodgers of Quarry Bank: This is an easy one to finish, arising from one of your many roles in the 2012 Olympics, and maybe this is a rhetorical question: do you expect that the Games will make widespread use of advanced surveillance technologies for the purposes of crowd control, prevention of terrorism and law enforcement? Have there been any discussions with the Information Commissioner, and do you think what is happening at Beijing might be the model of what you would like to have in 2012?

Professor Morphet: I should say first of all I can only speak for the town planning part of the Olympic effort, because I do not sit on the main committee. We have certainly looked at crowd modelling and what would happen, clearly the design of escape routes and so on. Also, we are controlling a perimeter fence for the duration of the Games as part of the security process. We have also looked at the access into the site through railway lines and so on as part of the planning process but I am afraid to say I do not have any other knowledge around the use of technology in terms of who is going to buy tickets and how that will operate. We have certainly looked at security within the site as of part of the planning consideration.

Chairman: Professor Morphet, can I thank you very much for the evidence you have given. Thank you very much indeed.