

WEDNESDAY 25 JUNE 2008

Present

Bledisloe, V
Goodlad, L (Chairman)
Morris of Aberavon, L
O’Cathain, B
Norton of Louth, L
Peston, L
Quin, B
Rodgers of Quarry Bank, L
Rowlands, L
Smith of Clifton, L
Woolf, L

Witness: **Mr Tony McNulty**, a Member of the House of Commons, Minister for Security, Counter-terrorism, Crime and Policing, Home Office, examined.

Q922 Chairman: Good morning Minister. May I welcome you to the Committee; thank you very much indeed for joining us. We are being televised this morning so could I ask you please to identify yourself for the record.

Mr McNulty: Tony McNulty, Minister of State at the Home Office with responsibility for policing, crime, counter-terrorism and security.

Q923 Chairman: Minister, the Information Commissioner, as well as some others, has warned that the United Kingdom is “sleep walking into a surveillance society”. Would you recognise such a thing as a surveillance society? Do you think that the Information Commissioner’s warning is justified?

Mr McNulty: I think his warning is justified in the sense that there is a potential if we do not do things in the right fashion and regulate them appropriately that we may end up with something approaching a surveillance society. However, in the next breath I would say that I am not entirely sure what the Commissioner or anybody else means by a surveillance society.

If they mean something approaching 1984 where every single element of what an individual does is regulated, surveyed and accounted for by some big brother state, then I do not think we are anywhere near that and I do not think we are sleepwalking towards it either. If they mean that generally as a society we are struggling with how to deal with the very positive benefits of new technology in all sorts of ways, the interface between the individual and data both in the private and public sectors and how we wrestle with those issues, then I think it is a warning that we would do well to heed to prevent sleepwalking, which I do not think we are doing at the moment anyway. I hope that makes sense.

Q924 Chairman: Would you yourself define privacy wholly in terms of individual rights and values, set against the interests of society as a whole? Or would you recognise any social importance, on the other hand, in privacy in terms of its contribution to the democratic society in which people feel free to participate without the fear of being suspected or watched?

Mr McNulty: I think the warnings from some about a suspect society are all the more interesting and I think that is absolutely counter-intuitive to a democracy. As our democracy has developed we have struggled with the rights of the individual and privacy and that individual's responsibility, and the duty afforded to the state in terms of public protection and public welfare. It is always – I think it always has been – a balance and the debate we are having now is about striking that balance, given other factors like, as I say, technology data and all the other elements. I would, I think, as most people should, weigh in that balance very strongly the rights of the individual and those broader rights of the state. Where there is a contest, other than in extreme cases, the rights of the individual prevail rather than the state; that is our democratic tradition and value.

Q925 Lord Peston: I tend to bore all our witnesses by quoting John Stuart Mill's famous dictum and I will quote it again to you. He says that there is a circle around every individual

human being which no government – be it that of the one of the few or the many – ought to be permitted to overstep, in other words there is this private area. When I put it to one of the regulators who was a judge and asked him whether that applied now – I think he was regulating phone tapping or something like that – he told me that that is dead. Parliament has passed a law that enables phone tapping and similar bugging to take place and therefore his view is merely to judge whether the case is appropriate. Do you have a view on that? Do you believe in the original 19th century view of one of the great English philosophers no matter what? You seem to be putting a trade off view.

Mr McNulty: I think it has always been about balance and I think John Stuart Mill was trying to strike the balance.

Q926 Lord Peston: No he was not; he categorically was not.

Mr McNulty: Let me finish. For him the balance then was that there was an absolute circle of privacy and space around the individual. I think that is still absolutely appropriate as an aspiration. My difficulty with that is that whatever the state does the use of technology, data and a whole host of other things will prevail anyway in the private sector. I am sure we will get onto CCTV but we think on estimate something like 80 per cent of the cameras are private so of course there needs to be a regulatory function for the state of what goes on in the private sector as well. I should think John Stuart Mill or anyone else will find it all the more difficult to function today, notwithstanding the state, in that absolute privacy circle, given what he wants to do with banks, buying houses and all sorts of other things. In that sense I do think things have moved on. Would I recast John Stuart Mill and come up with an equivalent sentiment for today given what I have said, I think I would and I think the starting principle must still be, as much as possible, to leave the individual citizen unfettered to go about their business.

Q927 Lord Peston: Are we to interpret what we are observing today as temporary, namely that there are some very special threats in our society at the moment – rather like things that were introduced in the war – or do you see what is happening is very much the now and there will not be a reversal?

Mr McNulty: Much of what is subject for debate today I think is today's normality. CCTV, DNA database and a whole range of these other elements are not there as a response to exceptional threats and exceptional circumstances. Clearly much of what we do specifically on counter-terror and other elements absolutely is; you are about to have the great fun of the debate we have just finished in terms of the Counter-Terrorism Bill to look at that exceptionalism. I do not think it would be fair to say that over recent times governments of either party have put CCTV in high streets or developed the DNA database purely as an exceptional measure for exceptional times; I think that is routine in the 21st century given all I have said about the utilisation of technology, data and everything else by the private and public sector.

Q928 Lord Peston: The other thing that those of us who are fairly ignorant learned about this, Minister, is the enormous technical advance that has occurred in the ability to engage in surveillance now. Essentially the worry one has is that if the technology exists why not use it? Do you have a role that says that it may exist but you should not use it?

Mr McNulty: We do and we equally have a role that asks if the technology is getting ahead of us so that whatever is today's highly developed technology is that still going to prevail for the very surveillance purposes that the state requires it in terms of people's public safety? Is that going to be relevant in five or ten years' time? So we have both, keeping ahead of technological developments to say that it might be there but actually there is a wider good that says you should not use it. Equally, is today's technology going to still be available to protect us in five, ten, twenty years' time?

Q929 Lord Rodgers of Quarry Bank: Turning away from the very important philosophic questions as to your own role, I know we are told exactly what your particular roles are within the Department, but what is your relationship with the other major departments? Are you chairman of a cabinet committee with other members? We are going to see Michael Wills later, do you have a competitive attitude? I have a piece of paper from the news on Monday morning on the question of councils being told to stop using spy laws for trivial issues. That is not a statement from a department but nevertheless it is close to Government. Would you be involved? Would you react to that? Apart from seeing the press cuttings would you think it would affect your view? Ministers do not normally sit down just thinking; they are expected to act upon the consequences. I am not expecting you therefore to sit for a long time thinking about the nature of surveillance, but how does it work? I am asking about the system of government in that respect.

Mr McNulty: I will come back to that example, if I may, after a few opening remarks. It depends on the area. Meg Hillier in our Department is more readily the Home Office minister charged with cross-cutting use of information, databases and everything else. That happens to be her responsibility but I work very closely with her. She will sit alongside colleagues on the relevant cabinet committees looking at those wider issues. We cast our net wider but in terms of counter-terror we do have weekly meetings with a whole host of departments, including ministers, on a regular basis updating not simply the security position but also then taking some thematic conversations about matters such as this and broader from a range of departments. We are absolutely plugged in across Government in terms of the architecture and increasingly I think joined-up government is both a clumsy phrase and probably still an aspiration, but that is what we need regardless of politics in terms of addressing these issues and that is what we are trying to do. If we go back to Sir Simon Milton's letter as a particular example, I had already got in touch with John Healey (my equivalent in the Department for

Communities and Local Government where local authorities sit) to say that we should meet the Surveillance Commissioner to discuss some aspects of how local authorities are using the RIPA legislation, so therefore reactive rather than just thinking about things. In the light of what Sir Simon Milton said I have written to Sir Simon to ask him to come in and talk to myself and to John Healey as well. I thought that was very useful on behalf of the Local Government Association. If you read his letter rather than just the headlines he was saying that these are important powers to deal with aspects of statute that local authorities are charged with control of and if there are abuses or misuses around the edges then that goes to the integrity of councils using these powers in the first place. It was not quite as sharp as some of the headlines were saying. That is exactly what I was thinking which is why I have asked John Healy to meet the commissioner and I have asked Sir Simon Milton to come in and see us too. If you read the RIPA legislation – the clue is in the title: Regulation of Investigatory Powers Act, not counter-terrorism but you can use it for the Litter Act as some would have it – of course terrorism and security was a key part of deliberations in both Houses but it was about some defence of the public from these powers invested in regulatory bodies, so we do react pro-actively (if that is an appropriate way of saying it) rather than simply sitting back and swerve the rigours on a daily basis and just carry on regardless.

Q930 Baroness Quin: Do you feel in joined-up government that there is enough focus on privacy issues in terms of the balance between those and security giving due weight to the privacy aspect? Are there discussions across Government on privacy?

Mr McNulty: There are discussions and the Prime Minister said last week that he is asking the commissioners in their turn to deal with the issue of privacy impact on the public and other matters in each of these areas. To go back to the original question, I do not accept the notion that we are sleepwalking into a surveillance society but I do accept that a lot of things are happening on a whole range of different fronts and it is difficult for any individual let

alone the state to see what the cumulative impact of that is. I think both in his liberty speech some months ago and in the speech last week the Prime Minister was getting to a place to say “Let’s have a look at the totality now of what prevails”. I remember once arguing with him when we had the ID cards debate and trying to picture a normal day in an individual’s life and the interactions they had with all sorts of databases, technology and potential surveillance or audit trails of their activities. You can cover most of the day and not even mention the state. I do think we need to look at that broader impact a bit more readily.

Q931 Lord Rowlands: Minister, we have heard from a variety of witnesses who have expressed deep concern at the way in which we legislate on the issue, that powers to collect and share personal data are reserved more for secondary legislation than primary legislation and, as a result, we have seen a kind of creep – a very considerable creep – an expansion by stealth, as it were, of both collecting and sharing data that a member of either House could not have spotted in the primary legislation. We have been provided with an example by Dr Chris Pounder in his detailed written evidence on the ID Card Act where he illustrates that point, the Children Act 2004 and the Anti-Terrorism, Crime and Security Act 2001. The National Pupil Database started off quite innocently in 1997 and again it has grown and grown and grown. First of all, how do you do that? Secondly is it not time that we had a kind of parliamentary view of privacy impact assessments on bills and legislation?

Mr McNulty: On that latter point I think that is very, very interesting and one on which there should be further debate. Quite what a privacy impact assessment would look like compared to some of the other impacts would be very, very interesting and I would not decry a move in that direction at all. On the broader point I think actually the person who prayed in aid the ID Card Bill was fundamentally wrong on the level of some notion of data creep or function creep because everything available to Government in terms of ID cards was quite properly put on the face of the Bill and any changes to that have to come back to the House and there are a

whole series of reasons in the Bill that go to the *raison d'être* for the register that they have to pass before they even go into orders. He is right, if I may say so, on the fact that the ID cards have increasingly more pieces of legislation; I quoted the other day 71 and was corrected to say that it was 74 order making powers springing from the ID Card Bill, but he is wrong in the essence of that meaning function creep in terms of the data. The data is very, very explicit on the face of the Bill or in schedule one. The issue is about whether it is appropriate for bills to more and more readily look like Christmas trees with all sorts of order making powers and, if you are interested, I am having a hard time following when that order is going to come subsequently because there are invariably delays to these things. That is a moot point and one that we should look at. The more serious matter is the principles that at least should be on the face of a bill. However, I have done enough bills to know that if you go in for undue specificity in terms of expressing things on the face of the bill, you sometimes cause more problems than leaving things more general. In the Counter-Terrorism Bill that you are about to inherit I think we have been as parsimonious as we can be on order making powers, save for the sort of 42 day model but I do not want to go down there necessarily today unless your Lordships want to. I do accept the premise that at least very, very clearly the principle and as much as possible the explicit functions and criteria for any data should be on the face of a bill as much as possible.

Q932 Lord Rowlands: In the case of Dr Pounder's evidence, will you give us a written comment on it.

Mr McNulty: I will.

Q933 Lord Rowlands: On the broader question I would like to pursue this question of a kind of privacy impact assessment on legislation and to say that some minister bringing forward a bill would have to make it very explicit as to what kind of information is being

sought and what is going to be shared as a consequence of the legislation. Would you accept that alongside the human rights issue?

Mr McNulty: I think we are almost half way there in the sense that any new legislation to do with surveillance information or data will invariably have the comments of the relevant commissioner as part of the process.

Q934 Lord Rowlands: I have not seen any explanatory memoranda.

Mr McNulty: Not necessarily in the explanatory memoranda or as part of the official documentation, but fairly soon after the publication of the Bill you will have the views of the commissioner forthcoming whether requested or otherwise. That is perfectly fair because that is their role. I am not offering that instead of privacy impact assessments, especially in areas of real sensitivity. As I say, I think it is a point worth exploring. I am trying to think through the practicalities of what it would look like rather than dismissing the notion. I think it is a fair point.

Q935 Lord Rowlands: You mentioned earlier that technical innovation almost outstrips legislation and even decision making and ministerial accountability. Is there any way we could have a parliamentary process where renewal of a power would be needed when technology has actually changed sufficiently to create a much bigger problem for the privacy of an individual?

Mr McNulty: I think if there is substantive change it should come back in some form or other, whether it is an information point or for renewal. You will know that the Leader of the House of Commons is looking at the notion of almost annual, if not bi-annual, reports back on legislation to see whether it was implemented, whether it was all utilised.

Q936 Lord Rowlands: Post-legislative scrutiny.

Mr McNulty: Post-scrutiny, absolutely, and I think that might be the appropriate way forward for newer legislation but I do take the implicit point you make about a whole host of legislation now that was at least at its statutory root developed in an entirely different time in terms of technology; that might be fair. To give you an example, the Police and Criminal Evidence Act has stood up extraordinarily well with tweaks along the way. We have just done a review on it and the most remarkable thing about the review is how comfortable people are on a consensual basis with the essence of it. If you look at it utterly literally – I have seen the outcome of this – it says there should be tape recordings of interviews and they should be portable. Every time I go to police stations I see cupboards stacked with cassettes, sometimes changed a little bit in terms of smaller digitals. We have requested permission under an order to conduct an experiment in the East Lancs Division of Lancashire Constabulary to do it on a digital recording basis with encrypted and sole access by the police and the defendant's side who require it so it is absolutely secure so nobody is lugging around cartloads of taped interviews. That technology was not anticipated in 1984.

Q937 Lord Rowlands: Would that require a change in legislation?

Mr McNulty: I think we can implement that universally on a wider order. We certainly have to bring an order to both Houses to even go down that route as an experiment. Perhaps I am proving your case rather than otherwise by saying that we can probably do that through secondary legislation. There has been a good deal of tweaking and changes to PACE by secondary legislation, broadly with agreement that it has been improved rather than otherwise, which is why the overall statutory roots have stood the test of time.

Q938 Lord Morris of Aberavon: Minister, I am encouraged by your pro-active role following the Milton letter, but the Home Office must have known for a long time that there were a lot of controversial decisions by local government long before the Milton letter which

may well be the basis for his concern. We have heard cases, we have cross-examined witnesses from dustbins to school catchment areas so this has been well-known, in the press for a very long time of local authorities apparently exceeding what might be regarded as a proportionate action to RIPA. Had that not occurred to the Home Office before? Secondly, I think Charles Clarke was in your seat when he sent a letter when RIPA was being taken through the House to Bill Cash. I do not have it with me today but we can get a copy for you. He gave a categorical assurance that RIPA would not apply to local government. Should these powers be given to local government, whatever the basis of them?

Mr McNulty: As I say, if we afford a whole host of statutory powers to local government and expect them to enact those powers, then if they feel they need the sort of powers referred to in RIPA then that is entirely a matter for them, so long as they are used on a proportionate and rational basis. The key word you latched upon in your description was “apparently” because I do not have hard evidence that there are local councils up and down the country routinely misusing, abusing or wrongly utilising RIPA. I have significant anecdotal evidence – if I can say it in those terms, certainly not substantive empirical evidence – from some of the newspapers that it has been used disproportionately which I think may well be the case in one or two of the dog fouling, schools and other cases. If we are seriously asking local government to carry out its statutory functions around a whole host of things like the dispersement of assorted benefits, like environmental health, fly tipping and a whole host of others, and to challenge serious criminal activities that matter to their communities, we need to give them the powers to do that. I do accept that there is sufficient disquiet, not least from Sir Simon’s letter, that goes to the integrity of local government using those powers at all, and that cannot be right which is why I am very keen to meet him with John Healy and why I had already set in train a meeting with the Surveillance Commissioner to discuss it with him. It would be unfair of me to say at this stage that there has been utter and broad misuse.

Q939 Lord Morris of Aberavon: There have been cases at the edge.

Mr McNulty: At the edge may be a fair description and I think we need to look at that in more substance.

Q940 Lord Morris of Aberavon: It may be the reason why Charles Clarke sent a letter in 2001 and the order was introduced contrary to his promise in 2003.

Mr McNulty: I could not possibly comment on that. Certainly looking from 2008 and what I know of RIPA I find it astonishing that anyone would say of all the public authorities local government probably would not have scope to utilise this.

Q941 Lord Morris of Aberavon: We will get the letter for you.

Mr McNulty: Thank you.

Q942 Lord Morris of Aberavon: Could I ask you about the tests of necessity and proportionality which officials at whatever level have to reach in the sense of whether it is appropriate to use powers in data collection and surveillance when there is a lack of benchmarks on how specific proposals could be judged? Have you thought about that?

Mr McNulty: We have in a very general sense. Clearly the more sensitive and the more intrusive the surveillance the more at the centre we are very, very clear about what those edges – as you referred to – are and what is permissible or otherwise. That is why it still remains the case that warranty is signed at secretary of state level for those very, very intrusive but necessary interventions. I think the discussion about Sir Simon and local government goes to the broader issue about those thought processes and, as you say, we are not anticipating either function creep or power creep, if that is appropriate and people pushing at those edges. To go back to one of my earlier answers, I think that is done fairly rigorously in its own terms within a bill but I am not sure if sufficient is done to put that bill in the

context of what is already out there, rather like the broader point about privacy and impacts and how this one additional element adds to the greater cumulative lot that is out there. I thought it was interesting – and I tease my officials about this – that at the end of the supposed questions that were coming my way it said, “What, in your view, are the four processes through which officials ought to go?” I could do a lecture on that in the broader general sense but not specific to these issues. Officials do consider proportionality and matters like that. I think collectively Government might have to learn a lesson about how to that more readily across the piece. That is almost the same point I was making about joined-up government.

Q943 Lord Morris of Aberavon: Proportionality is not always an easy decision and given the lack of benchmarks which I have referred to already, lack of training perhaps. We have had a look at Government officials before us; some of them have been very strong in their views as to what they can do and think that they can use their powers for any crime in sight which is worrying. The lack of training, the difficulty of the decisions – they are not easy decisions – has any thought been given as to how you ensure that those who exercise these powers have the necessary training to take not easy decisions?

Mr McNulty: I think we are relatively comfortable with the level of senior management on which these serious decisions are made, but like a lot of activities out there in the broader domain it is when the ability to utilise that power trickles down to the front line, as it were, that I think there may be broader concerns. That is certainly something I am keen to meet both with Sir Simon and with the Local Authority Coordinator of Regulatory Services (LACORS) to discuss this with them. I fear that if there are people pushing at the edges it is with or without the licence of those senior managers who do the signing off and we need to bottom that out and make clear which it is. I do repeat that these are very, very sensitive and serious powers that if, at the edges – as you describe it – they are open to misuse go to

challenging the entire integrity of quite proper use of these powers by local government and other regulatory authorities.

Q944 Lord Rowlands: Is it not the culture of the agency or department? You can have a department which quite rightly focuses on delivering a better set of services to the citizen and therefore automatically coming to the conclusion that the more information they can gather, the more data sharing you can take, that that will be a great facilitator of great services and there is no-one in that department or agency who will ask about privacy, the other side of the coin.

Mr McNulty: I am not sure that that is the case. Certainly from the Home Office's perspective and the prime minister's perspective, notwithstanding the sensitivities around these matters, they are convinced that data minimisation – another ugly phrase but it will do – should be the starting principle, that is: what data does a department or particular aspect of Government require to provide a service, deliver goods or whatever to the citizen? It is not: let us take all the data and then we can work out what we need to utilise to deal with and discharge our functions as a department.

Q945 Lord Rowlands: Do you think there is a belief in privacy and a culture embedded in government departments?

Mr McNulty: I think there is an increasing culture of being alive to the impact of surveillance and data collection and a guiding principle of greater data minimisation. So the starting premise is to resist the function creep and the data creep.

Q946 Lord Peston: Can I ask you to reflect on the following? Most of us are older than you but if I had been told when I was a young man that there would come a day when my local authority would actually want to know the details of what I put in my rubbish bin – or in my

case in my three different coloured rubbish bins – I would have said you were mad, that we would never come to a state of affairs where that would happen. Why would they remotely feel that that was fundamental to their delivering a service that I want? We now live in a society where there is not only that but they engage in really detailed scrutiny of what we do with our rubbish. There may be arguments in favour of that but in terms of respecting one's privacy I would have thought that that is a cause for concern, particularly given the threatening nature of some local authorities. I keep asking my wife if a bit of plastic goes in the black bin or the blue bin because I cannot remember the difference between the different types of plastic. According to my local authority I would be breaking the law if I put it in the wrong dustbin. Is there not a serious issue of privacy here where one wonders whether anybody in local authorities has thought about that, following Lord Rowlands' point?

Mr McNulty: I think there is and I think there will continue to be - which is why I welcome the debate rather than traduce it – a clash of particular policy outcomes. Twenty or thirty years ago people said you were mad if you thought that unless we do something rather starkly about the environment the planet is going to perish.

Q947 Lord Peston: We do not want to argue about that now.

Mr McNulty: It all goes to the same point; that is precisely what I am saying. However small a contribution, you putting the right rubbish in the right bins so that it can all be duly recycled is all part of that process. That is not to excuse a threatening paraphernalia around that if the public officials are discharging their function, but I think the privacy – to back to John Stuart Mill and your private circles – around how you discharge your rubbish has gone back to a public realm in terms of the utilisation of recycling that rubbish. It is a very, very interesting debate, but it still does not excuse the threatening or intimidatory nature of discharging those duties by local councils. I would accept that point.

Q948 Viscount Bledisloe: You said that the local government official ought to consider whether he needs this information to do his job, but is there not another question there? If I am the dog fouling officer I would need information about dog fouling to do my job, but somebody might say, “Well, maybe, but dog fouling is not that serious that we ought to be spying on people to get it” and you cannot expect the dog fouling officer to make that decision, can you?

Mr McNulty: No, and he would not. Under our architecture a senior manager way above him would, not the operative on the ground floor. I was going to say that I would not poo-poo the notion – I apologise for the pun – but if the one local park available to the community is festooned with irresponsible dog owners who are just using it as an open lavatory for their dogs then the impact of that on children and others in the area can matter. I am not saying it matters in every single circumstance however.

Q949 Viscount Bledisloe: There are some offences that are not worth the invasion of privacy involved in spying on them. Dog fouling may not be one of them.

Mr McNulty: It is a balance and it does go to the broader point about proportionality, but in the example I think there may be a reasonable and rational application of the law. We are at the edge, I do accept that. Are there circumstances in which I think it absolutely appropriate to utilise the powers afforded to local government against littering? Probably intuitively not, but there might be a broader context where it is absolutely a plague in a particular area so it does go to context and proportionality and the priorities of the local councils and the impact of the misbehaviour on the local community. I would not necessarily trivialise any application, but I do absolutely think – which is why I will discuss it with the commissioner and Sir Simon – that we need to re-define the edges.

Q950 Baroness O’Cathain: In what ways, if any, do you think that the work of the surveillance commissioners could be improved? Is there a case for requiring them to investigate specific cases where it appears that RIPA powers are being used unnecessarily or disproportionately?

Mr McNulty: It may be and I think the fairest point is to say that the whole commissioner architecture is relatively new and in this area we should keep it as flexible and dynamic as possible to see where the interventions of powers should be. It is certainly a question I will ask the Surveillance Commissioner when I see him specifically about RIPA but I think it is something that the Prime Minister is very keen on too. He will ask the relevant commissioner to look in more detail at the National CCTV Strategy and how that Strategy fits in with where we are at. I would say at this stage, so long as we keep an open mind and be flexible and not lock in a box the definition of what the commissioners should or should not do and constantly go to battle with them if they want to do any more, I think that would be an irrelevant and not terribly helpful approach.

Q951 Baroness O’Cathain: That would also be covered, of course, if you propose post-legislative scrutiny and watch developments all the time because there might well be technologies which we could not even dream of.

Mr McNulty: I think the Prime Minister in his speech last week formerly asked I am not sure whether it was the Surveillance Commissioner or the Information Commissioner to do an annual report to Parliament to assist that broader post-legislative scrutiny type approach. He did not promise this because he is in awe of the business managers, as am I, but hopefully with a detailed debate on it as well rather than just another document lodged in the library.

Chairman: Lord Smith?

Lord Smith of Clifton: I think most of my questions have been pre-empted by earlier debates so we should move on.

Q952 Lord Woolf: Moving to a different area, the National Identity Scheme Delivery Plan suggests that there will be the strongest possible oversight of the Scheme. Can you clarify what will amount to the strongest possible oversight?

Mr McNulty: I think the commissioner will have specific and broad responsibilities for overseeing the work of the Scheme. The information commissioner will ensure that there are high standards of data adhered to. We mean it when we say that there should be the strongest oversight possible. Also I think with increasingly a duty to focus on and resist data maximisation and the notion very alive when I took the Bill through of function creep. The oversight will be as broad as possible. We appreciate it is a serious step.

Q953 Lord Woolf: Will the commissioner have sufficient resources to carry out this function?

Mr McNulty: Yes, I believe so, and I think crucially including the right to be consulted about changes, not least changes in terms of function and data which of course needs to be approved by both Houses in the first place but I think it appropriate that the commissioner is consulted on that potential change before each House is troubled by orders.

Q954 Lord Woolf: Of course there will be also the Information Commissioner; how are they going to define the boundaries of the responsibilities of each?

Mr McNulty: I think overwhelmingly the Information Commissioner's role is in the context of the individual data protection and that is very, very clear, whereas the Scheme Commissioner's role will be about the proper oversight and integrity of the Scheme itself and making sure it complies with legislation and that any changes afforded are dealt with and discussed. He will have a role specific to the Scheme whereas you will appreciate the Information Commissioner's role is a far broader remit.

Q955 Lord Woolf: Who is going to tell them those are their respective roles?

Mr McNulty: Hopefully they will already know. The Information Commissioner certainly knows his role already and I think in the legislation the Scheme Commissioner's role is pretty well defined. It may well be one of those 74 areas yet to be fully defined in one of the orders hanging off the Christmas tree. It is some time since I did the ID Cards Bill so if that is wrong I will get back to your Lordships.

Q956 Lord Woolf: It may well be that it is best left to them to work it out in practice.

Mr McNulty: That may well be so. I know that because their areas overlap so readily the Intelligence Service and the surveillance commissioners do meet fairly regularly to determine their boundaries. Quite how they relate more readily to the overarching role around the individual data protection of the Information Commissioner I think is a moot point.

Q957 Chairman: Can I turn to closed circuit television? One of the recommendations of the National CCTV Strategy of October 2007 was for a national body responsible for the governance and the use of CCTV. Could you tell us a little more about this initiative and whether you think there is scope for statutory regulation in addition to better governance, codes of practice and the Data Protection Act?

Mr McNulty: There may be in terms of the second one. In terms of the first point, at the moment there is a programme board looking at the establishment of that national oversight. It contains a whole range of representatives from the Association of Chief Police Officers, the Home Office, our non-departmental public body, the National Policing Improvement Agency, the Local Government Association, the Ministry of Justice, the Information Commissioner's Office and a range of others across Government looking to get in place that national oversight and the broad development of CCTV. I think it is appropriate and that is why we endorse the Strategy because like a lot of these issues CCTV covers a relative multitude of sins. As I

referred to earlier when looking at the original concept of a surveillance society you would be forgiven for thinking, given some of the coverage, that every single camera was organised and there and manifestly there only for the state which is not the case; some 80 per cent plus on estimate are private. We think there is a reasonable relationship - whether people know of it sufficiently or otherwise is again a moot point – between the data protection legislation and an individual's rights vis-à-vis cameras, but that might be worth exploring in some more depth. There is also a range of technological capability around many of the cameras, most of those in the public space domain may well retain images for up to a month; many, but not all, of the private ones are at their most basic on a sort of 24 hour loop and are constantly taping over the images recorded. I think it may well be that this national body as it goes forward does look at the relationship between individuals, public authorities and CCTV. This area, above most, and the DNA database are areas where I would traduce entirely the big brother image because it is a nonsense.

Q958 Chairman: What would you think, Minister, of the suggestion that the Information Commissioner or another similar person should have to approve major new CCTV schemes or carry out retrospective inspections in the way the surveillance commissioners examine the use of RIPA powers?

Mr McNulty: I am not sure how helpful that would be unless we discern a difference between different types of CCTV schemes. It may well be that new schemes put in a town centre now, for example, will be wholly different from one that has been there for ten or 15 years and can have considerably more technological capabilities that may go to both better protection and have potentially greater intrusion so that there might be a case for doing that looking forward, but I am not entirely sure what a retrospective view of even those public place and space camera systems or indeed private would achieve because invariably things have moved on so

readily in terms of the technology, so your benchmark for assessing the impact of something retrospectively would be almost irrelevant.

Q959 Lord Peston: Going back to Lord Woolf's question, it suddenly dawned on me that I am totally ignorant now of where we are on the practical introduction of identity cards. You mentioning the 74 branches of the Christmas tree worried me. Would it be possible for your Department to give us a short statement on the present state of play, where we are with identity cards?

Mr McNulty: Of course; that is entirely reasonable.

Q960 Baroness Quin: You mentioned earlier the principle of data minimisation. I think the Home Affairs Select Committee is also keen on that principle. How does that apply to the National DNA Database, in particular in keeping DNA information on persons who are not charged with or convicted of an offence? What about the time honoured principle of presumption of innocence here? Is it fair to treat people who have never been charged or convicted in the same way as those who have been?

Mr McNulty: I think there is an entire misunderstanding of the nature of the National DNA Database; there are no guilty people on it in the sense of guilty of future charges. It is not an information source for all the naughty and potentially nasty people in the country and if you are on it is a stigma. It is purely an informational and investigatory device for the police. I would, I think, defend absolutely the position we are in now. You will know there are those who say why not go straight to a universal database. I got in trouble because I rather clumsily said on the *Today* programme that I had some sympathy with the spirit of the logic behind that which, of course, days after was cast as "Government minister has sympathy for universal database" which I did not say; there is some logic to it. I think that would be intrusive and unnecessary and cause all sorts of difficulties. We have also looked at broadening out the

potential sweep of the DNA database to all offences recordable and non-recordable, ie every fine and everything else and I think that is a step too far. I think where we are now is appropriate. I do not think it is intrusive and I think collectively in terms of weighing the public good against the intrusion on the individual, the litany of rapists, killers, child abusers who nominally, on anybody's definition, would fall into your innocent category, ie they have encountered the criminal justice system but the case has not been pursued against them, only for it in some cases, 15 or 20 years later, horrendous crimes are to be laid at that individual's door purely because of the individual DNA sample being on the database. If we go back to the notion of balance between the individual and the state, I think that is a balance worth defending and equally in many instances, of the 40,000 or so crimes dealt with since the inception of the DNA database, in any number of cases the police would have been able to entirely eradicate someone whose DNA sample was at a particular scene for entirely innocent purposes but they would only have been able to do so because they had that sample on the database as well. I would passionately defend the position we are in now in terms of the DNA database. The list of rapists, killers and everything else we have resolved only because of the existence of those samples on the database puts for me the balance very, very firmly into the maintenance of the database as it is now.

Q961 Baroness Quin: Given that you have talked about cases that have been solved 15 or 20 years later, do you have a view as to the time period after which DNA information should be deleted?

Mr McNulty: At the moment it is not, as you will be aware. Tony Lake, the outgoing Chief Constable of Lincolnshire, who was the ACPO lead on forensics, is looking at whether there should be, particularly for younger people, a time limited period of retention and then subsequent deletion. We are trying to explore that with him at the tail end of the broader PACE review. I think that sort of element is worth exploring, especially for very, very young

people, but I do want to get away from this notion that somehow these are individuals who, if we have not got them yet we will do, so they are almost a nearly guilty. It is not a list of either guilty or innocent or anything else; it is simply those who, for whatever reason, either at crime scenes or in terms of arrest but not ultimate conviction, have encountered the criminal justice system and it is a very, very useful investigatory and information device for the police and should not be seen as anything other than in those terms.

Q962 Viscount Bledisloe: I understand the point that everybody should be on the National DNA Database. I can understand another position which says that anybody who has been convicted of a criminal offence – or offence of sufficient importance – should be on. How can it be right to keep the DNA of somebody who has been taken but was not in fact guilty of that offence and the DNA was taken for the purposes of eliminating them from the enquiry? How can it be right that against their wishes – or certainly without consulting their wishes – it is retained?

Mr McNulty: How can it be right? Because it is not a sign of guilt; it is purely informational. I agree also with the logic of a universal database and can see the integrity of such a logic, but I do think for all sorts of reasons that is a step far too far, as is the broadening out to non-recordable as well as recordable offences. You have to strike a balance in these things and I think the balance is about right.

Q963 Viscount Bledisloe: If two people are present at a place where a murder has taken place and one of them voluntarily gives his DNA because he thinks it will help the police and the other one refuses, you keep the man who was cooperative but the man who refused is not on your database.

Mr McNulty: Unless he is arrested subsequently for anything else.

Q964 Viscount Bledisloe: Yes.

Mr McNulty: It is not about eliminating everyone and finally having everybody on the database. It is, by its nature, to an extent arbitrary in the terms of it being restricted to those who encounter by arrest or for some other reason a crime scene, but is a strong place to be in. I do not think there is a matter of principle here; I do not think there is any stigma attached at all with being on the database. The whole notion of “Can we take the innocent off the database?” is, when you think about it, abject nonsense because there is no guilty on the database. There may be people who have been guilty of other crimes in the past but on one level the intrusion into their liberty, just because they have committed an offence they should be on the database, is just as potentially damaging as the “complete innocent”. The power of the DNA database I cannot overestimate in terms of some of these cases. To give an example, Stefan Kisko only came out of prison because of a DNA database sample that Ronald Castree had had but it was years before he was arrested and convicted for that particular horrendous crime. I am not saying all 40,000 crimes that have been successfully dealt with because of the DNA database are as horrendous and as headline in nature as the starker cases but I think it matters. Dealing with these very, very serious crimes and getting innocent people incarcerated off because of it in some cases does matter and it is a matter of public policy and that balance between the individual right and public policy; this is actually something where the public good does outweigh the inconvenience of people being on the database if they have ever encountered the criminal justice system. I do believe that profoundly but there are people running around the country on some sort of campaigning charging white horse trying to get people to knock down the National Database or somehow take the innocent out of it. There are some horrendous cases here of the innocent who, by some of these people’s definitions, would be now out of the frame absolutely in terms of being charged with their horrendous crimes.

Q965 Viscount Bledisloe: Do you realise that inherent in that whole observation was the theory that you do not get investigated by the police unless there is something wrong with you?

Mr McNulty: Absolutely not. You are not investigating everybody on the database because they are on the database. You are investigating DNA samples found at crime scenes in the absolutely normal fashion of investigation and if, by chance, for some other entirely erroneous reason that perpetrator happens to be on the database they will be charged accordingly. It is not fishing. It is not a case that we have all these people on the database, they all must be guilty, now let us find a crime to attach to them. In terms of the wider political domain that is exactly the sort of sloppy intellectualism that attracts itself to this that I profoundly disagree with because of the profound power of dealing with these individual cases. They just will not happen, full stop. They will not happen unless we do have a database that has to be populated in some arbitrary fashion, yes it is populated by samples from crime scenes and you will remember in the past the home secretary did take samples from the entire prison population at that particular time and topped up by anyone who encounters the criminal justice by arrest. That is not to say they are guilty or otherwise; it is purely a very powerful informational diagnostic tool that I would utterly defend.

Q966 Lord Woolf: I gave a judgment – I have to disclose this – absolutely upholding the position you have just described and the case that was put against my judgment is that we really are adopting a totally illogical position. If your arguments are as powerful as you suggest they are, then surely they are powerful arguments in favour of universal disclosure. If it be the case that they are powerful arguments about universal disclosure where we all do it, then there is no inference that you are almost guilty or anything of that sort. What are the arguments that have persuaded you against universal? Why is too far?

Mr McNulty: As I say, I fell into the trap courtesy of Mr Humphries or whoever by saying that I agreed with the very strong logic of a universal database but I think it is outweighed by practical civil liberties and potentially legal concerns - notwithstanding the European court case that is before the courts at the moment – that prevail against that.

Q967 Lord Peston: And costs.

Mr McNulty: Yes, absolutely. The costs and practicalities as well, but in the sort of broader public policy and philosophical context of course I see the logic of it but I do think there are cost practicalities, legal and civil liberties dimensions that prevail against it, although I do see the logic. That was the trap that Mr Humphries drew me into.

Q968 Lord Woolf: I do not think it is right to say that it was a trap; it is a question of facing up if it were so beneficial for the public interest. Can you give some indication of what would be the additional cost of everyone being required to disclose their DNA? It is a very simple exercise.

Mr McNulty: I do not think to either cause excitement from media colleagues behind me or a nervousness in other people, that there is some report or work that has been done by Government to look at the costings for taking and then storing individual DNA for everyone. I think there are strong civil liberties and other reasons why, notwithstanding the logic, it is not a road I would go down. Some police officers do put that forward, and some a much wider base than we have now. You have to draw the lines of parameters somewhere and I think the line that says that encounter or arrest in the first instance is a sufficient line to draw for recordable offences, not just every offence. On a logical level I to take the broader point, but I think there are powerful public policies and civil liberties that in the balance of things mean that the position we have now is preferable to that sort of universal approach.

Q969 Lord Rowlands: We are still trying to grapple with the simple proposition that I, as an individual, volunteer to give my DNA – I am not approached by the police, I volunteer to give my DNA – why do I not have the right to say that afterwards I wish to have it eliminated?

Mr McNulty: By the nature of it and by the nature of the logic we have just been discussing, the DNA database is more enhanced with your sample on it than not. As I say, the work we are doing with ACPO to look at potential retention periods, especially for the concern – I put it no stronger than that – about very, very young people being on it and we do need to get to an acceptable and agreed position on that.

Q970 Lord Rowlands: Will you get a better voluntary effort if you at least give the citizen the right afterwards to say that he now wishes his DNA to be eliminated?

Mr McNulty: It is interesting that what there has not been is any concerted effort by Government to get voluntary contributions to it; maybe that is an area we should explore and then look at the retention protocol around that. The notion that volunteers should have at least the option for retention being for a shorter period than forever is a fair one that we are exploring.

Q971 Baroness O’Cathain: Still on the same question really but I take a somewhat different view. I do not know whether the Government has looked at this, there does not seem to have been much publicity about it, but a lot of women particularly would feel a lot more secure and safe if everybody was on the DNA database, particularly in rape cases, because there is a universal feeling out there that women who are subjected to rape do not have any chance whatsoever of getting any sort of justice.

Mr McNulty: I think the corollary of that is how some significant major rape cases have been dealt with only because of the DNA database so it goes to the same point. The debate around universalism will continue. In many investigations up and down the country around rape a

goodly number – if not the overwhelming majority of the male population in a particular area – have come forward quite willingly to submit their DNA sample to be eradicated. I do not think it is a debate that will go away. I think the position now is a very, very powerful one and I really would traduce those who are in opposition to it. I think there are principles around where you draw the line, but I do not understand at all these white knights charging round the country on some sort of civil liberties campaign saying that the DNA database is somehow inherently evil. That is an absolute nonsense. I have had some assistance from behind me – you get these inspirations every now and then – says: “Volunteer samples may only be taken where the person provides written consent to give a DNA sample to assist the police investigation. The resulting DNA profile is then compared in a forensic laboratory with the DNA material recovered from the crime scene. Volunteer profiles are only added to the National Database where an individual has given separate written consent for the profile to be loaded and retained. The consent form explains that once consent for addition to the National Database is given it cannot be withdrawn.” That reinforces your point and it is something that we do need to look at in terms of Tony Lake, the ex-head of Lincolnshire who was the ACPO lead on forensics and his successor. Regulating the framework roughly where it is now I think is hugely important and I have a task to explain to more and more people the public policy benefits of the DNA database and some of these significant cases only coming to fruition and conviction of the perpetrators because of an “innocent” sample given some time before the individual is actually caught on the major crime. That is a huge debate.

Chairman: Minister, thank you very much indeed for joining us this morning and for the evidence you have given.

Witnesses: **Mr Michael Wills**, a Member of the House of Commons, Minister of State and **Ms Belinda Crowe**, Head of Information Rights Division, Ministry of Justice on the Surveillance Inquiry, examined.

Q972 Chairman: Good morning. Can I welcome very warmly to the Committee the Minister, Michael Wills, and Ms Crowe. We are being televised so could I ask you please to identify yourselves for the record and then the Minister will make a very short opening statement.

Mr Wills: Thank you very much, my Lords. I am Michael Wills; I am the Minister of State in the Ministry of Justice with responsibility for data handling issues. On my left is Belinda Crowe who is the Head of Information Rights Division within the Ministry and who has responsibility for a team of officials who deal with these issues not only within the Ministry of Justice but provide advice and support throughout Whitehall as well. Thank you for this invitation to come here. It is a timely meeting because today we are going to see the actual results of one of the reviews that was set up by the Prime Minister towards the end of last year looking at a whole range of data handling issues, reviews into what has happened in the Ministry of Defence, in HMRC and across Whitehall as a whole. What these reviews reflect in a fundamental sense is what a huge challenge data handling has become for all organisations. This is not just the public sector, it is the private sector as well. Technology has moved so dramatically fast that organisations are really struggling to keep up with the implications. The advantages of what these new technologies offer are manifest and developing all the time, but the consequences of how data is handled are really also dramatic and organisations have found it difficult to keep pace. As I say, there have been some very well publicised incidents within the public sector, but the private sector is not immune from this as well and there have also been some slightly less well publicised incidents. A lot of financial institutions have had catastrophes with data handling. Mobile phone companies,

retail companies, all of whom keep and use huge quantities of data, when you talk to them they will all say how valuable this is to them but there are consequences for how they protect the privacy of their customers' information and for the public sector the burden is equally intense. We are running to keep up and that is the lesson that I have certainly come away with from my last year in this job. The advantages of these new technologies and what they offer in terms of data sharing are immense, and I may come on to that in response to some of your questions. It is clear that we do need a radical change of culture within Government about how we handle data. Over the years I think Government has become very scrupulous about how it handles money; there are very clear systems of financial accountability and transparency in place and everybody realises the need for that. I think the case with data is less clear. Clearly we do not handle data in the same way as we handle money and we should. That is the cultural challenge that all of us face - ministers, politicians and officials alike – and that is the challenge with which we are now grappling.

Q973 Chairman: Can I just press you a little further on that? Apart from the issues you have touched on, certainly the security of personal data against loss and breaches, how satisfied are you that the development of Transformational Government has resulted in the Government that you have touched on that minimises the collection of these data and processes them in line with the spirit and not just the letter of the Data Protection and Human Rights Acts?

Mr Wills: I think by its very nature the Transformational Government agenda should implement the minimisation of data principle because what it is trying to do is to use data more efficiently so instead of having a lot of separate and often quite large databases we are trying to integrate them. That should actually minimise these separate databases and ought to improve the security and handling of data, but it is not a panacea on its own. Its primary motivation is to improve delivery of public services for the citizen and all the other things that

are necessary for the security and proper handling of data have to be put in place. It is not a solution to it but I think it is absolutely consistent with the minimisation of data principle.

Q974 Chairman: Apart from the Government's Information Sharing Vision Statement what did the Ministerial Committee MISC 31 achieve in attempting to resolve cross-governmental disagreements and fragmentation concerning data sharing and privacy? Why was it dissolved before announcing any final solid policy conclusions? What lessons, if any, have been learned from this episode and what plans are there for the future?

Mr Wills: It pre-dates my time in this role so, if I may, when I have made a few responses to your various questions I will perhaps ask Belinda Crowe to add from her own experience of MISC 31. It was, as I understand it, an attempt to bring together across Government all the ministers with responsibilities in this area to see how we could join up what we do in this and that is clearly crucial. I think everybody accepts that collaboration across Government in these issues is vital. There have been some very good examples of it and I think MISC 31, from what I have seen, did do a good job in starting a process of collaboration across Government. It became overtaken by events and perceptions that we needed to look at this afresh when this prime minister took office before the very well publicised incidents of data loss and, as it were, inadvertent data sharing. He felt there were real issues that needed to be addressed here and that is why we set up some of these reviews before these incidents took place, such as the Walport/Thomas review. In answer to your question I think it did a valuable job in promoting collaboration. Some of the fruits of it we are still taking through and I will perhaps allude to those in response to later questions. However, that mechanism needs to be updated and what we are planning to do is to wait for the results of the data handling review that is being published later today, the other reviews will follow shortly afterwards. Once we have got those reviews and have taken stock and evaluated them then I think we will have to look at a new mechanism that promotes that sort of collaboration.

Ms Crowe: I would just reinforce the point that the creation of MISC 31 and, if you like, the official support that accompanied ministers did highlight the need for greater collaboration across Whitehall in the development of new policies and the way that data sharing and data protection issues were handled across the piece. Certainly in terms of the work that I do, when we looked at what the barriers to data sharing were in order to transform the way that public services are delivered, in actual fact data sharing and data protection was a small part of that and actually the main part was joining up together and different departments working together in order to deliver a particular policy outcome. It started to create a culture shift in terms of collaborative working on these issues which, as Michael says, was then taken forward and actually passed onto the Walport/Thomas review hopefully to feed into their thinking.

Q975 Baroness Quin: Do you think there is a case for some kind of formal ministerial committee on privacy? In your time in your present post have you had many discussions on privacy issues with colleagues in other departments?

Mr Wills: The answer to the last part is yes because it comes up all the time. When you talk about privacy, there clearly is a role for some kind of formal mechanism for ministerial collaboration on these issues, precisely what it is I think we will have to wait and see what these reviews recommended. That is why they were set up and we will act on it, there is no question about that. It is important that this is not only about privacy, it is also about how we maximise the benefits of data sharing. These are real and I do not think we can ever look at these things in isolation. All of us often want two separate things at the same time. We are all very careful about our own privacy; we want our own personal details to be kept confidential. However, we also want more efficient public services. To give two brief examples, if I may, why this is so important, we know for example that there is a big problem with the take up of free school meals and a lot of young children are not getting adequate

nutrition even today in this country because their parents are poor and they are not, for a whole variety of reasons, able to have the free school meals to which they are entitled and their nutrition is, without doubt, suffering as a result. The information that would enable us to identify those young children is available to us and it has taken Belinda and her team quite a long time to find a mechanism by which we can actually share that data so young children can have adequate nutrition. That is a good that everybody can subscribe to but it does depend on data sharing to improve that level of take up. Similarly Sir David Varney when he was looking at this quotes an example of a bereaved family who had lost a family member in a road accident. In these tragic circumstances the last thing you want to do is to be badgered with lots of information. I think they had 44 different contacts with the state in different ways and that is unacceptable. These things need to be done but if you could share the data the level of intrusion into a family in grief is minimised. That again must be a good that all of us could subscribe to but you do need to have data sharing. The question is how do you do that without, at the same time, compromising people's quite proper sense of their own privacy and confidentiality? That is the challenge. When we talk about privacy I think we have always got to balance it with data sharing. We always have to keep the two things in our minds at the same time.

Q976 Viscount Bledisloe: If I have some information which is private to me surely I am entitled to have that retained absolutely even if you in Government think it would be useful to share with other people?

Mr Wills: Of course there are all sorts of rights to privacy; it is embedded in the Human Rights Act, not the right to privacy as such but certainly something that comes quite close to it. There is a nice legal point about whether there is an emerging right to privacy or not as you will be aware, but certainly of course that is right. However, where the data exists already, where it has been voluntarily given or where, as a society, we have decided it should

be given – details about our income, for example, to the tax authorities or whatever – then we as Government have a duty to the public to look at ways in which, consistent with the legislative framework, consistent with the political consensus at the time, we use that data for the benefit of everybody. These are difficult questions of judgment; there are no absolutes here and it has to be done on a case by case basis. I do not think that these things are incompatible at all. We strike these balances every day in our personal lives as much as anything else.

Q977 Viscount Bledisloe: You say in your ministerial statement – or it may have been issued before your time – that once information has been collected the Government is very careful to ensure that sharing can only take place when it is not incompatible with the original purposes of a collection. Can you give me any example where sharing would be incompatible with the original purposes of collection? Is it not virtually a meaningless protection?

Mr Wills: I do not think it is a meaningless protection at all; that is embedded in the Data Protection Act.

Q978 Viscount Bledisloe: Give me an example of where any sharing that Government might do would in fact be incompatible with the purposes for which it was collected.

Mr Wills: Rather than give you a theoretical example, these are the kinds of issues that Belinda Crowe and her team are actually tackling all the time. When she gives advice and support to colleagues throughout Whitehall these are real issues and the advice and support that Belinda and her team give is precisely delineating what is compatible and what is incompatible. I do not know whether this is compatible with the principles we are talking about, but if it were to be compatible perhaps you could give some indication of an actual case that you have dealt with in the last couple of years on this.

Ms Crowe: I might have to disappoint you only insofar as we just would not allow that situation to arise. I think that is the general thrust behind the statement; the statement was meant to be both reassuring but also how in practical effect the policy is developed. A theoretical example, if that will do, might be that if the HMRC were to pass over details of your income to your GP for example; I cannot think for what purpose that might be but HMRC do not collect information about your income for that purpose so it would be incompatible to pass that information, for example, if there were some mean test medical services, to pass that information on.

Q979 Viscount Bledisloe: I have to say, Ms Crowe, if that is the best example you can give I am not really very deeply impressed. Would it not be much better if the answer was that you could not share my data outside the purpose for which I gave it unless you had my express permission?

Mr Wills: You cannot; that is one of the principles. There are eight principles of data protection and that is one; it can only be used for the purpose for which it was collected.

Q980 Viscount Bledisloe: Yes but you say it cannot be shared for incompatible purposes.

Mr Wills: The second data protection principle is that it should be processed for limited purposes and shall not be processed further in any manner incompatible with the original purpose.

Q981 Viscount Bledisloe: Incompatible with, yes.

Mr Wills: I am sorry, I am perhaps missing your concern here.

Q982 Viscount Bledisloe: If you wanted to give information about who could afford school meals, now the reason the person gave you information about their income was not to do with school meals but it is not incompatible to pass it on.

Mr Wills: The purpose for which the information about income that was given to the local authority, for example, was to receive a benefit.

Q983 Viscount Bledisloe: That clearly is compatible.

Mr Wills: Yes, that is why it would be compatible. If it was for any other reason than for a benefit from the state then it would be incompatible but that is why it is compatible. If, for example – I am straying into very theoretical territory which I said I would not do here – we had data on people’s income and it was handed over to the school which decided it wanted a very middle class selection of pupils for it, then that would be completely wrong. It would be completely wrong if a local authority had collected data for the purposes of, say, council tax benefit and then it handed it over the local education authority because they had decided that, for reasons that they thought was good, they wanted to concentrate resources on poor children and they should all be concentrated in one particular school, in my view that would be incompatible with the purpose for which that data was collected.

Q984 Chairman: Could I just ask if you could confirm the use of the statutory override in schedule two of the Data Protection Act in the context of what you are talking about?

Mr Wills: I think I will ask Belinda to do that; it is a rather technical question and I will defer to the expert on this.

Ms Crowe: I might need to understand a bit more as to the context.

Q985 Chairman: The Minister has been saying that the information can only be used for the purpose for which it was given but there is in schedule two of the Data Protection Act a statutory override enabling the information to be used more widely for other purposes.

Ms Crowe: I think we would need to write with information about setting out specifically how that might be used. I do not have that answer at my finger tips.

Q986 Chairman: Perhaps we could have a written note on that.

Ms Crowe: Yes, of course.

Q987 Lord Peston: Am I, as an individual person, supposed to know what data the Government collects about me and has?

Mr Wills: You are not supposed to know but you can know if you want.

Q988 Lord Peston: In my case I do not have the faintest idea what data you collect on me. I know some of us fill out an income tax form each year but it is not my duty to know.

Mr Wills: No.

Q989 Lord Peston: But I am entitled to know.

Mr Wills: Of course.

Q990 Lord Peston: Who would I write to? To you?

Mr Wills: To the organisation you think might hold it.

Q991 Lord Peston: Yes, but I do not know. Who would I write to to ask what data the Government has in total on me?

Mr Wills: How would you go about finding out all the data that is held about you?

Q992 Lord Peston: Yes, that is the question I am asking you. It is impossible.

Mr Wills: At the moment it is and it is impossible for perfectly good reasons, for the reasons we have just been talking about because data sharing is not universal. There is not a single database where you can just go to and find everything the state holds for good and proper reasons. There is an argument which I think I hear you making and this is something we will want to look at after Walport/Thomas about giving the public more confidence. This is

absolutely essential and if part of giving people more confidence is to bring out into the light the fact that the state does not hold all these murky secrets and all these bits of information that you have probably forgotten about yourself but someone somewhere in Whitehall has got it, then I think that is clearly something we must look at. How we do that exactly is going to be quite difficult mechanically because I do not think anyone wants to see gigantic databases where anyone can go and search. The security implications of that are horrendous. Again one has to be cautious about how one does this. There are probably ways in which we can go a long way towards meeting that kind of requirement; that is one of the key outcomes, we hope, from the Walport/Thomas review when they have reported which is about how we balance data sharing and all its advantages with privacy. That question of public confidence is absolutely central. If the public have no confidence in the way data is being handled they will feel much less sanguine about taking the opportunities of data sharing and society as a whole will be poorer. If they have confidence because the systems are robust and transparent – which is also crucial – then of course we can reap the benefits.

Q993 Lord Peston: You are aware that what I am really asking you about is privacy, but my problem is that I do not know whether the data on me is accurate. I remember the first time I went as a student to America 50-odd years ago and I was asked what I did. I said, “I’m an economist” and the chap wrote down “He is a communist”. I just managed to catch that he was writing it down when I said it was not quite the same thing. The real point I would have thought the ordinary person is worried about is partly data sharing but if you are also sharing dodgy data then they are even more worried about it.

Mr Wills: Yes, and you have a right to correct the data. The crucial point is that you only have the right to correct it if you know it is wrong.

Q994 Lord Peston: You have to know it is there.

Mr Wills: You have to know it is there and you have to know where to go. We are in an imperfect world in this and that is absolutely right. If we are worried in a specific area then the remedies exist. If you have access to it then the remedies exist to correct it. The problem is that not everybody knows everything that is held and I accept that point. That may turn out to be crucial to public confidence and I expect it will play an important part in generating public confidence. There is a great unease about the spread of people holding data about you but it produces huge benefits in the private as well as the public sector and it is not just the public sector we are talking about here. Your credit references are also very important as well, but people tend to worry about that and that tends to be brought to light quite quickly and that culture is changing. There is a job there and after Mark Walport and Richard Thomas have reported that is clearly an issue we are going to look at.

Q995 Lord Rowlands: There is a growing movement towards the application of privacy impact assessments (PIA) and the Information Commissioner is keen on them as long as they are not just tick box. Some of us went to the United States and had a meeting with the Chief Privacy Officer and his team in the Department of Homeland Security. There is a mandatory requirement for PIAs in the United States. First of all, what are your thoughts about the development of PIAs and, secondly, what about the mandatory requirements?

Mr Wills: We are very keen on it and every major gateway project in Government will now have a privacy impact assessment attached to it. We are keen to see them rolled out; we think they will perform a very valuable function.

Q996 Lord Rowlands: Will these be in the public domain?

Mr Wills: Yes.

Q997 Lord Rowlands: What about the mandatory requirement? Do you think we should go further?

Mr Wills: I think in essence we have said we have now pledged to do this so every major project will have one.

Q998 Baroness Quin: Will pieces of legislation have a privacy impact assessment?

Mr Wills: We have not gone as far as that yet and it will depend I think on the piece of legislation. There will be legislation which is just not relevant. My own personal view is that Government should be doing this. Again, we want to take stock of Walport/Thomas which is looking at precisely this area but it is quite clear that where the privacy impact assessment is at a place that we want to be - in other words it highlights the importance of this and it is crucial to keeping public confidence in the way that Government holds data - without wishing to commit precisely to every piece of legislation having it, we are wholly sympathetic to the purpose of it and depending on exactly what the Walport/Thomas review says we will be meeting those objectives in some form or other.

Q999 Lord Rowlands: On the back of this may I ask a supplementary question and that is that we have received quite a lot of evidence from a considerable number of witnesses who expressed the view that the Information Commissioner is under-funded and indeed also needs further powers. Is the Walport/Thomas report going to review himself and his resources and power?

Mr Wills: We constantly review his resources and he is actually funded directly by the data protection fee. I think when he talks about under-funding he is referring to his freedom of information work. This is quite a complex issue, I have to say. We have found, since I have been in this position, a lot of extra money for him. It has gone up by over ten per cent this year.

Q1000 Lord Rowlands: He is funded from the fees?

Mr Wills: He is funded directly from the fees and as far as I am aware he feels that is an adequate resource. In my many discussions with the Information Commissioner about his funding – I stress the word “many” – he has never, from memory, complained about the data protection funding which is separate from the FOI funding. He has frequently raised issues about his FOI funding but all things to do with money are slightly complicated and I would just say that we have found an increase of over ten per cent in the last year at a time when all government departments are finding their budgets very stretched indeed, and this Department as well. There are other measures that we have suggested he might want to take to help clear his backlog, to do with different ways of running his office which are under continuing discussion. We have also arranged secondments from Whitehall departments to help with his human resource; indeed, there is a secondee from the Ministry of Justice already there. We recognise his views on this; we are trying to meet them. Freedom of information is enormously important but that is where the issue is, not in terms of data protection money.

Q1001 Lord Rowlands: Highlighting the dual role he has reminds me that in our Canadian discussions the Canadians were adamant that these roles were basically incompatible, that there could be a conflict of interest between the FOI role and the data protection role. They would not have an information commissioner combining both those roles. Do you think there is any case for splitting those as well?

Mr Wills: There is always an intellectual case for changing the machinery of government and public bodies. I would not say there is no case for it but I have to say I think he has done a very good job and he and his team do really a very good job in what are still relatively new areas of public policy. They have been extremely robust and the way they have operated has not always been comfortable for Government, but they have done an excellent job. Richard Thomas and his team are consummate professionals. Whether as a minister or as a

backbencher or as a citizen I have seen no problems and no conflicts of interests at all. Belinda has been at this rather longer than I have, would you agree with that?

Ms Crowe: Yes, I would agree with it and I believe that Richard himself finds the roles sit quite well together. Indeed, in many speeches he has made he starts off by saying that intellectually there might be some inherent tensions but from a practical point of view this is about a regulator looking at the way people exercise their information rights on the one hand openness where appropriate and protection where it is necessary.

Mr Wills: To answer your first question about the powers, we think he should have more powers and we have given him more powers. We have given him powers to carry out spot checks; there are new penalties. When I first met him I asked him to tell us what he needs and we will do our best to give it.

Q1002 Lord Rowlands: To pursue individual cases where people have complained about their privacy? Is he entitled to do that?

Mr Wills: Again we need to look at future powers in the light of Walport/Thomas. These are precisely the sorts of areas that we have asked him to look at and new powers for the Information Commissioner may well be part of what they recommend. We are very concerned to support him both in terms of the powers that he has and indeed the money; he plays an invaluable role in our public life. He personally has been a consummate public servant of the highest order and so has his team; they do a wonderful job and we will support them.

Q1003 Lord Norton of Louth: Section 23 of our Data Protection Act makes provision for the appointment of data protection supervisors in each department with the role of monitoring independently the department's compliance with the provisions of the Act. That would probably fit in very much with what you were saying earlier about a change in culture within

departments. The only problem is that that provision has not been brought into effect and I wondered what was the reason for that and whether there is any intention to actually move in that direction.

Mr Wills: Without wishing to evade your question too far, there is no question that we need to raise our game. As I said at the beginning technology is changing too fast, people see the opportunities too vividly and we need to raise our game; there is no question about that. How we are going to do that must depend on the result of these reviews. If I were to come before you in three or four weeks' time I might be able to discuss the policy in a little bit more detail although I suspect we will probably have to wait until the autumn for that and I would be happy to come back and do so. We set up these reviews precisely because we felt there was a pressing need to review the way Government operates. They are reporting; we have had interim reports; they are all going to be out very soon (as I said, the data handling review is out this afternoon and the rest of them are not far behind). Once we have them we will make decisions and I do not think it is a secret to say that things will have to change.

Q1004 Lord Morris of Aberavon: I would like to ask you, Minister, about the Gus O'Donnell review on the loss of personal data by a number of departments regrettably. We had the interim report and some commitments there regarding the spot checks and new sanctions. What progress has there been in implementing these commitments and completing stage two of the review?

Mr Wills: The review is being published this afternoon. The Right Honourable Ed Miliband will be standing up in the House of Commons to make a statement on this very subject. That is the progress we have made on that. In terms of implementing it, I cannot speak for all government departments in detail but we have learned lessons and continue to learn lessons from these incidents. A lot of them have come to light because departments have really realised the need to scrutinise their own procedures. These did not all happen at once; they

have come to light precisely because of the reviews the departments have undertaken into the way they handle data and they have revealed, as I say, a very pressing need for change: a change in systems, change in procedures but above all this change in culture, people just have not taken the handling of data seriously enough and that has got to change. It is changing and I think if you go into departments and you talk to any permanent secretary now this is absolutely at the top of their agenda; it certainly is in our department.

Q1005 Baroness Quin: My question to a certain extent follows on from Lord Norton's question in terms of practice within Government. The Committee looked at practice in Canada as part of the inquiry and the Department of Justice there had quite a strong role in examining other departments' proposals for new data sharing provisions. I think they had departmental Department of Justice lawyers in each department reporting back to the Department of Justice itself. This may also be the kind of issue that the review is looking at, I do not know, but does the Ministry of Justice at the moment have any analogous role to this? If not, what do you think about the idea about having all data sharing proposals vetted by one particular government office with appropriate expertise and therefore ensuring a greater degree of compliance and conformity across the system and meeting the goal of joined-up Government once again?

Mr Wills: In terms of data protection it does happen pretty much like that. There is an analogous role here because Belinda and her team do provide that advice and support for data protection. There is not that role for data sharing at the moment. Again - I am sorry to keep resorting back to the reviews - clearly there is a case for that and in practice what has happened on an ad hoc basis in relation to three particular policy areas that I can think of Belinda and her team have actually been extremely helpful to other Whitehall departments in formulating data sharing proposals and trying to finesse the perception that data protection prevents as a matter of principle data sharing. Of course it does not, but there is a cultural

change that needs to happen there. In terms of data protection it happens already in effect; in terms of data sharing it is happening on an ad hoc basis but driven very much on a personal level. There is no institutional mechanism and, as I say, since I have been in this job there have been three examples where Belinda and her team have worked extremely hard to help other officials deliver a public policy objective which depended on data sharing. Free school meals was one of them, there have been two more recent ones, but it has been personal rather than institutional. I think the whole burden of what I have been saying and the burden indeed of the reason why set up Walport/Thomas was to look at how we could do these things better, more systemically and systematically. I would be surprised if there is not movement on this in the next few months, on the data sharing part of it I am referring to specifically.

Lord Peston: I am lost again; it is obviously my morning. I cannot work out what happened to Lord Smith's question because within what I thought he was going to ask I was going to ask about data sharing in the private sector.

Chairman: Lord Smith thought that the material had already been covered.

Q1006 Lord Peston: Can I ask then whether you have a view on access to private sector data? To go back to something you said earlier, if the Inland Revenue could share data with the leading supermarkets they could easily check consumption and expenditure against declared income and come very close to discovering whether you were fiddling your income tax. I take it nothing like that takes place.

Mr Wills: No. I come, as you see, with a very large file. I did read it and as far as I am aware there is none of this in it. If I may – and Belinda will forgive me – I will give you my instinctive response.

Q1007 Lord Peston: I am willing not to have that; you could write to us.

Mr Wills: I think it is a very important point; because it is a matter of principle I would be extremely concerned about it. The public and private sectors are completely different animals.

Q1008 Lord Peston: So there is no suggestion we are going down that path.

Mr Wills: Certainly not from me.

Chairman: Minister and Ms Crowe, can I thank you very much indeed on behalf of the Committee for joining us today and for the evidence you have given us. The Committee will now deliberate in private.