PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

COUNTER-TERRORISM AND BORDER SECURITY BILL

First Sitting

Tuesday 26 June 2018

(Morning)

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not later than

Saturday 30 June 2018

The Committee consisted of the following Members:

Chairs: Mrs Anne Main, † Joan Ryan

† Bowie, Andrew *(West Aberdeenshire and Kincardine)* (Con)
† Chapman, Douglas *(Dunfermline and West Fife)* (SNP)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Dakin, Nic *(Scunthorpe)* (Lab)
Doughty, Stephen *(Cardiff South and Penarth)* (Lab/Co-op)
† Foster, Kevin *(Torbay)* (Con)
† Hall, Luke *(Thornbury and Yate)* (Con)
† Hoare, Simon *(North Dorset)* (Con)
† Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† Khan, Afzal *(Manchester, Gorton)* (Lab)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† Maclean, Rachel *(Redditch)* (Con)
† Maynard, Paul *(Lord Commissioner of Her Majesty's Treasury)*
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Pursglove, Tom *(Corby)* (Con)
† Smith, Eleanor *(Wolverhampton South West)* (Lab)
† Thomas-Symonds, Nick *(Torfaen)* (Lab)
† Wallace, Mr Ben *(Minister for Security and Economic Crime)*
† Warman, Matt *(Boston and Skegness)* (Con)

Nehal Bradley-Depani, David Weir, *Committee Clerks*

† attended the Committee

Witnesses

Assistant Commissioner Neil Basu, Metropolitan Police

Gregor McGill, Director of Legal Services, Crown Prosecution Service

Richard Atkinson, Chair of the Criminal Law Committee, The Law Society

Public Bill Committee

Tuesday 26 June 2018
(Morning)

[JOAN RYAN *in the Chair*]

Counter-Terrorism and Border Security Bill

9.25 am

The Chair: Before we begin, let me say that you are welcome to remove jackets or ties—I would call it a day at that—because it is very hot. I have just a few preliminary points. Please make sure that your electronic devices are switched off. Tea and coffee are not allowed during sittings—I have been asked to say that because people keep walking in with coffee cups and so on.

We will consider the programme motion on the amendment paper and then take the motion enabling the reporting of written evidence for publication, before taking a motion to enable us to deliberate in private. We will then talk about the order in which Members may wish to kick off and look at the questions provided—you can of course add in any of your own.

I call the Minister to move the programme motion, which was agreed by the Programming Sub-Committee yesterday.

The Minister for Security and Economic Crime (Mr Ben Wallace): I beg to move,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 26 June) meet—

(a) at 2.00 pm on Tuesday 26 June;

(b) at 11.30 am on Thursday 28 June;

(c) at 9.25 am and 2.00 pm on Tuesday 3 July;

(d) at 11.30 am and 2.00 pm on Thursday 5 July;

(e) at 9.25 am and 2.00 pm on Tuesday 10 July;

(f) at 11.30 am and 2.00 pm on Thursday 12 July;

(g) at 9.25 am and 2.00 pm on Tuesday 17 July;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Table

Date	Time	Witness
Tuesday 26 June	Until no later than 10.55 am	Metropolitan Police; Crown Prosecution Service
Tuesday 26 June	Until no later than 11.25 am	The Law Society
Tuesday 26 June	Until no later than 2.45 pm	Max Hill QC, Independent Reviewer of Terrorism Legislation
Tuesday 26 June	Until no later than 3.15 pm	The Law Society of Scotland
Tuesday 26 June	Until no later than 3.45 pm	Liberty; Criminal Bar Association

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 11; Schedule 1; Clauses 12 to 17; Schedule 2; Clauses 18 to 20; Schedule 3; Clause 21; Schedule 4; Clauses 22 to 26; new Clauses; new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 17 July.

I welcome the consensus on Second Reading about the principles of the Bill. No doubt, we will all explore the details of what goes in it. At our meeting yesterday we came to an accommodation on timings and witnesses. For the record, we should recognise that a number of people we asked to be witnesses either chose not to, or were unable to, come. I do not think that is a reflection on the Bill, but it is why we do not have the full sheet of witnesses put forward by all parties to begin with. I am confident, however, that we have a spread of critics, supporters and objective commentators. Therefore, without holding up the Committee any more, I ask it to agree to the motion.

Question put and agreed to.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—*(Mr Wallace.)*

The Chair: Copies of the written evidence the Committee receives will be made available in the Committee Room.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Mr Wallace.)*

9.28 am

The Committee deliberated in private.

Examination of Witnesses

Assistant Commissioner Neil Basu and Gregor McGill gave evidence.

9.30 am

Q1 The Chair: Good morning. May I welcome the two witnesses, who are with us until 10.55 am? Assistant Commissioner Neil Basu of the Metropolitan police, you are very welcome, and we are very pleased you are here in attendance. Welcome also to Gregor McGill, director of legal services to the Crown Prosecution Service. We thought we would start by asking each of you to make a brief statement to the Committee, if you are prepared for that.

Assistant Commissioner Basu: I was not, but I am very pleased to be able to make a statement. My current role as assistant commissioner counter-terrorism policing means that I co-ordinate the network in the UK of nine counter-terrorism units that deliver counter-terrorism policing on behalf of the 43 chief constables. This is quite a responsibility, not least because last year I was senior national co-ordinator for counter-terrorism, responsible for the investigations and for the delivery of Prevent on behalf of policing.

If you boiled my job description down into one simple fact, it is to stop terrorist acts on our soil, along with my big partner, MI5. On my watch, 36 people died and many hundreds were injured. I want the Committee to know that I think about that every day. The reason that I took this job, that I am sitting here giving evidence on, is because I also think about having to stop that every day. Part of that is something that we call the operational improvement review. I led a strategic board along with MI5 that has led to over 100 recommendations, which are all being implemented as we speak. Part of

that was also our work with Government along the lines of what legislation might be required, and I see considerable value in the measures set out in the Bill to combat the change in threat that we have experienced post-2017.The nature and scale of the terrorist and hostile state actor threat to this country has evolved and changed. The simplicity and volatility of terrorism often requires us to intervene much earlier to protect the public. Offences previously considered periphery or minor are now seen as indicative of a volatile and unpredictable actor.

As we know, terrorism legislation is nearly two decades old. In the intervening years, there have been significant changes in technology. The reality of the modern world is that technological developments form part of people's lives and interactions, so legislation should reflect how people live in the modern world. While counter-terrorism policing can describe the operational challenges we face—and they are great, not just from the change and threat of technology—the appropriateness and specifics of each power are obviously a matter for Parliament to decide.

I have just got back from Australia, where I spoke to all my counterparts who run counter-terrorism in the "Five Eyes" countries. I would say that the great strength of counter-terrorism in this country is that we have the most remarkable connection between the UK intelligence community, policing, Government and, I am pleased to say, the general public, because of the UK policing model, which is envied throughout the world.

We must remember that 2017 was horrific. We have seen a shift, not a spike, in the threat. We are probably about 30% up in terms of our investigation workload, but the strength of that model will see us through, along with some additional measures from the operational improvement review and the legislative changes that I believe are required.

The Chair: Thank you.

Gregor McGill: I do not intend to say too much more than my colleague, but I will reflect on something that Mr Basu said—that the legislation is now some two decades old. There have been significant changes in technology, society and the threat to the UK. In the CPS we feel that the legislation should reflect those changes.

I will put my cards on the table straightaway: we support this legislation. In the CPS we try to prosecute all terrorist activity where it meets the test in the code for Crown prosecutors. The Bill addresses both the evolving terrorist threat and the changes in technology, and it should provide the CPS with the ability to prosecute offences that previously we would not have been able to prosecute. In the CPS we are having to put more resources into our division that deals with this type of offending, to reflect the spike in activity last year.

Q2 Simon Hoare (North Dorset) (Con): Thank you, gentlemen, for your representations. My question is to Mr McGill because he has his CPS hat on. Clause 3(2)(c) uses the phrase:

"on three or more different occasions the person views by means of the internet a document or record containing information of that kind."

Does that provide the necessary discretion to prosecutors? Is it clear enough, or would you need greater clarity? Could you comment on that, because the clause has been discussed here?

Gregor McGill: I am aware of the discussion that there has been. Prosecutors require clarity when looking at legislation, because they have to apply that legislation. Approaching this practically—we discussed this beforehand—three seems an appropriate number to us, because we would not want people to be criminalised for inadvertently going on to a website. I have to accept that that could happen. That could be a single occasion. It is a more difficult argument to accept if the person has gone on to it twice, and it is more difficult again if the person has gone on to it three times.

There is of course a statutory defence to the offence as set out, which gives some safeguards. The code for Crown prosecutors has a two-stage test, which is sufficiency of evidence and, if the evidence is satisfied, whether it would be in the public interest to prosecute. There are a number of safeguards in that for us to say that we think the legislation as drafted hits the right balance between protecting society and protecting the rights of a suspect.

Q3 Nick Thomas-Symonds (Torfaen) (Lab): Welcome, and thank you both for your opening statements. I want to turn first to clause 1 and the expressions of support for a proscribed organisation. The original offence is in section 12 of the Terrorism Act 2000, which says:

"A person commits an offence…if he invites support for a proscribed organisation".

The new clause in the Bill states:

"A person commits an offence if the person…expresses an opinion or belief that is supportive of a proscribed organisation".

It then brings in the concept of recklessness. Could both of you give me an example of a type of situation that could not be prosecuted under the previous regime but could be prosecuted under this new regime?

Assistant Commissioner Basu: Yes, I can certainly give you an example of that. The biggest problem we have in counter-terrorism, without a doubt, which is making this a generational challenge, is radicalisation. I think that is a given, from my position, but I could find a great deal of current support in Government and in social media sentiment to say that the ability to radicalise is a significant issue. I will leave the fine legal point of "reckless" to Greg, but it is a well-established criminal tenet, so I do not see that necessarily as an issue.

I could relate a number of studies. One is of Mohammed Shamsuddin. Many of you will have seen commentary on the Channel 4 documentary "The Jihadis Next Door" last year. On 27 June 2015, Shamsuddin gave a speech. In the context of that speech, it was very clear that he supported Daesh and what they were doing. He did not invite others, which is obviously the current test, so he did not meet a section 12 charge. He shouted anti-kufr rhetoric and said, "Allahu Akbar" in relation to the Kuwait mosque bombing. He said that one should not feel sorry for the British who died in Tunisia or for the kufr killed in Kuwait. He criticised Gay Pride and said that gay people should be thrown from tall buildings. Having spoken on recent shootings in Tunisia, he said, "The spark was lit," and that the listeners knew the rest.

A second example is Omar Brooks, again in 2015, on 4 July. He gave provocative talks and spoke of jihad and of how Islam was spread by the sword and was not a soft religion about peace. Brooks also mocked a sheikh who had spoken against the killing of Lee Rigby. Again, it was clear, when you look at the full tone of his speech,

that he supported the concept and principle of Daesh, but he did not invite others, under the terms of the current legislation, and again it would not have met a section 12 charge.

Now, were either of those two people reckless in that they would have thought that their deeds would have encouraged terrorism? My contention is that they absolutely would. What we have seen in the rise of terrorism—particularly with the malleable, vulnerable people not well equipped to understand the nuances of religion or ideology—is that this kind of radicalisation speech has really worked to increase the threat to the UK.

Gregor McGill: I would adopt that. I think there is a gap in the law at the moment that means that we cannot always prosecute people in the circumstances that Mr Basu has set out. You raised the question of recklessness. Do you want me to deal with the question of recklessness?

Nick Thomas-Symonds: Please do.

Gregor McGill: As you are aware, recklessness is a concept that is well known to the criminal lawyer. It is currently in the terrorism legislation. It is something that investigative colleagues and prosecutors are aware of dealing with. It has been seen to be ECHR-compliant; that is correct.

The legal definition of recklessness is a subjective test now; the courts made that clear in the 2003 case of G. It is about a person who realises that there is an obvious risk in what they are doing and, realising that obvious risk, goes on to do something that brings about that obvious risk happening.

It is a concept that is well known in terrorism legislation and also well known in the wider criminal law. It is used in a number of offences—for instance, arson, child neglect and some assaults. It is not an unknown concept. It is not unknown to prosecutors and judges, who are used to dealing with these difficult situations.

Q4 Nick Thomas-Symonds: I have a couple more questions. Let us move on to clause 2 for a moment, which is about the publication of an image of an item of clothing or other article. I think this argument probably also applies to clause 1, where we are trying to balance things up—in clause 1, it is freedom of expression versus the offending that we are talking about. In clause 2, where we are talking about the publication of images, presumably we would not want to criminalise a reckless 16 or 17-year-old going to a fancy dress party or something who clearly does not have terrorist intent. They may be doing something very distasteful, but we would not want to criminalise them via this clause. Could you both comment on that balance in relation to clause 2?

Gregor McGill: I agree with you. Most of the decisions that are made in the criminal law are a balancing exercise. Prosecutors have to balance the rights of a suspect against the rights and protection of the public. The code enables us to do that. That is why we have a public interest test that enables us to ask. Even if the evidence in its purest form makes out the criminal offence, it has never been the case here that, just because you prove an offence, you necessarily should prosecute it. Prosecutors have the discretion not to prosecute, and they exercise that discretion very frequently.

Assistant Commissioner Basu: I do not want to be glib about this, but I have worked with Greg for a very long time and I would never get such a case past him anyway, even if I was prepared to put that case. We are far too busy on genuine acts of terrorism to be concerned with such a case. What it might point to is somebody who is in trouble and needs a bit of guidance: that is the Prevent tactic under the Government's Contest strategy. There are some remarkable people on the front line capable of speaking to people and changing their minds about the path they might be following.

The other thing I would say about this clause is that this, again, is a modern technology phenomenon. The idea of dressing up in regalia that would be abhorrent to—hopefully—all of us here and the vast majority of the public has been well-established. The Public Order Act has established that. People just do not attend public assemblies, marches and demonstrations in the same way that they used to. Why would you need to? A tiny fraction of the population might see that for a fraction of a second, but now you can put it online and publicly display your message.

We would look at all the circumstances in relation to how that was being publicised and what you were trying to achieve by that before we looked at any form of executive action.

Q5 Nick Thomas-Symonds: Can I turn to clause 3, before we come to the issue of streaming and so on? This is to Mr McGill. Consider a situation in which someone goes to somebody's house and that person has, for example, streamed four or five things that we would be unable to prosecute under section 58, as it stands. I have seen it argued that that could or should be prosecuted. Section 5 of the 2006 Act relates to acts "preparatory" to terrorism: why could that not be prosecuted at the moment under that section or any other?

Gregor McGill: The answer to that, I think, is that we are dealing with specific offences under section 58, which is about viewing and streaming material. Prosecutors are adept at looking for other offences that would enable you to deal with the criminality, but the essence of prosecution is that you prosecute the most appropriate offence set out by the facts in front of you.

Prosecutors can sometimes shoehorn offending into other offences, but experience tells us that that can result in problems down the line because there can be technical defences to certain clauses that superficially make you think you can prosecute under those offences, although it is more difficult. Prosecutors will always try to prosecute under the most appropriate offence, and the most appropriate offence for this type of material is the section 58 offence under the 2000 Act.

Q6 Nick Thomas-Symonds: Have there been any attempts to prosecute under different sections, such as section 5 of the Terrorism Act 2006, or is it simply a decision that prosecutors have felt unable to make because of the nature of the offence?

Gregor McGill: Most cases are fact-specific, so it is difficult to talk in general terms. In these particular cases, so much turns on the particular circumstances of each case, the particular evidence in the case and the particular conduct of the person under investigation. It is difficult to speak in generalities. Prosecutors have, of course, tried a number of offences to deal with certain criminality, but generally it is difficult to shoehorn some conduct into offences that were not specifically set out to deal with that type of offending.

Q7 Nick Thomas-Symonds: I have one more question, still on clause 3. Obviously, there is the concept of three viewings, which you referred to specifically in your opening statement, Mr Basu, but there is no time limit in the Act as it stands for viewing three times over a specified period of time. In prosecuting the offence in practice, would the Crown Prosecution Service consider the period over which the three viewings had been made?

Gregor McGill: The CPS prosecutor, in looking at the case, would consider all aspects and look at the particular circumstances and timings of the access. If they were close together, that could tell a story; if they were apart, that could tell a story. We work closely with our investigative colleagues and find out from them exactly what the evidence shows and, if it has been put to the suspect in interview, precisely what they have said about that. But as a prosecutor, you have to look at the evidence in the round and consider all the evidence, including the circumstances in which the contact has happened. Depending on the circumstances of the case, the particular type of contact may tell a particular story.

Q8 Nic Dakin (Scunthorpe) (Lab): You have drawn attention to a number of areas where these new powers would assist in addressing issues that cannot be addressed at the moment. Are there any other areas that you would like to draw attention to? Are there any other powers that we should be considering in order to make progress against counter-terrorism?

Assistant Commissioner Basu: I did not want to get off clause 3 without making some really important comments about it from the policing perspective, if that is possible, Chair. To answer your question directly, we are very fortunate in this country, with the support of the Government over many decades, to have pretty robust legislation in terms of counter-terrorism.

What we are looking to do—and most of these clauses do it—is close some loopholes, because of the changing nature of the threat and the change in technology. There is very little that was left in the first debates that took place in terms of what would be best to counteract terrorism. One of the major partners that I am looking to involve much more in the counter-terrorism fight is the business sector—and the public sector. We have a Prevent duty that has gone a long way towards getting statutory partners more engaged in the battle, but we do not currently have any licensing, regulation or regime for the business sector to improve its ability to protect its employees, customers and management of events. We do not have that; it is a conversation we are still having.

I think—and you may want to get on to this—that the Australians have a "designated area" offence for people who wish to travel to war zones and fight. Although that would not be retrospective, and therefore would not have great utility in respect of the Syrian conflict, I think it would have utility for the future. If we were dealing with a similar situation in the future, stopping people from going to fight or enabling the prosecution of people fighting in theatre when they return would have great utility to us. Those are probably the two things that I would consider at the moment.

Gregor McGill: The Australians have such a power and they consider it a useful addition to their armament. We do not have a power. As my colleague Mr Basu has said, it would not help us address some of the issues that have happened in the past, but it could help us address some of the issues in the future.

Q9 Gavin Newlands (Paisley and Renfrewshire North) (SNP): Can I turn back to recklessness for a second? Recklessness is a common test in relation to physical acts against the person, but it is not usually used in speech offences. A report from the Joint Committee on Human Rights said 12 years ago, in 2006, that

"recklessness is normally applied to actions that are themselves within the realm of criminality…if you hit someone or deceive them then it is absolutely appropriate for a jury to be able to convict you of an offence even if you did not intend the consequences of your actions. The same nexus between action and consequence should not exist for speech offences. Speech does not naturally reside in the realm of criminality. This is why the element of intention should always be attached to speech offences."

Could both of you comment on that quote from the JCHR report? Can you determine the difference between speech offences and physical acts?

Gregor McGill: I appreciate what you say. Recklessness is not an unknown principle in criminal law. It is right that I should say, as well, that it is a particular principle that has caused criminal law some issues over the years, particularly in the field of whether such recklessness should be subjective—that is, you understand its nature—or objective, in that it is more from an objective test. As the court, the prosecutors and the investigators are used to dealing with the question of recklessness, these issues can be properly managed through the proceedings. The difficulty as well is that that quote, I understand, was from 2006. The world in 2018 is very different from the world in 2006, and Mr Basu will no doubt tell you that the threat facing us now is very different. That is one matter.

This is often portrayed as a thought crime, but I would say it is not that. The clause is seeking to address someone who is actively supporting a proscribed organisation and doing it in circumstances where they are reckless—by saying what they are saying and by giving that support—as to the consequences of what is happening.

I endorse what Mr Basu said. The threat that we are trying to address here is the threat of radicalisation, which is one of the big threats facing us at the moment. That is the purpose of this and that is the purpose of the recklessness clause.

Assistant Commissioner Basu: I cannot stress strongly enough the effect that charismatic, radicalising speakers, who profess to support proscribed organisations and encourage violence, are having on a section of our society. Despite the defeat of the caliphate and despite the fact that we have an extreme right-wing threat that is growing, those speakers are still capable of galvanising, mobilising and energising individuals.

If I look at the evidence for that, I would say the proscribed group that is al-Muhajiroun. We had five successful attacks last year, including one extreme right-wing attack. We also had 12 disruptions of international counter-terrorism: Islamist, jihadist plots. If you track back across the past four or five years and look at the pernicious influence of a group such as ALM, it is dramatic. They have a footprint in almost every crime. So to say that radicalisation is the biggest scourge of our time in terms of terrorism is probably an

understatement. It is making a significant difference. For me as a police officer, anything that helps me mitigate that threat has got to be a good thing.

Q10 Gavin Newlands: On the lack of time, which has been brought up, do you think that three clicks or three online viewings of terrorist content over, say, 25 years—just to pick a number out—shows enough intent to support terrorist activity to then prosecute someone? Do you think there is any danger whatever that in the end police time and resources could be spent on targeting innocent individuals who are of no interest, rather than focusing on individuals who obviously support and encourage terrorist activity? Do you have any concerns on that front?

Assistant Commissioner Basu: I do not actually have any concerns about that at all. We are very adept at looking at the full intelligence picture behind what somebody is doing.

Back to the comments I wanted to make around the section 58 and the streaming offence: that is the way people are living their lives now. It is not about operational security; it is just what they are doing. I am agnostic as to the number of times, but I appreciate prosecutors need some clear guidelines. That streaming is happening and it is happening en masse. At the moment, we are able to charge on one offence, because it was downloaded, but there might be a wealth of intelligence saying that a massive amount of streaming has been done. We then get a short-service sentence on the basis of one download, which does not say what the rounded threat of that individual is. That is very different from someone who has clicked three times on something over a huge length of time.

I would reiterate what Mr McGill said: these are not absolute offences. There are statutory defences and reasonable excuses built into this, all of which would be looked at very clearly before it went through the Crown Prosecution Service and before it went to trial. Then, an independent judge is overlooking that as well. So I am not concerned that it would be a diversion of police resource. I have examples that I can give to the Committee—or I can write to the Committee—that show that people are doing this as a precursor to much more violent offending in the future.

I do not want to be in the position I have been in many times in the last couple of years, looking at somebody who is committing what the courts might see as a minor crime and gets a very short sentence. That is not long-term public protection if they are out at three to six months. I am looking for them to go that next stage when I have got intelligence rather than evidence that they are preparing for that next stage. I want long-term sustained public protection, and that means that we need to be able to prosecute people who are streaming en masse.

Gregor McGill: Can I add two things to that? First, in such cases the police and Crown Prosecution Service work closely together. What often happens is the police will come to seek advice at an early stage and the Crown Prosecution Service will be able to give that advice in such a case. It is very difficult to say how a prosecutor would advise about a case in the abstract. What I could say is, three clicks over 25 years would be a harder case to prosecute than three clicks over a three or four-day period. One of the things a prosecutor has to do when reviewing a case is ask themselves whether they have sufficient evidence to prove a case.

Q11 Gavin Newlands: Would it be better if there was a term limit, with clear direction for prosecutors in that respect?

Gregor McGill: The difficulty is, cases can turn so much on their own facts. I cannot say that you could not build a case with three clicks over 25 years; it would depend on what the nature of that was and what the reasons for that were. But ultimately whether there should be such a limitation is a matter for Parliament. Prosecutors would work within that limitation, if that was put in.

Assistant Commissioner Basu: I would be nervous about absolute time limits because of our close subjects of interest. Khalid Masood and Salman Abedi are two very good examples from last year. Khalid Masood would have been engaging in looking at some of this material many, many years ago. So where would you put the line?

Gavin Newlands: I have one more question, Chair, but I will pass to my colleague, who wants to ask a follow-up.

The Chair: As we are in an oral evidence session, I am taking people in the order in which they indicate, which I think is fair. Mr Chapman will have to wait.

Q12 Mr Wallace: Assistant Commissioner, can I bring you back to clause 1—expressions of support? How dangerous was Anjem Choudary over the years? Obviously he is convicted at the moment, but how dangerous is an individual of such inspiration to radicalisation and to people around the country?

Assistant Commissioner Basu: It is the comment I made earlier: it is the greatest threat to this country that people such as Anjem Choudary have been able to speak very persuasively and charismatically for long periods of time. The difficulty in prosecuting him, as Mr McGill will know, was immense over many, many years. If my MI5 colleagues were sitting here today, they would be able to give exact numbers on how many terrorist atrocities al-Muhajiroun—he is a leader of ALM—have a footprint in, not just here in the UK but abroad, and on the number of disruptions we have had where people have been influenced by ALM rhetoric or material.

Q13 Mr Wallace: The number of those cases is in the hundreds—is that not correct?

Assistant Commissioner Basu: Yes.

Q14 Mr Wallace: How long did it take us effectively to get a conviction against him? For how many years was he on our radar, and we were worried about him?

Assistant Commissioner Basu: Many years.

Mr Wallace: Dozens? I think it was 20 years.

Assistant Commissioner Basu: I would not be able to give you the exact number.

Gregor McGill: It was certainly a significant number of years, and I think it was into double figures. I think it was somewhere around 10 years, at least.

Q15 Mr Wallace: We knew he was dangerous, so why did it take us so long to achieve a conviction? Was one of the factors the gaps in that legislation—the difference between inviting support and inspiration for support?

Gregor McGill: Precisely so. He was a very charismatic and intelligent man who was very able to stay just the right side of the legislation as it was at the time. That provided a real difficulty for investigative colleagues to gather evidence and for prosecutors to bring a case.

Q16 Mr Wallace: Would it be right for me to say that you see this clause as trying to deal with the significance of inspirers, people who use their profile and presence to inspire people recklessly into joining a proscribed organisation or following those beliefs?

Assistant Commissioner Basu: Exactly.

Q17 Mr Wallace: One of the criticisms will be: "But what if four blokes are down the pub and they say, 'You know that bloke Tommy Robinson, I think he's a good geezer'." Those blokes, as they would have been described to me, would not necessarily be prosecuted because the discretion of the prosecutor would say: "Well that is just freedom of thought, that's people chatting around a bar, versus someone addressing loads of people at Speakers' Corner". Is that where you see the prosecutor's discretion being able to stop that happening?

Gregor McGill: It is not the job of a prosecutor to stop people having odious thoughts and opinions. In a democracy, people are entitled to hold whatever opinions they want to. When the expressions of those opinions become criminal and go into what has been called "the radicalisation agenda", that is where we think there is a lacuna in the law and where we think it needs addressing.

Q18 Mr Wallace: If I were to take the Hitler test, the inspiration test—Adolf Hitler stood up at a Nuremberg rally and did not say to his followers, "Join the fascists in Britain", but said, "I think they're fantastic"—at the moment, he probably could not be prosecuted for that offence, unless he said, "Go out and join them". Would that be right?

Assistant Commissioner Basu: Yes

Gregor McGill: Yes.

Q19 Mr Wallace: So the power of inspiration is our biggest danger to radicalisation and this clause seeks to deal with that, would that be fair?

Assistant Commissioner Basu: Yes

Gregor McGill: Yes.

Q20 Mr Wallace: The last Labour Government rightly brought in the Racial and Religious Hatred Act 2006, which effectively deals with incitement both in public and private places. It was not called thought police at the time. It dealt with people using hate against religions as a cause, as opposed to proscribed terrorist groups. Is that why we cannot use that Act to prosecute? If people stand up and say: "I hate the Jews", you could prosecute them now for inspiring or inciting hatred, but you could not prosecute them if they stood up and said: "I think ISIL"—or National Action—"is fantastic"?

Assistant Commissioner Basu: Yes.

Mr Wallace: So the principle is already embedded in law around inspiration when it comes to racial hatred, but not when it comes to terrorism?

Assistant Commissioner Basu: Yes, precisely so.

Q21 Mr Wallace: Have we had any problems with the use of the Religious Hatred Act over the last 12 years?

Gregor McGill: Prosecution is fraught with problems, but none have come out. It is a perfectly workable piece of legislation and another tool in the prosecutor's armour to be able to deal with this type of behaviour.

Q22 Mr Wallace: Could I move on to the publication of images, the clause 2 issue? Assistant commissioner, do we see quite a few cases where people use their Facebook page or upload images of themselves standing behind flags or speaking to a group of people, for example, in the back of a house, with a black flag or a Hezbollah flag or a National Action flag or whatever else behind them. The image is up there, but because it is in a photograph, it is difficult to prosecute. Is that a challenge?

Assistant Commissioner Basu: Yes, it is a challenge and it is quite common.

Q23 Mr Wallace: Is it common for some of the foreign fighters in Syria beaming themselves backwards, effectively, saying to people, "Look at me, aren't I great?"

Assistant Commissioner Basu: Yes.

Q24 Mr Wallace: Would you say this clause is more of a modernisation reflecting how the internet is used, rather than anything new or magical? Is it just that people are using the internet differently and we need to adapt to that?

Assistant Commissioner Basu: That is exactly what it is. If you marched down the street with that flag, you would be in a different place.

Q25 Mr Wallace: Yes, and if you dressed up in some of the bizarre uniforms.

On clause 3, I am keen to be open to solutions on the three clicks issue. Would you both agree that streaming, again reflecting modernisation, is a major problem and that the law as it sits is not capable of defining the difference between streaming and downloading?

Assistant Commissioner Basu: Yes.

Q26 Mr Wallace: Maybe, for those who are worried about three clicks, a definition of streaming that does not use clicks but a more technical term might be a solution, as long as we deal with streaming as a problem; that is the main challenge.

Assistant Commissioner Basu: Yes.

Q27 Mr Wallace: May I fast forward and ask a question about the hostile state powers on the border? How important is "no suspicion" in the use of these powers? Why would we need to maintain it?

Gregor McGill: From a prosecutor's point of view, although these probably would not be exercised, they would be more investigative powers, if you are using an evidence base or intelligence base, you would have to make that intelligence or evidence available.

There are some complications and difficulties with that. There are some legal difficulties with making some intelligence available. There are some operational difficulties

in making such material available, which may impact investigative colleagues' ability to run some of their operations. On that basis, if we had to disclose that, it may limit the powers significantly.

Q28 Mr Wallace: If I had intelligence, let's say, that a hostile agent—maybe an assassination team or people using non-official cover—were going to come to the UK and take the nine o'clock flight from Amsterdam, but we did not know who they were, only that they were taking a flight. If we had to have suspicion, would that prevent us being able effectively just to target the flight, because we would have to have suspicion about an individual? Or is just suspicion that they might be on a particular flight enough to be grounds for suspicion? Or is it too general?

Assistant Commissioner Basu: Yes, I think it would be too general; that is the problem. It would need to be a reasonable suspicion test. If you look at section 1 stop-and-search powers, it would have to be much more directive than that. Certainly, in counter-terrorism and the example you have given, that would not be uncommon. Intelligence is very fragmented; it is very incomplete. We might have very limited material, possibly just on the travel method or a particular flight, and nothing more than that.

To echo Mr McGill's point about having a suspicion threshold undermining the utility of this particular investigative power, certainly very sensitive sources and methodology could be disclosed. Certainly, the people who were targeted could quickly work out how to bypass our methods. Certainly, it would be open to those people to displace their travel by passing on evidence to a travel companion, who would not be under suspicion. The lack of suspicion in terms of the power is critical to the utility of actually using it.

Q29 Mr Wallace: Would that breadth of suspicion being challenged as not narrow enough, also apply to a method? Let's say that we had intelligence that a hostile state agent was moving a radioactive substance in a flask but we did not know which flight, so we decided to target all people carrying flasks. That would be too broad because that would potentially cover every flight coming into the country. So, we would not be able to do that if we had a suspicion test.

Assistant Commissioner Basu: Yes.

Q30 Matt Warman (Boston and Skegness) (Con): Earlier you mentioned the prospect of extraterritorial powers and that Australia has them and we do not. As you know, a lot of MPs brought that up on Second Reading. Could you say a little more about how helpful they would be and how they might be used in practice? Would you just like to cut and paste the rules that Australia has or would you like to do something slightly different, if you could start with a blank piece of paper?

Assistant Commissioner Basu: Do you mean the designated area offence that we discussed earlier?

Matt Warman: Yes.

Assistant Commissioner Basu: I think the Australian approach is the more sensible one from our point of view. If you start introducing any kind of rules and notification procedure, there is bureaucracy and difficulty that would go with that. We know how people react. If you put in any kind of way of stopping somebody travelling, if they succeed and travel that would be a huge propaganda coup. That is not something that we would like to see. There is obviously a huge reputational risk in that happening and then them going on to commit atrocities, because somehow they had passed a notification requirement and travelled under the guise of something else, which has happened in the past. They have arrived and then fought and committed an atrocity. It would look like we had effectively licensed them to do that. We would rather have very clear legislation in the first place that prohibits the travel, and that people were then responsible for doing whatever it is they do and they took that risk, and we were able to prosecute in the future.

Q31 Matt Warman: Do you have a sense of how many people have been inspired to travel and how many people, if you were implementing an Australian-type system, you might have had the opportunity to prosecute already?

Assistant Commissioner Basu: I do not have those figures off the top of my head, but I could get those for you and it is substantial. One figure I do have is that we prevented 100 minors from travelling to a theatre of war. The other fact I have is that despite the collapse of the caliphate, we still see people inspired to travel.

Q32 Matt Warman: Is there anything you would add, Mr McGill?

Gregor McGill: I adopt everything my colleague has said. I would say, in respect of the Australian experience, is that although it is on the statute book, it is not often used. It is something that, like most offences, has to be—in accordance with the law—it has to be necessary in democratic society but it also has to be proportionate. It is an offence that would be a useful addition to a prosecutor's armoury, but we would have to be careful how we exercised it because there are ECHR implications, and prosecutors would be alert to that. The Australians are looking at their first case at the moment for dealing with such an individual.

Q33 Afzal Khan (Manchester, Gorton) (Lab): This question is to Mr McGill. We have heard a number of questions on the three viewings. With the viewing itself, does that mean whole or part? What proportion would have been viewed to be counted as one, two, three?

Gregor McGill: That would depend on the particular circumstances of the case and the particular evidence put before the prosecutor. If you went straight to a very criminal—if I can use that word—part of the streaming, that could constitute one. Just a very brief look could constitute one click.

Q34 Dr Rupa Huq (Ealing Central and Acton) (Lab): I just wanted to ask about support for proscribed organisations versus the lone wolf situation. To what extent do you think the Bill defines the expression of an opinion or belief in terms of a terrorist offence, without the actual action that goes with it to prepare for an act of terror? I am thinking of a case that was quite celebrated about a decade ago: the lyrical terrorist. Do you remember this? It was a 24-year-old shop worker

from the Heathrow Airport branch of WHSmith, who was writing dodgy things on the back of till receipts about beheading people. She initially was sentenced, but it was quashed afterwards. Would that case be different under all this? It is just the risk that, potentially, satirical activity could be criminalised. She claimed she was writing poetry. I think she also had some dodgy stuff in the house that could have aided terrorists. In the end, it was seen as too weak and was all overturned. Would that be different under this legislation?

Gregor McGill: That is a very difficult question to answer without seeing the precise evidence. The section 12 support offence is there to deal—sorry to come back to it—with the threat of radicalisation, and the charismatic speakers who stop just short of inviting people to become involved in terrorism but make it clear that they support that activity. That is what this clause is there to deal with.

Q35 Dr Huq: Anything different, assistant commissioner? Do you remember that case? It was on telly a lot, and I think it was partly out of public outcry that it was overturned.

Assistant Commissioner Basu: I do not remember that case, but in the circumstances as you describe them, it would be easy to see why that was a weak case. Mr McGill has said it already, but prosecutors look in the round at whether it passes an evidential threshold and whether it passes a public interest test, long before we get to the point where they advise us that we can charge somebody. So there is a significant period of time in which we would look at the full circumstances of the case. Just on what you have said there, I am not sure that is one that we would have been putting forward under today's—

Q36 Dr Huq: Some CPS prosecutor did.

Assistant Commissioner Basu: Yes, a decade ago. I just echo what Mr McGill said. There is a difference between a shop worker who clearly has some issues, doing what they were doing, and what we are talking about Anjem Choudary doing.

Q37 Douglas Chapman (Dunfermline and West Fife) (SNP): This is perhaps a follow-up to Mr Newlands's earlier question about viewing material over the internet. There is no doubt that a lot of people out there wish to do us harm, but can you foresee any situations in which people who may be fairly innocent—with mental health problems, for example—could be caught up in the Bill inadvertently? We have, for example, seen some cases involving people with autism who have been pulled into the counter-terrorism area—probably through their mental health issues—almost by error. Can you see any safeguards in the Bill, or in the justice system, that would protect people in those circumstances, so that they would not be unnecessarily criminalised, with all the anguish that goes with that?

Gregor McGill: There is a statutory defence, so that would give some safeguards. As I suggested earlier, prosecutors have to apply the code for Crown prosecutors, which means that they have to ask themselves whether there is sufficient evidence to provide a realistic prospect of a conviction and, if they are satisfied that that test is met, whether it would be in the public interest to prosecute. In certain circumstances, if a person was suffering from a mental health issue, that could be a reason for not prosecuting. In certain circumstances it could be a reason for prosecuting. A prosecutor has to look at the particular aspects of each case and make a decision based on what the evidence shows, but I think that there are sufficient safeguards in the legislation and the core process.

Of course, all court proceedings are overseen by independent judges. They are very independent and have an overriding duty to ensure that any court proceedings are fair. That is their overriding duty, and they are very active in ensuring, through the management of criminal cases, that criminal proceedings are fair at all stages. I would say that there are sufficient safeguards within the legislation, and in the wider way in which cases are investigated, prosecuted and tried, to ensure that the rights of everyone in the proceedings are protected.

Assistant Commissioner Basu: The spectrum for mental illness is huge. If people do not have the mens rea, they would not be charged. There would be alternative ways of dealing with that individual. If they do have the mens rea, it depends where they are; we have charged people who have got mental illness issues. Having low levels of mental illness does not mean that someone cannot consciously commit an atrocious act. The investigative process as it stands today, and always has, is that you have to be fit to be detained, fit to be interviewed, and fit to be charged. There is a lot of medical advice before it gets to a charging decision and a prosecutorial process in front of an independent judge. Again, there would be court measures around someone's fitness to plead or stand trial. I think that there are sufficient safeguards.

Just to be clear about who is drawing vulnerable people in, it is not legislation or the investigative process or the Crown Prosecution Service; it is radicalisers, who rely on the fact that some people are vulnerable and need safeguarding. We have measures within the police to try to prevent those radicalisers getting to those people. That is called Prevent, and we do not talk about that great work enough. It is about trying to stop someone being criminalised in the first place. I and my statutory partners have a lot of people working on doing precisely that—stopping people getting drawn into this and becoming subject to any of the legislation in the first place.

Q38 Andrew Bowie (West Aberdeenshire and Kincardine) (Con): A very quick question: in clause 3(2), on obtaining or viewing over the internet, it is clear that,

"on three or more different occasions the person views by means of the internet a document or record containing information of that kind."

That is quite clear—three clicks and you're out—but how do you define views? What is the definition of views? Is it a five-second YouTube advert or the like? Is it 10 minutes? Is it an hour? What is the definition of views when it comes to that?

Gregor McGill: I do not think it is defined in the legislation, is it?

Q39 Andrew Bowie: What if somebody clicks on it by accident, views it for three seconds, says, "Oh," and then moves away from it?

Gregor McGill: That is the point I would make. The analogy I always draw is with things such as indecent images of children. When we are prosecuting cases like that, if someone clicks on a website with indecent images of children once, they might think, "I didn't want that. I'll click off." I would say that no prosecutor would say that the code for Crown prosecutors was met in those circumstances. If you had one click and you were on there for a considerable period of time, that might be different. If you had one very short click, but then you went back and looked again, and then you went back and looked again, that is beginning to show a pattern of behaviour.

Q40 Andrew Bowie: It goes back to Mr Newlands's question about the period of time. Is it over a 25-year period? Is it a 10-year, five-year or one-year period? If it is a matter of seconds over a 25-year period, that is not really a pattern of behaviour.

Gregor McGill: No, and those are the factors that a prosecutor would take into consideration in asking themselves whether the evidential test was met and, even if it was in those circumstances, whether it would be in the public interest to prosecute.

Q41 Julia Lopez (Hornchurch and Upminster) (Con): I would like to move us on to corporations and local authorities. I was a councillor in Tower Hamlets at the time when we had three of our schoolgirls go to Syria, and it became clear that it was not just a counter-terrorism issue but a safeguarding, welfare and child-grooming issue. I wonder in what ways this legislation proves that you are working with local authorities. Do you think there are still any gaps in that working? I would also be interested if you could talk a little about how the Prevent agenda tries to build children's and other people's resilience against radicalisation, as one of the best ways of trying to stem the whole phenomenon of Islamic and far-right radicalisation.

Assistant Commissioner Basu: I am on public record as saying that I think Prevent is the most important pillar in the Government's strategy. What we are facing is a generational challenge. If I think about minors who are being influenced in all the kinds of ways that we have discussed here today, I talk about returning families, mothers and children who have been exposed to atrocities in war zones, who I have to treat as a potential threat as well as a potential safeguarding issue. I have talked about the fact that we see people still actively inspired and encouraged to travel to a war zone where the caliphate does not exist. There are still people being influenced by that.

I think of a case that I investigated less than 18 months ago, which has come to trial, of four young people who were trying to travel to Syria to fight. That links to the section 58 offence, because two of them downloaded material and therefore were chargeable with a section 58 offence. For two of them, there was no evidence under the current legislation to be allowed to interdict them at that time. They were not susceptible to Prevent, which is a voluntary scheme to help people who want to help themselves. That is the difficulty.

Where the Government have brought in desist and deradicalisation programmes that are mandatory for convicted offenders, at least that gives us a further opportunity to try to safeguard. That is another important aspect or evolution of where Prevent has been. But as I have just said, the number of people in policing and in our statutory partners, post the 2015 legislation, that made statutory partners aware of their responsibilities and gave them a legal duty to effectively deal with anyone they suspected was being drawn into terrorism, has made a significant difference. That is not least because the education sector, where you will be well aware that we had huge problems convincing people that safeguarding and not prosecution was our aim, is now the biggest referrer into Prevent—very recently, I think, it was 1% more than policing itself.

There has been a sea change. What we tried to talk to people about is that you do not need to teach teachers about safeguarding. It is absolutely engrained in their character as something that needs to happen. This was no different from a child being abused or neglected; it was exactly the same principle. We believe that is working effectively and will continue to work in the future. Probably the most important thing is that people are resourced and equipped to handle what is going to be an increasing case load, particularly if we see more people returning from theatres of war.

What we described here is a radicalisation process that is still ongoing. My colleagues in the Home Office will see social media and sentiment showing that there is still a growth of extremism in this country. You made the point about making people resilient and able to counter that narrative or to combat an ideology—a good academic we use talks about it being like fast-food ideology. Kids are being exposed to one or two lines of rhetoric from the Koran that mean nothing in isolation. The issue is in trying to teach people what that actually means, or trying to teach a young white lad in north-east England who has been told that white supremacy is the way and who understands nothing about the history of what that actually means. It is important to try to increase their resilience, and we do a lot of that type of work as well.

I do not think we talk enough about that kind of work. We do not hear from enough people doing that kind of work and some of the dramatic effects that they have had in changing people's ideology, which has meant that those people do not become criminals—they become useful members of society, and are advocates for a better way of life.

I go back to the Peel principles: my job is to prevent crime, not just to detect it. Save life and prevent crime—those are my two primary duties, and the Prevent strategy is precisely about that. Stop criminalising people and be effective, but I cannot do that myself. Those with the skills to do that are in education, health and social services. One of our greatest challenges is probably to properly equip them to do the work that we signpost to them.

Q42 Julia Lopez: Do you think this legislation goes some way towards dealing with that issue, or do you think that local authorities are neither financially equipped nor have the expertise to be able to do what you need them to do?

Assistant Commissioner Basu: I do not think the legislation is the issue. I think the equipping, expertise and resourcing are different problems, probably for the next spending review. Unless you can point to a place in the legislation where you think that more law is required, I am not sure that it is about more laws. It is about dealing with the issue; it is more about capacity.

Q43 Julia Lopez: Do you have anything to add, Mr McGill?

Gregor McGill: As a prosecutor, I would say we are involved in Prevent but not to the same degree. We sit firmly within the pursuit base, if I can put it that way. The aim of any prosecutor is to keep people out of the criminal justice system as much as possible; if people enter the criminal justice system, we have all failed to a certain extent. Going back to what was said at the beginning, the threat is from radicalisation. Anything we can do to prevent that radicalisation is to be supported. I think this legislation will give us the tools to help us do that. Is there more we can do? Yes. But I agree with Mr Basu: is it this legislation? No, it is much wider than that but this legislation will help, in my view.

Q44 Neil Coyle (Bermondsey and Old Southwark) (Lab): I want to go back to clause 2, which deals with the personal publication of images. Is this Bill not a potential vehicle for a wider power, which might be welcomed by police authorities, to compel any individual or media platform to remove images that incite or glorify any form of violence?

Assistant Commissioner Basu: It has the potential to do that, yes. I think most social media providers have stepped up to their corporate social responsibility, particularly post-2017. They get it—they get that there is a serious issue with social media. I have described it publicly as the internet probably being humankind's most important invention but also a great scourge of our time. It is not policeable as it currently exists; I certainly could not do it. The only way it can be done is if these companies take responsibility for what they are hosting on their platforms. We are seeing a real movement towards that, and the Government have helped dramatically in terms of being a convening power: getting the big chiefs round the table.

It has taken eight years for my counter-terrorism and internet referral unit to encourage social media providers to take down 300,000 pieces of extreme terrorist material: stuff that we think hits the threshold. During the first quarter of 2018, two of the major CSPs managed to take down just short of 4 million. When the impetus, drive and understanding are there and they know what they are looking for and what crosses the criminal threshold and undermines all their own policies, they can do this. That is incredibly important. That is over and above anything in this legislation.

Q45 Neil Coyle: Most of us are grateful to have seen the new Government focus on this and, in particular, the social media companies finally coming to the table. But that has been under threat of regulation—so, again, is there not the space within the Bill to take that forward? I think you are suggesting both that it is beginning to happen but that the Bill offers the opportunity to go a bit further and give the power that could be used if media companies do not continue to work closely with Government. Is that fair?

Gregor McGill: In legal terms, freedom of expression is not an absolute right, but a qualified one. It is important to remember that. It can be interfered with, if I can put it that way, if that is in accordance with the law—and this legislation would provide that; if that is necessary in a democratic society; and if it is proportionate. Like so much in the criminal justice system, we try to strike that right balance, between the rights of individuals to have that freedom of expression and the rights of other citizens to live in peace, security and safety.

Q46 Neil Coyle: In clause 3, what does this Bill do that the French legislators failed to do? Linked to that is the point made by the hon. Members for West Aberdeenshire and Kincardine and for Dunfermline and West Fife—namely, that we know vulnerable people are being deliberately targeted, or groomed, by those who want to incite them to undertake violent acts. You seem to be suggesting that a click of a fraction of a second would count towards a realistic prospect of conviction, but then seem to draw back and suggest, for example, that for someone with a learning disability, the public interest clauses would prevent a prosecution. Bearing in mind what the other witnesses would like to see and the case they might be making, are you suggesting that that is where the reasonable application would land and that that would be the trigger for a Prevent-type intervention, rather than a prosecution?

Gregor McGill: On the three clicks, how a prosecutor would have to approach it is to look at the case in the round and see what the nature of the clicks was—look at the issue in totality. How long someone looked and how close together—you have to build up an evidential picture and ask yourself, as a prosecutor, whether that provides you with a realistic prospect of a conviction.

In some cases, it may start off with a very short click, but the next click may be longer and the click after that may be longer. That enables a prosecutor to build up a story and a narrative and ask those questions. A prosecutor has to look at that and ask whether that evidence provides them with a realistic prospect of conviction. But they have to ask themselves a wider question: would the public interest require a prosecution in this case? That would depend very much on the circumstances of the case.

In respect of the French legislation, I am afraid I do not know much about that; I struggle enough with English law without trying to understand French law. However, I could find out about that and write to the Committee, if that would help.

Assistant Commissioner Basu: Every senior investigating officer has a responsibility to consider a Prevent line of inquiry while they are looking at the investigative lines of inquiry for their case. There are two very good examples of that. I mentioned the one about the four youngsters who wanted to travel. In that case, Prevent initiatives were put around certain of those vulnerable youngsters, because we did not want to criminalise them.

A very famous case that has just been convicted is that of Safaa Boular. Safaa Boular was a 16 year-old girl when she was groomed online by a 33 year-old from Syria. She was considered to be a very vulnerable youngster in need of some kind of Prevent intervention. That Prevent intervention failed: bear in mind that it is a voluntary programme; if you do not want to engage with it, that is a significant issue. We have people who go on to plan or even commit terrorist atrocities who have been subject to Prevent intervention. In terms of the efficacy, it is a very difficult thing to do, but we aim towards it.

I was taken by what Mr McGill said; it is a failure when we criminalise people and have to prosecute them. As I said, the primary duty of my job is to save lives and prevent crime—not detect it. I am a very experienced murder investigator, but I never wanted to be a murder investigator as a counter-terrorism officer.

Q47 Neil Coyle: To follow up on the point about the quick click, if you want to call it that, you are suggesting that because there is no time limit in the Bill, it could count towards a prosecution. We have to be mindful of that, and it might be worth considering some kind of time limit.

If someone is grooming, for want of a better word, someone vulnerable, and they send them an email link without any explanation, would the person being targeted be able to prove—as the onus is on them to do—that their excuse was reasonable, that the link was sent by someone they trusted and that it was a case of misplaced trust? How would that pan out in practice?

Gregor McGill: It is quite difficult, and it requires close liaison between prosecutors and investigators to work out exactly what the evidence is in the case. It is true that if someone is groomed and specifically targeted, that can be a powerful reason for not prosecuting, because we have to understand that people are targeted because they are vulnerable.

There comes a stage sometimes, however, when we have to focus on what people have done, rather than why they have done it—if I can put it that way. It is that balance, which goes back to what I said before and what Mr Basu just said. Wherever we can, we try to keep people out of the criminal justice system. Investigators and prosecutors will do everything they can, but in certain circumstances the code means that if the evidence is there, and it is a serious matter, the public expect a prosecution.

Q48 Neil Coyle: On clause 19 and terrorism insurance, despite the Prime Minister talking about the attack on London bridge and Borough market as a terror attack on the night it occurred, it took a considerable amount of time for it to be formally classified as a terror attack. The Ministers have suggested that one of the reasons for that was that three police authorities were involved—City of London, the Met and the British Transport Police. Is the Bill also a vehicle for trying to speed up the process by which acts of terror can be classified, so that those affected, particularly businesses and employers, have better protection when claiming from their insurers?

Assistant Commissioner Basu: That is a matter for the Government and the way the Bill is drafted, but it would be a laudable aim.

Neil Coyle: I will take that as a yes.

Q49 Simon Hoare: You may have a different view of this question, depending on which end of the telescope you are looking through. Is there anything that you would have liked to have seen in the Bill to help you with your respective jobs and tasks that is not there?

Gregor McGill: From a Crown Prosecution Service perspective, the Bill is a proportionate response to the threat we face.

Assistant Commissioner Basu: We have discussed the designated area offence and, briefly, the Protect duty. I caveat that by saying I understand how difficult a Protect duty would be. Some 80% of British businesses are small and medium-sized enterprises and I know it would be difficult. I do not want to impose a financial cost on people; I just want them to understand the seriousness with which we need their help. I am not sure that legislation is the right vehicle for that, but it is something we have debated.

The last point I have not mentioned is that we have a continual issue with people marching and waving flags—the whole display issue—and we do not have a power of seizure of flags, which is part of the evidential chain for a successful prosecution. That is a minor point. Otherwise, it is a well-balanced set of proposals.

Q50 Gavin Newlands: If I can draw attention to schedule 2, the retention of biometric data. Mr McGill, we—or certainly I—have heard that removing the oversight accorded by the Biometrics Commissioner could be seen as a retrograde step. Any data vulnerability is an issue, but it is particularly important when it comes to biometrics. In America there was a hack of 5.5 million unencrypted fingerprints, which would obviously be an issue if it were to happen over here. With all that in mind, could you provide any examples that would support the notion that the detection of crime is improved by retaining the biometric data of people who are not charged, whose charges are dropped or who are, indeed, found innocent?

Gregor McGill: That is quite a wide question. I do not have specific examples of that, although we could look for them. What we do know is that successful investigations and prosecutions use a number of investigative tools and evidence from different places. The more powers that investigators and prosecutors have to exercise those safeguards, the stronger the prosecutions and better the results. An example of where we have used biometric data for that? Off the top of my head, I do not know in these circumstances.

Assistant Commissioner Basu: The most famous example in recent years was Sardar, a cab driver from Wembley, in 2014. The US shared his biometrics with us. He had been overseas and become a terrorist. The reason we were able to match was that in 2007 he was subject to a schedule 7 stop and his biometrics were taken. So he was not convicted of anything. His biometrics were taken and retained for seven years. He was clearly suspected of travelling for a purpose, but not enough to cross the threshold. He travelled and was later convicted of murder.

Q51 Gavin Newlands: It would be useful if you provided the Committee with more examples. The Bill is asking for an extension from two plus one to five years; that would be more than double in some cases. To justify that, it would be useful for the Committee to have that information.

Gregor McGill: We can certainly look for those examples and write to the Committee.

Q52 Nick Thomas-Symonds: I have a narrow question. Clause 12 concerns the power to enter and search houses. I am trying to get a practical sense of that.

There are, of course, various requirements. On at least two occasions there has to have been attempts at entry before. The purpose is this:

"to enter premises specified in the warrant for the purpose of assessing the risks posed by the person to whom the warrant relates;"

Could you expand on that? Mr Basu, what exactly do you think is meant by "assessing the risks"? What practically would be likely in a situation like that?

Assistant Commissioner Basu: This is based around lifetime offender management of terrorism. The parallel is obviously registered sex offenders, where this power exists. You are looking for anything that looks as though they have re-engaged or are breaching their notification requirements, if they are on notification. It is something that allows us to assess the ongoing risk of their re-engaging with terrorism. You might find material if you were to do such a warrant. You might find a flag being displayed. You might find material that is of use to a terrorist. That is the purpose of it.

Q53 Mr Wallace: I think we are coming towards the end. Can I just thank you very much for your evidence? Could I ask you to set the scene, assistant commissioner, of where we are with today's threat and to put in context why these powers are needed?

Assistant Commissioner Basu: Certainly. You can listen to me or you can listen to Andrew Parker from MI5, who has spent 35 years in terrorism and says he has never seen anything like it. If I wanted to describe the threat, that is where I would start. It is definitely a shift, not a spike. We saw the start of problems that were predictable when the military push went into Mosul and Raqqa at the beginning of 2017.

Before Khalid Masood hit Westminster Bridge on 22 March, the number of leads from international partners, covert means and here in the UK were starting to increase in January. What we reached, post Khalid Masood's attack, was probably a lowering of the bar for terrorism in this country, where people thought that perhaps we were not as hostile to terrorism as we could be and, therefore, they were capable of committing attacks. The attacks that followed were not connected in any way, shape or form, but they say something about the inspiration and the radicalisation that we have discussed.

That has left us with a trebling of our leads; on a monthly basis we deal with three times the number of investigative leads that might later work themselves through into a priority investigation against terrorism. There is more attack planning here in the UK, which is why section 58 of the Terrorism Act 2000 is so important. Holding information is often a precursor for people seeking to do a much more serious offence down the line. We are seeing something in the region of about a 30% increase in case load.

We talk about somewhere between about 500 and 600 cases. Taking the cases that are not police and MI5-led and including the ones that are led by police alone, it is more like 650. We have talked openly about the fact that 3,000 subjects are of acute interest to us, which means 3,000 open cases of individuals who are considered a national security threat. We talk about the growing pool of those we have looked at and are no longer considered a national security threat, but who may re-engage in the future, as being 20,000.

We also have a number of issues, as we have discussed, of people who have been exposed to this in countries overseas. Now that the caliphate has collapsed, what will happen to those people? Will they return to their countries of origin? We still have a substantial number of people who could return against whom we do not have prosecutable case.

Within our communities, we continue to see a rise in extremism. Most disturbingly, along with the jihadist Islamist threat that we see in international counter-terrorism, we now see the extreme right wing growing as well. Those probably feed off of each other, which is why this becomes a whole-society problem, because we are seeing both sides of the coin. The previous Home Secretary proscribed National Action. We have done a great deal of work against National Action.

The most disturbing thing about the extreme right-wing threat, in terms of how it transfigured as National Action, is that it shows very similar signs to what was discussed about al-Muhajiroun—ALM—many years ago. It probably took years to get on top of ALM, and we did not want to make that same mistake with the extreme right-wing threat. Counting that together with the scale of the pace, our ability to counter that level of threat will be severely challenged over the next couple of years. This legislation provides me with some help on that.

The Chair: If there are no further questions from Members, I thank the assistant commissioner and Mr McGill for giving evidence this morning and for their time. It has been most helpful to the Committee. Thank you very much. We will now move on to our next panel.

Examination of Witness

Richard Atkinson gave evidence.

10.53 am

Q54 The Chair: We will now hear oral evidence from Richard Atkinson, chair of the criminal law committee of the Law Society. We have until 11.25 am. I welcome you, Mr Atkinson. Thank you for being with us this morning. Will you please introduce yourself for the record?

Richard Atkinson: Good morning. I am Richard Atkinson and I am co-chair of the Law Society's criminal law committee. I am a defence practitioner specialising in criminal law.

Q55 Nick Thomas-Symonds: Thank you for coming to give evidence to us, Mr Atkinson. I want to turn to the border security part of the Bill and issues of detention and access to a lawyer. There is no right to consult a solicitor in private in the Bill. The way the Bill works is that there is a one-hour period without the right to consult. Beyond that, there is a further six-hour period. The Bill is pretty clear about the power attached to it:

"a detainee who wishes to exercise the right"

may in some circumstances do so

"only in the sight and hearing of a qualified officer."

Is it a concern that there is no right under the Bill to consult a lawyer in private?

Richard Atkinson: Yes, a very great concern. It fundamentally undermines what I would consider to be a cornerstone of our justice system—legal professional

privilege. As you may know, legal professional privilege is a right that belongs to the client, not to the lawyer, and it is a right to consult with their lawyer and have the contents of those discussions, where they are a matter of advice, privileged and not to be disclosed to anyone. Clearly, if someone is listening to that conversation who is not advising them, that conversation is no longer privileged. Therefore, that risks undermining the whole concept we have of privilege.

I understand that the motivation for this is the concern that there may be advisers—lawyers—who may be susceptible to being used, if I can put it that way, by manipulative suspects to achieve the goals being sought to be prohibited—communication with remaining suspects, interfering with evidence or furthering criminal activity. However, that is not unknown to our current justice provisions. Powers are already in place to deal with such situations that do not require the breach of legal professional privilege.

For example, in the Police and Criminal Evidence Act 1984 code H, which deals with counterterrorism cases, where there is concern about an individual lawyer there is provision for the suspect to have the consultation with that lawyer delayed but to be offered the services of another lawyer in the meantime. The suspect is therefore not devoid of legal advice. That advice is in private and maintains privilege but meets the concerns, if there are specific concerns, in relation to that particular legal adviser. So we have in place a situation where we can address the concern but maintain the fundamental principle of legal professional privilege. The Bill goes much further than that and is a step that I feel is very detrimental to our system, and of course to our reputation.

Q56 Nick Thomas-Symonds: From what you are saying, there is a practical solution for any legitimate concerns there may be. There is also a situation—in a police station, for example—where you can have a duty solicitor or lawyer made available. That person could be someone of particular standing and reputation in whom we could all have faith and whom we would not have those concerns about.

Richard Atkinson: Absolutely. Again, code H allows exactly for that. If there are specific concerns about a lawyer, the duty lawyer or solicitor can be called to come and advise. That maintains privilege and maintains the defendant's access to advice at that point.

Q57 Mr Wallace: In your earlier replies, you talked about how an individual who was detained could have a conversation without legal advice or compromising themselves. It is right, is it not, that in this environment such a conversation would not be admissible in court, under the grounds of the stop?

Richard Atkinson: Not necessarily, because although there is a provision to limit its use, it is not absolute, is it? There are three exceptions where it can be used.

Q58 Mr Wallace: What are those exceptions?

Richard Atkinson: If I am right, the three are proceedings for an offence under schedule 7(18) of the Terrorism Act 2000; on a prosecution for perjury; and on a prosecution for another offence where, in giving evidence, the defendant makes a statement inconsistent with the answer or information provided by him or her in response to the schedule 7 examination.

Q59 Mr Wallace: Let us take perjury. Whenever any of us goes to the airport, a passport control person will ask us, potentially, where we are going or where we have been. They will question us, won't they? They have the power to do that.

Richard Atkinson: They will.

Q60 Mr Wallace: Do we have a right at that stage—because this is all about being at the border—to ask for a lawyer then?

Richard Atkinson: No. I think, though, there are three almost categories of questioning recognised in the legislation. You have screening, examination and detention. What you are talking about is much more akin to screening, and no one is suggesting that those sorts of questions require someone to be offered legal advice. Having gone past the screening exercise and moving into the position of examination, where someone can be held for up to an hour, they are now someone of interest. Their status has moved on from simply that person who walks through passport control.

Q61 Mr Wallace: What about customs, because we are really talking about a customs screening in the example of a passport? If I am coming in from a country with my baggage, a customs officer stops me and asks me where I have come from—there is the screening—and they wish to search my bag or my person, they will take me away. They can take me to a side room. They can hold me while they examine my bag, screen it, and take it through an X-ray machine. Do you have a right to a lawyer in that environment at the border?

Richard Atkinson: No.

Q62 Mr Wallace: But that is a detention. You can be held, I think, for quite some time. We have all seen the television programmes; it happens all the time. How long has that power been held at the border by customs officers?

Richard Atkinson: I am afraid I do not know the answer to that.

Q63 Mr Wallace: Because you started your critique of this part of the law by referring to the long established view, the cornerstone of British advice. If I may give you a clue, it has been centuries that customs has had that power at our border in order to protect our border.

Richard Atkinson: Sorry, I think you are conflating things that I have said. The cornerstone is legal professional privilege. That is not access to a lawyer; it is the confidential nature of discussions between a lawyer and their client. That is the cornerstone that has been in existence for hundreds of years and that is held out internationally as a gold standard that we have in this country. That is what is being undermined by this Bill saying that a police officer can stand and listen to the consultation that is going on between the client and the lawyer. That is not the same as access to a lawyer, which is none the less important but is not of the same nature as I was describing in relation to legal professional privilege.

Q64 Mr Wallace: That is the particular bit that you would have the most beef with—the discussion between, effectively, a client and a lawyer when they are allowed access to a lawyer at that stage.

Richard Atkinson: That is the most alarming part, yes. Access to a lawyer is important, but you were seeking to conflate the two. I am happy to discuss either, but not the two together.

Q65 Mr Wallace: Let us go to the access to a lawyer point, because I think there is an amendment down about that. On access to a lawyer, would you venture, therefore, it should happen from the first—not from the screening? Not from the initial detention, in the way customs is done? Or would you say that they should really have access as soon as they have gone beyond the screening?

Richard Atkinson: Yes, I think they should, and under the code of practice that currently applies to schedule 7 to the 2000 Act, if a suspect requests legal advice, that is entitled to be considered and they may be given it, so this is not something new to terrorism legislation. It is already there in the code of practice that suspects are entitled to ask for legal advice at that point.

Q66 Mr Wallace: I am just trying to get consistency. Does that mean you think that when a Border Force person, a customs person, seeks to detain you for an hour or however long to examine and question you further, they, too, should have access to a lawyer?

Richard Atkinson: If they are questioning you, yes.

Q67 Mr Wallace: But they do that every day in their thousands across the country, because that is how we control our borders.

Richard Atkinson: If it has gone beyond screening, then yes.

Q68 Mr Wallace: That is a significant shift in what you would desire on the borders of our country. There would be thousands of lawyers. Let's say someone goes beyond "Are you Ben Wallace? Did you come from Jamaica on this aeroplane? What's in your bag?" They start taking my bag away, screening it, X-raying it, and asking me questions about what hotel I stayed in. Are you saying they should have a lawyer there?

Richard Atkinson: I would separate out some of those actions. If they are X-raying your bag, if they are looking for physical evidence to support a suspicion, then no, you do not have a lawyer at that point. If they have formed a suspicion and are now looking to ask you questions, then yes. However, more particularly under this legislation, the concern is that you have no right to remain silent, you have to answer these questions. So, devoid of legal advice and required to answer the questions is a significant act on the part of the state.

Q69 Mr Wallace: I think it is right to say that access to a lawyer on the border has been qualified quite considerably over many years. Would you not say that? Whether it is a customs stop or not conducive to the public good or a whole load of establishing, it often goes beyond screening.

Richard Atkinson: That is not something I can comment on. It may be correct. I do not know.

Q70 Mr Wallace: As the Minister, I definitely take your point about access to legal advice and that privileged space. Do you understand why we are trying to use schedule 7 and schedule 3 on the hostile state? Do you understand why there is a need to try to establish people coming into our country? What alternatives would you proffer as a way to deal with people who sometimes do not want to answer the screening questions, obviously, but may have a lot of evidence on their telephones?

Richard Atkinson: I do understand what is being sought. What I am saying is that there is a need for legal safeguards for those individuals. I do not see how those prevent evidence of the type you are talking about from being obtained. With a telephone, you are talking about the material being taken away and examined. It is not a matter of questioning at that point, and I have not sought to say that that should not be the case.

If you want to move on to the wider issue around seizure of legally privileged material, that is a different issue and I would have comments on that.

Q71 Mr Wallace: So the Law Society does not oppose the concept of the schedule 7 or 3 type stop; it just wishes better access to legal advice.

Richard Atkinson: That is correct.

Q72 Mr Wallace: Does it oppose the lack of reasonable grounds, the no suspicion?

Richard Atkinson: No.

Q73 Afzal Khan: I would like to ask about the confidentiality between the solicitor and the client. It has been long-established that that is a privileged sort of advice. You also said you understand where the legislation is trying to go and why the Government are trying to pass it. Is an alternative available where both could be achieved without compromising and losing one?

Richard Atkinson: I do not think the two prevent one another. Obtaining legal advice, bearing in mind that the individual has to answer questions, is not going to stop the objectives of the legislation or investigation. As I have already indicated, if there are specific concerns about the individual adviser, they can be met in the way that the codes of practice attached to the Police and Criminal Evidence Act currently address the matter. So, no, I do not think there is any problem in maintaining legal professional privilege and achieving the objectives that are sought.

Q74 Gavin Newlands: In addition to access to justice and legal professional privilege, or lack of provisions in the Bill, are there any other aspects of the Bill that concern you? Do you think any of the provisions, such as three clicks, could result in aspects of the Bill being successfully challenged in court under human rights laws?

Richard Atkinson: I will take a moment to gather my thoughts around that. As far as other matters go, specifically going back to—although we did not quite touch on it—legal professional privilege, there is the issue of seizure of material and its examination. Again, it concerns me that, where legally privileged material is seized, it can be both examined and seized, even though it is legally professionally privileged material. I understand that the concern is that there will be those who falsely make the claim that the material is privileged—either that they themselves are lawyers and are privileged, or that the documentation and material they are carrying is in some form privileged and therefore should not be viewed by investigators.

In order to maintain privilege, which I think is so important, there are safeguards that can be imposed, which would mean that privilege is maintained but that the objectives are met. It has to be borne in mind that legal professional privilege does not extend to agreements to carry out illegal acts. If someone comes to me and wants to plan some illegal activity, it is not a privileged conversation and material. If there is material that is claimed to be privileged at the time of the seizure—bearing in mind that when he gave evidence to the Joint Human Rights Committee, Max Hill said that he saw this being a handful of cases, so we are not talking of hundreds of cases here—it would be perfectly legitimate to seize that material, bag it immediately and then put it in front of an independent counsel—lawyer—who would then be able to assess whether or not that material is privileged. If it is privileged that is the end. If it is not privileged, that material goes to investigators to be dealt with. It can be dealt with in a very short time, because lawyers are very adept at making themselves available to deal with urgent situations. When we are talking about a small number of cases to protect the fundamental right of legal privilege, that would be, in my view, an adequate and proportionate safeguard for dealing with that situation.

To your wider question—whether there were any other concerns—I suppose I could say three clicks et al. We have some concerns that the three clicks provision could potentially be restrictive or undermining of those with legitimate cause, such as journalists or academics making research into areas where they may find themselves falling foul of the legislation. I understand the statutory defence of reasonable excuse, but that is none the less relatively vague. The timings—you spoke about this in the earlier session and about having no time limit on this—are also vague.

To leave the law in the hands of prosecutorial decision as to whether or not it meets the public interest is a step too far. I think there is a need for greater definition around what is being sought to be prohibited. I understand the rationale for it and the need to prevent radicalisation, but we also need to ensure that we do not inadvertently criminalise those who are undertaking legitimate tasks. Although I was unaware of the specific example that one of your colleagues raised, of the worker in WHSmith, that shows the risk of simply relying on prosecutorial discretion as to whether matters should be prosecuted. In that case, clearly, a discretion was exercised to prosecute, and from what you have said—I do not know the case, so I am relying on the information given here—that was later found to be wrong.

Dr Huq: It was at the Old Bailey, and it was overturned by the Court of Appeal—

The Chair: Order. You need to speak through the Chair.

Richard Atkinson: That was an example where prosecutorial discretion was not aptly relied upon. When drafting legislation, where there are obvious potential concerns, it would be beneficial if that was better spelled out.

Q75 Dr Huq: I am surprised nobody in this room has heard of that case, because it was on the TV news at the time. It was at the Old Bailey and was overturned by the Court of Appeal.

My question is about to what extent you think that clause 3 could risk criminalising thought without action—people may not have to do anything. That is what that case hinged on.

Richard Atkinson: If I am honest, I am not sure I have a view on that at the moment. I think that is the most honest answer I can give.

Q76 Nic Dakin: The provisions under clause 17 and schedule 2 will bring terrorism offences under the Police and Criminal Evidence Act 1984 in line with those under the Terrorism Act 2000, in relation to biometric data. To what extent do you think it is necessary and proportionate to retain biometric data for individuals who are arrested for terrorist offences but not charged?

Richard Atkinson: It is an area of concern for us because, clearly, it is right that individuals' data is not routinely withheld, and we have looked at that in the past. I do not think I am qualified to answer on the need to extend the period, but your question very much enunciates our position, which is that any extension of time periods needs to be justified by objective evidence. I know the Committee were asking for examples of that from the two earlier witnesses. Before one could be satisfied of the need to extend periods of retention of biometric data, there would need to be a case made out. I certainly have not seen it. It was not something that could readily be articulated this morning, and great caution needs to be expressed before extending the periods of the retention of that data without an evidential base.

Q77 Mr Wallace: Can I just come back on the oversight of retained material? That is mainly paragraph 11 of schedule 3, on page 40 of the Bill. You have talked about an independent barrister or legal view about legally protected privilege. The Bill says that when a number of things are seized, including legally protected privileged material, but also broader material such as journalistic material and even health material, it has to go before the Investigatory Powers Commissioner. The Investigatory Powers Commissioner's Office is an independent body, headed by Lord Justice Fulford. That body will then have to make the decision on whether that material could be examined or destroyed and so on. They are all judges. The Investigatory Powers Commissioner is Lord Justice Fulford, and his judicial commissioners are obviously former judges. What is the gap—what is missing—therefore between that oversight and the oversight that you think needs to be improved?

Richard Atkinson: First, the conflation of journalistic material and legally privileged material is unfortunate. I understand the importance of journalistic material, but I would respectfully submit that it is not in the same category as legally privileged material. It is a different category of material and should be treated differently. I may have misunderstood the process, but as I understand it, the investigator views the material, seizes it and then seeks power to retain it, which means that the privileged material has already been viewed and the privilege breached.

Q78 Mr Wallace: I am not entirely sure that that is correct. I think he will initially seize it. I think he needs permission. He must be informed of the retention. The Bill talks about the retention by the commissioner where "there are reasonable grounds to believe".

Richard Atkinson: So you have seized it, viewed it and seek permission to retain it.

Q79 Mr Wallace: The Bill states in schedule 3 that

"an examining officer may retain the article…for the purpose…while the officer believes".

Paragraph 12 states:

"This paragraph applies in relation to an article retained by virtue of paragraph 11(2)(d) or (e)…The Investigatory Powers Commissioner…must be informed of the article's retention".

Paragraph 12(4) states:

"The Commissioner may…direct that the article is destroyed, or…authorise the retention and use of the article"

subject to whatever.

Richard Atkinson: My understanding—I could be wrong—is that that material will have been viewed prior to the application to retain it, which is a breach of legal professional privilege. The breach occurs, and then in order to perpetuate the breach, if I may put it that way, an application is made. That is too late, so far as legal professional privilege is concerned. Whether that is the case with journalistic material, I leave for others to argue. For legal professional privilege, to breach it and then seek permission to retain it is too late. It should be that as soon as privilege is claimed, that material is then examined. Ordinarily, you cannot go behind privilege, and that is it, but I understand that, in the particular circumstances being addressed here, it is important that the veracity of the claim is properly checked. That is what I am saying the first stage is. It is someone saying, "I am taking your briefcase." The person says, "Don't look at that file. That is a privileged file." The other person responds, "Right. I will put it in a bag, and we will see whether it is."

Q80 Mr Wallace: We should get some clarity on this. The legislation talks about seizing, rather than viewing. That may be enough to trigger it. If I claim something has legal privilege, that may be enough to trigger that a judicial commissioner looks at it—it is then referred to the commissioner, as opposed to your assumption that it will have to have been viewed before the request for judicial oversight.

Richard Atkinson: If your proposition is correct and there is therefore judicial oversight of that material, I would not have concerns, but that is not how I read it operating. We differ on that.

Q81 Mr Wallace: Are you happy with the Bill's oversight of that process, with the judicial commissioners and the independent commissioners being the ones who give the authorisation to retain or destroy material?

Richard Atkinson: Yes, but the issue is whether privilege is breached prior to that.

Q82 Nick Thomas-Symonds: Staying on this point, but moving away from the distinction about whether a document is privileged, do you think it would help if the Bill said, "Every single time this power is used, the commissioner will be informed about it"?

Richard Atkinson: Yes, I do.

Mr Wallace: The judicial commissioners will be the oversight for the use of the hostile port stops overall—the annual report or whatever it is.

The Chair: As there are no further questions from Members, I thank you, Mr Atkinson, for your time and evidence this morning. As the Committee is not due to meet again until 2 pm, I invite the Government Whip to move the adjournment.

Ordered, That further consideration be now adjourned. —*(Paul Maynard.)*

11.23 am

Adjourned till this day at Two o'clock.