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HOUSE OF LORDS

HOUSE OF COMMONS

MINUTES OF EVIDENCE

TAKEN BEFORE

JOINT COMMITTEE ON THE DRAFT CONSTITUTIONAL RENEWAL BILL

DRAFT CONSTITUTIONAL RENEWAL BILL

WEDNESDAY 4 JUNE 2008

BARONESS PRASHAR, PROFESSOR DAME HAZEL GENN and
MR JONATHAN SUMPTION

MR CHRIS ALLISON, MR DEAN INGLEDEW and MR KIT MALTHOUSE

Evidence heard in Public Questions 279 - 362

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Oral Evidence

Taken before the Joint Committee on the Draft Constitutional Renewal Bill

on Wednesday 4 June 2008

Members present:

Michael Jabez Foster, in the Chair

Armstrong of Ilminster, L.	Martin Linton
Campbell of Alloway, L.	Emily Thornberry
Gibson of Market Rasen, B.	Sir George Young
Hart of Chilton, L.	
Maclennan of Rogart, L.	
Morgan, L.	
Norton of Louth, L.	
Tyler, L.	

Witnesses: **Baroness Prashar,** CBE, a Member of the House of Lords, Chairman, Judicial Appointments Commission, **Professor Dame Hazel Genn,** DBE, QC, Judicial Appointment Commissioner and Professor of Socio-Legal Studies, University College London, and **Mr Jonathan Sumption,** OBE, QC, Judicial Appointments Commissioner, gave evidence.

Q279 Chairman: Welcome. May we thank you very much indeed for coming to talk to our Committee. You know of course that the Committee has a grand title but in fact we are looking at a series of different issues of which one is the suggestions made in the draft Bill for looking again at the judicial appointments process. As experts in that area, we are grateful to you for giving us your advice. The most obvious question I suppose is what has been put to us by a number of witnesses already. That is: is this the time for looking again to significantly changing the judicial appointments process, just three years after the 2005 Act?

Baroness Prashar: Thank you very much indeed. Can I first of all say thank you for giving us this opportunity. We are very pleased to be able to help you with your inquiries. In response to your question as to whether it is too early, as you already said yourselves, the Act is only three years old and the Judicial Appointments Commission has been operational only

for two years. From our point of view, there is not sufficient evidence to support any significant changes but I think we do need to focus on improving some of the current arrangements. In that sense I think we would not be in favour of major changes but there are some changes that we would like to see. The changes that we would like to see were very clearly articulated in our response that we made to the consultation paper. They are mainly on the administrative side but there are a few on the legislative side. The one that I think we would like to see is the question of eligibility criteria because currently, when it comes to non-statutory eligibility criteria, they are the responsibility of the Lord Chancellor. We have a responsibility for widening the pool and we think the Judicial Appointments Commission should have that responsibility and we should discharge that in consultation with the Lord Chancellor and the Lord Chief Justice.

Chairman: Would anyone else like to comment on the desirability or need for legislation at this time? None of the other witnesses? Fine.

Q280 Lord Maclennan of Rogart: Are you conscious already of there being too small a pool to provide the excellence required?

Baroness Prashar: When you say "a small pool of the excellence required", that is not our experience in terms of the pool from which we are drawing candidates. I think the pool is probably small when it comes to widening the pool in relation to under-represented groups, if that is what you are driving at.

Q281 Lord Maclennan of Rogart: No. It was an open question as to whether you were constrained by any of the existing rules from making the choices that you would wish to make.

Baroness Prashar: I do not think we are constrained by anything which is currently in the legislation to make the choices that we wish to make. As I said, when it comes to widening

the pool of candidates, one of the restrictions we do feel is that of the eligibility criteria, which are non-statutory criteria.

Professor Dame Hazel Genn: We are constrained to some extent by the demographics of the legal profession. As you may have heard from others, the representation of black and minority ethnic candidates within the legal profession is a relatively small proportion. We can only fish from the pool that we have. We are always looking for the most talented candidates. If you say are there sufficient people of quality to appoint to our posts, the answer is yes, overall, we have large numbers of people applying and we have very high quality candidates applying to us, so there is not a problem there.

Q282 Lord Armstrong of Ilminster: I think you said that most of the changes that you would like to see were administrative changes and that there were few legislative changes that you were looking at. Could you be more specific about the legislative changes which you would like to see?

Baroness Prashar: The one that we have suggested is the repealing of section 94 of the Act because we were asked in the past to create a list of candidates under section 94. The way that works is that you create a reserve list and people are appointed as and when vacancies come up. Evidence shows that that was a great disincentive for people to apply because you can languish on a reserve list for about a year and not be appointed. We would like to see more appointments made under section 87, which is that if you are selected you will be appointed. We would like to see section 94 repealed. We do not need legislation for that. It could fall into disuse but if you are looking at this that is one thing which can be changed. The other thing we have recommended is on the authorisations under section 9(1) of the Supreme Court Act of 1981. Currently we have to concur with the authorisations. What we would like to do is to be able to agree a process with the judiciary which can then be applied. Those are some of the legislative changes that we would like to see.

Q283 Chairman: It may be a matter of detail but section 20 of the draft Bill refers to salary protection for members of tribunals, which presumably would require legislative intervention. You did not mention it. Is that just because you do not agree that there should be salary protection for members of tribunals or is it because it is just a small issue that you would agree should be dealt with?

Mr Sumption: Salary protection for members of tribunals is not a matter with which the Judicial Appointments Commission is itself concerned. The terms and conditions of service are determined by the department and not by us.

Q284 Chairman: What about the statutory changes made by the draft Bill? Should they be dropped? Do you have a view about the other changes that are set out? You have said what you think is necessary. Are you by implication suggesting that all else is unnecessary?

Baroness Prashar: No. One of the things that we would be concerned about would be the question of giving us the responsibility for appointments below High Court because we think that the constitution settlement as it was agreed in the previous Act is fine. We honestly cannot see why there is a distinction between High Court and above and below High Court because it seems to us that at one level they are wanting to make us an appointing authority and, on the other hand, there is the question of wanting to impose targets on us. We think that is an inappropriate way of dealing with what we call an accountability gap. We would not be in favour of putting in that division and consequently imposing targets on us.

Professor Dame Hazel Genn: We said in our response to the consultation paper that we did not see the argument for the Lord Chancellor not approving appointments below the High Court level. Our view is that if there is a constitutional argument for the executive being involved in these appointments then that is an argument that applies all the way down the judicial hierarchy. We think that making a distinction at any level in the hierarchy would create a perception of a division within what should be a unified judiciary and we think that

would be an unhelpful division and the sort of thing that might reinforce the sense that there is somehow a glass ceiling somewhere in the judiciary, that posts below the High Court do not count and that those above certainly do and those are the only ones that the Lord Chancellor is interested in. We do not accept the argument for making that distinction and we do not accept the arguments about why that is a reasonable distinction to make. From our point of view, tribunal appointments, appointments at circuit level, at district judge level, are every bit as important as the appointments higher up and they have a huge impact on the public, so we are very much opposed to that.

Q285 Chairman: Baroness Prashar, you pointed out some areas that you thought would be usefully dealt with. You commented that certain aspects should not be pursued but are you suggesting that really all else in the draft Bill is unimportant? It would be better that they be dropped and you think it is damaging to pursue some of the other changes that are set out?

Baroness Prashar: The changes that are suggested like dealing with medical checks for example are something that we would like to see changed because we think that should be the responsibility of the appointing authority and that is the Ministry of Justice. Whether that means legislation I am not sure. If we do not agree in terms of making us a hybrid situation where we are a part appointing and part selecting body, of course that falls away. We are not very happy about having targets imposed upon us and I think that falls away. The other area is the suggestion of creating a statutory panel. We think that again is not necessary because the way we have been working to date give us flexibility. We have engaged very widely with a whole range of organisations that we have to work with. We have a number of working groups like the Judicial Appointments Advisory Committee which my colleague, Professor Genn, chairs. We have a Judicial Diversity Forum and a Research Sub-Group. That gives us the flexibility to create groups as and when we need them. If you have statutory panels, it will be costly. Who will be members of it? I think that takes away the flexibility. I question

whether you want to spend your parliamentary time in creating a statutory panel when we have the flexibility and we have worked very effectively with a whole range of organisations.

Professor Dame Hazel Genn: I feel very strongly that the way we have been working with our advisory group and our research advisory group has been a fantastic partnership. It is the kind of working relationship that you would not get from a statutory panel. Our advisory group which has representatives from the Bar Council, the Law Society, the Institute of Legal Executives, the Council of Circuit Judges, has been working with us together as we go along, looking at the challenges we face for example in developing a good quality qualifying test, which has an important diversity outcome. We have drawn them into our processes. We could not possibly do that with a statutory panel. I do not think it would have the effect for us; nor would it be as useful for the groups that you would have to have represented on such a statutory panel. From my own experience of working with that group, I just think the way we are working now is much better. I was asked at the beginning about whether or not it is too early for change and did not speak. Certainly my own view is that there is a number of administrative changes that would make our life much easier. There are things that could be done that could smooth our processes but in terms of many of the things being proposed in this legislation my feeling is it is far too early to make a judgment about a new organisation, with very important challenges in front of it, that somehow or other it needs to be changed before it has had an opportunity to really get stuck in.

Baroness Prashar: Although we are called a Judicial Appointments Commission, we are technically a Judicial Selection Commission. There are three parties involved. There is the preparation to be done before we get vacancy notices by the tribunal service and the court service. We do the selection in the middle and then of course we make recommendations. It is those administrative changes and how each segment of that process works well that we need to concentrate on rather than looking at some of the legislative changes.

Q286 Lord Armstrong of Ilminster: You would like to see section 94 go. You would therefore accept that it should be repealed in legislation but if it is not you will probably just never use it. It will just fall into disuse?

Baroness Prashar: That is what I said, yes. In fact, we are currently running two selection exercises, one for the High Court and one for the circuit bench, under section 87.

Professor Dame Hazel Genn: Everybody accepts that the section 94 procedure is not a good thing and I think that people are voluntarily not using it.

Chairman: I failed to say at the beginning that I should ask you to note that Members have declared interests relevant to this inquiry and they are available today and on the Committee's website.

(*The Committee suspended from 4.32pm to 4.43pm for a division in the House of Lords*)

Q287 Lord Hart of Chilton: You have answered a number of the questions I am going to put to you but they are directed towards the proposed changes which really stem from the desire on the part of the government to alter the accountability regime. The 2005 Act sought to balance carefully the judicial independence and the democratic accountability so these questions are directed to that. As I have understood it, you say that the Lord Chancellor's role should not be changed in relation to his obligations. You have not mentioned the Prime Minister. Do you have any views on whether he should be dropped from the regime?

Baroness Prashar: As you are probably aware, the role of the Prime Minister is really presentational so I think that can be dropped.

Q288 Lord Hart of Chilton: It is neither here nor there.

Baroness Prashar: Exactly.

Q289 Lord Hart of Chilton: The drift of what you were saying I think was to set your minds against the Lord Chancellor dropping powers but getting new powers to set targets and issue directions. I got the feeling that you were against that.

Baroness Prashar: Yes.

Mr Sumption: I think that a lot depends on what the targets are concerned with. If the proposal would allow the Lord Chancellor to give directions or set targets which determined how we selected candidates or how we selected people for appointment, or what sort of people we should be selecting, we would regard that as raising really very serious issues of principle about the independence from the executive, which was the whole purpose of the creation of the Commission. Another possibility is that it is concerned with purely operational matters. In relation to that, we have concerns about the kind of guidance and directions that might be given which are altogether more pragmatic. It seems to us first of all that the Lord Chancellor is not necessarily in a very good position to determine what is the most efficient way in which the body with which he is only concerned at arm's length operates. We also have misgivings that targets are liable to make us less efficient. It is the experience of quite a lot of areas where targets exist that their effect is normally to concentrate resources on the area covered by the targets with adverse effects on the overall efficiency of the organisation. We are concerned that this would simply get in the way of using our resources in the most efficient possible way.

Q290 Lord Hart of Chilton: I think it would also follow from what you have said that you were against there being any splitting of the responsibility of the Lord Chancellor between High Court appointments and appointments below that. I think I am right in thinking that you do not approve of that proposal?

Baroness Prashar: You are absolutely right. We are opposed to that.

Q291 Lord Hart of Chilton: I think it would also follow from what you said that you did not think there really should be any greater scrutiny of the appointments process by Parliament or by the Judicial Appointments Conduct Ombudsman. Things should be allowed to remain as they are for the time being to see how it settles down and evolves.

Baroness Prashar: We are not opposed to scrutiny by Parliament because currently, as you know, we are accountable to Parliament through the Lord Chancellor. We do an annual report each year and of course we can appear before select committees. I think that is a proper level of scrutiny. As regards the Ombudsman, I think we would require no change on that because the Ombudsman does investigate complaints and make recommendations to us. That is also appropriate, so no change there.

Q292 Lord Armstrong of Ilminster: I think the question which I had in mind to ask has really been answered. You think that the Lord Chancellor's approval should not be confined to the higher levels of the judiciary but should cover the whole range. Perhaps you would confirm that?

Baroness Prashar: That is right.

Q293 Lord Armstrong of Ilminster: It is proposed that the Prime Minister should be taken out of the chain for appointments of High Court judges and we have heard no counter view. It has been my personal experience that it has not been a mere passing on. There have been occasions when a Prime Minister has queried a recommendation which came from the Lord Chancellor. I cannot remember a case in which he has overridden it but he has required reconsideration. Does it remain your view that it would be sensible to leave the Prime Minister out of the process entirely?

Baroness Prashar: Yes, because it is presentational. What is different now is that you do have an independent organisation – i.e., the JAC – which goes through a pretty rigorous

process by which selections are made. If the Lord Chancellor is making the appointment, that should be sufficient.

Q294 Lord Maclennan of Rogart: In answer to an earlier question, I think you gave a clear indication that you felt that diversity was perhaps an issue but not one that should be tackled by statute or by other external intervention. Do you have any views as to how the issue of diversity ought to be tackled?

Baroness Prashar: Yes indeed. Let me just first of all give you the number of things that we would like to see changed vis a vis legislation to help us with that duty of ours. The first one, which we do welcome – and it is in the Bill – is the extension of the duty to encourage diversity to the Lord Chancellor and the Lord Chief Justice. At the moment we are the only ones who have that. That would mean all three parties involved in the process having that responsibility. Secondly, the question of the non-statutory eligibility criteria. Currently, the Lord Chancellor has that responsibility and because of our duty to widen the pool we question it. We think that we are better placed to deal with that. That is one thing we would like to see. I think I have already mentioned section 94 and section 9(1), so those are some of the changes. When it comes to widening the pool, it has to be recognised that this is not something that we can do in isolation ourselves. We have to work in partnership with the Bar Council, the Law Society and others because we are very much dependent on the availability of the pool out there. We are doing that very constructively. The way we are doing it is by developing the idea of what is the eligible pool there, setting ourselves and comparing how that matches up with the selections that we make. Also, we have begun to identify other factors. I think that using a blunt instrument like targets imposed externally would not be the way to do it. This issue is far more complex and requires strategies at different levels, all of which we have put into place – i.e., working with others, setting the diversity forum, doing

some research on why people do not apply. There is a range of things that we are doing to tackle the question of diversity.

Professor Dame Hazel Genn: You said diversity is a challenge and it most certainly is. You have to attack it in a number of ways and that is exactly what we have been doing, as the chairman said. We have to make sure that we get the most talented people from the widest range of groups applying to us. We have to make sure that we remove barriers to application, the kinds of things that might put people off from applying to us. We have to make sure that our processes are transparent, fair and work to ensure that we get a diverse group through. We are working on all of those fronts at the same time. Again, we have to work in partnership with the professions to make sure that they are doing things to increase the diversity of the pool.

Q295 Lord Maclennan of Rogart: The statutory duty to select on merit was much debated in the 2005 Bill. I think you have made it clear that you are not suggesting that that be interfered with?

Baroness Prashar: We are not suggesting that at all. Contrary to popular belief, I would also underline that in our book diversity and merit are not incompatible. We want to find merit wherever it can be found. We want to widen the pool from whence we draw merit.

Q296 Lord Morgan: Bearing on what you have said, the figures seem to be rather worse of late. In relation to ethnic diversity, the recent evidence is going the other way but is this just a kind of blip or is this a source for more profound concern?

Baroness Prashar: It is very difficult to draw a comparison because I know that our figures that were published at the end of April were compared to the figures of the old DCA. We are not comparing like with like because what is the range of selection exercise on which the figures are based? Our figures show that we are beginning to make some encouraging

improvement, particularly when it comes to fee paid appointments, where we are appointing more women and minorities in relation to the eligible pool. That is not to say that we are complacent but I think it is for that reason. We have written to the Lord Chancellor to look at whether fee paid experience for salaried posts should be absolutely essential or desirable and looking at part time working. That is why some of the issues in the non-statutory legislative category need to be looked at. There is a number of things that we are doing, as we have suggested, but from our point of view the figures are beginning to show some encouraging signs. There are other factors which we need to look at. When it comes to fee paid experience, that does have an impact on for example solicitors because the culture in law firms is that they do not normally take time off to do part time, fee paid work. That acts as a disincentive. It is for that reason we are saying that fee paid work should not be required as essential but desirable. That also means that the culture in the law firms has to change as well. In other words, they have to see it as a kind of credit to the firm if somebody is applying to do fee paid work. It is far more complex and it requires a pretty sophisticated strategy. That is precisely where we are working.

Q297 Lord Morgan: This is happening in other professions, is it not? I am a university teacher.

Baroness Prashar: Exactly.

Professor Dame Hazel Genn: In terms of encouraging signs, it underlines the point that one has to give an organisation like ours time to make progress on these various challenges. We are just in the final stages of a very large exercise to appoint about 70 recorders. For the first time, we have used a qualifying test as the first stage for short listing. The reason that we moved to a qualifying test is because we believe it is a more transparent, fairer way of short listing people, rather than on the basis of self-assessment and references. Of course, the use of references has been criticised at that early stage. The initial signs from that are very

encouraging in terms of diversity outcome. We have found that women have progressed in proportion to their applications. Solicitors have progressed in proportion to their applications and black and minority candidates have progressed roughly in proportion to their applications on the basis of an anonymously marked qualifying test. We have also found that that test is quite a good predictor of outcome on the selection day so that the people who score very well on the test are very likely to score well on the selection day. That is a sign in terms of diversity outcome that we are making progress and we are going to continue using those kinds of new procedures.

Q298 Chairman: You mentioned the fact that solicitors quite often were not prepared to do the part time apprenticeships. Is that not something to do with the fact that the rates paid for part time legal work are too small? The judicial fees are just too small?

Baroness Prashar: My information on that and the discussions that I have had with managing parties in large firms who have done a lot of work on this is that it is not so much the fee paid. It is the fact that if you are working for a firm it is seen as a sign of disloyalty if you are applying to be a judge; and if the amount of money you are earning as a solicitor is not committed to what you might get. It is more the culture and recognition that there is a whole range of things that they can do.

Professor Dame Hazel Genn: Can I confirm that? I recently had a meeting with some women partners in one of the magic circle solicitors' firms and I was talking to them precisely about this because of course they retire at a relatively early age. They are looking for other things to do. For them, the idea of taking up a part time judicial appointment would be impossible because they are required to give 110 per cent time to their job. Secondly, they said it is discouraged at that firm. There was one woman I spoke to who said that she had taken a post as a recorder. She said in the end she did it simply to be bloody minded and to be a role model. Also, she said that she paid a very huge price for it both financially and in work

terms, in terms of the amount that she had to do to make up the time. It seems to me that there are some real issues there for the professions about getting people ready to make progression to judicial appointment. It is not just a job for us; it is a job for the professions as well.

Q299 Baroness Gibson of Market Rasen: You have given us your views about the range of new powers of the Lord Chancellor but there is just one I would like to probe a bit further and that is the proposal to remove judicial posts from schedule 14.

Mr Sumption: We have quite serious concerns about this. As we understand it, the origin of this proposal was to make it easier to make appointments which were in reality redeployments within the existing group of judicial office holders at a particular level. That is an objective which we have no problem with. There is no reason why, if you are redeploying somebody at the same level of the judiciary, there should necessarily be a new selection process. The problem is that the form of the Bill would entitle the Lord Chancellor to remove any schedule 14 office and basically resume the appointing power himself in any circumstances whatever. It appears to us that this is completely inconsistent with the whole rationale for creating an independent Judicial Appointments Commission in the first place. We think that the redeployment problem can be tackled by a much less extreme form of legislation than that.

Q300 Martin Linton: I have some questions about the key principles. Are they the right ones? Should they be statutory? Should they be excluded from applying to advice under section 98?

Mr Sumption: The first question about the key principles is whether they are necessary or whether they serve any useful purpose. We have an obligation to select on merit and in addition to that we have a wide range of, in some cases, quite exacting obligations imposed on us by the general principles of public law. The problem about these principles is that they are

extremely vague. Some of them appear to echo existing principles on public law. Some of them – e.g. the requirement of proportionality – do not appear to have any obvious bearing on what we do. The difficulty about very vague principles of this sort is that they engender disagreements about what exactly they do mean and in my experience they are greater generators of, in some cases, highly unmeritorious applications for judicial review. There is no reason why the Commission should not be judicially reviewed in appropriate cases but I think it should be clear what it is that they are required to do. If you have extremely vague requirements such as those which are included, you will have people having a go in all sorts of areas which would I think occasion considerable surprise. If I can just give one example, flexibility, of course flexibility is, as a matter of business management, a sensible way of making efficient use of your resources. On the other hand, are we going to see people complaining that for example we have not been prepared to accept late applications for appointments? I cite that as simply one example of an area where this has the propensity to make us a great deal less efficient without achieving any compensating advantage and also to generate disputes. As regards your point about section 98 assistance, it seems to us that if there are going to be principles the difficulty about applying them to section 98 assistance is that it can be assistance in almost any area. Because we do not know what kind of assistance the Lord Chancellor might ask us for, it is very difficult to know whether the qualities that you have identified are going to be germane to the assistance in question. I can see the reason why, if you are going to have these qualities, you should not apply them to that sort of thing, but we think that the qualities are, on the whole, unhelpful.

Baroness Prashar: We are just a little segment of the whole process. Those principles not being applied to all the other partners in the process, just to the JAC, would be inappropriate as well.

Q301 Chairman: Thank you very much. It has been extremely helpful. We were going to ask you something more about the JAC panel but you have answered those questions, save to ask if you think there should be any changes to the number, composition or process of reappointing commissioners. You are very welcome to comment now but it may be easier for you to respond in writing.

Baroness Prashar: We would be very much opposed to the changes in composition of the Commission because that has been the most effective composition and I think the balance is right. The expertise is right. Also, the Commission operates as a corporate body and I think it has been very effective. There is no evidence that it has been in any way ineffective on that account. We would not be in favour of any changes to the composition. May I thank you very much indeed? We will be submitting a written memorandum to you. If there is any further help you would like, perhaps you can let us know and we would be very happy to provide you with any more information.

Chairman: That is very kind of you. Thank you very much for attending.

Witnesses: **Mr Chris Allison,** MBE, Deputy Assistant Commissioner, Metropolitan Police, **Mr Dean Ingledew,** Director of Community Protection, Westminster City Council, and **Mr Kit Malthouse,** Deputy Mayor for Policing, Greater London Authority, gave evidence.

Q302 Chairman: May I welcome you to the Committee and thank you very much indeed for coming along to give us the benefit of your advice on what is one of the very interesting parts of our consideration, namely concerning demonstrations around Parliament. You may or may not be aware that we had evidence from other groups yesterday, those who had an interest in carrying out demonstrations, and they more or less suggested that it would be a jolly good idea to repeal SOCPA but absolutely nothing else was required. That may be a précis of what they said, but very little was required as the law already provided most of what you guys need. If I could start from that premise, what have been the main problems of sections 132 to 138 of SOCPA and do you think that the provision should be repealed? I appreciate of course you have put in a Metropolitan Police proposition which says that there are changes but you do not suggest repeals. Chris Allison, perhaps you would like to start off by answering that?

Mr Allison: Hopefully all Members of the Committee have had a copy of our response. We made it quite plain in there that we thought it was time to look at this and potentially repeal sections 132 through to 138. At the same time we felt it was necessary to harmonise parts of the Public Order Act and add further provisions to the Public Order Act, given the fact that the Public Order Act was passed in 1986 and significant things have changed in relation to our society in that time, specifically the issue of security. There are some things about the Public Order Act in relation to processions and I suppose we need the distinction. SOCPA only ever applied to static demonstrations. It never applied to processions or marches. Therefore we have two different regimes that operate. Our take as the Metropolitan Police is that, for the future, what we should do is have in effect harmonised conditions applied to both

marches and demonstrations, increase the times on which we could put conditions in to include security and include safety of those members of the public who are taking part so that we can effectively manage the number of protests that take place in this particular area. The first main challenge that we have had in relation to SOCPA is the one of public perception. There has been a perception put out there that SOCPA has in some way prevented protest. It has not prevented protest because we have no power to prevent protest whatsoever. We have to give authority to anybody who applies. All we can do in certain circumstances is put conditions on the people but it does not stop them protesting. The one concern that has come from those who wish to protest is around the time. Yes, there is a time limit. It does say six days' notice in SOCPA, or where that is not reasonably practicable 24 hours. Again, in our response, we have suggested that in any future provision or change of the Public Order Act you move that to follow the conditions around processions. In processions, it is six days' notice or as soon as is reasonably practicable, recognising that sometimes things do happen almost instantaneously, but you should still inform us. Therefore, we have suggested the same in relation to marches. I suppose the main challenge is public perception which resulted in a large number of demonstrations which were not about other parliamentary business or other issues of an international nature or a national nature but were just protests about SOCPA itself. As a result of that, we ended up with a number of people who sought to use the bureaucracy and the administration that comes on the back of SOCPA to try and undermine it. There was a number of people who then were putting multiple applications in. That has been the main challenge, though in the current year, 2008, a lot of that has calmed down so some of the difficulties and challenges we were having have gone away. We are still of the mind that a move to a more harmonised process through the Public Order Act would probably be better.

Q303 Chairman: Before I ask the others to answer that same first question, can I ask a supplementary? It has been suggested that the conditions that you apply can significantly

change the nature of the demonstration. Is there any evidence that you have so applied conditions as to justify that concern?

Mr Allison: I would not say so. The concern is have we tried to stop people having protests. No, we have not. We have only applied conditions. I have the numbers of demonstrations we have had. Out of the maybe 2,000 demonstrations to which this has applied, it is fewer than 20 where we will have applied any conditions. The most visible one – we have to be honest about it – is the condition that was applied to Mr Haw. This is not about Mr Haw. This is the wider issue, but we did apply a condition on the grounds of security to Mr Haw, that his protest should only be a certain size on the grounds of security because we sincerely felt that, if it continued at the size that it was, not that he was a security threat himself but somebody could use him by way of some form of Trojan horse. They could use the cover of his demonstration to put something down that nobody would realise and then subsequently we could face some form of terrorist attack. I do not recall any time where we have put a condition on which has physically changed the nature of a protest. We have just tried to manage it to ensure that parliamentary process can go on and we can minimise the disruption to the life of the community.

Q304 Emily Thornberry: There was recently a protest organised by Abortion Rights which took place outside of Parliament. Did you apply any conditions to that or do they apply the conditions themselves?

Mr Allison: Forgive me. I do not know the detail on that. I can come back to you.

Q305 Emily Thornberry: For example in particular, it was not possible for Members of Parliament to go out and speak to the protestors because there was a very large group and there was a group of anti-choice protestors next door. I do not think there were any mics or any systems whereby a speech could be made or people could come out and speak to the

protestors. I just wondered if that had been a self-imposed condition or whether the police had imposed it. That is the last demonstration that I know of and I have had some involvement and I just wondered.

Mr Allison: I regret I cannot tell you whether there were any conditions on that one but we can come back to the Committee on that. It is generally very, very rare that we have had to put conditions onto demonstrations since August 2005. We have to justify why we have done it. They have to be proportionate, necessary and in line with the Act and the Human Rights Act. The key bit for us as the police service is that, in anything that we are doing for the future in terms of the law, we really do see it as a matter for Parliament to make the decisions about what should and should not take place, as we tried to say in our report. If there are certain lines in the sand, it is a matter for Parliament to clearly define where they believe demonstrations should take place. That is for the benefit of everybody, of protestors, parliamentarians and those who go about business in this House, the wider general public and the police so that we are all singing off the same song sheet. We all know what the rules are. Then there is less chance of a conflict and less chance of confusion.

Q306 Chairman: Can I ask the other witnesses if they have anything to add to those comments about SOCPA generally and the need for retaining any part of it?

Mr Ingledew: From the City Council perspective, I assume we will be dealing with the issue of noise separately, so I will hold my water to a degree on that but I would point out that a great deal of officer time is spent administering the requests for noise with very little sanction in the way of controlling it when there is a breach in the order or a breach in the conditions that have been imposed. Our view would be that there is no constructive purpose served by us managing that kind of request.

Q307 Chairman: Congratulations on your appointment. I know the Mayor's office has made specific comments about noise so we will come back to that later but generally, on the need for SOCPA, do you have a particular view?

Mr Malthouse: Not any different. With my Deputy Mayor for Policing hat on, we support Chris completely around this notion that a myth has arisen that the police are somehow arbitrating on whether people can democratically demonstrate or not. We would fully support the removal of that particular provision and, if you like, a better public understanding of what can and cannot take place in Parliament Square in terms of definite geographical areas defined by a democratic body, about where protests should take place, because then the police know exactly where the lines are. So do the public and then that is policeable, rather than there being any notion of discretion by the police over whether the protest should take place or where it should take place. Our problems that we have experienced have been largely environmental to do with the static demonstrations, around the irritant caused by the permanent resident demonstration. I am sure we will come on to that later.

Q308 Chairman: Would any of you be concerned if there was a repeal of those particular provisions without any form of replacement at all, simply relying on the existing law elsewhere?

Mr Malthouse: Yes, most definitely.

Mr Allison: Yes, on a number of grounds. First, at the moment, we can impose conditions on the grounds of security if it is felt necessary. If the current Public Order Act was just repealed and we returned to section 14 of the Public Order Act and managed static demonstrations, or even processions which came through and then became static demonstrations, we would have no power to put anything on in relation to security. We also would have no power to put any condition on in relation to public safety, which we have found quite valuable on the odd occasion when we have had to do it. Also, I have slight

concerns that at the moment for a moving procession people have to give us notice and that is accepted within the Public Order Act. If you just return to section 14 alone, there would be no requirement for any notification. I am not asking for authorisation. I understand the concerns that creates. This is the most heavily demonstrated bit of real estate in the country. Quite understandably, people want to come here because it is the heart of our democracy. They want to come here and make their point but, as a result of that, we as a service have to manage that for the benefit of the protestors, parliamentarians and the wider public. We do not have a standing army of officers just sitting there, waiting to come out to be able to deal with this. If it was repealed, we would look for some level of replacement so that we could ensure that we could impose the necessary, appropriate and proportionate conditions and have a notification process so that we could make sure we could manage it appropriately.

Q309 Chairman: It was put yesterday by the Countryside Alliance that before the 2005 Act there was adequate provision, but it was a question of a lack of will or perhaps resources to ensure the public safety, noise, security and access to Parliament. Presumably you disagree with that?

Mr Allison: I disagree with that. There is no provision in there whatsoever in relation to security. We have to accept that things have moved on. The other thing that we need to consider is the issue of sessional orders. Although we are focusing on SOCPA and the static demonstration, as much a concern to Members of the various Houses here is the issue of the marches that come through here. Again, we are being increasingly challenged, quite rightly so, by those who wish to protest, who ask us on every occasion to justify why we have said no to a particular march. Whereas in the past we were able to say, "Sessional orders apply. Therefore you cannot march down there" and people accepted it, we are now being challenged. In the evidence that was given by Lord Stevens in 2003 to a procedure committee here – I have a copy of it - he did say that at that time we accepted that sessional orders were

out of date. They did not necessarily reflect the new world that we are in, the Human Rights Act, and as a result we needed to consider something slightly more. Our position is quite clear. I think it would be good for Parliament to be able to declare what they need, what is right, what is acceptable, the level of access they think they need to come into this building, those area where protests could or could not take place. For example, Parliament may take the view that protests should not ever be allowed on the pavement at the side of Parliament to allow those coming in and out of the building free access. If Parliament does not decide that, the reality is there will be occasions when there will be protests there because there will not be reasons for me or my colleagues to be able to say no to that particular protest. The world has moved on since 2005 and certainly since sessional orders. I think it is time to update it all, as we have outlined in our response.

Q310 Martin Linton: I wanted to ask for a point of clarification, if I could, about the meaning of "harmonisation" between the law on assemblies and on processions. Clearly, if you are talking about one kind of harmonisation where you drop the requirement for pre-authorisation from both, the main way in which harmonisation is being used is that you should be allowed to set the same kinds of conditions for assemblies as for processions. What would be the practical effect of that? What kind of conditions could you impose on assemblies that you cannot now?

Mr Allison: You are right. In terms of harmonisation, on assembly we are limited to the types of condition which is duration and size. There is one other. I will look it up in a minute. On a procession, we can impose any condition that we feel is appropriate and proportionate. What we are saying is it does seem silly. Anything that is there to demonstrate, if we can prove that it is necessary, proportionate and justified, we should be able to put conditions on it.

Q311 Martin Linton: Can you just give an example? If it is not about duration or size, what are the other kinds of conditions?

Mr Allison: It may be the content, what is there. Let us think of some of the conditions that we have put in relation to SOCPA. On an occasion earlier on last year, when we had two opposition groups who wanted to demonstrate at the same time, both passionately believing in their particular view, we felt the best way to manage them was to put them into penned areas. Both those groups have a habit of lighting and burning flags that belong to the opposition group. We took the view that it was an appropriate condition, because we were penning people in the areas to keep them apart, to say that they could not burn any flags in that area on a public safety ground because if you suddenly burn something in a confined area everybody around it suddenly moves. Our view is, give us the power to put any conditions on any protest, whether it is a procession or whether it is a demonstration, provided they fit the various criteria, and again we would be seeking an extension to include security and public safety as part of that, so that we can make sure that these pass off for the benefit of everybody.

Q312 Lord Maclennan of Rogart: With regard to static demonstrations, and in view of the fact that Parliament Square is being redeveloped, do you have a view as to whether or not the space should be designated within that area in which you would be managing a static demonstration? You mentioned the responsibility of Parliament in this matter but Parliament would be informed by the views of the police as to what is appropriate, and would you, if you had such a defined area for demonstrations, take the view that a different sort of legal regime might be appropriate to demonstrations in that area from that which covered the mobile demonstrations?

Mr Allison: I may bring in Kit here because obviously the bit in the centre is GLA property and we work together in relation to how we manage protests. It is a protest that would come

to us about a demonstration in Parliament Square. We would give them authority and if necessary conditions. As I say, it is not often that we do, but if it is a large demonstration they then have to go and get authority from the Greater London Authority to be able to mount that demonstration, if it is on the green area or the paved area, on the far side. The closest area is Westminster City Council property where the current demonstrations are. If it was decided that you would define an area where protests would be allowed I would be quite happy with that. It would be a matter for the GLA. I think the challenge in all of these would be how big an area is that because our protests vary in size. We could have something which could be one or two people up to something like when the Countryside Alliance came out, as they did many years ago when they brought one of the biggest demonstrations to central London, and they said, "We want to put it all on Parliament Square". There is a limit in terms of the numbers. Would we be saying, "You can take over the whole of that area", because if you are saying that then you are limiting it for use for other people. It is back to the definition. I think the key bit for me, sir, about defining from Parliament is that it is about what Parliament thinks is acceptable in this particular area to allow Parliament to go about its democratic process and do its business, and that includes access and egress. In relation to what demonstrations look like, to my mind that is not a matter for the Police Service. We are only concerned with the points of law. If there are those who are concerned about what things look like in a particular area, that should be legislated for rather than us as the Police Service making arbitrary decisions about it. I do not see that role for the police at all.

Q313 Sir George Young: The new Mayor came up with some very robust views in his evidence to us. He does not agree that Parliament Square garden should be used as a free camp site, creating an unsightly public health hazard of offence to the thousands of Londoners and visitors who use this public space every day. Presumably those views also apply to the stretch of pavement that abuts the gardens.

Mr Malthouse: The pavement does not belong to us. It belongs to Westminster Council.

Q314 Sir George Young: But the views would apply equally to the pavement.

Mr Malthouse: Yes. I think the nature of a permanent demonstration is something that we would be keen to explore. The current demonstration is residential in nature and causes a lot more problems perhaps than the over-20-year 24-hour vigil which took place outside South Africa House where there were not similar problems because it was not residential in nature.

Q315 Sir George Young: I think there is a distinction between permanent protests like Mr Haw and more conventional ones. Presumably Mr Haw would not be allowed to do what he is now doing in Trafalgar Square.

Mr Malthouse: No.

Q316 Sir George Young: And so if it was pedestrianised, following Lord Maclennan's point, that type of protest simply would not be allowed to happen. It would be an obstruction to a public highway.

Mr Malthouse: Yes. I think we would have more power to be able to control it and put conditions on it and the nature of it. On Lord Maclennan's point, we did look initially at the notion of having a defined space where permanent demonstrations could take place but in the end we were looking at it from the wrong end of the telescope in that if you do that (a) you encourage people to come and use it but (b) you then get competing groups which use it on a permanent basis, so effectively people are booking slots for years or however long it may be. One of the things we find attractive about the notion from the police is that you as an organisation should define what access you need, what corridors geographically specifically you need kept free to allow the full function of the building, and then it is left to us, frankly, the three of us, to sort out and streamline the management of what is left and the conditions

and what-have-you about the demonstrations that take place, so rather than define a space where they can demonstrate I think it would be easier for everybody if you defined specifically where you want to be able to move freely and then leave the rest to us.

Mr Allison: If I may come back on obstruction, obviously, if there is anything that takes place on what I describe as the green area of Parliament Square that is the GLA property and there is not the offence of obstruction but there are the byelaws which say, "You cannot be on here because it is GLA property", and that has been used in the past. In relation to the footway, that is seen as the public highway at the current time and actually Mr Haw's demonstration has been found by the courts not to be an obstruction. Westminster City Council and the Metropolitan Police a number of years ago did take action to see if it was an obstruction and it was found by the courts not to be.

Q317 Sir George Young: That was because they used that particular stretch of pavement, whereas if it became a pedestrianised area presumably that argument would lapse.

Mr Allison: That would be a matter for the courts rather than us, and again it would depend on the definition of the new Parliament Square, what is GLA property and therefore covered by the byelaws and what is the public highway, and obviously obstruction law applies to the public highway, so it would depend on where the boundaries were drawn.

Q318 Lord Armstrong of Ilminster: Are you able, and if you are not would you like to be able, to impose conditions on the duration of static demonstrations in Parliament Square?

Mr Allison: I am not asking for that, sir. I do not think there is any justification for me to do so. The Act as it is at the moment is about security, it is about access to and from the building, it is about serious disruption to the life of the community and a range of others, and I can find no reason why, on the basis of any of those things that we want to achieve, I could ever say to somebody, "This is the time limit on your demonstration". I cannot find any

proportionate condition that would allow that to occur. I am certainly not asking for it. If Parliament or others feel that it is important that we do put time limits on, that is fine but I do not think that is a matter for the Police Service. Clearly, if there was something that would impact on security, if there was a demonstration there at a time when we had something that had security implications, then we might put conditions on to move that demonstration for that period of time, but as of a general nature there is not anything where I can say, "Proportionate condition, you cannot be there for more than ten hours".

Q319 Lord Armstrong of Ilminster: The submission from the Mayor of London says, "A key concern with regard to conditions of protests to be held on Parliament Square is proportionality and duration". Perhaps Mr Malthouse could answer this question. Would the Mayor like to impose conditions on duration?

Mr Malthouse: Obviously, on the land that we control we do currently have conditions about what goes on there. I guess it is a definition of where the public highway lies and where it does not. Obviously, we have to manage this within Trafalgar Square, competing demonstrations and competing groups who wish to use the square, and the system that operates around Trafalgar Square, which I think we pointed you to in our submission, works well and is generally accepted by those groups who use it for festivals, demonstrations and similar things, and we think something along those lines in Parliament Square would be equitable and fair for everybody else.

Q320 Emily Thornberry: I want to ask you about a couple of things. I presume that it is quite common for there to be demonstrations of opposing groups at the same time, particularly if there is a piece of legislation on a particular issue, and when you were talking about being penned in I began to be able to visualise that. It seems to me that if we have New or Old Palace Yard on the one hand and then we have got Parliament Square on the other, is it

not more of a common practice to be able to separate the groups completely rather than having them in pens next to each other when, for example, you may have one group wishing to pray and another group wishing to sing? My other question, and it may be a lack of imagination on my part, is that I would appreciate it if you were able to help us with some concrete examples of when there would be security implications and what sorts of conditions you need to put on particular things in order to ensure the security of Parliament.

Mr Allison: Thankfully, and I will touch wood, while we do have on occasion the competing groups who will come down and both protest on different sides of an issue, it does not happen as often here as you would expect. Usually people come to protest on a particular point of view and usually we are able to keep them well apart. There are some occasions, like the protest I was talking about last year, where both protest groups said, "We want to demonstrate in the same area". When you keep them apart, they were 40 to 50 yards apart and there was a big barrier in between the two of them to try and keep them calm and they were then in their own penned areas, but I have to say generally we have not had big issues with the competing groups ending up in disorder with each other. Where we do anticipate that we are able, through policing operations, through the use of pens, the use of barriers, to keep people far enough apart, and generally people who come to protest here protest legitimately and lawfully. That is the reality of it.

Q321 Emily Thornberry: Have you ever had a situation where you have put one in Old Palace Yard and the other group in Parliament Square, because those seem to be natural barriers because there are cars there?

Mr Allison: The only challenge for us in all of these is that you have groups who will say to us, "We want to go to this particular area", and it does come on a first-come, first served basis, so if the first group has applied and we have given authority and another group comes along and says, "We want to do a counter demonstration", we will then give them authority

but we will say, “You will have to go somewhere else”, and the reason for that condition, which is perfectly justified, is, “You cannot go there because somebody else is there. Come and negotiate”, and 99.9 per cent of the time negotiations work very well and we do keep the groups separate. In relation to the security, the sorts of conditions we put on individuals in relation to security are, for instance, the size of their protest. Mr Haw – and it is important to say that this is not about Mr Haw; this is about protests around Parliament – is an example of somebody we have put conditions on. At one point it was 41 metres worth of protest and our condition was, “You should reduce the size of your protest to something that is three by three by one”. The rationale behind that is that you can keep secure something that is like what you have around you when you are going into an airport queue with all your luggage around you. You can make sure that you know what is around you, what is there. Somebody cannot put something in without you knowing about it, whereas with something as long as it was somebody could put something there without us knowing about it and ten minutes later a device could go off. We have also put conditions on people who have protests in Downing Street, which is that individuals will say, “I want to go in there”. At the moment that is a public place. Again, Parliament may take the view, as we said, that that is an area where they think there should not be protests and protests in Richmond Terrace right opposite are effective to allow people their right to protest, but for those that we have allowed to go into Downing Street we have said that they will be a certain penned area and they will be searched before they go in there, so there is a range of conditions around that because of the very nature of what Downing Street is. Those are the sorts of conditions that we put on. As I say, of the nearly 2,000 demonstrations that we have had, it has been rare that we have had to do it but there have not been occasions that we have had to do it and we will be saying as the Police Service that we think we need that ability to do it to ensure that we can keep not only the general public, not only protesters, but everybody in this building and our officers safe.

Q322 Emily Thornberry: But do you need additional legislation to give you the power to make decisions in relation to security, or is it not right that existing legislation is already sufficient?

Mr Allison: It is not right. We would need a change to the Public Order Act. The Public Order Act only allows me to apply conditions in the event of serious public disorder, serious damage to property or serious disruption to the life of the community. The Public Order Act, because it was written in 1986 when security was not done in the same way that we are dealing with it as of now, is about a different sort of security.

Q323 Emily Thornberry: What about section 44 of the Terrorism Act which gives you power to stop and search?

Mr Allison: That gives me a power to stop and search but it does not give me a power to put conditions on anybody.

Q324 Lord Armstrong of Ilminster: Am I right in thinking the Public Order Act applies only to marches and not to static demonstrations?

Mr Allison: No, sir. It applies to static demonstrations nationally but it has been disapplied in the SOCPA area. Under section 132 of SOCPA they specifically disapplied section 14 in this particular area.

Q325 Lord Armstrong of Ilminster: But you would like to see that put back if SOCPA goes?

Mr Allison: If SOCPA goes, sir, then it would automatically come back, but what we are saying is if it did come back we feel that we would need some extra powers within the Public Order Act to allow us to put conditions on people in line with what SOCPA does, which is

security and safety of people, and our view is no, there is not existing legislation that gives us that power.

Q326 Emily Thornberry: If I might ask one more question just to follow this up, the examples you gave I would have thought were exactly the sorts of examples of circumstances in which the Public Order Act would apply. You were saying, for example, with regard to the area outside Parliament, possibly someone could toss a bomb into one of the tents or something like that, or in Downing Street, you ensure that people are penned into a particular area and searched beforehand, presumably again in order to stop serious unrest and threat to life. There is a lower level of security, is there not, which I think you were talking about, something which is not currently covered under the Public Order Act, and I still do not really understand what that might be.

Mr Allison: I apologise; I am not getting it over. At the moment I can only impose conditions for those three things that I talked about – serious public disorder. If I have intelligence that there is going to be serious public disorder I can impose conditions. If I have intelligence that there is going to be serious criminal damage I can impose conditions or if I believe there is going to be serious disruption to the life of the community.

Q327 Emily Thornberry: Under the Public Order Act?

Mr Allison: Under the Public Order Act.

Q328 Emily Thornberry: What else do you need? Surely that is enough.

Mr Allison: If I had a view that a demonstration might cause a security risk -----

Q329 Emily Thornberry: Like what?

Mr Allison: The very nature of Mr Haw's protest being 41 metres long. I could not impose a condition under disruption to the life of the community or criminal damage to property or serious public disorder which required him to reduce the size of his protest.

Q330 Chairman: It is a definitional thing, is it? It is the serious disorder point you are saying is too high a bar. Is that what you are saying?

Mr Allison: It looks at something completely different. Serious public disorder is very different from somebody planting a device and the device going off. It is on the grounds of security. If I believe that I am going to have 10,000 left wing and right wing protesters turning up to a particular demonstration and meeting at one particular point where I fear serious public disorder, then I would impose conditions on the two marches that they went on different routes because I can because I anticipate serious public disorder, but at the moment under the Public Order Act I have no power. Because I fear that this may create a security breach I have no power to put conditions on whatsoever because it does not sit within the current legislative framework.

Q331 Martin Linton: Do you think there is an inherent security risk in allowing large static demonstrations just across the road from Carriage Gates? We asked Baroness Mallalieu yesterday about the Countryside Alliance demonstration in September 2004, before this Act came in, and in her report she admitted that there were "troublemakers who appeared to be inciting an otherwise peaceful crowd". She conceded that within the demonstration there were people who wanted to storm the Carriage Gates. It would seem to me that any large demonstration could pose that risk.

Mr Allison: Most large demonstrations do not pose that risk. Why? Just because of the numbers of people that come. People come and they passionately believe in the cause but

they also believe in the rule of law, but there are, sadly, those elements who will go that one step beyond and we have seen that on a number of protests.

Q332 Martin Linton: You are saying you would have to make a judgment in advance if this was the kind of demonstration which might pose a risk of trying to get into Parliament or throwing things at it or whatever, you would then limit the size of it or what?

Mr Allison: The law allows us to impose conditions beforehand if we consider one of those three conditions might occur or, as and when that demonstration is taking place, to then impose conditions to prevent one of those likely outcomes. We have used that power on a number of occasions in London. If you go back a number of years to the fuel protest in, I think, 2001, we imposed a condition on a mobile protest that was coming. We used section 12 of the Public Order Act to say, "Look: this is the defined route that you will go on". In some of the Mayday protests in recent years, again, we have used section 12 of the Public Order Act if, as a demonstration has gone on, we have felt that it has got to the stage that we need to impose extra conditions on it to minimise what we felt was going to be severe public disorder.

Q333 Martin Linton: So could you use the Public Order Act to impose those conditions on demonstrations in Parliament Square?

Mr Allison: Yes, we could. Again, if I had a march coming through Parliament this week which we anticipated was going to end up with severe public disorder because a group of anarchists had decided they wanted to storm Parliament, we could impose conditions under the current sections 11 and 12 of the Public Order Act. In relation to static demonstrations we currently use SOCPA but if SOCPA was repealed and section 14 came back, then yes, we could use those conditions. However, what we are saying is that under section 14 we are

limited in the conditions that we can impose because they can only be on the location, the numbers and the time that it is there, and we would say that we would want the wider power.

Q334 Lord Hart of Chilton: You touched on this earlier and it is going back to the time before SOCPA to the Sessional Orders. You indicated, and I have not read this, that Lord Stevens gave evidence to a committee and indicated that the Sessional Orders were really past their sell-by date. In a way I would like to know what precisely was it that made them go past their sell-by date because we understood from some of the evidence yesterday that arrests were made up to a point under the Sessional Orders and then you stopped arresting people. I do not know why that was and perhaps you could help us by explaining a little bit as to the defects in the Sessional Orders and the problem or mischief that has to be corrected.

Mr Allison: I have got a copy of the statement that was submitted by Lord Stevens to the Procedures Committee; he gave evidence on 8 July 2003 and I will quote it: "The Act is antiquated and not designed for modern-day protests and issues. The age of the provision also it means that it was not drafted to take account of the rights to peaceful assembly and freedom of expression". The way in which the Sessional Orders works is that both Houses pass what is called a processional order. That is served upon my Commissioner. My Commissioner then passes something called Commissioner's Directions which declares in a particular area of London that the roads will be kept clear to allow free passage of peers to this House when it is sitting. That relies on 1839 legislation for which there are some breaches. If we then say, "You cannot walk down this particular street because you are interfering with peers going about their business", and they choose to carry on doing it, we do now have a power of arrest if they refuse to give us any details, but it is a very minor offence with a very minor fine. It is seen as the lowest level. The advice that we were given was that since the time of that Act the Human Rights Act has come along, there has been a Public Order Act come along, there has been a declared right for people to have freedom of assembly and freedom of expression, and

therefore to rely on something such as Sessional Orders was no longer tenable, given that it was so weak. The "Stop the War" protest from last October probably gives the most visible demonstration of that where people were queuing up to take us to judicial review if we were going to try and prevent them coming down here on the basis of Sessional Orders because the view is that they are no longer Human Rights Act compliant. The only way in which I could ban a march coming down here is if it was serious public disorder, serious criminal damage or serious disruption to the life of the community, and the advice I was given was that we could manage the protest in such a way that we knew it was not going to be disorderly, we knew it was not going to cause massive criminal damage and we could manage it in such a way that it would not cause severe disruption to the life of the community and as a result a march would come down here. There are various views within both Houses. There are those who believe that there should be no marches whatsoever in this particular area. There are those who believe that there should be all sorts of marches. There are those who believe that Sessional Orders can allow us to stop marches coming down here. In previous years we have gone to demonstrations and we have been able to say that Sessional Orders apply and most people go, "All right, that is fine. We will not go there. Where can we go?". Increasingly, and understandably, people are checking and pushing and wanting to make sure that the police are using powers lawfully and appropriately and where there is not a power for us to do something then people are challenging us and there is a recognition that now with Sessional Orders we need to move on, which is why we are back to where we would be looking to Parliament to define what it is that you need to undergo your business which defines where protests and what sorts of protests can take place, which means that we can then manage the protest working with those who wish to come and do demonstrations. I hope that has answered the question.

Q335 Lord Tyler: I have a supplementary perhaps for all three of you. The Sessional Orders obviously are primarily concerned with when either House is sitting. Do any of you feel there should be a different regime when we are in recess or at weekends, or do you, for example, take a different attitude to marches outwith the parliamentary session?

Mr Allison: Clearly, from the police side, yes. The way we have managed this over the years is that traditionally we would try and not have any marches during the time that the House was sitting within the sessional area but, as I say, we are being increasingly challenged by those who wish to protest because they are saying, "The whole reason that we are protesting is to go down and see parliamentarians at the time that they are sitting", but what we did at weekends was allow people to do their big marches and we obviously saw many large marches come through central London at that time. My take would be that if we could find a set of rules that you as Parliament decided were appropriate and then we applied them all the time it would make it a lot easier for everybody to understand. Where we have our biggest challenges is where there is confusion. Where there is confusion about what people can and cannot do that generally leads to conflict and that leads to people feeling unhappy. If we were in a position where we could clearly articulate, "These are the rules of the game and they are the rules of the game that apply 24 hours a day 365 days a year", and they are seen by everybody as being proportionate, I think that would be better for all of us.

Q336 Lord Tyler: Do the other witnesses concur?

Mr Malthouse: Yes. The other thing we would say is that we have tended to favour weekends for this kind of thing, not least because the Trafalgar Square/Parliament Square corridor is pretty key in terms of traffic flow and that disruption is minimised at weekends and during the summer and those kinds of times, and we would support the police here.

Mr Ingledew: As far as we are concerned the big issue is that we have residents, we have other businesses; it is not just the government estate that is here, and that actually it can add

significant costs to the city if this disruption is allowed to continue without the police imposing reasonable constraint on the activity.

Q337 Baroness Gibson of Market Rasen: Can I bring us back to the thorny problem of noise and the legal framework surrounding noise? If the powers to prevent noise in the 2005 Act were repealed, especially those relating to loudspeakers, would the police have a sufficient power to prevent noise and what about the powers for putting conditions on a maximum noise level? What about the question of a blanket ban on loudspeakers? That surrounding issue seems to be a very difficult one to deal with.

Mr Allison: Yes, it is a difficult one and I will probably defer quite a bit to my colleague from the local authority because the reality is that we are not experts in relation to noise in the Police Service. The statutory body responsible for noise is the local authority. Our position in relation to this is that if SOCPA was repealed the only time that we could possibly put a condition on in relation to noise would be, and it would generally be after a protest was occurring, if the noise was such that it was causing serious disruption to the life of the community. We would be unlikely to hit any of the other conditions, and if those other conditions are security and the safety of the public even there it would only be ----- the reality is that the people who would be most affected would be those who work and operate in this building. Again, for us to be able to impose such a condition we would be looking for somebody to come forward and say, "We are not able to operate. It is seriously affecting us". That is the challenge, the word "seriously". Many demonstrators – and I have spoken to many of them over the years – use their loudhailers because they want to get their message across and they feel that if they are just shouting on the other side of the road, with all the traffic that is going past they do not get heard so they want it. Therefore, for the test and for me to be able to take action and be seen to be acting correctly in the courts it would have to be seriously disrupting the life of this community or some other community in the area and that

is probably the area that Dean will come from. In relation to setting maximum sound levels, that is not something that the Police Service would do. We have no expertise in it, we have no knowledge in it. I also think it would be very difficult to do. The maximum sound level at six o'clock in the morning is going to be very different from the maximum sound level at 11 o'clock and at nine o'clock at night, and those would change on a daily basis with no notice. If suddenly there is a big accident out there you will have masses of traffic and therefore I think it would be very difficult to have a framework where you declared a maximum level of sound because there would be those who are protesting, saying, "Hang on. At this particular time when I want my message to get across I want people in there to hear what I am saying. I cannot get that message over".

Mr Ingledew: I congratulate the police on their thorough and complete understanding of the noise issues. The first thing is that if you look at noise from the local government perspective, noise actually creates a nuisance. That is the way legislation frames it. That nuisance is really aimed around protecting residential areas but the courts have been tolerant with us in terms of applying it to work premises as well. I think if you then look at how we assess it, largely the courts are more than happy with the judgment and assessment and experience of environmental health officers, so having a pair of ears and a bit of common sense tends to be the judgment that is often applied. SOCPA changed that in that it brought in the Control of Pollution Act and therefore required us to authorise these loudhailers, et cetera. If we were to look at demonstrations that we have experienced, what we have found is that when we have tried to measure the sound as each phase of traffic passes through Parliament Square the sound of the loudspeakers disappears; it is drowned out by the noise of the traffic, so if you put that in perspective in terms of do we want to start considering legislation to ban loudhailers, et cetera, I think it is quite interesting in that regard.

Q338 Martin Linton: And the traffic?

Mr Ingledew: Yes, that is another option, of course. If you were to look at the plans around the World Squares that will happen in 2011, that may change things in that the demonstration could perhaps be much closer to you. The key issue is nuisance. The key issue is the extent of that problem. In terms of setting a rate of noise, we know the rate of decibels at which it becomes painful to humans and when we have tried to set with Mr Haw, for example, a certain level of decibels what we have found is that his equipment could not actually reach that level. We found, as I say, that when the traffic goes past it is drowned out. As Chris said, the big issue is that at different times of the day in different atmospheric conditions the level of noise produced by a particular implement varies considerably, so it would be immensely difficult for us to deal with that. Then, of course, going back to the base piece of legislation, it specifically excludes political noise created during any kind of political demonstration, so we are in some difficulty there.

Mr Malthouse: From our point of view you cannot use a loudhailer unless you have got written permission from the Mayor. Unfortunately, in the byelaw there is no sanction if you disobey that. Under the trading byelaws, if you trade in contravention of the conditions or indeed of a licence we can seize the equipment. We cannot actually seize any loudhailers that are used in contravention and we may take the opportunity to review the byelaws and update that in advance of the expansion of space in Parliament Square in 2011.

Q339 Chairman: You mentioned the 1839 Act. We are advised that apparently it allows the police to restrict the use of horns or noisy instruments. Would that be a power that the police could look at, again for regulation of loudhailers?

Mr Allison: I think sir, again, going back to 1839 legislation, society has moved on significantly from then. The courts' view of the Human Rights Act, which is an individual wishing to make their point, and us using a bit of legislation from that far ago to try and prevent them doing so I think would create us some challenges. Again, in relation to all of

these, the ultimate decision maker on whether the prosecution goes ahead is not the Police Service; it is the Crown Prosecution Service on whether it is in the public interest. One of the biggest concerns for the House may not be the prosecution that takes place but is this going to make a difference to what is going on there and now, and the reality is that we do not have a power of seizure in relation to these sorts of things. If there was any form of offence, if somebody was committing an offence and we knew them very well, therefore we had no power of arrest, and that is an issue that is covered in here, and we may well get to that later, we do not have the power to take that loudhailer off them and say, "You are committing an offence. We are now going to stop you doing it". We may report them for the offence but they can continue doing it.

Q340 Chairman: But would you welcome that power? The Mayor's paper suggested that power should be created. Would you recommend that power as well?

Mr Allison: I think it depends again on what are we saying can and cannot be done? It is back to Parliament setting out some clear framework upon what you think is appropriate to allow free running of this House so that it can do its business and then giving us the powers to take action against those people who then step across that line, a line that seems acceptable by all. I mentioned the power of arrest. We are faced with a situation at the moment where, under the current legislation, we have individuals who we know very well. They are breaking the law and they are continuing to break the law after we have told them that we know they are breaking the law and we are going to take action against them but we do not have a power of arrest because it does not fit any of the arrest conditions, and therefore they can just continue committing that particular breach. We say that undermines what we are trying to do and therefore we think there should be times when we are empowered to make an arrest where somebody continues to commit an offence after it has been pointed out to them and when we are taking action against them.

Mr Ingledew: One of the elements we require is, of course, complaint, and it has been extremely difficult in respect of the use of loudhailers et cetera around Parliament Square to get anybody who is willing to complain about the noise, and the second thing is that you cannot deal with noise in isolation. There are far more considerations that the Public Order Commander of the police has to bear in mind before such legislation is used or such intervention taken.

Q341 Martin Linton: Are you saying that if and when SOCPA is repealed the people who use loudhailers will therefore use them without hindrance from ATMs and RPMs every day?

Mr Ingledew: Very much so, yes. In the absence of complaint and in the absence of a statutory nuisance being discovered then we have to go to the evidence.

Mr Malthouse: And in the absence of a power to confiscate the loudhailers.

Mr Ingledew: Or arrest the person using them.

Mr Allison: In the absence of an offence. There are a lot of absences there.

Baroness Gibson of Market Rasen: Can you give us a phone number before you go and then we know where to complain?

Q342 Martin Linton: In view of what you have said already about the level of noise, if somebody from Number 1 Parliament Street complains that the noise is unbearable, as I have often heard them do, what chance is there going to be that you will be able to use the powers without SOCPA to force them to reduce the noise level?

Mr Ingledew: It is not a statutory nuisance because the Act specifically excludes protests.

Q343 Emily Thornberry: We heard from some solicitors yesterday who were talking about if there was an offence whereby there was alarm, harassment and distress caused the person

could be arrested and as part of that arrest the loudhailer could be taken away. Is it your evidence that that is not correct?

Mr Allison: Not all the time. To prove an offence of alarm, harassment or distress would be very difficult in relation to a political protest or some form of protest around here. Again, in all of these it would generally appear over a period of time. I am not saying it never would happen but we have constantly got to balance the right to free speech for an individual who is saying, "I want to be there. My views may not be in accordance with other people's but certainly I have got a right to hold those views", so there is a significant challenge around us using section 5 of the Public Order Act because many people would say, "That is the police just trying to stifle protest". In addition to that there are those situations where that individual may have overstepped the mark, as we have seen on occasion here, and they have gone too far so that we do have sufficient evidence of alarm, harassment and distress, but once again we would need somebody who is saying, "I am alarmed, I am harassed, I am distressed", and willing to go to court to give a statement because there are challenges. We as police officers cannot be alarmed or harassed or distressed. If we know that individual very well there is no need for us to arrest them to interview them because we have already got the evidence. We can serve a summons on them and therefore none of the arrest conditions applies. Therefore, we can say, "Right, we are reporting you. You will go to court in the future because you will get a summons", but we cannot arrest them; therefore we cannot take the loudhailer away from them so they still remain in situ.

Q344 Emily Thornberry: So if someone on the second floor of 1 Parliament Street is distressed by being shouted at on a regular basis and told that, for example, she may be responsible for the death of large numbers of Iraqi babies, she needs to go to the police and complain?

Mr Allison: If she can and signs a complaint saying, "I am feeling alarmed, harassed or distressed", in the current situation what we would do is send that file to the Crown Prosecution Service, "An allegation has been made. This is the situation". The Crown Prosecution Service would make a decision about whether to issue a summons or not, and if the summons was issued then we would serve the summons. However, in the sorts of cases I think you are talking about we certainly would not go and arrest people on the basis of that information because a protester will say, "But that is my point of view. I am expressing my point of view. They have got a different point of view. Why should the Public Order Act be used to prevent somebody from expressing their views?". It is a very difficult line, as you see. We are stuck right in the middle.

Q345 Martin Linton: But if somebody had a 200-megawatt amplifier out in the middle of Parliament Square that was pumping out noise at a fantastic level presumably there would be some way of stopping it.

Mr Allison: I think in those circumstances, and I was talking with Dean earlier on about this, if I am honest I would find it difficult to see, given the background noise, how I could ever say that was creating serious disruption to the life of this community. However, if somebody turned up with an articulated lorry with a sound system such as we see at Notting Hill Carnival and parked it opposite and had it running for four or five hours I could quite easily see where I could be justified in saying, "I think that is potentially a serious disruption and I am now going to put a condition and the condition is that you stop". Again, the difficulty there may be what the length of your protest is. If they then say, "Okay, but you know who I am. I am not going to stop", I might not have a power of arrest to enable me then to take them away and take the sound system away.

Q346 Emily Thornberry: Not even for obstruction?

Mr Allison: If they were obstructing that is slightly different.

Q347 Emily Thornberry: What if they are adjacent to the highway?

Mr Allison: No, only if they are obstructing the highway.

Mr Malthouse: If they set it up on the grass we would not have any power because they would not be obstructing. Therefore there would be no power for us to confiscate.

Q348 Martin Linton: Why would you have no power?

Mr Malthouse: Because we do not have a power to confiscate equipment for a protest. If they had permission for a protest, unless they had an unexpectedly huge loudhailer we would not have any power to take it away.

Q349 Chairman: So are you saying there are no powers or it is your belief that you do not have the right to judge serious disruption? It is a judgment issue? I think it is the Trade Union and Labour Relations Act where there is some provision which allows some control. Have you looked across the board at the other possibilities or are you suggesting that there is simply not anything at the moment that can help you control what is a nuisance, to most parliamentarians anyway?

Mr Allison: I do not have a power to impose conditions, sir, in relation to nuisance around the Public Order Act.

Q350 Chairman: What about the local authority? I am certain there are powers for the local authority to use.

Mr Ingledew: The problem we would have, again, if noise was the issue, is that the Act specifically excludes political protests.

Q351 Chairman: It would be really helpful if each of you could send us a paper explaining what we have been asking about because it would be extremely helpful if you could tell us what you think the powers are at present and what you think you need to deal particularly with this small issue. We appreciate that everyone around the table has a sort of personal interest in this that we ought probably to declare but it is one which we would like to see a resolution to.

Mr Allison: Can I confirm that that is in relation to the noise issue, because I think the rest of the Metropolitan Police position hopefully is set out in the paper, or do you need some clarification on what we have written in here?

Q352 Chairman: I think the noise issue in particular is something that we would very much welcome a note on. The Committee certainly nods in approval. If we can go back to the Brian Haw situation, not in particular but generally the use of tents in the area around Parliament, do you take the view, any or all of you, that if the 2005 Act is repealed the powers to do anything about that would then be diminished or would there be something under the Public Order Act or otherwise that would be of help?

Mr Allison: We at the current time have no power to say to somebody that they cannot have a tent in a particular area, or they cannot have an encampment. The position in relation to Mr Haw is that we have given the condition as to the size of his protest. When he started to put a tent there we started discussions with him about the tent being part of his protest, and he then applied for a judicial review of that decision and that judicial review is still ongoing. We are waiting for that and it is a very busy court at the moment, but the legal advice upon us was that it would be inappropriate for us then to go and start doing some enforced moving while he was judicially reviewing the decision, so we are having to manage it. I formed the view that I do not actually have something which says, "No, you cannot put a tent there". I only have the ability to say, "You cannot do something because of security or access to this area",

all the conditions as laid out in SOCPA. If we move to the Public Order Act, I could only put a condition on if it was serious disruption to the life of the community. It is all of those things. There is nothing there that allows me to say to somebody, "You cannot put a tent there".

Q353 Chairman: Would the local authority welcome some power, if they do not think they already have it, to resolve this issue of structures?

Mr Ingledew: I think our problem in this particular case is one of obstruction. We had hoped to use obstruction, and there are different facets to the obstruction rules, in order to remove the tents and elements of demonstration. Unfortunately, the courts did not support that, nor would they support our application for an injunction along those lines. There are two opportunities here. One is that in the interim, prior to 2011, the status quo will remain in Parliament Square and perhaps there is some opportunity for the GLA and ourselves to talk to each other about who is responsible for that piece of pavement, because they, of course, are in a very strong position to refuse permission to put tents there, but we cannot replicate that, so that is an avenue of inquiry we could seek.

Mr Malthouse: We have had, as you will have noticed, some success in terms of getting the tents off the grass. In 2007 there was quite a large encampment built up and we do have a specific byelaw that without written permission you cannot erect a tent, but unfortunately that only applies to the grass; it does not apply to the pavement because the pavement does not come under our purview. If the whole square did as part of the redevelopment then obviously we would be able to impose that condition and we could stop tents being erected. That is one of the issues. As I said earlier, the irritant for us is around the residential nature of this. I will not go into some of the details but some of the sanitary arrangements are not particularly brilliant. Some of the people who come to participate in the camp seem to think that the rest of Parliament Square is part of their sanitary arrangements and that causes us all sorts of

problems, so we are keen to try and control that but this little strip of pavement causes us a problem.

Mr Allison: Coming back to the obstruction bit, I have been helpfully reminded by my colleague that what the High Court said in relation to the obstruction was that they added an additional test and the additional test was one of "Was it unreasonable?", so you might be causing a bit of an obstruction but was that obstruction unreasonable? It is using that test as well that led them to say, "Okay, he is causing a bit of an obstruction but in the circumstances and where it is, it is not unreasonable. Therefore, he is not committing an offence of obstruction". We just need to factor that into our decisions.

Mr Ingledew: When we move on to the new arrangements of the World Squares plan I think between ourselves we need to make sure that there are sufficient byelaws in place to make sure that we can manage that within the square. Were the tented encampment to move to one of the other areas of pavement around the square then I am quite confident that we could apply convenience in terms of any obstruction because the obstruction would be there for all to see.

Q354 Baroness Gibson of Market Rasen: I think earlier you said that one of the reasons that he was not creating an obstruction was that nobody used that pavement. The answer to that is that you would not, would you, because he has been there a long time so most of us who would perhaps have used that area of pavement do not do so. How was the assessment made?

Mr Ingledew: If you were to look at the use of that pavement prior to Brian's arrival, because of the traffic flow arrangements and the pedestrian crossing arrangements very few people use it. In order to prove the offence you have to prove that the free passage of the highway has been obstructed, and most people could walk past even the existing demonstration, provided they were not bothered by Brian and the sanitary arrangements referred to by Kit, without any

problem at all. That is where the court held that the test of reasonableness was appropriate – so that you can pass.

The Committee suspended from 6.13 pm to 6.23 pm for a division in the House of Lords

Chairman: We are quorate again. We do apologise. We want to try and finish this session by 6.30 so if we move on to two more questions and then if there is anything beyond that we can perhaps deal with it in writing because you have been extremely useful already.

Q355 Lord Armstrong of Ilminster: Look: there is this terrible state of the square, the sort of wigwams and tents and God knows what. You all know what I mean. It does not do us any credit in the eyes of the world, tourists or anybody. Something has got to be done about it. It is not in my opinion the job of the police to do it. It is the job of the local authority to decide how the square should be used in the public interest. There is always a confrontation between human rights and human interests. There is the right to demonstrate, fair enough. There is a right to have the decency of a reasonable square, clean and tidy, in the national interest as part of our heritage. Could you please write to the Chairman and let him have your thoughts?

Mr Ingledew: Yes, I would be delighted to do so. Think Westminster Council's record on keeping this very precious city of ours clean and appropriate for all our visitors is extremely positive and we will continue to do that. There is a big issue about this being an English Heritage site. It is a very important part of our country. It is the impression that most tourists and visitors have when they leave the country, so we fully support that, but, like all local authorities, we are constrained as to what we can and cannot do. It is the absence of powers to take action that is our problem.

Q356 Lord Armstrong of Ilminster: As to how we go about it, I am not an expert in that branch of the law. Perhaps you could explain what steps should be taken.

Mr Malthouse: What we have been trying to highlight is that it is not as if we have not been doing anything. We have been attempting to control and ameliorate the effects of it but legally we have been restricted and the courts have not been sympathetic to your view, sir, and they have maintained that the people who are there have a right to be there and have a right to protest, notwithstanding the objections that we have made.

Q357 Emily Thornberry: I want to ask you about prior notification and really it is a question of whether you would welcome a scheme that was voluntary or only applied to groups over a certain size.

Mr Allison: In our response what we said and what I said earlier was that it is important for us to be able to manage this bit of real estate on behalf of everybody who uses it . That is the parliamentarians and that is also the people who protest. With a voluntary notification scheme, again what you get is all those who are going to be very supportive and never create any problems whatsoever and will probably be people we never ever have to put conditions on. If there were to be such a scheme, and we are advocating such a scheme, we would want it to go back to harmonisation of the Public Order Act: they have to notify us that they are going to march or demonstrate. That is accepted up and down the country. If anybody does want to do that then six days before or as soon as practicable they will tell us they want to march or process in a particular area. What we are saying is that for this bit of area, or a smaller area than SOCPA in the past, anybody who wishes to assemble under section 14 (and the definition of "assembly" in the Act is two or more people) should notify the police to let us know because we can then ensure that we have not got two or three protests going to exactly the same place at exactly the same time.

Q358 Emily Thornberry: So you would say compulsory notification for static protests?

Mr Allison: Yes, in exactly the same way as there is that requirement in law for processions and marches.

Q359 Emily Thornberry: And there is a difference, we appreciate, between a static protest and a march. There would be all sorts of management needs for a march that you would not need for a static protest.

Mr Allison: I fully accept that and in our submission we have said that we only think as the Metropolitan Police that there is a need for that notification for a static protest to occur in a very small area around Parliament and a reduced area of the SOCPA list. Our rationale behind that is because of the large numbers of demonstrations that come here and therefore to effectively manage that, to make sure that we have got the ability to police it if necessary. That is why we would like prior notification. We recognise there is a difference between the two and we are not advocating that that notification should apply to any static demonstration wherever it takes place in the country, just the small area around Parliament.

Q360 Emily Thornberry: Would it not be possible to manage protests if there was not a compulsory scheme?

Mr Allison: The challenge for us comes from the fact that you may end up with a large number of protests all turning up at the same time. As I said earlier, we do not have a standing army of officers who are available to come down here and deal with this. If we know that we are having a large number of protests taking place we make provision for that and warn officers specially to come and do that duty. That is the benefit of having an advance notification. Also, if we are likely to see conflict between two groups we hopefully can apply conditions prior to these demonstrations taking place to prevent that conflict. It is always difficult if that conflict has started to take place for us to then separate individuals. First we

get the officers and then separate the individuals. My take is that prevention is better than cure. This is not about an authorisation process. I understand fully the concerns that people have. I think that sadly has been misrepresented and the public have a view that we as the Police Service are somehow controlling and stopping people protesting under SOCPA. We are not. Anybody who applies to protest we have to allow to protest and we do, but what we are saying is that to manage this bit of very important real estate which has a large number of demonstrations we feel that we need some form of notification process.

Q361 Emily Thornberry: So in order to demonstrate in Parliament Square and not give notice you have to be a lone protester?

Mr Allison: Yes. We would be quite happy with that, but what we would be saying, and again it would need an amendment to the Act, is that for this small area we would like the ability, because the Public Order Act applies to marches and processions and static protests or assemblies of two or more people, to put conditions on a lone protester if required because there are occasions when a lone protester can cause significant disruption or can cause one of the various elements that are in the Act or that we would hope would be in the Public Order Act. We would not want prior notification for a lone protester; we would be happy that we could probably manage that, but if, say, we ended up with two lone protesters outside Downing Street, one on each side of Richmond Terrace, one from the far right and one from the far left, we might want to have the ability to put conditions on them so that we could keep them apart and make sure that the life of the community could go on.

Mr Ingledew: I very much support prior notification because on behalf of my own community we have a right to be policed and the spontaneous demonstrations invariably take police away from Westminster at the first instance, which is very disruptive to my Borough Commander colleague who is obviously trying to police the normal problems and issues within Westminster, so prior notification invariably means that either he can plan or we get

the support from Chris's outfit to make sure that the right resources are put in place. Otherwise we have constant disruption and you actually see the difference in our crime figures and response.

Q362 Emily Thornberry: In what way would you see a new law that you envisage being any less restrictive than the current 2005 legislation?

Mr Allison: I suppose I would answer that by saying that I do not see the 2005 legislation being restrictive. I think it has a group of people who believe that it is. I do not think it is because we do allow everybody to protest. Yes, it gives us the power to put conditions on but, as I say, out of the couple of thousand demonstrations we have had we have only put them on in a handful of cases. The only potential restriction that people could be concerned about is where they have to give a minimum of 24 hours' notice and that has received much publicity. We are actually saying move it into the Public Order Act where we would not require that; it would be six days' notice or as much notice as is practicable, recognising that sometimes things happen that people spontaneously want to protest about, and we accept that, but what we would be saying in those cases is, "Give us notification when you are coming even if it is as you are on the way, so that we can put in place the necessary controls". I do not think the current Act is restrictive although I fully accept why people have got concerns about it, but I think we can make it better for everybody by putting it all into the Public Order Act. We can make it better for everybody by clearly defining what Parliament thinks it needs to have access to and from this building by Parliament saying what is acceptable and what is not acceptable in this area. Once that is clearly defined for everybody we can work with the protesters and with people in this building and the wider public to make sure that is put into place.

Mr Malthouse: I guess also, where it would be less restrictive is around the wide geographical area which is delineated at the moment. That is frankly part of what caused so

much consternation among the public. I do not know if you remember but there was supposed to be – it never quite got off the ground – a protest where they were linking their hands around the boundary of this so-called draconian area. That would disappear, of course and there would hopefully be specific proposals around Parliament Square that would recognise its special status at the heart of democracy and would remove this general ban that resulted in the exhibition in the Tate and all that kind of stuff, so that provocation restriction would go. In terms of notice, we are in the fortunate position of having run an extremely successful notice period scheme for Trafalgar Square, so we operate on a five-day notice basis because of the byelaws, and in fact, the land there is not deemed to be public; it is GLA land, and that works perfectly well and it is very well accepted by everybody using the square, not least because they recognise that you have to queue for your slot. So many people want to use it that the only fair way to do it is for people to notify so that they get the proper whack that they want to demonstrate on or hold their festival in the square.

Mr Allison: Can I just reiterate the significant change, and it is in our response, which is that the area that we would propose that the notification process would apply to and our ability to apply conditions to it, and it would really be restrictive to the close element around the parliamentary estate, so Parliament Square, a little bit Abington, part of the way down and up Whitehall till you cover Downing Street, front and back, and obviously Portcullis. We would not be looking for the big area because we recognise the concerns that that was creating.

Chairman: Thank you very much indeed for all those interesting comments. We are certainly going to take them all into account and we are grateful to you for coming.