



HOUSE OF KEYS OFFICIAL REPORT

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PROCEEDINGS

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(HANSARD)

COMMITTEE ON THE CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) BILL

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BILLEY CAIRYS KIMMEE (CAGHLAAGH
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Douglas, Friday, 15th April 2011

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**PP99/11
KCJB, No. 2**

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Members Present:

Mr C R Robertshaw, MHK (Chairman)
Mrs B J Cannell, MHK
M Q B Gill, MHK

Clerk:

Mr R I S Phillips, Secretary of the House

BUSINESS TRANSACTED

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The Committee adjourned at 4.34 p.m.

House of Keys Committee on the Criminal Justice (Miscellaneous Provisions) Bill

*The Committee sat in public at 1.56 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR ROBERTSHAW *in the Chair*]

Procedural

5 **The Chairman (Mr Robertshaw):** Good afternoon and I welcome you to this meeting of the House of Keys Committee on the Criminal Justice (Miscellaneous Provisions) Bill.

We are meeting this afternoon to take oral evidence. We have invited Mr Stanley and Mr O’Riordan of the Law Society to give evidence today and, following this session, we will be hearing from Mr Wood, an advocate, a little later this afternoon. This is our second oral evidence session and further sessions will be arranged.

10 I would like to introduce you to my fellow members of the Committee, Mrs Brenda Cannell MHK and Mr Quintin Gill MHK. Mr Phillips, the Secretary of the House and Counsel to Mr Speaker, is the Committee’s Clerk and legal adviser. Catherine Groom is our *Hansard* editor and is recording this afternoon’s proceedings.

15 At this point could I ask anybody who, perhaps, has their mobile phone still on, please check.

Should the fire alarm activate, it is the usual route out. If that is obstructed, there are lots of opportunities elsewhere.

Gentlemen, thank you for your attendance this afternoon. For the benefit of *Hansard* recording, perhaps you would be kind enough to introduce yourselves in turn, please.

20 **Mr Stanley:** Yes, my name is Jason Stanley. I am the present President of the Isle of Man Law Society. I have been a practising advocate in the Isle of Man for just over 20 years and am also a committee member of the duty advocate committee, which operates the Police duty advocate scheme.

25 **Mr O’Riordan:** Kevin O’Riordan. I am the Vice President of the Law Society, I am a director of Simcocks Advocates, I have been a Manx advocate since 1998 and a solicitor in private practice in England dealing with a variety of cases, including criminal cases, since I was admitted in 1975.

EVIDENCE OF MR J STANLEY AND MR K O’RIORDAN Evidence commenced

30 **Q249. The Chairman:** Gentlemen, we will go straight into the clauses that we are looking at, which are effectively covered in your submissions, which we were very happy to receive and thank you for the work you put into that.

So, if you turn to clause 11, which is the test purchases for under-age persons. In your written submission, you stated that you consider the use of under-age persons for test purchases inappropriate. Would you like to expand on that first, please?

35 **Mr Stanley:** There are two aspects to it, really, One is, firstly, a political aspect as to whether it is something which is acceptable to the Isle of Man people to use children as, effectively, undercover police officers.

Also from a practical perspective as a practising advocate, it could raise further difficulties which may not have been considered. If, for example, a test purchase were made by an under-age

40 person and a person were to be charged with an offence in consequence of that, then you could have a situation where the young person was required to attend court to give evidence as a prosecution witness. That is something which is probably not terribly desirable.

45 It also has some practical implications, because the way in which children give evidence is slightly different from the way in which adults give evidence and the like and you may have issues as to whether you need TV link evidence and all sorts of things like that.

The Chairman: Thank you.

50 **Mr O’Riordan:** I do not think I have anything to add to that.

Q250. Mr Gill: Could I ask, in terms of the current legislation and the legislation that is proposed, is there actually a loophole that this legislation is filling, or do you think this is adding an additional power?

55 **Mr Stanley:** I have not researched all the surrounding legislation, so I cannot really say too much about the ins and outs of loopholes or gaps. I am not aware, certainly, of there being any under-age people exercising this function at the moment, so I presume that it is not something which is covered under present legislation.

60 **Q251. Mrs Cannell:** Mr Chairman, if I could.

I am not sure if you are aware that what happens at the moment is the Office of Fair Trading will actually select a young person who looks to be under-age, appears to be under-age, and uses that person in this particular role at present. So this move by the Department looks as though it is merely to legitimise what is currently taking place, but I think the crucial difference is that they are 65 looking to use a person who is *actually* under-age in this. Do you have any comments to make, in terms of a perception of entrapment, possibly?

Mr Stanley: Certainly, you could have entrapment. The law of entrapment is quite complicated and I could certainly envisage somebody, whether it is a young person, or somebody who is, in 70 fact, over-age, but looks like a young person, you could still have the same argument as to entrapment.

However, I do not think it is just like putting onto a more formalised footing something that already happens. It is quite a fundamental difference to have somebody who is over-age, but who perhaps looks younger, going in and carrying out a test purchase. They are, of course, an adult and 75 they may be better equipped to deal with issues, such as acting as a prosecution witness, than a child would be.

Q252. Mrs Cannell: Through you, Mr Chairman, I take it, then, that when the Department went out to public consultation you stressed your concerns regarding this aspect, did you? 80

Mr Stanley: Regarding the consultation on this Bill?

Mrs Cannell: In particular, clause 11.

85 **Mr Stanley:** I believe we did.

Mr O’Riordan: Yes.

Mr Stanley: I would have to check the original consultation and the original response, but I 90 believe we did because my written submissions which I have sent in respect of this Bill effectively mirror the submissions that the Society made in the original consultation.

Mr O’Riordan: I should, perhaps, say that I was the author of the original letter at the consultation stage of the Bill because I had – and still have – responsibility for the legislation committee of the Law Society Council but, albeit I think it was possibly... I think it had been 95 anonymous at the time, except that it is mentioned in my letter. I was producing some more refined comments on the Bill, as it then stood, from Mr Stanley.

Now, when this Committee was convened, I sent in a copy of that original letter and the submissions that accompanied it. So, hopefully, you’ve got that. (**Mrs Cannell:** Yes.) Now, those 100 submissions may differ slightly from ones Mr Stanley has put forward independently more

recently. I have not compared the two but, certainly, I recall this being an issue which was a bit of a problem and I see there is provision for safeguards, in that the Department for Home Affairs may issue a code of practice, and certainly it seems to me that if this sort of thing is going to be included in the legislation, then there will need to be some pretty thorough clarification and protective measures in place so that, certainly, a code of practice, I would have said, would be essential if we are going to have this sort of thing on the statute book, to avoid all kinds of complications, such as have already been touched upon.

Q253. Mrs Cannell: How would you... well, would you consider, rather than having a code of practice in order to put in a framework for how and what they do in respect of this provision, do you not think it might be even better to actually have regulations to support this?

Mr O’Riordan: Yes, either way, but there would need to be something pretty clear, setting out exactly how this is supposed to work. Even then, there might be things. I am thinking, somewhat cynically, not only of practical difficulties in making it work, but also the creative minds of a lot of my fellow practitioners, who might be defence lawyers and could create quite a lot of mayhem if this sort of thing leaves itself open – and that is not a criticism of anybody. It is, technically, a problem area and, if not properly addressed, it is an accident waiting to happen.

Q254. Mrs Cannell: Okay, so if the safeguards are specified within secondary legislation, it would actually strengthen it?

Mr O’Riordan: I would have said, yes.

Mrs Cannell: Thank you.

Q255. The Chairman: Is this active now in the UK, in England and Wales?

Mr O’Riordan: I am afraid I do not know, but I would suspect so, in that it may be a little bit of a cynical view, but a lot of this stuff that comes through, one thinks, is put through to mirror probably something that is already established in England. Whilst I retain my practising certificate as an English solicitor, I do not give myself the extent of brain damage of keeping up to speed with English legislation that I do not need to keep up to speed with, at the same time as Manx legislation, which I obviously do.

Q256. Mr Gill: Could I just ask about consultation, about the role, as individual practitioners but also on behalf of the Society, in general, in regard to this Bill, do you think the consultation has been meaningful: and if any comments, and other comments you have heard, have been considered and reflected?

Mr O’Riordan: I think the consultation was probably meaningful. I know there was quite a strong body of feeling and I remember attending meetings with colleagues, which led up to the submission of the letter that was sent in originally.

I have to confess that I have not scrutinised the process of the passage of the Bill to the extent of being able to ascertain and measure how far comments we may have made may be reflected in changes.

Mr Stanley: Yes, one comment I would make in terms of consultation is that this is, unfortunately, a hugely complicated draft Bill and it is a hugely lengthy document as well. I think that does negatively impact upon the public consultation in respect of it. It is difficult for me as an advocate to follow. There are many provisions which I could spend days trying to track through exactly what all the effects are and I am quite sure there will be many things in this draft Bill that I have not even spotted, which I might want to make comment about, because it is so complicated and just so lengthy.

Mr O’Riordan: If I could add something to that. It increasingly seems to be the case and I think, again possibly reflecting matters in England, but we are presented with quite complex amending legislation, which you can really only make sense of if you sit down with the original legislation and that must make life hugely difficult for the legislature, never mind the practices and the public. It is almost a reverse engineering situation.

To produce this Bill, somebody must have had to sit down with the original legislation and make, so to speak, amended copies and it seems to me that it would have been easier, not just for this Bill – but this is very much a case in point – if what was presented, both to legislature and to the practitioners who were asked to comment on it, or anybody else, would be, effectively, a consolidated Bill. Something that showed what the law was going to be, which, of course, if the legislation is passed, will have to be published, as such, in any event. So someone has had to undo it, then do it up again and undo it, which must make more work, I would have thought, at the drafting level, never mind making more work for those who are trying to consider what the legislation is going to say, because you could look at this in quite some detail and still struggle. Even when you go back and put it side-by-side with the original legislation, it is not an easy process and this just seems to be a fact of life in modern legislative drafting, which I suspect is led from England, but maybe there is an opportunity for the Isle of Man to stand up and be counted in trying to reverse that trend to some extent and creating a more sensible legislative process that we can perhaps send back to what, as a foreigner myself, I should not be referring to as the adjacent isle, but we might be able to teach them a thing or two that would be helpful.

As a cynical lawyer, sometimes you see some of this legislation and think, well, is this deliberate obfuscation, so that maybe we are not necessarily going to see what is coming down the pipeline? I do not think that happens often, but I have seen a couple of occasions where I have thought, well, maybe someone somewhere thought that was a way to go. I am not trying to be hugely contentious, but I do think this is a very pertinent point.

This Bill is particularly difficult, because it amends a lot of different legislation, but even one, such as I have to consider at the moment, or have been, is amendment of the anti-terrorism legislation. It largely amends a single statute, but even that, you have got a fairly thick Bill, it is amending quite a lot of different clauses, it does not make easy reading, or easy deliberation, and I know I am currently addressing people who might be in a position to influence how that works in future Bills.

The Chairman: We are grateful to you for taking the time to make that point to us.

Q257. Mrs Cannell: Just following on very briefly from that, I am not sure if you are aware that we have had two or three occasions in the last 15 years where we have had presented to us for consideration and consolidation different pieces of legislation, and I take your point. It does make the job easier.

Would it have been easier, perhaps, rather than having so many different provisions relating to so many different pieces of legislation in one Bill, would it have been easier if it, perhaps, had been split into, possibly, six separate Bills for consideration?

Mr O’Riordan: Certainly.

Mr Stanley: Indeed. I think that was one of the submissions we made on the original consultation.

Mrs Cannell: Thank you.

Mr O’Riordan: Our perspective is not hugely different from that of the legislature. We are looking at this, trying to make sense of it and if we are given something large and indigestible, it slows the whole process up for us, as much as for the legislature.

Q258. Mr Gill: Just finally, Mr Stanley, could I come back, if you made that submission, which I think sounds eminently sensible – and I think the Chief Secretary has accepted the wisdom of smaller, more accessible legislation where that is do-able – do you know why that response to the consultation was ignored by the Department?

Mr Stanley: No, I do not know why.

Q259. Mrs Cannell: Just to finish on that, Mr Chairman. With regard to the Isle of Man Law Society, do you, on a regular basis, put submissions in during a public consultation exercise on legislation?

Mr Stanley: Yes, we are very often identified as – I think the term is – a stakeholder and we are specifically identified in public consultations for various Bills, but we do also make a comment

quite often on draft Bills, which are not out to public consultation, but simply issued as draft Bills. Mr O’Riordan, as chair of our legislation committee, looks at that, sometimes in conjunction with other members of the Bar.

225

Q260. Mrs Cannell: So you are an essential component of the consultation process, albeit at a very early stage. Would you... are you not surprised, therefore, that given the strength of feeling in this current submission to do with the piece of legislation before us that perhaps... were you surprised that you were not invited in by the Department for Home Affairs to perhaps be a little bit... to give you an opportunity to further expand upon your grave concerns, as contained within your submission? Were you surprised that you were not called to the table?

230

Mr Stanley: I am not surprised, in that is not something which ever happens. *(Laughter)*

235

Q261. Mrs Cannell: Would it be useful if it did happen, on occasion, when it is something as contentious as this?

Mr Stanley: If there were to be, then, I am sure the Law Society would be quite happy to be involved at an early stage, prior to the drafting of what turned out to be very controversial provisions, to give their input, to see if, perhaps, the wisdom is still maintained in the draft when it eventually comes through.

240

Q262. Mrs Cannell: So you would welcome more involvement, in order to get the legislation right?

245

Mr Stanley: Certainly, yes.

Mr O’Riordan: Yes, I echo that and, like Mr Stanley, I am not surprised because it has not happened in the past.

250

That is not to say it could not happen in the future. The process at the moment is somewhat hit and miss. Quite often stuff comes through that is not of such general legal application that I consider it appropriate for the Law Society to comment, in which case we would usually send a response, saying, as a society we are not going to comment but, at the same time, I would probably pass the message to individual practitioners and say, if any of you have a particular interest in this field, it will obviously be useful if you make individual submissions and that has happened from time to time, as well.

255

If it is something substantial, we would, as far as possible, respond as a society and we would certainly be prepared to do what we could within reason to facilitate the drafting at an early stage, rather than letting the ink get dry and then trying to move the goalposts at a time that might be less convenient and appropriate.

260

Mrs Cannell: You would welcome a more proactive role?

Mr O’Riordan: Yes.

265

Mrs Cannell: Thank you.

Q263. The Chairman: For clarity, are you considered to be stakeholders for all pieces of legislation at consultation stage, as far as you know, or is that process selective, as far as you know?

270

Mr O’Riordan: I think, in theory, it is for all legislation, but in practice it is probably selective as to what gets referred to us specifically, rather than accidentally. My company tends to have a system whereby most Bills of any consequence are brought into our office and we look at them in-house, rather than as a society. So I would tend to get some knowledge of it that way, but whether every draft bill as a matter of course is sent to the Law Society, I would rather doubt.

275

Mr Stanley: And I believe that there are some which do not make it to us.

280

Q264. The Chairman: One final point on clause 11, which we are still on. I make this point, because you raised it in your submissions and it concerns the matter, in terms of the items for purchase. The restricted items, you say, appear to have wide definition and I wonder whether you

want to take this opportunity to suggest where this lack of definition might lead us, in terms of items that you are testing for purchase, cigarettes or alcohol?

Mr Stanley: I presume it is designed to be aimed at shops selling cigarettes and alcohol to people who are not old enough to buy them, but if you do not have a sufficient definition as to what the provisions are to relate to, then they could be applied to other items. They could be applied to firearms. Without looking at the minutiae of the section, could it be applied to people buying drugs that they are not entitled to be in possession of?

The Chairman: I think we had better move on.

Mr Gill: Thank you, Chair.

The Chairman: This is clause 37 – 41.

Q265. Mr Gill: Clause 37 relates to search warrants and, in your submission, you state that you consider the proposals excessive. Could you explain to the Committee why you take this view?

Mr Stanley: The ability for the State to enter into somebody's home or their office or their other property is a very serious and quite a draconian power for the State to have. The old saying that 'a man's home is his castle' is something which a lot of people very much feel to be the case, as part of our society and English society and so on.

It is a fundamental right of individuals not to be unnecessarily interfered with by the State or by other people. To create situations which could involve multiple, repeated entries into somebody's home, for example, for repeated searches of a home, or repeated searches of premises which are occupied by them – however that would be interpreted – would be something to see.

It really is a very serious thing to do, to go and search somebody's home. It is a huge invasion. People often talk about how they feel after burglaries and the like, with other people being in their homes and so on. I am quite sure that many people who have their homes subjected to searches by the Police Force probably have very similar feelings afterwards. It no longer feels like their home. It is a serious step to take to search somebody's home and it is not something which should be done lightly.

Q266. Mr Gill: In the Chief Constable's evidence he was repeatedly very firm in the view that it was matter of operational efficiency and it was straightforward to have one search warrant, which could be extended to – the example he used was the lock-up garage, that you find the keys that you know is the property of the person whose house you are searching. I think that was the example he outlined.

He also suggested there would be difficulties in contacting a JP or a Deemster, whoever the appropriate person to offer to get a warrant for that garage: what would your response be to that scenario?

Mr Stanley: I would presume that if the Police are going to search some premises, they know which premises they are going to search, so they should be able to identify those premises, when they are coming to the JP to ask for the warrant.

Usually a search warrant is a precursor to the arrest of a suspect. It is something which is authorised in advance by the court and it is usually done in respect of drug raids, but it can be for anything. Usually what happens is, there will be a particular time and date, or a particular event, which will then trigger the search happening and that usually is to coincide with people being on the premises. Then you will have arrests and, once people are arrested, there are additional search powers under the Police Powers and Procedures Act, so that if people have been arrested and there are suspicions that they have illegal drugs or something of that sort on their premises, there are provisions already whereby an inspector can authorise somebody's home address or other addresses that they control, to be searched. So there are other provisions which can step in.

What these provisions, or draft provisions, seem to suggest, is that there should be a very wide-ranging power, which is not subject to very much control at all by the courts, to go multiple times into multiple properties, without having the protections there which might be more appropriate.

Q267. Mr Gill: So, do I understand the matter of principle is the overriding, guiding issue here?

345 **Mr Stanley:** Yes, it is an issue of principle, really, and whether –

Mr Gill: And in terms of the... sorry?

350 **Mr Stanley:** And whether or not we wish the State to have such draconian powers at its disposal, without having the appropriate protections of the court and the like.

Q268. Mr Gill: In terms of accessing a GP or a Deemster to sign off an additional warrant, would you... what strength would you give to the Chief Constable's argument that that would, operationally, be inefficient or problematic in some way?

355 **Mr Stanley:** I have a little bit of difficulty in understanding the scenario where the Police would be placed in a particular difficulty, because, as I say, a warrant obtained in advance from a JP is something which is done for a pre-planned search of somebody's address and that is almost always planned for a time or an event when they know the person they are looking for is going to be in those premises. Once they have done their search and arrested the person, if they have found what they were looking for, they then have different powers of search under the Police Powers and Procedures Act.

360 If the person they have arrested... they have reasonable grounds to think that he may have illegal goods or stolen goods on the premises, they then have powers under the Police Powers and Procedures Act to follow that through and so it would not be a case of necessarily going back to a JP at that stage to try and get a further search warrant, because you are then looking at different powers of search under the Police Powers and Procedures Act.

370 **Q269. The Clerk:** I think what the Chief Constable was trying to get at, was the situation where there is a Police search of a property on a warrant, they do not find sufficient evidence to arrest him, but they find keys to a lock-up. Let us say, typically, it is a drugs raid, the people who know that the keys to the lock-up where the stuff is hidden are discovered by the Police, will have time, perhaps, to telephone their friends to get rid of the evidence, before the Police can telephone for a search warrant or go to a JP, as they have to do now, go to a JP, physically, and ask for an extension of the warrant. That was the sort of circumstances that he was thinking about, bearing in mind these are quite rare events on the Island.

375 **Mr Stanley:** I was about to say, it is very rare for there to be a search under a search warrant and nobody to be arrested. I suppose you would have to query if they have carried out their search of somebody's premises, they have identified in advance, obviously, all the premises they know of, they have carried out their search of those premises. If they do not have enough grounds to arrest somebody, then do they really have grounds to be searching somebody else's premises?

385 **Q270. Mrs Cannell:** Can I, through you, Mr Chairman: when they initially apply for the warrant and they are aware, possibly at that time – because what you are suggesting is that it is the result of a surveillance operation, possibly, over time, (**Mr Stanley:** Usually) is it normal practice, in your view – and does it happen – that when a warrant is applied for and issued, that it covers multiple properties in that initial first warrant? Or is it normally just warranted to search one premise?

390 **Mr Stanley:** I can't say that it would never cover more than one property. I think I have only seen search warrants in respect of one property at a time in cases where I've been up at the police station with matters.

395 Usually, it is as a result of surveillance and the typical scenario is where somebody is followed off the boat to a particular address. There is already a search warrant for that address because they have information that there is likely to be drugs delivered there and then, as soon as the courier, if you like, has gone through the door, the warrant is then executed and people arrested. That is the typical scenario.

400 **Q271. Mrs Cannell:** It is not always drug raids, is it? It could be arms, it could be terrorist related, it could be anything, really, holding somebody, incarcerating people. I mean it could be for anything, it is not just drugs.

405 **Mr Stanley:** If somebody had been kidnapped, there would be powers to go into a property, if there was a belief that there was somebody in that property, is my understanding. I have never come across that in the Isle of Man, I have to say, but I am pretty confident that there is a power to go into a property... *[Inaudible]*

410 **Q272. Mrs Cannell:** *[Inaudible]* ...that initial search, perhaps, with the warrant, in the belief that the person being held, will be held at that property and they find the person is not there, but they do find a set of keys to another unknown property –

415 **Mr Stanley:** I would have to check, but I think the law would be that if the Police had grounds to believe that somebody had been kidnapped and was being unlawfully detained, they would have the right to go into the property without any search warrant. That would be a power they would have under the Police Powers and Procedures Act.

420 **Q273. Mrs Cannell:** So, in your view, then, in the present setup, there are sufficient powers and there are sufficient safeguards in existence in law at present?

425 **Mr Stanley:** I would think so, yes. In terms of things like terrorism, provisions relating to the prevention of terrorism typically are dealt with differently from other matters of criminal law, because terrorism is a very different kettle of fish. It is one thing to have certain powers, for example, in respect of terrorism. It is another to have those powers just for general criminal conduct.

My concern would be the potential for abuse of such a power. It is, unfortunately, just inherent in human nature that, whenever a power is given, it will ultimately be taken to its extreme limit and there are examples, even with the present legislation, where, certainly in my opinion, people's properties are being searched when, perhaps, really they should not be. For example, I think there was a chap who had some chocolate cake or something the other week – it was in the newspaper – and had his property searched, because the police officer thought it might be drugs. I had, the same week, a person in the police station, who had properly been arrested for something else, but he was found to have a home-rolled cigarette. There were not, in fact, any drugs in it, it was just a home-rolled cigarette. That was deemed sufficient by the Police to warrant a search of his home address.

435 **The Chairman:** That was recently?

Mr Stanley: That was in the last two weeks.

440 **Q274. Mr Gill:** Was that arrest drug related?

Mr Stanley: It was a breach of bail condition. But that is, unfortunately, an example of how the present powers can be pushed.

445 Similarly, I have had occasions of people who have been arrested and interviewed in connection with something like an assault or a fight in a pub and their properties have then been searched and computers seized and the like: that sort of thing, to my mind, certainly pushes the boundaries of proper exercise of powers of search, as they stand at the moment.

450 **Mr O'Riordan:** All I would add is – and I agree with this whole point of principle – is that we have the advantage, through being a small jurisdiction, that we are perhaps better able to assist the Police in terms of JPs, Deemsters and so forth being available at short notice in an emergency at more or less any time of day or night. So I do not see that, administratively, it is that difficult to get that authorisation and I *do* agree very much with Mr Stanley that, sadly, one does see abuses of these powers, possibly with the best of intentions and in the interests of public order and so on; but it is part of the delicate balance of the liberty of the subject, as against whether we end up being too near to being a police state, and the fact that this is still a relatively law-abiding jurisdiction. Long may it continue to be so.

460 **Q275. The Clerk:** There is one other provision in the Bill, which allows the Police to apply to a JP or Deemster by telephone or in e-mail. Do you have any observations about the utility or otherwise of that provision?

Mr Stanley: I suppose, unfortunately, it is something that, as a defence advocate, we never get to see. We come in at the stage where this has all taken place, the warrant has been executed and

465 the suspect is at the police station, so it is difficult for me to comment, as to what the processes are, when the Police turn up in front of a JP in person.

I would certainly hope that the JP in question would make sufficient enquiry, if it were by telephone or something of that sort, so that the JP was satisfied it was a proper case for a search warrant to be issued. It is always difficult to deal with legal issues over the telephone, though.

470 **Q276. The Clerk:** The set of circumstances we were exploring earlier, where you have a warrant executed, they find nothing, unusually, perhaps, except some keys to other premises... That is the sort of circumstances where they might telephone a JP and say, well, look, we have got these.

475 **Mr Stanley:** Indeed, yes, because, there, presumably the JP would already have given consideration to the evidence initially, in order to justify the warrant being executed at the primary premises. Therefore, it would effectively be by way of additional submission, backing up what had already been put forward, so that sort of scenario may well be satisfactory to have it by telephone.

480 Again, I think it is a fairly unlikely set of circumstances because, if a person has had their property searched but the Police have not got sufficient grounds to suspect them – sufficient reasonable grounds to suspect them – of committing an offence, it is going to be difficult for them to identify the premises, in any event.

485 If they find a set of keys, unless it has got the address attached to the key, they will not have arrested the suspect, they will not have taken them to the Police Headquarters, they will not have questioned them to find out where the keys relate to. So it is something which probably is not going to arise, particularly, in practice I would have thought.

490 **Q277. The Clerk:** And, presumably, the keyholder, if I call him that, is not obliged to give any information about any of his property whatsoever?

Mr Stanley: No, no, he is not obliged to answer any questions.

495 **Q278. The Chairman:** Moving on slightly, but still within the same area, is it not useful and necessary to allow a company expert the same powers as a constable when a warrant has been executed?

Mr Stanley: That is not an area that I have looked particularly at.

500 I can understand that there might be circumstances where, for example, a computer expert might be an appropriate person to go along with the Police in order to identify whether certain things may or may not be evidence or whether it is proper, or not proper, for those items to be seized.

I presume the only other alternative that the Police will have is that if they suspect that something does contain evidence, that they will simply seize it and take it away and then have an expert look at it at their own leisure and that does tend to be something that takes quite a bit of time. Whether, in practice, it will save items being taken away that do not need to be taken away, I do not know, because most of these computers and technologies and whatever tend to be a bit more complex and time-consuming to examine. So whether, in practice, it will have any benefit, I do not know, but I can certainly see there being an argument for it.

510 **The Chairman:** Thank you very much.

515 **Q279. Mrs Cannell:** Could I just follow on, Mr Chairman, from that? We are talking about IT, potential IT fraud and that sort of thing, but it could be a piece of art, could it not? It could be a piece of art that is perceived to have been stolen, so the police officer could turn up with, you know, an art or painting expert?

Mr Stanley: Yes, it could be.

520 **Q280. Mrs Cannell:** Would it not be useful, in those sorts of circumstances, that if the constable turns up with an expert to look at the said alleged stolen painting, and the expert says, 'Well, actually no, it's not a...' – I am trying to think of a famous artist now and I have loads of them at the back of my mind! (**Mr Stanley:** Gauguin!) (*Laughter*) Nothing is coming to the fore! 'It's not a Gough' or whatever. (*Laughter*) (**Mr Stanley:** Good one!) 'It's not an original; it's actually a copy.'

525 That would save, would it not, a wrongful arrest? It would save all the paperwork; it would
save the person being taken back to Police Headquarters, questioning, only later to find the expert,
having looked at the seized evidence – the painting – to say, ‘Actually, this is not what you think it
is; it is just merely a copy. It has no particular value at all. So in those sorts of situations, it might
be actually quite useful, would it not?’

530

Mr Stanley: Yes, there might be benefits for it. In practice, in the sorts of situations where you
get search warrants and the like, as cases relate to drugs, that sort of thing, I do not know, in
practice, whether it is going to be of huge benefit, because I suspect that most computers and
electronic equipment will be seized in any event, because they do take time to examine – but there
could be scenarios where it could be of some benefit.

535

Q281. The Clerk: It says here,

‘to allow the accompanying expert the same powers as a constable’.

540

In other words, the expert could seize. Do experts not already accompany the Police, as part of the
team, but not seize them?

Mr Stanley: I am not entirely sure of the answer to that.

545

Just in terms of the expert seizing something, that is a slightly odd concept, because I would
have thought that anything that was seized as potential evidence ought to be seized by the
Constabulary, but the expert, presumably, would be there with a constable, so if he said, ‘Yes, this
needs to be taken as evidence’, presumably the constable would then take it. It does seem a little
bit odd that the expert, who obviously is a civilian and very possibly someone from a private
company, for them to be able to seize items and then retain them against the rightful owner. It does
seem a bit of an odd provision, that.

550

Mr O’Riordan: It sounds a dangerous direction to go in, really.

555

The Chairman: That actually takes us on to more detailed powers of seizure.
Mrs Cannell, would you like to...?

Q282. Mrs Cannell: Yes, we are dealing now with clauses 42 and 43, power of seizure. We
are particularly interested in whether there is adequate protection, in terms of the seizure of legally
privileged documents and whether you have any views on that?

560

Mr Stanley: Again, it is not a section I have looked at in any great detail. Obviously, at
present, you can have scenarios where somebody’s property is searched, whether it is under a
warrant or under one of the powers of the Police Powers and Procedures Act, and where Police
come across material which is subject to legal privilege – and obviously legal privilege is
something which is absolutely to be protected. People must be able to be secure that they can have
independent and free and confidential legal advice and that is something that does need to be
protected at all costs. You cannot have a situation where a person cannot take advice, because that
advice might then get seized or disclosed to the Police. It simply prevents someone having advice
at all, because it just renders the whole thing pointless.

570

So I have not had a very detailed look at those particular provisions, but it is a hugely
important thing to ensure that the protection stays in place.

Q283. Mrs Cannell: Thank you.

575

Would you not think that, in the course of a search, if they come across legally privileged
documents which are seized, there should be clear time limits within which they can actually hang
on to those legally privileged documents? In other words, should there not be written into law a
particular timeframe in which they have to return them to their lawful owner?

580

Mr Stanley: Well, the timeframe should be immediately. There should not be a timeframe
within which they are entitled to keep things that they are not entitled to have. As soon as
something becomes clear that it is subject to legal privilege, it should be immediately returned.

Q284. Mrs Cannell: But, equally, it may not become clear to them, perhaps, until they have
hung on to them for a week or more, that they are actually legally privileged?

585

Mr Stanley: Unfortunately, if it is not clear to them, then they are going to have it, anyway. You cannot have a timeframe.

As soon as they realise that it is something which is subject to legal privilege, it should be immediately returned. You cannot say... It is unfair on the Police to say after the event, 'Well, you didn't realise this was subject to legal privilege at the time, and you have kept it for a week. You are therefore acting incorrectly' –

Q285. Mrs Cannell: What would be your view, therefore, that if the Police have got the warrant, they go into the property, the person whom the property belongs to is there, the search is undertaken, they come across legally privileged documents and the occupant says, 'You can't touch those, they are legally privileged'? What would you expect to happen then? Would you expect the officers to then say, 'Oh, here you are – sorry about that' – or seek a qualification as to whether or not, in fact, they are legally privileged?

Mr Stanley: Well, what do you mean by a qualification?

Mrs Cannell: Well, the occupant says, 'Well, you can't take those – they are protected by legal privilege.' Unless it is obviously made apparently clear that, in fact, what the police officer has in his hand does have legal privilege, he may wish to seize it, anyway, take it back and show his boss and say, 'Is there legal privilege here? Am I not allowed to have this document?'

Mr Stanley: I am certainly aware of cases where investigating authorities, when they have been planning a search where they suspect that there may be documentation subject to legal privilege, they will find a qualified advocate to go with them, to act as an expert, to identify whether documents are, or are not, subject to privilege. I know that they do that, because I have been asked to do it, although I could not do it on the occasion I was asked.

Q286. Mrs Cannell: So, therefore, our previous questions, then, in terms of giving the powers to an expert equal to that of a constable, are quite relevant, in that there are times when experts are drawn to go with, to identify something.

Mr Stanley: Indeed, and indeed as a legal expert.

Mr O'Riordan: Could I comment briefly on that? (**Mrs Cannell:** Sure.)

I am not sure it is the power equivalent to a constable. What this is very akin to is, in civil proceedings, you have an independent person who will come along – an independent advocate, and experts if necessary – to hold any potentially contentious items, pending further direction. I can see the problem here is going to very often be with the case of a computer. You seize a computer: who knows what you are going to find on it? Some stuff may be privileged; some stuff may be not. It is clearly unrealistic to expect that the Police cannot touch it, if there is a suspicion that there might be something privileged on it.

So, you are then, I think, back to a situation, that, yes, as soon as the penny drops there is something privileged, that should be released; but maybe you are looking more at a mechanism, be it taking an independent advocate along or taking any seized material, rather than back into the hands of the Police, if there is a doubt over whether it has got something privileged on it, it is placed in the hands of some independent party. That might be something that could be set up through the Attorney General's Chambers, or it might be something that needs to be done through private practice, using an independent advocate. But one needs that sort of safeguard, I think – although I think the problem is that with the advance of IT and everything, and the greater sophistication that comes to the whole criminal process, there has got to be some possibility of the Police being able to seize multiple material that might be partly privileged, might not be privileged.

Again, you are back to how does one balance that to protect the individual, and it is clearly not satisfactory, if the Police have got absolute power over it for any significant period and you are then trying to cobble together some way out of a difficult situation after the event.

Q287. Mrs Cannell: Okay, that is very useful.

I therefore take it that both of you are not content that property owners are adequately protected in this area of seizure under the new powers of seizure, then?

Mr Stanley: My concern would be that it is a power which would be open to abuse.

650 **Mr O’Riordan:** My concern is it is already a power that can be open to abuse. I have a particular case at the moment, where the Police are continuing to hold material to no apparent purpose, on the basis of saying ‘Well, we have seized it and we cannot release it till after the case is over’ – but there is no indication that anything they are actually holding forms part of the case they are going to prosecute.

Q288. Mrs Cannell: But is it partly legally privileged, then?

655 **Mr O’Riordan:** No, some of it may be, frankly, but the difficulty we have there is, simply getting the property released is difficult. As has been mentioned in the earlier clause, it shows that, to some extent, existing powers are perhaps being stretched and therefore if greater powers are given, one worries about the possibility of abuse being greater as well.

660 **Q289. Mrs Cannell:** Do you believe, then, to pursue that a little bit deeper, you say that the existing power is frustrating and that they can hang on to stuff (**Mr O’Riordan:** Yes.) almost indefinitely. So therefore, do you think it would be good to have provision in new law that specifies a timeframe for returning material?

665 **Mr O’Riordan:** Absolutely. I think it would be a mixture of both. It would be that if they found something privileged, for instance, it should be returned immediately or, in any event, they had a deadline by which they had to find out whether it was privileged and deal with it and possibly like... it might be the kind of thing where, if any power of retention is subject to a judicial review of some kind, in the same way as bail and other things, if the Police had to persuade a JP or a
670 Deemster to give them extra time, that would be the kind of thing that could be a further balance on their end of things, rather than it being, ‘Absolutely. It has got to come back within seven days, come hell or high water.’

Q290. Mrs Cannell: So build in a mechanism for justification for continuing to hold documents?

Mr O’Riordan: Yes, and for oversight.

680 **Mrs Cannell:** Yes, sure. Thank you.

Q291. Mr Gill: Mr Stanley, you used the phrase ‘immediately returned’. What does that mean in practice?

685 **Mr Stanley:** Well, in practice, it probably means about a week later! (*Laughter*)
If the Police seize something and, at some stage, they realise that it is, in fact, subject to legal privilege, they should make sure that that is returned as soon as it can be returned, and they should not look at it any further.

The whole principle of protecting legal privilege is so important that it is not something that they should be given a week to return something that they are not entitled to have. They should
690 have an obligation to give it back as soon as it can be given back.

Q292. Mr Gill: I understand that. Does that mean, though... do the Police arrange for that to be delivered back to the premises it is seized from, or is the onus on the owner of that property to collect it?

695 **Mr Stanley:** At the moment, I think mostly, when people are getting items back from the Police which have been seized, they tend to go to the police station and pick them up. Obviously, the Police Force are a stretched public service, as everybody else is, so it is perhaps not surprising that they do not want to spend time delivering bits of paper around to people.

700 In practice, I think people would go and pick it up.

Mr O’Riordan: In fairness to the Police, my experience is that once it is agreed that something is going to be released, they will usually be very co-operative in the releasing of it, and if it is bulky material, they will arrange to have it delivered back whence it came. Obviously, it may suit the individual to go and collect it, as being quicker than the Police finding time to return it, but I
705 do not think that distinction, certainly, is a particular problem in practice at the moment and, hopefully, would not become so.

Q293. The Chairman: Before we move on, gentlemen, to clauses 44 and 45, which is powers of arrest, I have to say that I am finding this exchange absolutely fascinating and I am sure I speak on behalf of the rest of the Committee. (*Laughter*) However, it is now ten to three.

Could I perhaps suggest, would you be willing to allow us to go over, beyond three o'clock and, if so, would that be something Mr Wood would be comfortable with?

Mr Wood: Yes.

Mr Stanley: Absolutely, yes.

Q294. The Chairman: Then if we can move on to clauses 44 and 45, powers of arrest: in your submission you suggest that the Bill appears to remove the requirement for 'reasonable belief'.

Mr Stanley: Yes, I was looking at what would be the new section 27, which says,

'a constable may arrest without a warrant'

and

'(a) anyone who is about to commit an offence',

then it says in (c),

'anyone whom he has reasonable grounds for suspecting to be about to commit an offence'.

It is hard to reconcile how those two things work together, because you do not know if somebody is about to commit an offence, until after you have prosecuted them and found they were in the process of attempting to commit the offence.

By having those two sections there, it implies that – subsection (a) there – that anyone who is about to commit an offence does not necessarily require the 'reasonable grounds' for the officer to suspect that they are about to commit the offence. So it does not seem to work together; I do not see how they fit together. And you would not know, obviously, if somebody was about to, until you had had the trial, which is after the event.

Q295. Mrs Cannell: So, through you, Mr Chairman, does that imply, therefore, that the... At the moment, the rule of law is that you are innocent until proven guilty (**Mr Stanley:** Indeed.) and this is taking a step before –

Mr O'Riordan: Most of the time!

Q296. Mrs Cannell: Well, that is what we have to maintain, that you are innocent until proven guilty. So this provision, then – the reasonable belief – would actually water that foundation down, would it not? It is taking a step before it.

Mr Stanley: It would because, if that were to be passed as it is, I think the way in which it would be interpreted would be that there were two different bases to arrest somebody.

One would be if the officer has reasonable grounds to suspect that the offence is about to be committed – and that is perfectly proper. The other would be if the officer did not have reasonable grounds to suspect that the person was about to commit the offence, but, in fact, they were about to commit an offence. That is something that you could only identify after you have had a trial. So it would seem to imply that an officer could arrest someone even though there was no reasonable grounds to suspect they were about to commit an offence but maybe, at the end of the day, with a fair wind and a bit of luck, they might actually get a conviction.

Q297. Mrs Cannell: But where they may find that an offence had been committed?

Mr Stanley: Yes, it was in fact about to be committed.

And the difficulty you will have there is that if there is not, in fact, reasonable grounds to suspect somebody is about to commit an offence, they will then feel they have been unfairly and wrongly arrested; but they will not be able to pursue any allegation of wrongful arrest until after they have had a trial to see whether, in fact, they were about to commit an offence.

770 You will have the situation where, if somebody has been arrested without reasonable grounds
for suspecting, the Police will then undoubtedly feel very obliged to carry on with the prosecution
to the bitter end, to make sure that they do not get sued for wrongful arrest. That is not something
that... The Police should not have personal motives, if you like, when they are doing their job.
They are there to be doing an independent investigation. They are there to be providing a service
775 to the public. If you put them in a situation where they may have a vested interest in securing an
ultimate conviction, that is a very dangerous situation to create.

Q298. Mrs Cannell: Nevertheless, if the person who has been arrested and is going through
this dreadful nightmare is, in fact, innocent, is then taken to trial and it is found that he is innocent
and he did not commit the offence and the prosecution have lost, do you then think that there
780 would be sufficient grounds for that individual to take, or to put, a claim against the prosecution,
the Police, if you like, for wrongful arrest?

Mr Stanley: Well, then you have... well, you are closing the door after the horse has bolted. It
is all very well saying, 'Well, let's allow the Police Force to do a particular thing and if it turns out
785 that they have got the wrong man, then people can sue them and seek compensation,' but that is
closing the door after the horse has bolted. What you need to do is make sure that the horse does
not bolt in the first place.

If this provision was here today, for example, a police officer could come in, could arrest you,
without any reasonable grounds for suspecting that you had in fact been about to commit an
790 offence, and you could then have your life torn to shreds by the process of being arrested,
interviewed, taken through court and ultimately vindicated. Compensation does not solve the
problem.

Mr O'Riordan: Can I comment briefly?

795 I do not read this section quite that way. I regard (a) and (b) as redundant because I agree with
what Mr Stanley says, it has got to be pretty rare... you know, I have got the crowbar and I am
about to smack the window. That may be, and the constable can say that you are about to commit
an offence, but what it also means is he has got reasonable grounds for suspecting I am about to.

If he finds me in somebody's house stealing their valuables, he might be in a position to say
800 that this person is in the act of committing an offence but, at the same time, he has got reasonable
grounds for suspecting that. So in a way (a) and (b), I think, confuse the section. I can see the way
the draftsman has got there, it is kind of... well, if somebody is about to commit an offence or
committing an offence, they should be arrested, but then there is a lesser degree in a way, where
805 the constable has reasonable grounds – but they are the same thing and I think what the section
does is create potential confusion if (a) and (b) stay there. I would have thought (c) and (d) on their
own cover the whole base.

Mr Stanley: Of course, I think those are covered by the present powers of arrest.

810 **Mrs Cannell:** Thank you.

Q299. The Chairman: Although we will not be dealing in this session with that part of the
Bill concerned with aspects of the law related to licensed premises, we would just like to look at
one aspect with regard to powers of arrest in clause 29, where it refers to 'in the vicinity of
815 licensed premises'.

Mr O'Riordan: Oh yes, that was a party one.

The Chairman: The Licensing Act 1995 limits the power of arrest to those drunk on licensed
820 premises. Under this Bill it would be expanded to 'in the vicinity of licensed premises.' Are you
clear what this phrase means and how it would be applied?

Mr Stanley: It is a very vague phrase and it would be applied however best suited the person
825 who was applying it.

Mr O'Riordan: Absolutely.

Mr Stanley: The law, when you are dealing with criminal law, in particular, it is important that
there is clarity, because people have to know what they can and cannot do and where the

830 boundaries of the criminal law lie because you may not just lose a bit of your income; you could
lose your liberty for the criminal law. So having vague and uncertain phrases such as that is not a
desirable thing.

835 **The Chairman:** So that is a no.

Mr O’Riordan: Can I add something to that, briefly? Putting that into a factual context, when I
originally read this, back whenever it was, and wrote the original letter of submission, it occurred
to me how absurd this is, that I have been perhaps on licensed premises or perhaps at a friend’s
house, I have taken on a ‘skinful’ and I am wandering home in a rather inebriated fashion and I
840 happen to pass a pub – I have not just come out of the pub. My inebriation has nothing to do with
the pub, but I could be caught squarely by this section and that cannot be right.

Mr Stanley: Well, do not worry, because you would be committing an offence from being
845 drunk in public, anyway, from another section.

Mr O’Riordan: Quite possibly, but there again, you do not need this extra measure of
confusion.

The Chairman: I think that is clear. (*Laughter*)

Welcome to visitors from Kenya

850 **The Chairman:** Perhaps I could take this opportunity to welcome our friends from Kenya to
this session this afternoon. Thank you for your attendance.

Mrs Cannell: Mr Chairman, could I also add to that, if you are a little uncomfortable with the
seating arrangement, you are welcome to come forward, if it is more comfortable for you in the
855 rows ahead of you.

The Chairman: If you are a little warm with the sun.

EVIDENCE OF MR J STANLEY AND MR K O’RIORDAN Evidence concluded

Q300. The Chairman: So, I think we have got a clear picture of that one.
If we could move on now, please, to clauses 46 and 47. This concerns bail elsewhere, other
860 than at a police station. You appear content in your written commentary, or at least that is the
impression I got – about this provision, but what are your views about the powers to prescribe
conduct by way of subordinate legislation, which may make conduct criminal, and here I refer to
page 115, new section 33(2)(d).

865 **Mr Stanley:** I am not sure I am looking at the same... I have had several drafts, I think, of this
Bill and I am not sure I am looking at the same page.

Mr O’Riordan: This is section 47, are we looking at, of the Bill?

870 **The Chairman:** Clauses 46 and 47, but here we are looking at new section 33. Have I got that
wrong?

Mr O’Riordan: New section 33.

875 **The Chairman:** New section 33(2).

The Clerk: It is section 33A.

The Chairman: Oh, have I missed the ‘A’ off, have I?

880 **Mr O’Riordan:** 33B (2), I think it may be. The new section 33 seems to break down into capital A, B, C and D.

The Chairman consulted the Clerk.

885 **The Chairman:** I think, perhaps, we will skip that one and you did not comment on it, anyway. Unless, Roger, you want to...?

Mr Stanley: In terms of subordinate legislation, generally, it is something which I do not think many advocates would support, having criminal law dealt with by subordinate legislation.

890 You have got a number of aspects there. First is with the criminal law being such a fundamental area of law, in terms of personal rights, personal obligations, potential sanctions against individuals, it is something which, I am sure, all the Society would feel was more appropriate to be dealt with by way of primary legislation. That would have a number of... there would be a number of reasons for that – obviously, public awareness is a key issue. People need to know what the law is and subordinate legislation is something which every lawyer always has to go and look for in order to find.

895 I am quite sure that the members of the public would have huge difficulty in even finding out about criminal acts, or criminal offences created by subordinate legislation. Indeed, advocates have great difficulty finding it, as well. I have had to deal with various road traffic matters which are being dealt with by way of Orders from Government Departments and it takes hours even just finding the appropriate legislation.

Mrs Cannell: Mr Chairman, do you want to move on to clause 51?

905 **The Chairman:** Just for one moment, we just want to go back to... Mr Gill would like just to get clarification on one particular item.
Mr Gill.

Q301. Mr Gill: Thank you.

910 It is the power for a person other than a constable to exercise a power of arrest with certain conditions.

Mr Stanley: Yes, this seems to extend the right of what is called ‘citizen’s arrest’, colloquially. This is on (4).

915 At the present, my understanding is that a citizen can arrest somebody for an offence if (a) an offence has definitely been committed and (b) there are reasonable grounds for suspecting that the person arrested has committed it. I believe it also has to be an offence which is punishable by at least two years in prison, from recollection. So it only relates to more serious matters, not minor matters, and there has to have been an offence actually committed.

920 So, typically, it is to cover the scenario where somebody has just stolen something from a shop, perhaps a television or something of that sort. The shop owner knows that the item has just been stolen. They go outside and they see the person who they reasonably suspect has got it on them, or something of that sort, and they can arrest them on the spot.

925 The draft provision here seems to take away the provision that any offence has, in fact, been committed. So it puts them on the same footing as a police officer, effectively, in saying that, as long as they have got reasonable grounds, then they can go and arrest whoever they reasonably suspect. Given that the power of arrest again is a very serious thing, to be able to take somebody off the street, deprive them of their liberty and take them into your control is a very serious thing. It is a very responsible thing and it is not something to be given to the general public very lightly.

930 The Police are trusted with that power. They obviously have training. They have, obviously, a much greater day-to-day working knowledge of all the legal issues and the like, so it is perhaps a little bit dangerous to extend the public’s general power of arrest where an offence may not even have been committed.

935 **Q302. The Clerk:** I am just looking at the new section 28(2) which is inserted by clause 44, where it says, at 28(2):

‘Where an offence triable on information has been committed...’

940 So the person in those circumstances does actually have to... If an offence has not been committed, then they are in trouble, aren't they?

Mr Stanley: Sorry, I am just trying to find that section –

945 **The Clerk:** I beg your pardon, I did not want to catch you out at all, but the Bill is in front of you there. Page 113 –

Mr O'Riordan: If I could perhaps comment, at the moment, this is the same as the one we just looked at, where there is the absolute and then there is the reasonable grounds. I think the absolute makes for a complication. How are you going to know whether somebody is definitely guilty of the offence?

I think the way to deal with these things is to try and translate it into practical reality. You see a man carrying a television set, running out of a TV shop. You may suspect that he has stolen the TV, particularly if the shop owner is saying, 'Oy, come back!', but how can you know it for a fact? I think the difficulty here is this whole concept of how is a member of the public going to know whether it is triable on information? The whole thing is fraught with difficulty. If they want to make a specific power that can extend to shopkeepers or something who are being robbed, it might make sense to try and work something in. But this seems to be another accident waiting to happen, in terms of creating a potential public right, that you may get some very public minded citizens who feel it is essential to do this.

960 Now, in parts of England where policemen are thin on the ground and there are Neighbourhood Watch people in place, one can see something like this being relevant; but how relevant it is here, I would seriously doubt.

965 **Mr Stanley:** Yes, I see the section. I may have to come back to you, if I may, on that because I see the section that you meant. I think I may have been looking at the section above that, which says 'any person who has reasonable grounds for suspecting to be committing an offence'. Again, that would appear to be whether an offence is, in fact, being committed or not. It is a reasonable suspicion only. The subsequent section does seem to require that an offence has been committed.

970 **Q303. The Clerk:** So, in other words, there is some latitude around the situation where you see them and you think they are in the act of it and reason, you know, somebody has slipped something into his pocket, he may have paid for it, but he cannot sue you because he is –

975 **Mr Stanley:** Very possibly. Yes.

The Clerk: Yes. Okay. That is the sort of –

980 **Mr Stanley:** Maybe.

The Clerk: It requires some thought.

Mr Stanley: Yes, I think I would have to give that a bit more thought.

985 **Mr O'Riordan:** But I think that is the key to it. You have to. A lot of this stuff, it is only by thinking it through in practical terms, 'How this is going to work?' that you can then sit back and think, 'Well actually, that is going to be too subject to abuse or misinterpretation and it is better not to have it.'

990 **Q304. The Chairman:** Indeed. Thank you.

So if we move on to clause 51, which is police bail, your comments here on this provision were very firm indeed (*Laughter*) and I would be grateful if you would expand on them further for us, please.

995 **Mr Stanley:** Yes, in terms of the Police being able to impose conditions on bail, to a limited extent that would be a useful provision, but I think it does have to be very limited and very carefully defined. The scenario where somebody is spoken to, perhaps late at night, it is not particularly convenient to take them to the police station, because they going to be there all night until the morning before they can see an advocate. It is not something which requires an urgent

1000 arrest. That sort of scenario you can understand an officer wanting to grant bail to someone to turn up to the police station the following day, for example.

I do not think it would be appropriate for officers to be able to put conditions on that bail, other than to turn up at the police station at the appointed time, but it would be a useful thing to have because, at the moment, you very often get the situation where there has perhaps been a scuffle
 1005 down in one of the night clubs or something of that sort, somebody is arrested, they are full of alcohol, they are taken to the police station, the doctor comes out to see them, because they are full of alcohol; they might have medication, as well, which they have to take and they may not have that with them. They are kept all overnight because they are too drunk to be interviewed. You then have problems in the morning getting somebody because it is the Tuesday, fixed court is on for the
 1010 criminal courts and they can be in custody for quite a length of time before you can actually deal with them properly. It might be something which does not require immediate action by the Police, beyond sorting out any obvious issues at the scene, but it might be a situation where it could be dealt with at a later date, more conveniently for the Police and more conveniently for the person who has been arrested.

1015 So I can understand there being good reason for an officer to be able to say, 'Right, you are under arrest, but I am going to bail you to come to the police station tomorrow at five o'clock, say.' I think it would be dangerous if a police officer could put conditions on any sort of bail of that sort, other than to return to the police station, because, people are obviously entitled to be presumed innocent until they are proven guilty and it is very hard to justify conditions being
 1020 imposed when somebody has not even been charged, let alone been put before a court for consideration.

Once somebody is at the police station, obviously, you very often get the situation where they will be spoken to, they will be interviewed, spoken to and the Police may have further enquiries to make, or they may have to give consideration as to whether somebody is to be charged, offered a
 1025 caution, released with no action and so on. People are very often bailed from the police station to return to the police station at a later date. Again, if the Police were in a position to impose conditions on the bail, you could have a very unfair situation, where somebody may be entirely innocent, they obviously have not been charged at that stage, which means that the Police do not have reasonable grounds to believe that they have committed the offence. At that time, they would
 1030 only be suspected of having committed an offence, but if you had conditions imposed, those conditions effectively act as a punishment.

Conditions which the courts regularly impose for bail include a condition that you have to reside at a specific address, you may have to observe a curfew, so you have to be inside the
 1035 address from, perhaps, seven at night until seven in the morning, you may have to report daily to police stations, you may not be allowed to speak to particular people, you may not be allowed to go to particular parts of the Isle of Man, you might be excluded from Douglas or Ramsey, or something of that sort. The sorts of conditions that you get on bail can be quite onerous and quite invasive and, in some cases, you even get the situation where, by the time the person gets to court and if they have pleaded guilty or been found guilty, they get a punishment, which probably does
 1040 not even compare to what they have had to endure for the six or so months they have been on the court bail conditions!

So to give that sort of power to the Police, I think, would be a very dangerous thing. Of course, when the Police are bailing people out for further enquiries, there is no set timeframe for how long those enquiries might take. Once you are in the court system, you are in the system and it is
 1045 running and you have the constant supervision by the court, as to how people are being treated. Before you reach that stage, when you are just a suspect and you are being processed through the Police side of things, that process can take a long time.

Someone could be on Police bail for six months before a decision is made. It could be longer and, again, that would be a situation that would be open to abuse, as well as being something
 1050 which is probably excessive, given that a person has not been charged. Once a person has been charged, then I think there would be a benefit for the Police to be able to impose some conditions on their bail and I think that would be acceptable for a number of reasons. Firstly, because a person is charged, there will be a limited amount of time before they actually come before a court and the court can then review what those bail conditions are and as long as you had some sort of appeals process to the court in that intervening period, then that should give sufficient protection
 1055 against unfair bail conditions being imposed.

One of the issues which that would solve would be the situation where a person is charged with an offence, but, because the Police have concerns as to somebody else's safety, for example, or that the person might interfere with a witness or something of that sort, what they actually do, is
 1060 they keep them in custody and they take them to court and then they ask the court to impose

conditions on their bail. If that happens over a weekend and, worse still, over a bank holiday, you can have people who are kept in custody at the police station, which is not ideal for any length of time. You can have them kept there for two, maybe three, days in total, before they eventually get to a court, only to be given conditional bail. That sort of situation is not ideal and that would be addressed by allowing conditions to be put on after charge, but with very clearly defined limits.

Q305. The Clerk: But what about the situation where there is alcohol related argy-bargy and the officer says, ‘Okay, I am going to arrest you and bail you now, on condition that you do not go back to this public house tonight’? Is that a reasonable condition, because they are going to come back to the police station the next day? Would that not actually save the necessity of locking them up? Or they might be sent home, and they have got to stay at home for the rest of the evening and then come back to the police station the next day. Is that not quite an efficient way of handling things?

Mr Stanley: Well, I can see the benefit of that. However, again, it is difficult, where you have a situation where... say it is an alcohol fuelled domestic – typical scenario – because the Police officer will want to make sure the person does not go back to the house that night. They will then have issues as to whether or not they know that the person has got somewhere else, in fact, to go to.

I can see police officers being very reticent to say, ‘Well, I am bailing you on condition that you do not go back to your house’, without being certain that that is actually not going to happen. If someone is still full of alcohol and still full of adrenaline from a domestic, I suspect that the Police will actually just keep hold of them, anyway.

Q306. The Clerk: They might know them. But you can imagine circumstances where it would make a difference between holding them in a cell, particularly over a bank holiday, and letting them go home, just if they were able to give them some temporary conditions – which might not be onerous.

The other thing I was going to ask you –

Mr Stanley: I think you would have to draw a difference between someone who is only *suspected* of an offence and someone who is actually charged with an offence.

There are different levels of being a suspect and being a defendant. To be a suspect, the officer only has to have reasonable grounds to suspect an offence. To charge, they have to have reasonable grounds to believe that an offence has been committed. In practice, what will happen if you have a domestic is that the Police will come in and they will arrest whichever party they feel is most at fault. It is normally both parties, to some extent, but they will arrest whoever appears to be the party most at fault, and they will interview them, and they will ordinarily, if they have a complaint statement from the other party, charge them with an offence. Then, if it is between charge and court, they could impose those bail conditions.

I think it would be unlikely for the Police to say, ‘Right, we are going to arrest you, but we are going to let you go.’ I think that is an unlikely scenario.

Q307. The Clerk: Okay, but I mean in all cases what we are talking about is a condition as an alternative to being locked up. So maybe it is not that disadvantageous to a suspect because they might spend the night in a cell as a suspect.

Mr Stanley: That is true. The difficulty is that unless... well, if you did have something of that sort, it would have to be very, very tightly controlled because it would be something which... you could have endless police bail. You could be on bail for the whole of your life – (*Laughter*)

Q308. The Clerk: Well, there is –

Mr Stanley: – in theory.

The Clerk: – provision, under subsection (6), for appeal to the courts, though, isn’t there?

Mr Stanley: Yes, although the majority of people, I think, would be reluctant to go to a court in order to appeal bail conditions. Without wishing to be unkind to my clients, a lot of them are not really geared up to deal with situations involving the law, the courts, very well. A lot of them are

not terribly *au fait* with legal matters. They are perhaps not as well educated as others and you will not have as many people appealing their bail conditions as perhaps you might expect.

1125 **Mr O’Riordan:** The boot needs to be on the other foot, really. It should be that they can do it for, say, a week and then they have got to have it ratified by the court, otherwise the conditions fall away. So the onus is on the Police to take the matter before the court.

1130 **Q309. The Clerk:** So you would be quite happy for this provision, provided it was firmly time limited, and they could go to a third party for scrutiny and review and –

Mr O’Riordan: I think that is a bit strong.

1135 **Mr Stanley:** I just have a great reluctance. If it is prior to charge, I have a great reluctance where there is not even sufficient evidence to charge somebody, I have a great reluctance on giving the Police powers to, effectively, impose a house arrest on somebody, for example, by giving them a curfew, or to... Well, I just have great concerns over having any ability to impose conditions where there is not even sufficient grounds to believe they have committed an offence.

1140 **The Clerk:** Thank you.

1145 **Mr O’Riordan:** It is hand in glove with the power of detention. If the Police have not got enough to hold the person, they have got to go and get clearance quickly, and it is... I agree entirely with Mr Stanley: there is this very strong distinction between charging them – they are going to be at court fairly soon and the whole thing is going to get scrutiny – and prior to any charge, where the thing can drag on quite considerably and, again, we are back to the fact that if the powers are there, they will get taken to the limit.

1150 The point you make that it is preferable to being locked up, to be allowed out on condition, is a very valid one, but it would need to be very tightly circumscribed, I think, with the onus on the Police to justify it at every stage, rather than being able to just impose it. What Mr Stanley says is quite right about the average criminal client not going to be particularly geared up to think, ‘This is a bit steep; I want to go and make an application to the court to deal with it.’

1155 **Mr Stanley:** If I can just make my position quite clear, I think that, although there might be some scenarios where, if the Police have not charged somebody, a person might not have to spend a night in the cells, the risks inherent in giving such a huge and different power to the Police outweigh the small benefits that might be gained.

1160 **Mr O’Riordan:** If I can come back briefly, it is already a situation where, if there is an alcohol fuelled domestic, and the Police are worried about it, they will usually persuade one or other party to leave on the threat that they will otherwise be arrested, because their behaviour may be a public order offence.

1165 So they can deal with that very short-term situation reasonably well as it stands, without having some more elaborate power that might enable them to impose unreasonable conditions over a long period which go against this whole ‘innocent until proven guilty’ presumption.

Q310. The Chairman: We can move on, please, to clause 52: child arrested for a serious offence.

1170 Here we are talking about children aged 10 to 14. I think I was probably surprised there was not more comment from you on this one. I just wonder whether you would like to make comment now about safeguards appropriate for... [*Inaudible*] ...once arrested.

1175 **Mr Stanley:** I have not particularly looked at that, because I am not sure it makes a great change from what the law is at the moment. I think the existing law effectively says the same thing in relation to homicide, but this adds a provision saying that the Department can specify other offences.

The Chairman: Can we possibly, then, ask you have a look at that later. If you felt that you might want to write to us, we would appreciate your comments.

1180 **Mr Stanley:** Yes, I will have a look at that.

The Clerk: I believe there was an arson case last year, apparently, which the Chief Constable mentioned, where they wanted to keep the child – who was, I think, 13 – in custody when they wanted to.

1185

Mr Stanley: Right.

Q311. The Chairman: Thank you.

1190 If we move on to clause 54, visual recordings of interviews. We will be hearing from Mr Wood eventually but, in anticipation of that, have you any comments that you would like to make yourselves?

1195 **Mr Stanley:** Personally, I would not be in favour of video recording of interviews. I think it is a question of looking at the pros and cons of doing that. Presumably, the main purpose of videoing an interview would be to, hopefully, show that to a jury or a court at a later date to try and get the court to draw some sort of inference, as to what they had seen rather than what they have heard, because at the moment interviews are tape-recorded, audio-recorded and courts can either listen to the audio recording or, more usually, they will have a transcript of what was said.

1200 The only thing that would be added by video recording would be the ability to look at the person's demeanour when answering the questions. That is a dangerous thing, in that people rarely act in their normal demeanour when they are in the stressful situation of being in Police custody and how a person comes across in an interview may not give a good indication to assist a jury one way or the other in deciding whether they have committed the offence or not. You may well have scenarios where a person has had, perhaps, quite aggressive style of policing applied to them outside the scope of the interview and then the police officers being nice as pie in the video interview, but you have an agitated and wound-up defendant and it would be very easy to see how you could have a false impression given over in a video, which does not really reflect or give any assistance to the court in actually getting to the truth of matters.

1205 Videos also add an extra layer of stress to an already stressful situation. People who are in Police custody already feel under considerable pressure and applying additional pressure does not assist in getting to the truth of matters. Additional pressure simply makes people panic, make mistakes, forget to mention something that they wanted to mention, perhaps not express themselves properly and it makes them more self-conscious. I would not think that videoing suspects is going to assist the ultimate purpose of getting to the truth of an allegation, but it could add additional pressure and perhaps give false impressions.

1210 **Q312. Mrs Cannell:** So, through Mr Chairman, then, could it be perceived as, possibly, incriminating?

1220 **Mr Stanley:** A person may feel very self-conscious having a large video camera. The interview rooms at Police Headquarters are small rooms and they are perhaps from that wall to here, and perhaps from there to the end of this bench here, and when videos... because occasionally video cameras are used, with agreement in advance, where perhaps you have got...

1225 The one case I can think of is a very technical issue relating to mechanical issues and whatever and therefore it was important to see what people were demonstrating and the like. So when you do have these cameras there, they are quite imposing and they are quite sort of... you are very conscious of their presence and it does not help to ease people to speak and to be able to think clearly. It just adds additional pressure which is not going to assist and that could have a negative impact which perhaps is not warranted. It might also have an impact on the advocates. I do not like being video recorded, either! *(Laughter)* So it might make me more self-conscious.

1230 **The Chairman:** I will make a note of that. *(Laughter)*

1235 **Mr Stanley:** So advocates are all very well standing on their feet and waxing lyrical in court, but, like anyone, put them in a situation that they are uncomfortable with and they do not come across nearly as well and they do not function as well.

1240 **Q313. The Chairman:** So if we could move on, then, to clauses 55 to 59. This relates to powers over the collection of DNA and fingerprints. How important do you think it is that such samples should only be taken at a police station, and why?

1245 **Mr Stanley:** Again, there are a number of reasons why I think it is only appropriate that these things be done at a police station. Firstly and foremost, from the prosecution side of things – I have done prosecuting as well as defending so I have a relatively balanced view, I would hope – if you have samples which are taken outside the controlled environment of a police station, you will inevitably have issues as to integrity of that evidence. If you have a police officer who takes a hair sample or a DNA sample or a fingerprint out in the street or in somebody's home, there are going to be issues as to contamination, storage, audit trail issues, because you have to be able to follow exactly what has happened to a sample all the way along the line from it being taken, to it being processed and analysed – it used to be in Chorley, but I think they are sending them somewhere else now – and if you add in a whole set of extra variables that might apply outside a police station, you are going to add in potential problems in using that evidence in the case, at the end of the day. So from a prosecution perspective, that can cause a problem.

1255 From the defence perspective, again you have issues as to contamination: can the defendant be sure that the sample that was plucked from his hair by PC Smith is the same sample that ends up in the police station at the end of the day? There is public perception of fairness: it is not just important that justice is done; it has to be seen to be done, so that people have confidence and faith in the system. So we have to have systems in place which make sure that that is the case. Once you limit these to being in the police station, police stations are covered by CCTV cameras and microphones. If anybody had issues as to contamination or whether the sample that was sent off was actually the same sample as they had given, you have got a much more controlled environment to deal with that and to address that sort of issue.

1260 There is a further issue, however, in that if you allow samples and the like to be taken elsewhere than a police station, then the suspect loses all the protections that they would have under the Police Powers and Procedures Act (PPPA). You do not have the custody sergeant there to make sure that everything is being done properly and in accordance with the codes; you do not have it recorded on CCTV, when they are having it explained to them what the purpose of the samples is and what their rights are, what their duties are, what their abilities are; you do not have the facility to have advice from a duty advocate, so people do not know whether they have to give a sample or not. They do not know about, for example, speculative searches. All samples are subjected to speculative searches on the database. Once you take it out of the police station, you have lost all of those checks and balances that were the whole thrust of the PPPA, and the Police and Criminal Evidence Act in England which we mostly copied.

1275 The whole thrust of that was to make sure that everything was brought within this controlled environment, within the custody suite. You had a designated officer, the custody sergeant, who is there to make sure not just that the Police are doing everything they want to do, but that the defendants' or suspects' rights are being protected, they know what their rights and entitlements are. All of these Acts were there to bring everything into the controlled environment. This is now taking it out of the controlled environment, and it would undermine a lot of the protections that were put in place originally.

1285 **Q314. Mrs Cannell:** Through you, Mr Chairman. I thank you for that, but then what you are talking about really is the collection of personal DNA and fingerprints from an individual or individuals, and saying that that should be done within the confines of Police Headquarters, the police station, but then, of course, there will be the gathering of DNA and fingerprints from, perhaps, pieces of furniture, pieces of other evidence. There might be samples of blood, possibly in another place outside of the police station.

1290 **Mr Stanley:** Those are –

Mrs Cannell: Those things have to be gathered, anyway.

Mr Stanley: Yes, those are already. This would not affect that.

1295 **Mrs Cannell:** It would not affect that.

Mr Stanley: No. These provisions here are to do with taking a sample from a person.

1300 **Mrs Cannell:** From an individual. So it is just the personal aspect of it.

Mr Stanley: A blood stain or a fingerprint at a crime scene is an exhibit. It is an item.

1305 **Q315. Mrs Cannell:** Can you imagine, bearing in mind you have experience in prosecutions as well as defence, can you imagine why on earth the Police would want to have this sort of provision in law? For what reason they might want it?

1310 **Mr Stanley:** I do not know. Possibly to save a bit of time and money. That is the only thing I can think of because if you have a situation where you want to take a sample from somebody, I would have thought that that person was going to be under arrest and it is going to be coming to a police station, in any event.

There could be situations where a person, perhaps, is not under arrest, but they want to get a sample and to save them coming in to the police station, that they took the sample from the house, at the person's house. I suppose that would be a minor benefit, but –

1315 **Q316. Mrs Cannell:** So do you think, if it was for those reasons, then, it is actually extending that important application of evidence in far too relaxed a way that could, in fact, compromise the evidence?

1320 **Mr Stanley:** Yes. DNA evidence is not the strong evidence that most people think it is. There are a lot of factors that you look at in DNA evidence.

1325 People always think, 'Oh, yes, DNA evidence: that is conclusive proof,' and it really is not. It is important that you have integrity of the sample-taking process, the sample storage process and the sample transportation process and that you have a proper audit trail, to make sure that there is no contamination. With things like DNA, I have sat in this room today, there will be my DNA in this room. If a police officer comes along and carelessly takes DNA from my learned friend, it may be contaminated with my DNA. You do not want to have a situation where you lose all the protections and controls which we have got at the moment, just for convenience or saving a few pounds, perhaps.

1330 **Mr O'Riordan:** Could I perhaps comment on that last question?

1335 Again, thinking of the broader picture, as just about a 'stopover' by now, I can visualise a situation in England where, with government cuts and all kinds of reasons, police stations are rather more distant from each other than they are in this jurisdiction, so that I could see it being potentially a useful idea that a police car could be equipped with its own mini crime lab to take these samples; but I cannot see why it would be necessary in this jurisdiction.

1340 **Q317. The Chairman:** You touched on the issue of once consent is given for a sample to be taken that, in fact, we find the Bill says that it should not be withdrawn. I cannot see why that is in there. Could you guess as to why that might be the case?

1345 **Mr Stanley:** It might be the case that if samples are being taken outside the police station, somebody might have a policeman turn up on the doorstep saying, 'I have just popped round for a quick DNA sample. You don't mind, do you?' and the easiest answer is 'No. That is fine.' Then they might have time to think about it and, if they were to be given their rights and entitlements, because there is a consent form that they have to sign and that sets out that, 'Yes, your DNA will be subject to a speculative search against the database.' People may then think, 'Well, actually, no. I don't want to do that and I will no longer consent.' You are then at the situation where a sample is going to be taken by force if the person no longer wants it to be taken and it does seem to be contrary to common sense, as much as anything else, that consent should not be deemed to be an ongoing process.

1350 If I consent to something now, why should I be deemed to consent to it later on, if, in fact, I do not consent. It creates a legal falsity to the situation.

1355 **Q318. Mrs Cannell:** Through Mr Chairman: Nevertheless, though, you specify, quite importantly, that the person has to consent by the signing of a form. If the form were to include all the possible scenarios for which this DNA might be used, including putting it into a database, would that not be better at that stage, because then the individual can either say, 'Um, well, okay. I will agree,' or 'No, I don't like the idea of that. I am not going to agree,' and then it is not done.

1360 **Mr Stanley:** Once a person has got to the stage of reading through the form and if they do consent, they sign the form, the sample is, in practice, taken straightaway. So it is unlikely that you will have a situation where somebody signs the form and then says, 'Actually, I have changed my

mind,' but you could have that situation and it would seem to be contrary to common sense that you could not withdraw your consent because, as I say, consent is an ongoing thing.

1365 You would not have the concept of 'deemed consent' in a rape case, for example, where a person may consent initially and then change their mind. You cannot say, 'Well, you consented before. That is alright. I will carry on.' Why should anything different be applied to a suspect, than to a victim of a...?

1370 **Q319. Mrs Cannell:** If I could just pursue that, then. But, then, wouldn't it be frustrating for the police officer, having obtained the samples, the DNA, that possibly show to be conclusive in relation to a particular crime or action, only then – and it might be a witness – for the witness to say, 'Well, actually, I am withdrawing my consent now.'

1375 That would have been extremely frustrating and there would have been an awful waste of public money, would there not, to get to that stage for then the person to withdraw? Would it not be better for such as a police officer, when he has to make an arrest, he has to stick to the verse and chapter, word for word, 'I arrest you...' *blah, blah, blah* – and he goes through everything, word for word, and it has to be word perfect – would it not equally be helpful if, when wanting to take DNA samples from an individual, they read out their rights under the consent, so that the obligation and the onus is on the police officer to explain to the person, the individual whose DNA analysis samples they are wanting to gain, to point out and read out to that person what their rights or *blah, blah, blah*, '...this DNA may be used in this. It may be used in evidence for that. It may be checked in the database. Will you give us consent?' and give the person... then they have not had to read and wade through it. They have had it read to them.

1385 **Mr Stanley:** I think there are two issues there. The first one: I think this is not quite what you understand it to be. The consent is to the giving of the sample. Once a sample has been taken, that is the end of it. It is then an item which is in the possession of the Police. It is an exhibit and consent ceases to be relevant. The Police have got that piece of evidence. It is the taking of the sample which you are giving consent to. Once that sample has been taken, that is it. They have got it and it is evidence. You are no longer withdrawing consent because it is the act of taking it which you are consenting to, not the act of keeping it.

1390 **Q320. Mrs Cannell:** No, no. I understand that perfectly, but would it not be better if there was a provision written in law where you are seeking to take a sample from somebody, that their rights, in agreeing to give a sample, are clearly illustrated and read out to them before they agree to give the sample?

1400 **Mr Stanley:** Well, yes. As I say, there is a form at the moment which has to be read out by the custody sergeant who is authorising the sample to be taken, or filling out forms, and they will actually read through that form to the person before the person signs it. The forms do not explain in chapter and verse every single thing about samples, which is why you quite often get people in the police station wanting to have advice about the giving of samples and there are lots of other little tangential issues which can be relevant.

1405 If a person refuses to give a sample, they quite often want to know what is going to be the legal effect of that. Is an adverse inference going to be drawn at a later date from court? If they refuse, can the Police do it by force? So there are lots of quite complicated issues which surround the taking of a sample, which is another of the reasons why it is done at the police station, where you have the right to speak to the duty advocate, free of charge, to get the advice on the spot before you sign the form. All those protections disappear if you are outside the police station. You also do not have... well, you do not have the protection for the police officer, either, for that matter, for when he does the job perfectly properly and well, and the defendant later on says, 'Oh, well, of course, PC so-and-so didn't tell me about that' or 'he did not show me the form' or 'he just said "Oh, just sign on the bottom there. It is nothing to worry about."' So it goes both ways.

1415 **Q321. Mrs Cannell:** Are you suggesting, therefore, that because all of the safeguards are in for the protection of that individual when they are in a police station, the checks and balances are all there, that in order to extend the collection of DNA for analysis outside of the police station, if that was going to happen in practice, then there has got to be a provision for the individual to later withdraw their consent to having it taken? Is that what you are saying?

Mr Stanley: Well, no, because once the sample has been taken, the issue of consent becomes redundant. It is not the possession of a sample by the Police which is the issue. It is the physical act of taking it.

1425 If a police officer comes up to me and plucks a hair out of my head, that is an assault. If I consent to him taking it, up to the point at which he takes it, that is fine; after he has done it, I cannot say I am not now going to consent to the plucking of that hair. It is a *fait accompli*.

1430 **Q322. Mrs Cannell:** But he could say, 'I am not going to consent to you *using* that DNA that you took from me with my consent.'

Mr Stanley: There is no right to do that.

1435 **Q323. Mrs Cannell:** No, but are you suggesting that there ought to be a right, if this provision that we are questioning you on is retained within legislation?

1440 **Mr Stanley:** I do not think so. I think that the issue is more the integrity of the system in the taking of the sample. If the Police have the right to take a sample... because in certain circumstances, they can, in fact, take samples and fingerprints without consent: you can get consent of senior officers to do certain things without the consent of the suspect. If you are going to have a situation where a person can say they are consenting to a sample to be taken, the sample is taken, the Police process it, they get 95% down the line towards having the result, and then the consent is withdrawn, it totally removes the purpose of the provisions, because –

1445 **Q324. Mrs Cannell:** This is what I thought earlier on. So you would rather, then, not see this provision retained within the legislation.

1450 **Mr Stanley:** I think that the situation ought to stay as it is: that samples should only be taken with all the protections for both sides at the police station.

Mrs Cannell: Okay, thank you. Thank you, Mr Chairman.

1455 **The Chairman:** We have three more clauses. Thank you for your patience. Clause 64: power to demand a person's name and address: quite simply, why do you – ?

Mr Wood: Chairman, I am up against time, so far as my car parking is concerned. (*Laughter*) I would not want to get caught out, so if I walk away and come back in perhaps five or ten minutes, would that – ?

1460 **Mrs Cannell:** Absolutely, yes.

The Chairman: Yes.

1465 **Mr O'Riordan:** This is an illustrious enough gathering to give him a dispensation against a parking ticket! (*Laughter*)

Q325. The Chairman: On the issue of power to demand a person's name and address, quite simply why do you consider this provision excessive?

1470 **Mr Stanley:** Well, it just strikes me – it is more on a personal level than a legal level, I think – that if a person is not doing anything which would give a power of arrest, why should they have obligations to give their details to a police officer, who will make a record of that, might then put it into a file...? It is just a little... It seems to be excessive for our society.

1475 If a person is committing an offence, there are plenty of provisions that will enable the Police to arrest them, take their details and deal with them appropriately; but if a person is not actually doing anything to give reasonable grounds to suspect that they are committing an offence, it does seem excessive that they should then be legally compelled to 'produce your papers', sort of thing... We are not living in – well, hopefully not – a police state.

1480 **The Chairman:** Anybody want to comment –

Mr O’Riordan: It is not unlike taking the samples outside the police station, in that the safeguards within the system disallow the Police to basically put someone in a position that they are committing a criminal offence, without necessarily having proper grounds to go that far.

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The Chairman: Thank you.

Mr Gill is going to take us through clause 65.

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Q326. Mr Gill: Yes, clause 65. You say that there are already sufficient powers to deal with such persons – that is, 10 persons or more – who may be causing intimidation and appear to be under 16. What are these and do you have any opinion about why the Police seek further powers in this area?

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Mr Stanley: The Public Order Act contains provisions which deal with how people act in public and in particular the first three sections of that Act deal with taking the most minor of those sections.

Section 3:

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‘any words or conduct likely to cause harassment, alarm, annoyance or distress’.

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That is a hugely wide provision, ‘any words or conduct that cause annoyance’, and there is a power of arrest attached to that section as well. That section is used for absolutely anything. If somebody swears in public, they can be arrested and end up in a police station. You only get a fine. You cannot go to gaol for it, but you can be arrested, held overnight, taken to court. It is a wide power as it is.

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If you have people who are not even committing something as wide and low level as that, I am not quite sure what it is they are doing wrong because, as I say, it is a very low level offence. People could be accused of committing it every day. I curse and swear every day at the office and if somebody took me up on it, they would probably say, ‘Section 3 of the Public Order Act.’

So given that sort of very low level of activity that can give the Police the various powers to act, I do not see how anything else would be required.

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Q327. Mr Gill: Do those powers you have just described extend to young people below 16?

Mr Stanley: They are general criminal provisions. They apply to people who are 10!

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Q328. Mr Gill: Yes. I am particularly interested in this provision, because it just seems to me – this is my opinion and if you would care to respond, I would be obliged – that the relationship between the Police and the ‘policed’ is based on the Police intervening in situations where there is a need to do it, where, rather than...

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The provision here is that the Police could be taking children off the street under certain circumstances, taking them to their home, and I think the first question, as a father, I would ask, if my child had been brought home in those circumstances, is ‘What has he or she done wrong?’ ‘Well, nothing – just being in the street.’ Well, that is not really the relationship, I think, I want with the Police, as a father. It is not the relationship I want my children to have with the Police. I just wonder if you are aware of any circumstances where those sorts of powers would have been –

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Mr O’Riordan: Not in the Isle of Man. I think this is another English provision, aimed at a huge housing estate, where you have got common gatherings of 10 or more kids terrorising the community. This enables the Police to say, ‘Right, this area is off-limits for big groups of people for the next six months’, because they are trying to prevent a problem that, so far, is not and, hopefully, continues not to be a problem in the Isle of Man.

1535

But, again, it is another of those powers: if they have got it, it is a little uncertain how it might be applied. I cannot see, from everything I know about, what goes on in the Isle of Man, that this would have any application here, because we do not have that kind of scale of these huge estates in England, which did become virtual no-go areas for the Police, and gangs of youths were terrorising the locals.

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Q329. Mr Gill: And anyway, we have already got the powers – is that...?

Mr Stanley: Yes, we have sufficient powers to deal with the situation –

Mr O’Riordan: For the individual one-off.

1545 This is more, as I read this, a generic prevention power – ‘we are going to declare this area off limits for groups of youths for the next six months’ – which was addressing an inner-city evil that they needed to do something about in England, but is not a problem we have got here or are likely to have.

1550 **Q330. Mrs Cannell:** Mr Chairman, if I could just pursue this a little bit deeper, I agree with you in your interpretation of the intention of this particular provision; but we do have, in the Island, situations – and I will name one – that is a regular occurrence throughout the season and that is the Sulby Claddaghs area, where camping is permitted by the Department and you do occasionally get groups of 10 or more young people, who have perhaps been to a party on the Friday and decided to extend the weekend by pitching a couple of tents and continuing on. Now, 1555 you may not be able to pick them up by a public order offence, because they are actually not committing anything under a public order offence, but the very fact that there are 10 or more of them there and other campers are feeling intimidated by their presence... They might be a little bit loud, but not to the extent where it is a public order... it is a breach of peace or anything like that. I think possibly this is the reason why the Department are trying to bring this in, because we have 1560 that situation, which is a regular occurrence.

There are one or two situations, where you can get youngsters who are not breaking the law, they are not causing... if you are a parent, such as we are, to us they are not a problem; but perhaps to somebody elderly or perhaps to somebody who has never had the experience of raising children, they feel intimidated by the fact that they are at the end of the road, on the fairfield or 1565 wherever it is, and they tend to be grouping together and they are seen to be hanging around there for some considerable time. I think that is possibly the thinking behind bringing this particular clause and putting it into legislation. Do you think that is sufficient reason for bringing in such a power?

1570 **Mr Stanley:** The way I always look at the law when I am trying to work out what the law is, I always look at the fundamental principles and then see if it fits the way that it seems to fit.

The law deals with interaction between different people and the interaction of my rights and somebody else’s rights. The fundamental building blocks of our system are that you start from the provision that I, as an individual, am entitled to do as I choose to do without interference from 1575 others, including the state. Where my actions interact with other people, you have to see how their rights – the same rights – and my rights balance against each other: that is how we have developed our systems of law. I can do what I like, as long as I am not interfering with other people and if I am, there is a line which the law says.

When you are looking at this sort of provision, you have to look not only at the rights of, 1580 perhaps, the elderly person who is a bit worried because there is a group of young people who are gathered nearby, you do have to look at that person’s rights, but you have to look at the rights of the children as well. They are individuals, too. They have rights. If they are not doing anything wrong, is it right to, effectively, punish them for not doing something wrong, simply because another person perhaps might have a greater sensitivity to things or might even have a less tolerant 1585 attitude towards young people? So it is a question of balancing the rights of each of the groups, including the rights of young people.

As an offshoot from that, if you have unfair situations being imposed upon young people, where they have not done anything wrong and yet they perceive that they are being punished, or 1590 treated as if they have done something wrong, that will have a very negative impact as they go forward into adulthood as to how they then deal with the Police, society and other people. So you have to be very, very careful not to do things which will create a poor perception for young people.

Q331. Mrs Cannell: Okay.

1595 Mr Chairman, if I can then just expand into what is your view with regards to ASBOs, Anti-Social Behaviour Orders?

Mr Stanley: Well, if somebody is generally committing anti-social behaviour, generally they will be committing an offence of some sort or other. Whether they are charged with something or other is another question and ASBOs are there to prevent future occurrence of improper behaviour, 1600 as opposed to punishing past occurrences for it. (**Mrs Cannell:** Thank you.)

I am not a huge fan, I have to say, of ASBOs. The risk that you have with those is that if you do have someone who is a bit of a tearaway, they are a badge of honour, rather than a punishment

1605 (*Mr O’Riordan:* Absolutely.) and if you have tearaways, then they perhaps perceive that they are
being picked upon and singled out and being treated unfairly and that then has repercussions again
in the future.

1610 **Q332. Mrs Cannell:** Within the provisions of the legislation before us, there is an extension of
the provision of an ASBO to members of the same household. So an ASBO could be applied to
perhaps two members of the same household, but in connection with different activities, possibly.
Do you not think that poses a conflict, in terms of being able to do that – in the same family?

1615 *Mr Stanley:* It is not an area I have got huge experience in, I have to say. I do not think that I
have ever had to deal with a young person on an ASBO. They are, thankfully, fairly rare. So I am
not quite sure how those things would interact.

But certainly, if you had two people whose conditions of their ASBO were perhaps in conflict
and would prevent them from doing things which, together, might be reasonable, it might not be
ideal.

1620 **Mrs Cannell:** Thank you.
Thank you, Mr Chairman.

1625 *Mr O’Riordan:* If I could comment briefly on the removal clause, and the point Mrs Cannell
raised, I think it is a question of if it falls short of criminal behaviour, it has got no part of a
criminal Bill.

1630 You can look at civil restraints of one kind or another, possibly – and there is the balancing act,
anyway, that Mr Stanley refers to – but I cannot see here, even looking at the sort of situation you
have outlined, that we have the sort of evil that merits this sort of criminal approach. Certainly,
from what I understand of the position in England, the youths who were terrorising the estates
would have been actually committing criminal behaviour. Police resources and the nature of the
layout of the estates were such that it was difficult to go and arrest them on an instance-by-
instance basis. The way they have evolved of dealing with that was to create these no-go areas for
the youths.

1635 I do not see that we have got anything that gets close to it yet, and hopefully it will not get to
that point, so I just think it is wrong to include something like that in criminal legislation, for our
purposes.

Mrs Cannell: Okay. Thank you.

1640 **Q333. The Chairman:** Thank you very much.

And finally, two hours later, clause 66, spot fines. Your written submission is that this is a case
of damning by faint praise, I think is the best way to describe it. Were you actually reluctantly
admitting here that this might be a good idea or have I misunderstood your submission? In other
words, are you for or against spot fines, or are you ambivalent?

1645 *Mr Stanley:* I am a little ambivalent about it, to be honest. (*Laughter*)

1650 In some respects, they will be a good thing, because if somebody commits a minor offence,
which can be appropriately dealt with by a financial penalty, it is far preferable to have that done
on the spot there and then with the least convenience and expense to everybody concerned, rather
than going through the cost and expense of reporting them for the offence, making the application
for summons, the court issuing the summons and serving the summons. They turn up to the court.
They see the duty advocate and perhaps wait six or seven hours before they actually have their
court appearance and then they get the £50 fine for whatever it was. That is not an ideal scenario.

1655 The risk that you have, which you have to balance against that, is people who feel that they
have not committed the offence and that they should not have been brought up for whatever it is,
may well think that it is just far too much trouble for them to say anything about it and they will
just pay the fine and be done with it. That is the risk.

1660 **Q334. Mrs Cannell:** Through you, Mr Chairman: would it not be appropriate, then, to perhaps
build in an appeal process if an individual feels that they have been unfairly fined, despite the fact
they paid it just for the sake of convenience so that they could get away and leave in their vehicle
or whatever, but there was an appeal mechanism that was simple to apply for?

1665 **Mr Stanley:** Well, there would certainly have to be an appeal mechanism, otherwise the provision, I think, would fall foul of the Human Rights Act. So there certainly would have to be an appeal provision. Again, it is not something which I have looked at in any great depth, but, as I say, there are pros and cons to it.

1670 **Mr O’Riordan:** I would agree with that, but I think he is quite right that, as long as there is a safeguard, it would make sense because you can just visualise a situation where the police officer certainly implies that if the person does not accept the spot fine, they will be arrested and taken off to the police station, and so on. Therefore, something that allowed somebody aggrieved by a spot fine to make an appeal, be it to the court or some such process, within a period afterwards, I think would create a better balance.

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Q335. Mr Gill: Is there not a danger with that that it would almost be a perception that the Police had been cast in the role as judge and jury?

1680 **Mr O’Riordan:** Unless you had the appeal process, yes. If the appeal process was adequate, then that would address that to at least some extent.

I think I have got the same mixed feelings. I can see a lot of the time when it would be an excellent tool to dispose of something quickly, economically, sensibly mark the person’s card, but without blowing it out of proportion which sometimes has to happen at the moment. So I can see it as being a useful addition, but only subject to having that counterbalance that allowed the appeal.

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Q336. Mr Gill: And should that counterbalance extend to the right to be dealt with through the court system, instead of a spot fine, if that was the choice of the –

1690 **Mr O’Riordan:** I suppose that is where it would be... The way I see it is the spot fine would probably happen and be done with. It might be more difficult to... Well, I suppose one could try and come up with something in advance, where the person could say, ‘Well, I will go to court, rather than having the spot fine’, but I was thinking more of the situation where the whole idea of a quick, on-the-spot fine, the process would be complete, subject to, in the cold light of day, the party on whom it was imposed then having the right to take steps within a reasonably short period to cancel it, if I can put it that way. That might be, from a practical point of view, the better way round, rather than complicating the process going in.

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Q337. Mrs Cannell: Just to add onto that, would you not think it might be appropriate in those sorts of circumstances..., depending upon the fine, of course, and the severity of the offence that is being perceived to have been committed, if the person pays it just because he wants to get on with his business – he is due for a meeting, or whatever, and he just wants to – ‘Oh, for goodness’ sake! I don’t think I’ve done it, but I am going to pay you, because I’ve got to move on!’ – would it not be a good idea, rather than have the courts then have... for him to then have to make application through the court, because we are getting back into the same quagmire that we are trying to avoid by bringing in spot fines? Would it not be useful to have an independent tribunal, perhaps –

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Mr O’Riordan: You could do it that way. Yes.

1710 **Mrs Cannell:** – that a person can simply go and say, ‘Right, I think this was inappropriate and these are the reasons why...’ and they look at both sides and either say, ‘Yes, it was inappropriate,’ in which case your fine is returned by compulsion written in the law, or ‘No. Actually, we feel that, in fact, the appropriate action was taken.’

1715 **Mr Stanley:** I am not sure. Given that this would be a criminal issue, I am not sure you could do it by way of tribunal. I do not think a tribunal would, in reality, be a court –

Mrs Cannell: The tribunals are... Yes, well, they are covered in legislation and regarded as courts.

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Mr O’Riordan: One would need a reasonably streamlined system, I think. One would not want to make it the full panoply of the usual court appearance, if one could avoid it. So I think the general idea, yes, but one might want to think through precisely how is it going to work –

Mrs Cannell: The practicality.

1725 **Mr O’Riordan:** It might be something as simple as perhaps an appeal in writing to the Chief Constable initially, with a right of appeal beyond that, if necessary. One would want to keep it fairly simple, if one could.

1730 **Mr Stanley:** You could possibly do something along the lines of the parking tickets. There is an appeal process on those. I know you do not pay the parking ticket on the spot to the parking controller; you have a period of time in which to do it, but you also have that period of time in which to write in and challenge its –

1735 **Q338. Mrs Cannell:** Of course, those appeals are heard and considered by the Department – the relevant Department which is in charge of the traffic wardens.

1740 **Mr Stanley:** These are slightly different types of provisions, (**Mrs Cannell:** Sure.) because these cover things such as public drunkenness, section 3 of the Public Order Act – so you can fine the youths on the Claddaghs (**Mr O’Riordan:** Yes!) and they will not have the money so they will have to go home to get the money! (*Laughter*)

1745 **Mrs Cannell:** Actually, from this year onwards, through Mr Chairman, the youths on the Claddaghs will not be allowed on the Claddaghs unless they have got a permit issued by the Police so, hopefully, the problems will not arise again!

The Chairman: One final question, Mr Gill, before we close.

1750 **Q339. Mr Gill:** I am very conscious we have kept yourselves longer than we intended – and Mr Wood much longer than we intended.

Could I just ask a question I put to the Minister – and I was not much wiser at the end of his answer than I was at the beginning of it (*Laughter*) – the ‘Respect’ agenda in the United Kingdom has been a very lengthy and wide ranging criminal justice programme, with lots and lots of legislation, lots and lots of initiatives. Do you have the feeling, from your understanding of that agenda in the UK, that we have basically looked at that, lifted it, not bothered to Manxify it, perhaps, and what I have heard police officers describe as ‘future proof’ legislation – ‘We might need it at some time, so give us the powers; we won’t abuse them’?

1760 **Mr Stanley:** Well, yes, I think my perception would be that a lot of provisions in this draft Bill are provisions that have been lifted from England. (**Mr O’Riordan:** Yes.) Some have been tinkered with, some perhaps not so much so.

1765 We have a very different jurisdiction from the jurisdiction of England and Wales. There is also a perception that the criminal justice system in England and Wales, which was once the gold standard, is now perhaps not the standard that it used to be and that there has been a lot of political influence, in terms of the criminal justice system and the criminal law in England, which perhaps is not quite as desirable and not quite so appropriate over here.

1770 **The Chairman:** Mr Stanley, Mr O’Riordan, we are deeply grateful to you for your contribution. I am sure I speak for us all, when I say that it will help us enormously in our work as we deliberate further. Thank you so very, very much.

Mr Stanley and Mr O’Riordan: Thank you.

*The Committee adjourned at 4.10 pm. and resumed its sitting at 4.14 p.m.
when Mr P Wood was called.*

Procedural

The Chairman: Thank you very much indeed, Mr Wood, for your patience. Were you here at the beginning? Do you know everybody?

1775 **Mr Wood:** Yes, I know everybody.

Q340. The Chairman: Well, we have not prepared a sumptuous array of questions; we just thought that it would be good for you to sit and talk us through how you feel. Is that acceptable?

1780 **Mr Wood:** It is, sir, yes.

The Chairman: Please, continue.

1785 **Mr Wood:** I will begin as the others began: my full name is Peter Robert Wood. I am a Manx advocate and I qualified... I forget now when, but it was in about 1977, so that makes me having been in practice for about 35 years. I am now semi-retired, and I am a consultant with a firm – an individual advocate – called Nigel Cordwell. So I am a consultant in his firm.

EVIDENCE OF MR P R WOOD

1790 **Mr Wood:** Most of my practice has been – or a lot of my practice – concerned with the criminal law. There have been other portions where I have dealt with conveyancing and wills and winding up estates and that sort of thing, but mainly there has been an underlying trend of criminal law. For the last... ever since the introduction of the Police Powers and Procedures Act in the Isle of Man, I have taken part and have been – in fact, I have always been – the senior member of that panel of advocates who provide services under the Police Powers and Procedures Act.

1795 So that means I have been doing that particular job and I have been listening to my colleagues detailing what goes on for 11 or 12 years now. So I am rather familiar with that limited aspect of the criminal law, as it applies to individuals who have had the shock of being arrested. I put it like that: it can never be easy for anybody to be arrested. There are some that it is easier for than others.

1800 When they are arrested, they are taken to a police station for the purpose of being interviewed – i.e. asked questions about the commission of a potential offence. That interview at present and, indeed, as established by the Police Powers and Procedures Act is tape recorded. Indeed, our proceedings today are tape recorded.

1805 The background of the tape recording comes, I think, but I stand to be corrected, from the mistrust that a section of the community had – because it came from England, 15 years ago when that came in – about the actions of the Police. Rightly or wrongly, there was a section of the community who did not necessarily trust the Police in their day-to-day actions. That part of tape recorded interviews was carried on over here, and I have to say, from my experience over the last 12 years, that that section of the community exists here as well and does not necessarily believe everything that police officers do and, for that purpose, there was built into a system of tape recording the safeguard that the suspect, the detained person, knew that that recorded interview was being sealed. So there were two copies of a tape taken at that stage – now there are three taken – but, at that stage, one was then sealed, physically sealed. It had a sticky paper seal, a piece of paper, signed by the same person and by the police officers – the interviewing officers – put round the cassette and physically sealed it, so it could not then be opened and tampered with.

1815 Of course, because it could not be opened and tampered with, neither could the one that the Police use be altered, either, because it would then become apparent that there had been some – for want of a better expression – jiggery-pokery with the interview. Looking back on that now, I can see that that was a jolly good idea. It still is a jolly good idea: everybody has confidence that those tapes and what has gone on in the interview room cannot be altered afterwards. It is there and fixed in stone.

1820 I had the experience – and I am not certain whether any of my other colleagues have had this experience – of the Police attempting to introduce a system of video recording of police interviews, about two or three years ago. It was introduced without any discussion with myself – I was just shown into the room, ‘Oh, by the way, we are now going to video record this interview.’ Well, I was initially taken aback and one or two interviews like that passed without me saying anything, but then eventually I began to wonder, ‘Why is all this going on? Why are you doing it this way? What is going on here?’ There seemed to be no satisfactory answer, until I think, eventually, one of my colleagues – or perhaps it was myself – really said something to somebody and it stopped.

1830 So I have the unique advantage of actually knowing how the video recording of police interviews will happen, even though it does not happen now, and how it will happen in a Manx context. I was not at all impressed by what I saw. In fact, I was disturbed by what I saw, to put it perhaps at its highest level.

My colleagues have referred to the fact that being under arrest at a police station is highly stressful – for most people, it is an experience that they will never forget and, frankly, it is an

1835 experience that most law-abiding people who are arrested would never look at a police officer again in the same light, after they have been arrested. It is as simple as that.

In that stressful situation, dealing with old technology, tape recordings – it may not sound as if they are old technology, but they are by modern standards – then it was a comforting and acceptable procedure that nobody would take exception to. We are not taking exception to our recording this afternoon.

1840 To have, on top of that, a video recording taken... I just differ slightly with my colleagues, when they said it was ‘slightly’ intrusive, the camera was intrusive into the room. I am sure nowadays it is possible, with modern technology, not to be quite so intrusive – in fact, it could just be a little fisheye – but certainly the cameras that were used in the interviews that I was present at were stuck, coming down from the ceiling, in a corner of the room – and indeed, to this day, you can see the mountings where they were. I think there was even a pole that went up on which it was fixed at a certain height, so the whole thing was manifestly obvious to a detained person, that they were there, in effect, for want of a better expression, to be grilled. That was the feeling they got and that was the feeling I got that they were being subject to. It was a disturbing process for me, as well as them.

1850 It may be you have heard evidence from others as to why this video recording is necessary, but I must admit, I thought about it afterwards, again coming back to the analogy of the tape recording today, is there anything being gained, other than the fact that we are being tape recorded? Would anything further be gained by any other process? The purpose of the Police interview is to get at the truth and the purpose of the advocate being present in the interview with a detained person is to assist the client to get to the truth – there is no other purpose in being there.

1855 We are all seeking justice and I am disturbed that the introduction of a certain element of technology might, in fact, interfere with that.

1860 The effect of video recording means that anybody in the world could, in effect, be present in that interview room, which is a little startling thing to say, because the video is being shown somewhere else. It is not being shown in the room, in the interview room, with the defendant or the detained person. All we see is a camera. It is being shown on a screen somewhere else. It may be being downloaded to experts in Australia to... experts here, to experts there. It may be being seen by who knows who. So the ultimate protection that is afforded to a detained person, to know that their information that they are providing is being properly dealt with, has gone. It is not physically being sealed. It is becoming available to the world at large – the information.

If I knew that was actually going to happen routinely –

1870 **The Chairman:** The sealing, you are talking about?

Mr Wood: Yes, well, there are two elements, actually.

1875 First of all, I am not aware that once a video has been taken of a situation – for example, like us here – that it is physically possible to seal it at all. It is recorded on a disk and would need to be brought back into the room to be sealed in one’s presence, but it has been out of one’s presence for the whole time. There is no video recording machine in the room where the interview is taking place; there is just a camera. You do not know what is going on behind the scenes.

1880 Indeed, it is my view, although the Chief Constable or others, the Police giving evidence, may say, ‘Oh, it is only for experts to look at, like psychologists, to see whether somebody is telling the truth or not,’ or whatever, and that alludes to what my colleagues, in fact, said of the fact of people being judged, not by what they say, but by how they appear, and I think that is mighty dangerous. Mighty dangerous.

As I say, secondly, the detained person has no idea who is watching that video. It could be anybody throughout the world in real time, as far as I am aware.

1885 What also disturbed me was the fact of the authoritarian way that the Police went about setting up the system. One entered the room in the usual way with the detained person – that is the interview room. There was a table set in the usual place. There were, perhaps, four chairs. There was the camera up. The detained person was told to sit on a chair over a spot of the floor marked, I think, with a cross. I was told to sit in another seat out of camera shot. So I had immediately lost eye contact with my client and for any advocate, for any lawyer to be able to achieve anything in these sort of situations of stress, there has to be eye contact. You cannot get anywhere. In other words, I have to be able to tell that my client, for example, as does happen from time to time, is not, in fact, becoming mentally ill under the stress. It has happened on several occasions to me, that I have become aware and had to say, ‘I am sorry. My client just cannot carry on with this. He/she is not well enough to be able to answer your questions properly.’ That is a deep concern to me about the overall use of the camera.

1900 The final point I make is that, before any interview begins, a detained person is given some very sound advice by the Police – in other words, they are cautioned. They are given their rights. They are told they are not obliged to say anything, but if they fail to mention now – that is in the interview – something they would later rely on in court – that is if they are charged – the court can then draw an inference or conclusion as to whether they are telling the truth or not. Now, if at that moment they are being distracted by seeing a camera looking at them and being told to sit on a chair on a certain spot, then that is clearly not functioning on them properly. That would be a deep concern to me that the caution – the words of the caution – is just washing over them and not biting on their minds as to what they can do and what they should not do.

1905 I think that is it.

Q341. The Chairman: Can I then ask how you would respond to an amended situation? You have told us very eloquently about your experiences in what one can only view as a rather crude interpretation of using the facilities.

1910 How would you respond if the system was introduced in a much more sophisticated way and was responding to many of your criticisms? For example, if there was an ability to put the disc of the video recording in the room, in the same way as one does with a tape recording; if the cameras were recessed in the way that you said, in a fisheye format, and were not intrusive; if the position of the defendant – or the accused, I beg your pardon – the accused and the defending advocate were in a much more comfortable environment, would you have the same degree of concerns in that scenario?

1920 **Mr Wood:** The principal concern is the information that your client is giving to police officers, pursuant to the caution, i.e. this is an interview between a detained person and two police officers, in effect being available to the world at large.

Q342. The Chairman: But what if that was not the case? What if the recording had the same protection as would a – ?

1925 **Mr Wood:** Then that would remove my objection to it.

The Chairman: It would?

1930 **Mr Wood:** Yes, I think it would.

The Chairman: Mrs Cannell?

1935 **Q343. Mrs Cannell:** Mr Chairman, I was going to more or less say the same thing: that if all of the safeguards were introduced... Surely, prior to interviewing detainees in the past, they used to rely on just hand notes –

Mr Wood: Indeed, I remember the days – hand notes.

1940 **Q344. Mrs Cannell:** So I would have thought that, at the time of introducing tape-recorded interviews, it was quite scary, also?

Mr Wood: I think I agree with you, yes.

1945 **Q345. Mrs Cannell:** So, I suppose one could argue that going to video recordings to be able to catch the visuals of the whole interviewing process is going a step forward, in terms of improvement, because of technology, etc; but if the same safeguards were put in place that were put in place on the tape-recorded interviews, then it should not cause –

1950 **Mr Wood:** Yes, I would not have any great difficulty with that.

Mrs Cannell: It should not cause alarm.

1955 **Mr Wood:** Indeed, I would have a fallback position, because if it then turned out that it was not running in accordance with instructions to clients – in other words, it was making my life more difficult to give and receive instructions – one would simply, as one sometimes does at present, go on to a format of interview where you reply...

1960 Perhaps if I explain that, usually, before the Police interview a detained person, either they verbally tell you, 'Bloggins is here for an affray' at a house or outside a public house, 'and that is why we want to interview him' – there has been a complaint and he has been arrested for affray or public order; sometimes, in more serious cases, there is a written notice given, setting out exactly the same thing but in writing, specifying what Police would like to ask the detained person about. Quite simply, if I was not happy with the way the video was being conducted, I would actually go to the format of replying in writing to the written disclosure notice. So it would, in fact, make everything amazingly stilted and prevent any information coming out at all. It would defeat the object of it for me.

1965

The Chairman: Mr Gill, you had a question?

1970 **Q346. Mr Gill:** Yes, please. Just if you will be satisfied if those safeguards or those measures could be put in, in the manner that the Chairman described, do you think they can be?

Mr Wood: Do I think what?

1975 **Mr Gill:** Do you think that that is doable? Is it possible to achieve those practices in the manner you have –

Mr Wood: I have no idea. I am a technophobe. (*Laughter*)

1980 If it is possible, I am sure it could be done. I have to say, however, in the example that I actually saw, all this was completely disregarded. There was no thought given to it at all, about the protection of the interests of the detained person, in what actually happened.

1985 **Q347. The Chairman:** You have sat through very patiently this afternoon while we spoke to the other two gentlemen. Were you at any stage itching to add your six-penn'orth to the debate? Is there anything that you would like to summarise for us before we close?

Mr Wood: With hindsight, I do not think so. There were portions I found to be most interesting, and perhaps you saw me nodding my head!

1990 But my experience nowadays is limited almost entirely to police station work. I know how the Police work. Indeed, I have made it my business – how do I explain this? – to broaden our interface, the police station advocates' interface, with the Police, because I take part in the police training courses. As a result of that, I do know that some of the difficult instances I have had in the past, where I have described a police officer as being authoritarian, I now know to be the result of police officers going on... either inappropriate police officers going on inappropriate training courses... I think that has been recognised.

1995

Q348. The Chairman: By the Police Service itself?

2000 **Mr Wood:** By the Police Service itself, and I think, now, that the format of the training they undergo is much more attuned to the needs of the Island.

The Chairman: That is good to hear.

2005 **Mr Wood:** Yes, I think they were applying rules and procedures that might well have gone down well in Manchester or Liverpool, but –

The Chairman: I think we have heard that comment as an undercurrent right through this afternoon, haven't we?

Mr Wood, is there anything else you would like to say?

2010 **Mr Wood:** No, thank you for asking me to come.

The Chairman: Well, no, thank you for coming, and thank you for just...
Oh, I beg your pardon, Mr Gill has got something.

2015 **Q349. Mr Gill:** I would just ask: as a practising lawyer, and you are faced with this as a piece of legislation –

Mr Wood: Ah, yes.

2020 **Mr Gill:** – is that too big for you to consume in –

Mr Wood: Well, I forgot to mention that I thought you might ask me: did I make any submissions the first time all this came around?

2025 **The Chairman:** Did you?

Mr Wood: No, because, to answer Mr Gill's question now, it just gave me complete indigestion.

2030 I looked at the section that I was most interested in and, to put it bluntly, I thought to myself, 'Oh, to hell with it.' But then, afterwards, I began to think, 'No. This is wrong. We do need to think about this carefully,' and I am obliged to you for asking me to come along.

The Chairman: Thank you very much indeed.

2035 **Mrs Cannell:** Thank you.

The Chairman: Enjoy the sunshine this weekend.

2040 **Mr Wood:** I shall go into the garden.

The Chairman: And can I thank *Hansard* for hanging with us this afternoon for so long.

The Committee adjourned at 4.34 p.m.