Dear Margaret,

November 2013

Anti-social Behaviour, Crime and Policing Bill

Thank you for your letter of 6 November where you seek clarification on three aspects of the Anti-social Behaviour, Crime and Policing Bill, which the Constitution Committee has considered. Given that the provisions in respect of compensation for miscarriages of justice are to be debated in Committee of the Whole House tomorrow, I wanted to ensure that members of the House had our response to the Committee’s questions on that issue in advance of the debate. I will write to you again shortly in response to the Committee’s questions about the injunctions to prevent nuisance and annoyance and the amendments made to Schedule 7 to the Terrorism Act 2000.

You asked three questions about the provisions in clause 151; I respond to each in turn:

i) We do not agree that clause 151 imposes “what amounts to the criminal burden of proof on applicants”. Clause 151 does not require applicants to prove their innocence; instead it requires that the new fact which underpinned the quashing of their conviction should clearly demonstrate that they did not commit the offence – for example, that they were somewhere else at the time. We are not planning to require applicants to provide additional evidence, but will look, as now, at the new fact which was before the Court of Appeal, and at the impact of that new fact.

ii) The effect of the decision of the Supreme Court in Adams is that compensation for a miscarriage of justice will be payable to any person either where a new or newly discovered fact shows: (a) him or her to be innocent, or where (b) the evidence against the applicant has been so undermined that no conviction could possibly by based on it. The effect of clause 151 is to limit eligibility for compensation to those who come within the first category. This will mark a return to the basis on which compensation was payable between 2008 and 2011.
(iii) As outlined above, the Supreme Court considered in Adams, that in addition to cases of “clear innocence”, that compensation should be paid where no conviction could be based on the evidence now to be considered. The issue was before the Supreme Court owing to doubt as to the correct basis for determining eligibility for compensation. Since the Supreme Court gave judgment in May 2011, there has been doubt in respect of the cases which properly fall within the ambit of that second category. Indeed, the Divisional Court in the case of Ali in January 2013 reformulated that test in the hope of making it clearer. It is against this background that the Government has felt it necessary to legislate in the way proposed by clause 151 of the Bill, the purpose of which is to provide much needed clarity in this area.

As to the constitutionality of legislating in this way, the Government does not consider that the majority decision by the Supreme Court in Adams binds the UK to interpret Article 14(6) of the International Covenant on Civil and Political Rights in a particular way, particularly outside the context of the facts in that case. The interpretation of international obligations is, in the dualist system of the United Kingdom, a matter for the Government. The interpretation and application of Acts of Parliament, including those which may ratify international obligations, is a matter for the judiciary. There is therefore no difficulty in the Government making plain, through the proposed amendment of the Criminal Justice Act 1988 that it views Article 14(6) of the ICCPR as limited to cases where a new fact shows that the defendant was innocent of the offence of which he was convicted. Section 133 of the Criminal Justice Act 1988 as amended by clause 151 of this Bill will become the relevant consideration for the courts in future.

I might add that at Second Reading, Lord Hope of Craighead, who was a party to the majority decision by the Supreme Court in the case of Adams, said “I believe that it is right that Parliament should take a fresh look at this issue and should do so with an open mind” (Official report, 29 October 2013, column 1519).

I am copying this letter to those Peers who spoke at Second Reading.

[Signature]

Lord Taylor of Holbeach CBE