Dr Hywel Francis MP  
Chair  
Joint Committee on Human Rights  
Committee Office  
House of Commons  
7 Millbank  
London SW1P 3JA

23 January 2014

Dear [Chair],

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL: NINTH REPORT OF SESSION 2013-14

I am grateful to the Joint Committee on Human Rights for their further scrutiny of the Anti-social Behaviour, Crime and Policing Bill. The Minister for Policing, Criminal Justice and Victims has already responded to the conclusions and recommendations the Committee’s ninth report in relation to the provisions on compensation on miscarriage of justice (Damian Green’s letter of 16 January). This letter now responds to the remaining conclusions and recommendations in that report.

Anti-social Behaviour (Parts 1-6)

Injunctions to prevent nuisance and annoyance

Conclusion and Recommendation 1: We welcome the Government’s indication that IPNAs should not be use to stop reasonable, trivial or benign behaviours, but this intention is not so far reflected in the wording of the Bill. We therefore maintain our recommendation that the Bill be amended to introduce an objective element into the definition of anti-social behaviour in Part 1 of the Bill, by inserting a requirement that the conduct in question “might reasonably be regarded as” causing nuisance or annoyance.

As acknowledged in your recent press release, the Government has listened to the Committee’s concerns and tabled an amendment to the Bill which was debated on the first day of Lords’ Report stage.

The Government’s amendment would have made the following change so that instead of the court being satisfied that the respondent had engaged or threatened to engage in conduct capable of causing nuisance or annoyance to any person, it would now have to be satisfied that the respondent had engaged or threatened to

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engage in conduct that could reasonably be expected to cause nuisance or annoyance to any person.

However, the Government amendment did not find favour with the Lords which instead agreed, on a division, an amendment tabled by Lord Dear. What is now clause 1(3) of the Bill (as amended on Report) provides for a two-tier test. The “nuisance or annoyance” test would continue to be applied by social landlords to tackle housing-related anti-social behaviour but, in other circumstances, the test of “harassment, alarm or distress” would operate. The Government has reflected carefully on the debate at Report and has tabled amendments for Lords Third Reading which accept the substance of the change made at Lords Report stage but ensures that the “nuisance or annoyance” test is tenure-neutral in its application to housing-related anti-social behaviour.

Risk of conflict with religious beliefs

Conclusion and Recommendation 2: We welcome the Government’s willingness to consider amendments to these provisions, but it has not so far explained why singling out religious belief for special protection in this provision is necessary. In the absence of such an explanation, we consider that the existing protections for religious beliefs in sections 6(1) and 13 of the Human Rights Act should be sufficient, and we therefore invite the Government to consider whether any legal protection for religious freedom would be lost by accepting our original recommendation that the two provisions in question be deleted from the Bill.

Conclusion and Recommendation 3: However, if the Government remains of the view that this provision is required, notwithstanding the protection provided by the Human Rights Act, we recommend that the current wording is revised to ensure that the absolute right to religious belief must not be interfered with under any circumstances (rather than “so far as practicable”). As acknowledged in your recent press release, the Government noted the Committee’s concerns regarding clause 1(5)(a) and 21(9)(a) and tabled amendments at Report stage in the Lords to remove these provisions from the Bill on the grounds that the courts would, in any event, need to consider whether any prohibitions or requirements were compatible with the respondent’s Convention rights.

Eviction for riot-related anti-social behaviour (Part 5)

Conclusion and Recommendation 4:

In our view it is the job of the criminal law, not the civil law, to deter riot-related offences and to administer sanctions when such offences are committed. Nor do we consider the existence of judicial discretion to be a satisfactory answer to our concern about the disproportionate impact of eviction on other members of the household who have not engaged in such behaviour. We maintain our recommendation that clause 91 be deleted from the Bill. (Paragraph 20)
The Government remains of the view that it is important to send a strong signal that looting, and other riot-related criminal activity, may carry tenancy consequences. It is a well established principle under the existing discretionary grounds for possession for anti-social behaviour that there could be consequences for the tenant's home where crimes are committed by the tenant or a member of their household in the locality of the property. As rioting is unique in its sudden and destructive effect on whole communities, we believe that landlords should have the power to seek to evict a tenant where they or a member of their household is convicted of a riot-related offence wherever that takes place.

We consider the discretionary nature of the new ground to be of particular significance, as in considering whether it is reasonable to make an order for possession “the judge is to take into account all relevant circumstances as they exist at the date of the hearing in a broad common sense way giving weight as he thinks right to the various factors in the situation.”\(^1\) This means there is no general restriction, save relevance, as to what the court can take into account under the general heading of reasonableness. We would, therefore, expect the court to consider the circumstances of the tenant and other family members, including any children, when making its decision.

However, in recognition of the concerns raised by the Joint Committee in its report on the Bill and at Lords' Committee stage, the Government tabled amendments at Lords' Report stage to provide that the new ground would only apply where the tenant or an adult residing in the dwelling–house has been convicted of an “indictable offence” which took place during, and at the scene of, a riot. This will ensure whole families cannot be evicted under the new ground for the actions of a child at a riot.

The Government amendments to clause 91 were agreed by the House. A further amendment to remove clause 91 from the Bill was rejected on a division.

Powers to stop, question, search and detain at ports (Part 10)

Conclusion and Recommendation 5: We have considered the Independent Reviewer’s recommendation that a subjective suspicion threshold be required to be met before the powers to detain and to copy and retain personal electronic data can be exercised, but for the reasons we have explained above we remain of the view that the threshold for the more intrusive powers in Schedule 7 should be reasonable suspicion.

Conclusion and Recommendation 6: In our view, reasonable suspicion is the absolute minimum that is required to qualify as a safeguard because it opens up the possibility of independent scrutiny and review. That scrutiny and review can still be appropriately deferential and sensitive to operational realities, especially if there is good practical guidance for police on the sorts of things that count as reasonable grounds for suspicion.

\(^{1}\) Cumming v Danson [1942] All ER 653.
The Government maintains its view that the introduction in Schedule 7 to the Terrorism Act 2000 of a reasonable suspicion test for the exercise of the power to detain individuals and to make and retain copies of electronic data would undermine the capability of the police to determine whether or not individuals passing through ports and airports appear to be involved in terrorism. This is echoed by the Independent Reviewer of Terrorism Legislation, David Anderson QC, who has explained to the Home Affairs Select Committee that: “My exposure at a variety of ports to the operational constraints under which ports officers operate inclines me, on balance, towards rejecting the reasonable suspicion standard as a condition for detention”.

The Independent Reviewer has recommended that the powers to detain and to copy and retain data should only be exercised when an officer has grounds for suspecting that the person appears to be a person concerned in the commission, preparation or instigation of acts of terrorism. In his view, this represents “the maximum safeguards consistent with the continued productive operation of these vital powers”. The Government notes that the Committee accepts that “the concerns which underpin his rejection of a reasonable suspicion standard are entirely justifiable concerns”.

We find that in the specific context of port and border controls to determine whether individuals appear to be concerned with terrorism reasonable grounds for suspicion is not an appropriate threshold. Ensuring an appropriate threshold which is clear in its meaning and provides an effective safeguard in its distinct context is a matter the Government is continuing to consider. We shall reflect further on the recommendations which the Independent Reviewer has made and any further recommendations he may make in his report of the examination of Mr David Miranda and in light of the judgment of the High Court in judicial review proceedings brought by Mr Miranda.

Yours sincerely

Norman Baker MP
Minister of State