Dear Theresa,

Anti-social Behaviour, Crime and Policing Bill clause 132 and new clause 10

Further to my letters to you about this Bill on 26 June and 10 July, I am writing to you about two more matters on which the Committee would appreciate your assistance, one arising from a recent court judgment and the other from Government amendments to the Bill.

Compensation for miscarriages of justice (clause 132)

First, as I anticipated in my letter of 10 July, the judgment of the Grand Chamber of the European Court of Human Rights in the case of Allen v UK on 12 July makes it necessary to seek further explanation from the Government about the compatibility of clause 132 of the Bill with the presumption of innocence in Article 6(2) ECHR.

In the Government’s human rights memorandum it said that it was satisfied about the compatibility of the proposed scheme with Article 6(2) ECHR because that Article does not apply to an application for compensation for a miscarriage of justice. That argument has now been considered and rejected by the Grand Chamber (paras 103-108).

Moreover, the Court also held (para. 133) that “references [in the Explanatory Report to Protocol 7] to the need to demonstrate innocence must now be considered to have been overtaken by the Court’s intervening case-law on Article 6(2).” In reaching its decision that there had been no violation of the applicant’s right to be presumed innocent in the case itself, the Court said “what is important above all is that the judgments of the High Court and the Court of Appeal did not require the applicant to satisfy Lord Steyn’s test of demonstrating her innocence.”
Q: In light of the judgment of the Grand Chamber of the European Court of Human Rights in *Allen v UK*, I would be grateful if you could provide a supplementary memorandum setting out the Government’s assessment of the compatibility of clause 132 of the Bill with the presumption of innocence in Article 6(2) ECHR.

**Retention of DNA samples (new clause 10)**

Q: What evidence does the Government rely on in support of its argument that there is a pressing social need to widen the circumstances in which DNA samples may be retained and removing the judicial oversight currently provided for by section 63R of PACE?

Q: What is the justification for retention of DNA samples in all cases raising CPIA concerns when in some cases there may be scope for obtaining a further sample in the future?

Q: Will the Government consider strengthening the safeguards in the CPIA Code of practice, as recommended by the Information Commissioner?

Q: Did the Government consult the Information Commissioner’s Office about new clause 10 and the retention of DNA samples?

Q: Please explain the Government’s policy in relation to consulting the Information Commissioner’s Office about proposed legislation within the ICO’s remit.

It would be helpful if we could receive your reply to these questions by 31 July 2013. I would also be grateful if your officials could provide the Committee secretariat with a copy of your response in Word format, to aid publication. I look forward to hearing from you.

Dr Hywel Francis
Chair