

PAPER A:

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Minutes of Liberty Council meeting 6 October 2007

Present:

Amanda Ariss, Nick O'Shea, Doreen Lawrence, Louise Christian (Chair), Madeleine Colvin, Shaheed Fatima, Deok Joo Rhee, Bill Bowring, Alex Bailin, Stephen Ward, Caspar Bowden, Tish Andrewartha, Jean Lambert, Christine Jackson, Naik Sonali

In attendance:

Shami Chakrabarti, Gareth Crossman, Jago Russell

1. Apologies

Lucy Armstrong, Mike McColgan, Tim Lezard, Carolina Gottardo, Frances Butler, Michael Ellman, Mona Arshi, Rod Robertson

2. Minutes of last meeting

Minutes of the meeting held on 30th June 2007 were agreed.

3. Office Update

Staff update: The Director explained that (i) a highly-qualified locum operations director is now in post; (ii) a temporary office manager will remain in post until Christmas; (iii) a new communications coordinator has been recruited; (iv) Sabina Frediani had now been promoted to become Liberty's campaigns coordinator; and (v) recruitment for a short-term campaigns assistant and a short term policy assistant is ongoing.

The Bonfire of the Liberties comedy event at the Hackney Empire on 5th November was discussed.

4. Campaign Updates

B1: Terrorism

The implications of the decision about an autumn general election on the Charge or Release campaign were discussed. The Director confirmed that discussions were continuing with Number 10, the Home Office and other key bodies. Campaign materials were also circulated.

Discussion of the forthcoming Terrorism Bill was deferred until the parliamentary update item on the agenda.

B2: Criminal Justice

Discussion of the Criminal Justice and Immigration Bill was deferred until the parliamentary update item on the agenda.

B3: Privacy

It was announced that Gareth Crossman's report on privacy was nearing completion and that it had recently been launched to the press, alongside a YouGov poll which found that only 17 percent of Britons trust the authorities to keep their personal details completely confidential while 57 percent believe the UK has become a 'surveillance society.' Caspar Bowden congratulated Gareth on the report.

There was a brief discussion of the recent reports and media coverage of the DNA database. Madeleine Colvin announced that she had been appointed to the DNA ethics group.

B4: Asylum

Amanda Ariss suggested that Liberty consider the possibility of using the gender equality duty to challenge the treatment of female asylum seekers. It was agreed that a litigating lawyer in the office would call Amanda to discuss this in more detail.

Jean Lambert commented on the EU Returns Directive and raised the question of the legal status that states should accord to those who do not fall within the definition of "refugee" in the 1951 Convention but who cannot be removed for other reasons.

Concerns were expressed about the possible implications of political discussions about a British Bill of Rights for non-British citizens in the UK.

B5: Culture of rights

The Government and Conservative proposals regarding the HRA were discussed. It was noted that, while Liberty would clearly welcome an instrument which provided greater protection than the HRA, greater protection was not the reason triggering the debates. It would perhaps be naïve to consider greater protection to be the most likely outcome of the current discussions of the HRA. Liberty was not, therefore, actively encouraging debates in this area but should, of course, engage in any debates which do arise.

Shaheed Fatima referred to a future judgment of the House of Lords on the prohibition on political advertising by bodies which are not political parties (political parties can advertise subject to content, duration and other restrictions). Council considered this to be a complex and controversial area of policy which should be discussed at the next Council meeting. It was noted that there were compelling arguments for retaining the restriction (i.e. the "deep pocket" arguments that have arisen in the United States) and for removing or relaxing the restriction (free speech arguments and inconsistency with the lack of regulation of advertisements on the internet). The Director explained that, if possible, the office would try to duck any questions on this issue pending council's discussion. If this were not however possible the Director explained that the office would endeavour to communicate with the Board on this by email in advance.

5. The next parliamentary session

Gareth Crossman explained that there are two key pieces of legislation expected to dominate the next Parliamentary session for Liberty: the Terrorism Bill and the Criminal Justice and Immigration Bill.

Gareth explained the expected content of the Terrorism Bill. The main issue was, of course, the proposal to extend the period of pre-charge detention. The four options currently outlined by Government were discussed. The following points were made:

- Liberty saw no distinction in principle between Option 1 (primary legislation extending the period of pre-charge detention) and Option 2 (primary legislation which would extend the period of pre-charge detention where approved by a Parliamentary resolution or other trigger mechanism).
- Option 3 (Liberty's CCA suggestion) was discussed the key benefits of this are the political disincentive of declaring an emergency, legal restrictions on the duration of the emergency order and the availability of effective judicial oversight.
- Option 4 (using the French investigating magistrates system) was also considered and dismissed on the basis that this system has led to significant miscarriages of justice in France and would not be compatible with our adversarial system.
- The risk of judicial oversight being used to provide "a thin veneer of legality" for extended pre-charge detention was highlighted. Alex Bailin explained the importance of pointing out that, in practice, the judge has nothing to go on given the lack of a crystallized allegation and the reliance on police suspicion rather than evidence.

Other likely provisions of the Bill were also discussed, including the proposal for "enhanced sentences" for non-terrorist offences committed for a terrorist purpose.

Jago Russell discussed the Criminal Justice and Immigration Bill which was published just before the Blair/Brown hand-over but has received relatively little media attention. It was explained that the Bill contains a huge raft of measures which John Reid and Lord Falconer had consulted on over the last year or so. In particular the following provisions were highlighted as being of concern:

- The powers to close for homes which are associated with anti-social behaviour. Not only was the vague nature of the definition of anti-social behaviour raised but also the possible implications of the measures for family members who have not themselves been involved in any anti-social behaviour.
- The proposed new civil order, breach of which is a criminal offence, was considered - the Violent Offender Order or VOO.
- The measures in the Bill designed to further the aim of "rebalancing the criminal justice system". In particular, the proposals to restrict the ability of the Court of Appeal to quash convictions resulting from serious abuse of process.
- The proposed special immigration status was discussed. Particular concerns that were raised included: the breadth of the definition of what behaviour can justify this status; the ability to impose an undefined range of restrictions on the people concerned for an unlimited period of time and for any purpose; and the possibility of these orders being used to replace or supplement control orders, but with even less judicial oversight.

6. Discussion of Part III of RIPA

Caspar presented his paper on Part III of RIPA which came into force on 1st October. He expressed his concerns about the implications of RIPA for personal privacy and his view that it will not be effective in practice. He also explained that Liberty and

other civil liberties organisations had historically opposed Part III and that he had been concerned to read in Hansard that Government (Lord Bassam) had told the House of Lords that Liberty supported RIPA being brought into force.

Jago emphasised that Liberty opposed Part III when it was initially proposed and that this position had not changed. He explained that Lord Bassam had seriously misrepresented Liberty's position, had apologised for this and had also explained Liberty's real position to other peers involved in the debate.

Part III was then discussed and the following comments made:

- Liberty should remain opposed to Part III in particular due to the reverse burden of proof in the offence of non-disclosure.
- The operation of this offence in practice should be kept under review and, depending on whether and how it is used, Liberty might wish to consider intervening in an appropriate legal case.
- It would be disingenuous for the Government to seek use problems with accessing encrypted data to justify longer pre-charge detention in terrorism cases given that Part III is now in force.

7. Any other business

The following items should be discussed at the next Council meeting, subject to any more pressing issues arising: (A) reforms of legal aid (the Chair offered to prepare a short paper in advance); and (B) restrictions on political advertising by bodies which are not political parties.