Débat à la chambre des Lords du 5 mars 2008

Our Amendment No. 146 refers to the recent catalogue of personal data disasters in which so many government departments have been involved in the loss of data, whether through gross negligence or mere carelessness. Our amendment addresses that. The data controllers referred to in the amendment are a key group in ensuring that procedures and practices governing personal data are well thought-out and well practised. They must ensure that there is no room for sloppy practice at the least and intentional disclosure at the worst. Our Amendment No. 146 would strengthen Clause 129 in an important way. I beg to move.

Lord Henley: We have tabled Amendment No. 148A in this group. Like the noble Baroness, Lady Miller, I appreciate that the House is filling up and many would prefer to discuss blasphemy. However, I should first say a few words about data protection and, as the noble Baroness mentioned, data retention. The Government are in a mess in this regard. Therefore, I shall very much welcome hearing the Minister's comments on the amendment. I understood that the Government wanted to remove this clause in the interests of speeding up the Bill's passage. They have now said that they will retain it, but I understand that if they cannot reach agreement with all parties concerned it may be withdrawn at a later stage. Perhaps the Minister will confirm that.

In the mean time, we think it is important that the Government consider not only the Liberal amendment but our own amendment which concerns knowingly or recklessly causing the loss of personal data. The Government know a great deal about that. The noble Baroness, Lady Miller, rightly referred to the recent loss of child benefit data from HMRC, which affected some 26 million people. Only today we read in a newspaper article that, according to written ministerial Answers in another place, something of the order of 1,000 laptops have been lost or stolen from government offices over the past few years and that figure does not even include those that have been lost from the Home Office, the Foreign Office, the Department for Transport or the Department for Business, Enterprise and Regulatory Reform. No doubt many more have been lost about which the Government will let us know in due course. But that is an aside to the issue before us at the moment which relates to the unlawful loss of data. Our amendment refers to recklessly or knowingly losing data on the part of a Crown servant or a person acting in pursuance of a government contract. That is something we think the Government ought to address.

At this stage, it is best for me to await the Government's response so that they can clarify the issue and let us know their thinking on this. We may want to pursue this matter further on Report, as I am sure will the noble Baroness, Lady Miller. I make it clear that, as the noble Baroness put it, we are generally in favour of Clause 129 being included in the Bill. However, we may want to see the introduction of certain safeguards; for example, a public interest defence. But no doubt the Minister will address that.

The Earl of Onslow: One of the problems of present society is the immense spread of data retention. For instance, the police now undertake number plate recognition of motorway traffic and in inner cities without any statutory authority whatever. There is a DNA base relating to children, with a disproportionate amount of data on black children. The amount of data collected on everybody is generally unsatisfactory. If you have a very large database with a lot of people having access to it, it is automatically insecure. We have a very serious problem with regard to these databases, which have grown like Topsy and without people noticing. There has been a perfectly good, sound reason for this, that and the third thing, but we have grown into a surveillance and data-bloated society. Something must be done to reduce this practice and to ensure that data are properly controlled. In a free society, the state should not be able to hold all this information on everybody as that is open to tyranny. It is a very serious problem and this is but a first effort at addressing it.

The Earl of Erroll: I reinforce what the noble Lord, Lord Henley, said about retaining Clause 129. I think that it is very important, as I sat on the House of Lords Select Committee on Science and Technology on personal internet safety. The committee recommended it for important reasons which I will not bother to go into.

However, I am afraid that I disagree with the Liberal Democrat Amendment No. 144A to exempt journalism. There are bad people in every occupation, vocation, profession or whatever and journalism is no exception.

There have been examples of journalists obtaining information that is not in the public interest but will increase their newspaper's circulation. Journalists have also bought information from public databases, for example, on the friends and families of celebrities.

It is important not to make such exemptions. In fact, I might take the position that the noble and learned Lords who surround me took on the previous clause and say that we should leave it up to a sensible British jury to decide whether the journalist had acted for good public interest purposes.

I do not support Amendment No. 144A and I would leave Clause 129 in the Bill. It is very important that it stays. As the noble Earl, Lord Onslow, said, we have an enormous amount of data sharing. We have to give some information to the Government and it is important that the public have trust and confidence that it is secure. Unless the Information Commissioner has powers to start checking that it is, I am afraid that things will get worse.

The Earl of Northesk: I support the thrust of Amendments Nos. 146 and 148A, although, on balance, I favour the wording of the latter. I have little to add to what has been said. As has been pointed out, the Government appear to be presiding over a systemic failure to secure the sensitive and personal data that they hold about us in trust, and have an inexplicably cavalier attitude about data security and privacy. In recent years, a number of us have sought to alert a series of Ministers to the seriousness of this; for example, on the Children Act, which provided for ContactPoint, and on the Identity Cards Act. I cannot help feeling that, for all our efforts, the stock response to our concerns has tended to be platitudinous and complacent. In those circumstances, I can but hope that the Minister makes a better fist of his response than those that I have sat through in the past.

The new offence enumerated in both amendments has the great virtue of acting both as an incentive to establish best practice in data security and as a deterrent to those who would seek to abuse, knowingly or recklessly, the position of trust in which we place them. I wholeheartedly support the amendments.

Lord Hunt of Kings Heath: Blasphemy approaches, but this is an important discussion which I am sure that we will come back to at Report. I understand exactly what the noble Earls, Lord Onslow and Lord Northesk, are driving at when they raise concerns about where information is going and the impact of information sharing. They will also expect me to say that there are many advantages to that sharing of information, both in the benefit that we, as individuals, get from a joined-up approach to services, for instance, and in the protection of the public from criminal activity. The noble Earl, Lord Northesk, referred to legislation and information kept on children. I refer him to the tragic death of Victoria Climbié and the report that came from it. If I recall, it showed that there were eight or nine different agencies involved and that if only they had shared some information, they may have saved her from the tragic consequences. There is a balance and there are many advantages. Equally, I accept that we cannot have a cavalier approach and that we have to have rigorous safeguards in place that assure the public that information is shared only where necessary.

It is a serious matter, which is why a number of pieces of work are now being undertaken by the Government in the light of the general concerns that the noble Earls have raised and in the light of the particular issue in relation to HMRC, which noble Lords have referred to. Of course, the clause can be seen as one component of the various matters that are being taken forward. In introducing her amendment, the noble Baroness, Lady Miller, referred to the Information Commissioner's report. I am not going to repeat what she said, but it highlighted the extent of the illegal trade in personal data and the corrosive effects that that has on society. That is why the Government were sympathetic to the argument that the existing penalties were not sufficient and it is why the clause is in the Bill.

In relation to the other amendments, which call for additional sanctions and provisions, on 17 December the Cabinet Office published an interim progress report on data-handling procedures in government. That confirmed our commitment to take legislative steps to enhance the ability of the Information Commissioner to provide external scrutiny of arrangements. We have already announced our intention to institute spot checks on central government departments and we are committed to consulting shortly on extending that to the entire public sector. There is also the Kieran Poynter review on HMRC procedures. We have had an interim report, which set out a number of measures that are to be taken, and a full report is expected in spring 2008. Sir Gus O'Donnell, the Cabinet Secretary, has also undertaken a review, and there is likely to be a consultation shortly on a number of the issues that he raised.

Clearly, we take this matter seriously. We are committed in principle to the introduction of new sanctions under the Data Protection Act for the most serious breaches of principles. The proposals that we will bring

forward will be part of a consultation paper that is being written at the moment. I am sympathetic to the intent of the amendments proposing new sanctions under the Data Protection Act, but we should await the result of the consultation before considering what legislation should be taken forward.

Let me make it clear that the Government have no wish to curtail legitimate and responsible journalism. Obviously, we have listened with great interest to the debate and to the views of the media. Of course, I understand the points made by the noble Earl, Lord Erroll. The concern that has been raised is that the Bill's current provisions would have what is described as a "chilling effect" on responsible investigative journalism. This is not a straightforward issue and we have to be careful to get the balance right. As my right honourable friend the Prime Minister said in a speech on liberty on 25 October last year, we need to,

"make sure that legitimate investigative journalism is not impeded",

while safeguarding personal privacy.

The proposed penalties in the clause are intended to strengthen the protection of individuals' rights and respect for their privacy. We think that the current definition of the offences in the Data Protection Act strikes the right balance between freedom of expression and privacy, but we want to put the matter beyond doubt.

Noble Lords are already well aware of the time pressures on this Bill, as the noble Lord, Lord Henley, implied. That is why I want to give notice that we intend to withdraw this clause on Report unless a satisfactory solution balancing these objectives can be identified by all the parties involved. We will of course seek to do that between Committee and Report, but it is important that we get this right and that we get the balance right. That is more important than anything else in consideration of this clause. I hope that that has given the Committee a clear view of the Government's commitment to the importance of these matters.

The Earl of Erroll: This is about the Data Protection Act, which is about personal data. Therefore, I would have thought that the journalism issue was not enormous, because normally journalists will be chasing things on which the state has erred, which is not personal data. This is about people infringing the security of personal data, which I would have thought should be legitimately protected in most instances from journalistic intrusion. In cases where infringement could be justified, that could be done quite easily through the courts. As regards other journalistic investigation, I am afraid that the Government will have to look after themselves, as personal data are not the issue.

Lord Hunt of Kings Heath: I am grateful to the noble Earl for that intervention, but the point relates to Section 55(2)(d) of the Data Protection Act 1998, under which subsection (1) does not apply when a person shows, "that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest".

The point that has been put by media representatives is that that is not sufficiently broad. That is the matter that we will discuss with them.

Lord Henley: Can the noble Lord help me on one matter? He has confessed that the Government have slight problems regarding time on this Bill, which seems rather odd, given that the Bill was introduced in another place as long ago as last July. He says that unless we can come to some agreement he proposes to withdraw this clause on Report, although presumably we would have a chance to debate it before he withdrew it and we could table amendments to it. Just how much time does he think that he will save by withdrawing it?

Lord Hunt of Kings Heath: Of course I cannot answer that question because I cannot anticipate the time that noble Lords will spend on the Bill in your Lordships' House. However, I confirm that, if we were to withdraw it, that would require me to table an amendment, which would be open to debate.

Baroness Miller of Chilthorne Domer: I thank all noble Lords who have spoken. I must say to the noble Earl, Lord Erroll, that the Press Complaints Commission report on subterfuge and news gathering recognised that there was a substantial problem, as in the case of the News of the World journalist who snooped on the royals and subsequently sold the information. So the problem has been fully recognised by the press.

The Information Commissioner is working on a draft prosecution policy in relation to journalism and a solution has almost been arrived at, because there is a substantial public interest defence that all genuine journalists can claim. I have had the same detailed briefings from Antony White QC as I am sure the Minister has had, and I am sure that they will be helpful in reaching a conclusion on this.

I urge the Government to consider not dropping a clause in which the public have belief. One thing that the

Information Commissioner's work has discovered is just how concerned the public are about the protection of their data—and rightly so. The fact that the Government do not regard this as a serious issue will be a bad message for them to send out. We have just debated a clause on self-defence that I heard the noble and learned Lord say is not really necessary and now the Government are considering dropping not that but a clause that the public really believe in. I urge them not to do that. I look forward to hearing from them on Report and, in the mean time, I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

[Amendments Nos. 144 and 144A not moved.]

Clause 129 agreed to.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Andrews) moved Amendment No. 144B:

After Clause 129, insert the following new Clause—

"Blasphemy and blasphemous libel

(1) The offences of blasphemy and blasphemous libel under the common law of England and Wales are abolished.

(2) In section 1 of the Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8) (orders for seizure of copies of blasphemous or seditious libel) the words "any blasphemous libel, or" are omitted.

(3) In sections 3 and 4 of the Law of Libel Amendment Act 1888 (c. 64) (privileged matters) the words "blasphemous or" are omitted.

(4) Subsections (2) and (3) (and the related repeals in Schedule 38) extend to England and Wales only."

The noble Baroness said: It is always rather alarming to bring forward an amendment that is looked forward to so avidly in your Lordships' House, and it falls to me to introduce it on behalf of the Department for Communities and Local Government—the department that promotes social cohesion and matters of faith.

Amendment No. 144B and consequential Amendments Nos. 180D and 184A fulfil the commitment made on 9 January, at Report stage in another place, by my ministerial colleague Maria Eagle that, following a short period of consultation, we would abolish the common law criminal offences of blasphemy and blasphemous libel. The noble Lord, Lord Lester of Herne Hill, has added his name to the amendment. Unfortunately, he cannot be with us today but I pay tribute to the work that he has done over the years, particularly in the JCHR, on this continuing and long debate. Indeed, that is the burden of much of what I want to say: it has been a very long debate.

The Government are of the view that it is now time that Parliament came to a settled conclusion on this matter for two key reasons. First, the law has fallen into disuse and therefore runs the risk of bringing the law as a whole into disrepute. Secondly, we now have new legislation to protect individuals on the grounds of religion and belief. In setting out these reasons, I will also aim to reflect on the words of the most reverend Primates the Archbishops of Canterbury and York in their joint letter to my ministerial colleague, Hazel Blears. They say:

"Having signalled for more than 20 years that the blasphemy laws could, in the right context, be abolished, the Church is not going to oppose abolition now"—

with the rider—

"provided we can be assured that provisions are in place to afford the necessary protection to individuals and to society".

I shall address those points in some detail as I go through the argument.

First, it is important to point out that the blasphemy offences are offences of strict liability—that is, the intention to commit an act of blasphemy is not required. That contrasts with the incitement to religious hatred offence, where an intention to stir up religious hatred needs to be demonstrated. All that matters for an offence to have been committed under the blasphemy laws is that a person published material that is the subject of prosecution. It follows that a person might commit such an act inadvertently, but it would not be a defence in law to say that there had been no intention to be blasphemous.

I believe that it is crystal clear that the offences of blasphemy and blasphemous libel are unworkable in today's society because they do not protect the individual or groups of people, they do not protect our fundamental rights—indeed, they may conflict with them—and they do not protect the sacred. That last point is very much reinforced by the recent judgment in the Jerry Springer case. I again quote the Archbishops' letter to Hazel Blears:

"The real purpose of the offences is the preservation of society from civil strife, rather than the protection of the divine or any particular religious beliefs".

I also remind noble Lords that this is the fifth time that this House has considered this issue. It was previously considered in 2005 during the passage of the Racial and Religious Hatred Bill, in 2002 during the Religious Offences Bill, in 2001 during the Anti-terrorism, Crime and Security Bill, and in 1995 during the Blasphemy (Abolition) Bill. At each stage, Parliament has had the same information before it and has been able to draw on the results of serious parliamentary scrutiny.

That the law has fallen into disuse is evident from the fact that there have been no public prosecutions in almost 90 years—since 1922—and it has been more than 30 years since the last private prosecution. In fact, coming new to this debate, I asked my officials to go back a little further. There was hardly a rash of prosecutions before 1922. I have been able to find only two cases. The first was in 1676, when a Mr Taylor was made to stand in the pillory "in three several places" and had to pay a 1,000 marks fine for,

"uttering of divers blasphemous expressions horrible to hear".

Hard on the heels of that event, there was one in 1841, when a Mr Haslam, in a pamphlet castigating the clergy of all denominations, described the Old Testament as "wretched stuff" and a "disgrace to orang-utans". That was 20 years before the great Oxford debates on belief, religion and science. I am assured by my noble friend Lady Hollis, who knows about these things, that that case was probably something to do with the secularist movement and the Chartists. I am sure that she is right. Its author was described as a random idiot and he was held guilty of blasphemous libel and of appealing to the wild and improper feelings of the human mind—I suggest, anticipating notions of civil strife. It was 80 years before the law was invoked again.

I am making this excursion into history not to be flippant—far from it—but simply to illustrate that, when we say that the law has fallen into disuse, perhaps we should really say that the law has never been found to be usable. The recognition that the offences appear to be moribund was reinforced by the High Court's decision on 5 December 2007 in the case of Stephen Green v City of Westminster Magistrates' Court and others, which was a private prosecution for blasphemous libel. The court's primary judgment was that the Theatres Act 1968 and the Broadcasting Act 1990 now already prevent the prosecution of a theatre, the BBC or another broadcaster for blasphemous libel.