

Business, Energy and Industrial Strategy Committee

Justice Committee

Oral evidence: Prepayment meters: warrants and
forced installation, HC 1209

Tuesday 14 March 2023

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Members present:

Business, Energy and Industrial Strategy Committee: Darren Jones (Chair); Bim Afolami; Alan Brown; Mark Jenkinson; Ian Lavery; and Mark Pawsey.

Justice Committee: Sir Robert Neill (Chair); Janet Daby; Maria Eagle; Karl Turner.

Questions 1-32

Witnesses

[I](#): Robin Cantrill-Fenwick, former magistrate.



Examination of witness

Witness: Robin Cantrill-Fenwick.

- Q1 **Chair (Sir Robert Neill):** Good morning and welcome to this joint session of the Justice Committee and the Business, Energy and Industrial Strategy Committee. I am Bob Neill and I chair the Justice Committee, and to my right is Darren Jones, who chairs the BEIS Committee. We will be swapping halfway round, because the plan is that we will start with predominantly justice-related questions and then move on to some BEIS-related questions for the second half.

At the beginning of meetings we have to declare our interests, which is a formal process, and then we will come to our first witness. I am a non-practising barrister and a former consultant to a law firm.

Maria Eagle: I am a non-practising solicitor.

Karl Turner: I am a non-practising barrister.

Chair (Sir Robert Neill): Mr Cantrill-Fenwick, you are our first witness. Would you like to introduce yourself?

Robin Cantrill-Fenwick: Good morning. I am Robin Cantrill-Fenwick, and I am a former magistrate.

- Q2 **Chair (Sir Robert Neill):** How long did you sit as a magistrate for? When did you start and when did you stop?

Robin Cantrill-Fenwick: I am grateful to former colleagues at HMCTS for confirming this. I was appointed as a magistrate in September 2016. I resigned in August 2022, so I was a magistrate for five years and 11 months.

- Q3 **Chair (Sir Robert Neill):** Whereabouts did you sit? What part of the world?

Robin Cantrill-Fenwick: I was appointed to the bench in north Essex, and after a couple of years I moved up to north-west Cumbria.

- Q4 **Chair (Sir Robert Neill):** What was the ground for your leaving the bench?

Robin Cantrill-Fenwick: In the course of 2022, as there were various headlines arising around the cost of living, I raised a number of concerns around things like television licence payments and changes to victim surcharges, but ultimately it was the powers to issue energy company warrants of entry that triggered my resignation. I was very concerned that not enough was being done to divert people out of the criminal justice system as a consequence of the rising cost of living.

- Q5 **Chair (Sir Robert Neill):** The topic of our inquiry today is the process for the issuing of the warrants and then what happens thereafter with the installation of meters. How many cases of that kind do you think you dealt with during your time as a magistrate?



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Robin Cantrill-Fenwick: By the very nature of what we are going to discuss, it was more common in the early years, and then after the changes in 2019, which we will come on to, it was much less common. In the early years, I would have dealt with these cases quite regularly. I sat between 15 and 20 days a year, and these cases came up regularly. Towards the end, they were much less frequent, but we will come on to talk about the nature of that.

Q6 Chair (Sir Robert Neill): Initially, if we can go back to your first appointment, when you were dealing with them fairly regularly—I think we will find pre-2019 is the relevant date—can you outline the typical process with a list that involved applications for warrants?

Robin Cantrill-Fenwick: As the Committee is probably aware, the threshold for issuing a warrant is actually very low. There has to be some money owed, which can be a big or small amount—there is no minimum. There has to have been a demand made to pay in full within 28 days, or the option to pay a deposit should not have been taken up. The amount owed has to be not in dispute, and a human rights notice—a notice that you are entitled to come to a court and challenge the warrant—should have been issued.

A warrant officer would come to court in person and we would put them on oath in the witness box. We would do this fairly frequently; we would be dealing with a few warrants at a time. The proceedings, as far as the occupant was concerned, would be taking place in a known location at a known date and time, so they could contest the application if they wished to.

In six years as a magistrate, I never actually took part in a single contested hearing. What was much more common was that the occupant would turn up at court, the warrant officer would disappear into the lobby, there would be some discussion and they would come back and then withdraw the warrant, rather than go to a contested hearing.

We would have the warrant in front of us. We had a straightforward checklist that we would go through with basic details: address; purpose of warrant; the amount outstanding; whether the occupant was known and, if not, what steps had been taken to identify them or, indeed, to identify if the property was occupied at all; and vulnerabilities—were there young children, very elderly people or people with disabilities present? All those checks are allowed for under the law.

Then, based on the information given to us by the warrant officer or information in the warrant application itself, we may then go on to ask questions such as how many attempts there had been to contact the occupant, the recency of the last visit, the amount owed, whether they had been offered a payment plan and what other efforts had been made to collect the amount. One of the questions on vulnerability was whether the occupant might be experiencing severe financial insecurity.



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As a consequence of that, sometimes the warrant officer would go back and have to check or we would reject the warrant, but if a warrant was granted, a physical piece of paper would be passed down the bench. I would sign some of them, as a magistrate, or the application would be declined.

- Q7 **Chair (Sir Robert Neill):** The foundation legislation is a 1954 Act, isn't it? It has been suggested to us that that gives precious little discretion; once the debt is proved and the statutory requirements for the issuance of the warrant are approved, that is really it.

Robin Cantrill-Fenwick: Absolutely. One of the things that I think it is important for the Committee to know—because in various public defences of this, from the Magistrates Association and others, people have been saying, “Look, magistrates have to apply the law”—is that there was no change in the law. There was a very substantial change in how the courts operated, what the outcomes were and the number of bailiffs knocking on people's doors.

- Q8 **Chair (Sir Robert Neill):** I want to come to that. When we talk about a warrant officer, some people might think that that is an officer of the court or a police officer, but it is a representative of the energy company or the agents acting to collect the debt for it, effectively.

You referred to the checklist that you used to have, and we have a specimen in front of us here. As you say, it sets out the name of the company and the name of the applicant, a means of recording any respondents who attended—virtually never—and the number of applications opposed.

In particular, there is this passage in the checklist. Does this tally with your recollection? “In relation to each application: Is the information in writing?” and then “Yes/No”. “If no—STOP! Do not issue the warrant”—pretty obvious. “Identification/Warrant Card produced” and then “Yes/No”. “If no—STOP! Ask them to leave and return with identification”—obviously right.

You are then asked to check whether the application clearly states the enactment on which it is based, the address—as you say—the purpose of the application and the amount outstanding. If any of that is missing, you would expect them to be fully enumerated; otherwise, if they were missing it would be a ground for not issuing the warrant, wouldn't it?

Robin Cantrill-Fenwick: That is right. Although this does not cover the full extent of the questions we would often ask, there is a sense here that this is a flowchart—that you are going through a process and applying some judicial discretion—whereas under the current process there is an enormous presumption that the warrant will be granted.

- Q9 **Chair (Sir Robert Neill):** I understand that. Can you help me with this? Pre-2019, did you have any guidance as to the application of the Human Rights Act process—in other words, the rights that the respondents to the warrant, the occupiers of the premises, would have in relation to, say, article 6, the right to a fair trial, or article 8, the right to family life, which



could be affected by the disconnection of their electricity or gas?

Robin Cantrill-Fenwick: I am aware that there were, for example, Judicial College training courses that were optional. Some parts of the country had best practice checklists and Q&As that went beyond what we have discussed today. I was not given any grounding in the human rights legislation when processing these warrants. I want to be clear that I have nothing but praise for HMCTS's legal advisers, who steer magistrates through these processes in court. The likelihood is that I would have been advised, as would the entire bench, as to what we needed to be satisfied of in that moment.

Q10 **Chair (Sir Robert Neill):** Tell me what then changed in 2019.

Robin Cantrill-Fenwick: It is important, as part of the timeline, to stress that in 2017 Ofgem published some statutory consultation outcomes in which they said warrants were being used too readily and there were less invasive alternatives. They were concerned about failure to identify vulnerable customers, that some vulnerable customers were going through traumatic experiences, and that some companies were applying excessively high charges. It is important to understand that, because in 2019—despite all those concerns—the process was changed such that the field was tilted even further in favour of the energy companies, so as magistrates we were required to take on an almost entirely performative and uncritical role, applying and approving these warrant applications in bulk.

There is much less judicial discretion in the current process. It is a bulk process. Rather than having individual warrants in front of us, there would be a spreadsheet. That spreadsheet would contain many more applications in a list. I now know—I didn't at the time—that some courthouses are dealing with up to 1,000 per list. It was my experience that I was dealing with between 50 and 100. The occupants do not know when, where or at what time the application is being dealt with, and there is much less information on the spreadsheet. There is partial address and name, if available. My recollection is that the amount was on there, although I have seen subsequent guidance that suggests that is not always the case.

The warrant officer would then come on the phone—they are no longer physically required to come to court. They would come on oath, and would read a fairly template declaration to say that they had done everything they needed to do, and they would then notify us if they were withdrawing an application. Because the magistrates had so much less information before them, there were no grounds on which we could then question a warrant, so you are entirely reliant on the warrant officer to withdraw applications. Then it was the usual process: the legal adviser would steer you through; the presiding justice would check that their wingers were happy; and once they were happy, the warrants would be signed electronically.

Q11 **Maria Eagle:** Once the process had changed as you have just described, did you receive any further guidance on how to deal with warrant



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applications, or did you just feel like you were administering a process?

Robin Cantrill-Fenwick: The change was certainly communicated by email, but as is often the case in the courts, your legal adviser will brief you moments before you enter the court, and again in open court, as to what you need to be satisfied of. That would have been the norm; in the moment, the legal adviser would have been taking us through, step by step, what we needed to be satisfied of.

Q12 **Maria Eagle:** If you as a magistrate had concerns about an application for a warrant, or just had a general concern that you were being asked suddenly to okay a number that you could not satisfy yourself about in the way in which you had previously, could you ask for any more information about an individual applicant? Could you pluck one out of the list and say, "Mr Bloggs, tell me about this application"?

Robin Cantrill-Fenwick: Had I, as a winger, asked my presiding justice to do that, my presiding justice would have asked me to justify the grounds on which I was doing that. If I had sort of made up a requirement that I wanted to sample the list on that basis, I think that would have been treated as irregular and would not have been allowed to go ahead—so, no, I would not have been able to pick any address out.

Q13 **Maria Eagle:** Am I right in thinking that the guidance issued from the national leadership magistrate at the same time that the bulk upload procedure was introduced justified these changes, in the sense that advice to justices had not kept up with the way in which utility companies operate; and that the rationale appeared to be that, given the utility companies were not enforcing entry to disconnect, the previous way of doing things was therefore disproportionate? Was that the rationale for this change in guidance?

Robin Cantrill-Fenwick: I would say that is a retrofitted rationale. The guidance you are referring to is an articulation of the process that was issued just this year; although the process changed in 2019, that guidance only came out earlier this year. You are absolutely right. That guidance, for example, makes no reference whatever to the 500,000 to 600,000 people a year who self-disconnect—no reference at all.

Q14 **Maria Eagle:** I was going to make that point. What is the philosophical difference between being disconnected and not having enough money to put in the meter to enable you to have electricity or gas? What is the actual difference in practice?

Robin Cantrill-Fenwick: As far as the guidance issued is concerned—as far as the new process is concerned—the whole premise is that the installation of a prepayment meter is somehow trivial when compared to disconnection. But in order to come to that point, you have to be wilfully blind to the information that is known, and that is published by Ofgem, that up to 600,000 self-disconnect; lack of money is a key reason, and around half had experienced a negative impact on health or mental health as a consequence. None of that is reflected in the guidance to the courts.

Q15 **Maria Eagle:** You are now not seeing the warrant officer in front of you,



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which is different from seeing them in front of you. You said that, in your case, there may have been 50 to 100 cases at a time. Obviously, they have taken an oath, but you have no way of checking, on the process that you have set out, that that person has carefully checked through each case. You can't go behind the oath, really, can you?

Robin Cantrill-Fenwick: No, there is no basis to question further. You see that in the number of warrant applications rejected. On the MOJ's numbers, in 2019, 1,824 applications were rejected. In 2020, it drops to 43, and it stays in double digits despite the applications then soaring in number.

- Q16 **Maria Eagle:** Lord Justice Edis said in his statement on 6 February, when he suspended any further consideration of these warrants, that magistrates relied "on the assurance made by all applicants on oath that the supplier and their agents have complied with the standards set by Ofgem". He went on to say that Ofgem had reiterated concerns, and that was his rationale for suspending the operation of these warrants, or any more warrants being applied for. What was your understanding before then, when you were on the bench, of the nature of the assurances made by applicants for warrants on oath?

Robin Cantrill-Fenwick: By the point that the applicants came on the telephone, they would be declaring that they were a fit and proper person, appointed by the energy company or on its behalf; that the company was compliant with the supply licence—it is really that part that covers, for example, checking whether or not customers were vulnerable; that entry was reasonably required under the legislation, and that the very low threshold that they had to hit had been met; and that the sums weren't being contested, and that some efforts had been made to engage with the customer.

- Q17 **Maria Eagle:** Was there any consideration of the vulnerability of the people who these warrants were being signed up against?

Robin Cantrill-Fenwick: Under the old process, there may have been clues in individual applications. There may have been information on the applications or, to some degree, you might have been able to apply local knowledge in order to raise those questions—for example, an address might be associated with particularly vulnerable people. But under the bulk process, no, you would be entirely reliant on the warrant officer to volunteer that information.

- Q18 **Karl Turner:** I think I am right in saying that between July 2021 and December 2022, magistrates granted a staggering 536,139 of these warrants and refused just 75. Why do you think that is?

Robin Cantrill-Fenwick: If you will indulge me for just a moment, I think the answer to that is much more clearly articulated in the guidance that has been referred to than I could tell you myself.

The guidance that was issued took the form of a Q&A. I will just quickly rattle through some:



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"We always used to require them"—the energy companies—"to prove more things, e.g. the date of the last visit?" "There is no requirement in the legislation for any personal visits at all."

"Can the justice refuse to issue a warrant if the sum is less than £100, or £200 etc?" "If the applicant proves their grounds on oath, normally you should grant the order, as it would be irrational not to."

"Do we need to know the sum demanded in each case?" "The amount is not a relevant consideration."

When it came to the sending of human rights letters, "Once the notice has been sent and no reply received, the court can be satisfied that it is not opposed." In all sorts of comparable procedures, there would be some recourse for someone to say, "I did not get that letter," but not here.

"I believe the fees that companies charge to fit a prepayment meter are too high; can I refuse to issue a warrant on those grounds?" "In general no."

"What do we do if someone turns up for the telephone hearing?" "That is a vanishingly remote possibility as occupiers are not told the date or location and the hearings are not in public...if by some freak chance someone did demand admittance, the justice could either get on with the case in private, or put it off". There should be alarm bells ringing about that. I promise that I will come to an end very quickly.

"How to check for conflict" of interest? "Strictly speaking there probably isn't a need to be concerned about this...it could be embarrassing for a magistrate to find they had issued a warrant against their cousin, fellow-worker, sworn enemy etc., so a search...can be made for names".

"Is there an appeal?" "Not strictly speaking."

"What if the customer doesn't attend the contested hearing?" "By their absence it is clear that they are NOT contesting it". Again, in comparable procedures, we simply would not take that as read.

This is a reflection of a very strong presumption that magistrates were simply expected to perform a role really no more sophisticated than that of an algorithm: "Has a properly constituted application been put in front of me? If yes, approve."

Q19 **Karl Turner:** That is incredibly helpful. I suppose you have answered my next question: in your experience, why were so few of the applications contested?

Robin Cantrill-Fenwick: The answer to that is known to the courts. The answer lies in a document that we are all issued with, called, "The Equal Treatment Bench Book". For socially excluded people, for example, it refers to: "there is a fear factor for many...They are also used to having important decisions about their lives made by others...A failure to attend a hearing, for example, may be due to a chaotic lifestyle...they may lack



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what judges presume to be a natural wish to come along and put one's case...it cannot be assumed that the individual defendant—"defendant" in this context—"is able to understand legal documents...and problems of understanding may not be confined to the written word." The answers to why there are so few contested applications are absolutely known to the courts, but are completely thrown out in the guidance—totally ignored.

- Q20 **Karl Turner:** You decided to go public once you had resigned from the magistracy. While you were serving as a magistrate, did you express your concerns to the court clerks, legal advisers or senior members of the judiciary, such as the district judge?

Robin Cantrill-Fenwick: As I said at the outset of my evidence, there were a number of interconnected matters. Yes, for example, I raised concerns about changes to victim surcharges, which were affecting this group of people—the most vulnerable in society—in exactly the same way. I wrote to—I will not personalise it—a member of the Magistrates' Leadership Executive. Well, first, I raised it with my local elected bench chair, who was very diligent and listened very closely, but that role is simply not empowered to effect change at speed in these kinds of things.

I wrote to the Magistrates' Leadership Executive about victim surcharges, but the reply that I got back was: "Our judicial oath requires us to apply the law whatever our personal views might be. If a judicial office holder finds that they cannot do that, then resigning is the appropriate course." There are two parts to that, however. The "oath requires us to apply the law" of course is absolutely true and, as a magistrate, I believe in the rule of law. But actually, the oath is to "do right to all manner of people after the laws", and I think that within those words judicial discretion lies. Again, I emphasise, there was no change in the law; there was a huge change in how magistrates applied the law. The reply is also an indication of how if you raise such matters constructively, politely and in an evidence-based way, the response is, "Well, you can always resign."

- Q21 **Karl Turner:** What did you think of that response? Did you change your response?

Robin Cantrill-Fenwick: Ultimately, I took its advice. That advice was given to me in June and I resigned in August.

- Q22 **Karl Turner:** Based on your experience, who is responsible for identifying and resolving problems with how process operates in the magistrates courts?

Robin Cantrill-Fenwick: The normal people whom a magistrate reaches out to would be their bench chair, who is represented on a number of bodies, or they might talk to—you are absolutely right—some of the roles that are being abolished, such as deputy justices, clerks and so on. There is also the Magistrates Association—I should acknowledge that I was never a member of the Magistrates Association, because it has always seemed to me to be a deeply conflicted and rather compromised organisation—

Chair (Sir Robert Neill): You do not need to go into that.

Robin Cantrill-Fenwick: Thank you, Chair.

- Q23 **Chair (Sir Robert Neill):** Let's go back to the factual position. Did you notice any change in the number of applications refused before and after the change in process in 2019?

Robin Cantrill-Fenwick: Under the old process, I would personally have been involved in rejecting some applications, and under the new one not at all.

- Q24 **Chair (Sir Robert Neill):** We have statistics that suggest that in 2019 across the country there were 1,824 refused out of 278,000-odd. By 2022 it was 56 refused.

Robin Cantrill-Fenwick: It is a 98% drop in one year.

- Q25 **Chair (Sir Robert Neill):** In terms of the chronology, the bulk upload process is introduced in September 2019 and the telephone process comes in with that. At that stage there is no additional guidance on how you deal with those matters from any central body.

Robin Cantrill-Fenwick: Not that I recall. As with any significant change like that, there would have been an email, but, as is usually the case with a procedural change in court, you would expect to be briefed on it moments before entering the court.

- Q26 **Chair (Sir Robert Neill):** And then the legal adviser would deal with that.

Robin Cantrill-Fenwick: Yes.

- Q27 **Chair (Sir Robert Neill):** And as you say, in open court there is the big cost of the open nature of justice.

Robin Cantrill-Fenwick: Yes, bearing in mind that this procedure happens in court, but not in open court.

Chair (Sir Robert Neill): Effectively nobody will be there. It is just stated for the record.

- Q28 **Ian Lavery:** On a point of clarification, the statistics are absolutely baffling. In 2019, as the Chair has just mentioned, there were 1,824 refused out of a total of 278,966. Then it gets worse. In 2022, 56 were refused out of a total 367,140. You say it is not a change in legislation—by the way, your presentation has been fine—so it is a change in advice that magistrates get. For clarification, who has the power to change that advice, and what do you believe the reason was behind changing that advice that has made a huge difference in the figures?

Robin Cantrill-Fenwick: As a lowly winger, the upper echelons of the judiciary would not have been immensely clear to me, but my best guess, my starting point, would be the Magistrates' Liaison Group, which is the group where the senior judiciary and senior representatives of the magistracy meet to deal with matters of policy and implementation. I suspect that that is probably where this originated from.



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As to the reasons why, again I cannot speak to that in an evidence-based way, but my strong suspicion is that this was an innovation to deal with a rising number of applications. The threshold to make a valid application is so low that the volume was going up and up, and my strong suspicion is that there were then conversations around how to balance the interests of an efficient process in the court with an efficient process for the energy companies. Somewhere in that the interests of the person, the occupier, got lost and somewhere in that there was a presumption built in that the energy companies themselves could sufficiently balance the interests of the occupier and their own commercial interests. They would be the people to exercise restraint on whether to put a warrant application in in the first place. I think ultimately that expectation has been shown to be quite naive.

- Q29 **Janet Daby:** Robin, you mentioned the victims surcharge. From what I understand, you have indicated that that could vary. Could you say a little more about that and how much that surcharge was or is?

Chair (Sir Robert Neill): I don't think the victims surcharge would apply to this.

Robin Cantrill-Fenwick: No. Just to be clear, in 2022 there were a number of areas where I was concerned about the most vulnerable and poorest people in society, and the victims surcharge is a tangential but connected area, so not directly related to this.

- Q30 **Chair (Sir Robert Neill):** A different area of concern. There is no victim in this case, so there could not be a surcharge

Robin Cantrill-Fenwick: Indeed. Well, you could debate whether there is a victim in this.

- Q31 **Chair (Sir Robert Neill):** Not within the terms of the legislation. So you had a number of concerns, and that was another one of them. To conclude, we have the chronology of the change to the bulk upload process: in about September 2019, you have indicated that through the courts processes you were advised of that. What we then know is that in December 2022, a journalist—Mr Dean Kirby of the *i*—ran a number of articles highlighting what were perceived to be potential injustices with this procedure. That has attracted a degree of publicity.

You referred to the communication from the national leadership magistrate, Mr Webster. That is in the form of a short preamble. We have it, and we will make arrangements for it to be published in annex to the record of the proceedings. You have referred to certain passages. In fairness, in our printout it goes over a number of pages. It takes the form of, "Utility Warrant frequently asked questions." You have quoted certain extracts from that. It was issued in January 2023.

Robin Cantrill-Fenwick: That is my understanding. Of course, by that point I had left as a magistrate.

- Q32 **Chair (Sir Robert Neill):** The logic of that has to be that the guidance from the national leadership magistrate is effectively a response to the



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media coverage that had been generated, by the sound of it, earlier that year.

Robin Cantrill-Fenwick: I believe it says that explicitly.

Chair (Sir Robert Neill): Does anybody else have any questions?

Robin Cantrill-Fenwick: Very quickly, I am aware you are tight on time. I want to highlight that nobody in this process has yet accepted wrongdoing at all. The Ministry of Justice said that people can always contest these warrants. We have discussed that. The senior judiciary said it was reasonable to rely on the energy companies for assurances. HMCTS has been mute; the Magistrates Leadership Executive has been mute. The MA, as we discussed, said the magistrates did nothing wrong. It is worth highlighting to you that nobody in this process has yet accepted that what happened was wrong. That poses a very real danger that when the media attention moves on, and the parliamentary attention inevitably moves on, this could snap back to the way it was before, which would be a tremendous injustice.

Chair (Sir Robert Neill): Lord Justice Edis, probably perfectly reasonably from a judicial point of view, says we relied upon assurances. I suppose the question mark, which we will come on to later, is the reliability of assurances. We cannot help with that on this panel. I am very grateful to you for your time and evidence, Mr Cantrill-Fenwick.