



Home Affairs Committee

Oral evidence: Psychoactive substances, HC 361

Tuesday 15 September 2015

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Members present: Mr Keith Vaz (Chair); Victoria Atkins, James Berry, Mr David Burrowes, Nusrat Ghani, Mr Ranil Jayawardena, Tim Loughton, Stuart C. McDonald, Keir Starmer, Anna Turley, Mr David Winnick.

Questions 14 - 168

Examination of Witness

Witness: **Professor Les Iversen**, Chair, Advisory Council on the Misuse of Drugs, gave evidence.

Q14 Chair: Could I call the Committee to order and refer all those present to the register of members' interests where the interests of members of this Committee are noted? This is a continuation of our inquiry into the Government's proposals on psychoactive substances and this is in fact the last panel session. The Committee will produce a report in time for the return of Parliament in October.

Can I welcome the chair of the Advisory Council on the Misuse of Drugs? Thank you, Professor Iversen, for coming in to see us. You and your committee were quite critical of this Bill. You set out eight major concerns that you had when the Bill was published and I think it was you who said, or maybe it was another member of your committee, that there were serious unintended consequences if this Bill went through in its current form. Do you stand by that? Or are you pleased with the changes that have been made?

Professor Iversen: May I say I welcome the opportunity to talk to your group about the novel—must not call it novel; it is not allowed—the Psychoactive Substances Bill, which is the most important piece of new drugs policy legislation for 40-odd years and therefore deserves to be taken very seriously.

Q15 Chair: Indeed. If I could ask you, Professor Iversen, could you speak up a little? The acoustics in this room are not brilliant.

Professor Iversen: Yes. My voice is not brilliant either but I will try.

It is a Bill that we welcome very much. We regard the present system as quite a good system but also a rather slow system. The advisory council using the Misuse of Drugs Act

has to recommend compounds that have evidence for harm. We recommend to the Minister a compound and maybe a whole scope of generic cover around that compound that will cover a lot of related substances. The Minister then has to get this through both Houses of Parliament and this all takes time, before it can be enacted.

Q16 Chair: Yes. We understand the process. I am asking you whether the proposals that have been put forward are now satisfactory to you, bearing in mind the comments that you made. You cited eight particular concerns that you had and you said that there were serious unintended consequences. Are you now happy with the changes or are you still concerned?

Professor Iversen: I remain to see the changes in substance, chairman. I still have unease about the Bill as drafted. Our ACMD first saw the draft Bill at the end of May when it was published and we thereafter met and I solicited comments from each of the ACMD members, 25 people, and we went to a meeting with Home Office officials also at the end of June. Then we had a Council meeting early in July and I wrote to the Home Secretary, as you know, on 3 July with these concerns.

Q17 Chair: Have they been met as yet?

Professor Iversen: I am not aware that they have been met as yet. Some of them have. One concession, which I was very pleased to see, was that the ACMD would be a statutory instrument in the Bill; the Government would be required to seek our advice on issues raised in the Bill and I think that was a very important step forward for us.

The issue about the Bill impairing research, both clinical and scientific, I think has been or is being adequately addressed. The learned societies have written jointly to the Home Secretary with that plea and I believe it has been met sympathetically although I still have to see the concrete results of all that.

Q18 Chair: Have you received a substantive reply to your letter to the Home Secretary?

Professor Iversen: Yes. The Home Secretary gave me a very substantial reply, very promptly, and dealt with each of the points. I do not think any of the main issues have yet been resolved. I wrote to the Home Secretary again in July and more recently in August.

Q19 Chair: Have you received a reply to your latest letter?

Professor Iversen: No. I am having a meeting with the Home Secretary next week where I hope we can discuss all these matters.

Q20 Chair: One of the points you make is that there was an inability to prove psychoactivity in a court of law, which is pretty fundamental to a Bill that seeks to ban psychoactive substances. Has that been addressed?

Professor Iversen: I think you have put your finger on the critical point. In a Bill to ban psychoactive substances, you must have some means of defining what a psychoactive

substance is. Just to say that a psychoactive substance is something that causes psychoactivity in human beings is really not adequate. We have tried to address that issue and tried to be helpful in coming up with an alternative definition, which I could state if you wish. To backtrack a moment: the new compounds coming into the country from China or wherever—

Q21 Chair: Yes. We will come on to the new compounds. Just on this one issue, the evidential issue: that has not yet been addressed?

Professor Iversen: I am saying how we would like to see it addressed. It has not been. I am hoping the Home Secretary might tell me next week whether or not she is sympathetic to this idea. Our idea is that since most of the new substances coming in belong to, or mimic, one or other of the existing five or six categories of psychoactive drugs and since we know how those drugs work in the brain, all of them, we should be able to say whether substance X activates the same target as a known psychoactive substance and for the purpose of this Bill that should be an adequate definition. That is the sort of line that we have been pursuing.

Chair: Very helpful. We will explore all these points as we go through the session.
Victoria Atkins.

Q22 Victoria Atkins: As the market in these substances, we hope, grinds to a halt in head shops and so on is there a risk that sales of these substances will increase over the internet?

Professor Iversen: That is a question I do not think the advisory council can be equipped to answer. It may be; it may not be. I am not the expert. The effect in Ireland has certainly been to close most of the head shops. Whether there has been diversion, I do not know.

Q23 Chair: I think what Victoria Atkins is trying to get at is once you ban them in one set of circumstances they will appear somewhere else. Maybe you are not an expert on the internet; however, do you accept the point that if they are banned in the way the Government has suggested, the trade in psychoactive substances will then go underground?

Professor Iversen: That is possible but if you were to purchase one of these substances on the internet you would be importing the compound into this country and that would be a criminal offence. There are some deterrents inherent in the Bill.

Q24 James Berry: Professor, as I understand it currently—in the lead up to this legislation—what the Government has been doing is banning individual substances and then drug producers have been slightly altering the chemical compounds so that the drug has roughly the same effect but does not meet the prescription that the Secretary of State has made and then the Secretary of State has to prescribe the next compound and the next compound and we are playing a game of cat and mouse with drug producers.

Professor Iversen: Yes.

Q25 James Berry: Would you agree that overall the intention of this legislation to take a broad sweep of psychoactive substances is the right one?

Professor Iversen: Absolutely. The big advantage this Bill would have, it would be proactive rather than reactive. I give you the example of synthetic cannabinoids. These are chemicals designed to mimic the effect of cannabis in the brain and they do so very effectively and there are hundreds, literally hundreds, of chemicals of this type. The advisory council first addressed this question in 2008 and came up with a definition and a recommendation that covered a very large number of substances. We thought we had solved the problem but within a year or two new compounds had emerged. We addressed the problem again in 2012, tackling the second generation of compounds, and we found ourselves last year, 2014, making another recommendation about the third generation. So you are absolutely right. We are not winning this game, in that particular group of compounds anyway, and something more radical is needed.

I might just say that we have some success. The other instrument that is available to the advisory council is to launch a temporary class drug order, which is something that can be put into effect very much more quickly. Recently we heard from the Edinburgh police of the misuse of ethylphenidate, a close relation of Ritalin, methylphenidate. Ethylphenidate was being injected in injection rooms in Edinburgh, which were littered with injection syringes and needles. There were cases of infection at the sites of injection, possible septicaemia; the usual category of horrible things that happen with injecting drugs. We heard again from the West Country, a similar story, from Taunton. We were sufficiently concerned about this to ask for a temporary class drug order. We heard from Edinburgh in the first week in March and we obtained the temporary class drug order with approval by the advisory council members by the first week in April. I am pleased to say the Chief of Police in Edinburgh has written to congratulate us on the rapid action that we took and the significant impact that it has had on the use of these drugs in Edinburgh. So we have some success.

Q26 Chair: Thank you very much. That is very helpful. Can you just tell the Committee how many new products are coming on the market every week? Would you have any estimate?

Professor Iversen: Yes. Our best estimates come from the European Monitoring Centre for Drugs and Drug Addiction, which is European-wide, scanning for new drugs appearing anywhere in Europe. They are monitoring new substances at a rate of about two a week, every week, and this is not abating.

Not all of those will end up in the UK and we have our own system, a forensic early warning system, which monitors this situation. It is also registering a large number. I do not know the exact number for the UK but it is a significant number.

Chair: Thank you.

Q27 Mr David Burrowes: You are the experts charged with the duty of advising the Home Secretary on the misuse of drugs. So how do you take her response to your first suggestion in relation to the word “novel” being included or not as being unworkable?

Professor Iversen: You may be aware that we have talked about novel psychoactive substances since we encountered mephedrone five or six years ago and we have a novel psychoactive substances committee set up in the advisory council. Most people seem to be aware of what we are talking about but the lawyers said “novel” is not a word that can be defined legally with sufficient precision. So the Government then dropped “novel” and has psychoactive substances but we think in so doing they may have lost sight of the original intention.

Q28 Mr David Burrowes: So lawyers, the Home Secretary, said it is unworkable, your advice.

Professor Iversen: Has she said that? I don’t believe so.

Q29 Mr David Burrowes: That is my understanding.

Professor Iversen: I don’t believe so

Q30 Mr David Burrowes: That is my understanding; that in correspondence the Home Secretary said that your recommendation about including “novel” was unworkable.

Professor Iversen: That we have conceded to the lawyers, that “novel” shan’t be— We have however offered another definition, which would not require a change in the wording of the Psychoactive Substances Bill. We simply said how you would define psychoactive substances.

Q31 Mr David Burrowes: If your recommendation is not accepted and it is still the current definition, how would you judge the workability of that definition?

Professor Iversen: The concession of “novel” is past history.

Q32 Mr David Burrowes: So now looking at your new recommendation.

Professor Iversen: I have not heard a response from the Home Secretary yet on that

Q33 Mr David Burrowes: But if it is not accepted, what would be your advice?

Professor Iversen: The advisory council offers advice. It is not a legislative body.

Q34 Mr David Burrowes: No, but in terms of the advice on it being workable?

Professor Iversen: We would stand by our belief that the existing definition of psychoactivity in the draft Bill that we have seen is not workable.

Q35 Mr David Burrowes: Fine. In terms of the need for suitably qualified medical experts in courts to be available to prove psychoactivity, do you think there are sufficient numbers of suitably qualified medical experts?

Professor Iversen: I do not think that is quite what we are suggesting. What we are suggesting is that there would be a limited number of targets in the brain that psychoactive drugs act upon and activate. It would be quite easy for the Government to set up a contract laboratory to test any new substance against any one of these five—or not more than five or six key—targets in the brain and if drug X were to activate any one of these, it would be considered to be an active psychoactive drug for the purposes of the Bill we would say. Maybe this could be argued.

Q36 Mr David Burrowes: But in Court, in defence—thinking of some of my defence-lawyer colleagues and what they would want to do with the current definitions and experts—do you think that when it becomes an issue of expert evidence there are sufficient numbers who would be able to both prove the case sufficiently to ensure that everyone is sure that there is the—

Professor Iversen: I do not see a great need for medical experts to be available in the court. I think that if our definition were to be accepted the tests required would be written into the Bill and therefore for the purpose of the Bill this would be definitive.

Q37 Mr David Burrowes: I believe Scotland suggested there would be a need; that there was a problem about proving psychoactivity and there would be a need for particular medical experts to be available to be able to prove psychoactivity in relation to the different substances.

Professor Iversen: I believe this to be the case in Ireland, although I have not had any definitive reports from Ireland, that there have been cases where there has been a contest in court about whether a substance is psychoactive or not and they have indeed used medical experts.

Mr David Burrowes: Right.

Professor Iversen: I do not foresee that being a great need.

Chair: Thank you. We will come on to Ireland a little later.

Q38 Mr David Winnick: You are not very happy, are you, Professor, with the attitude the Government has taken on this issue? That is not a criminal offence, I am glad to say.

Professor Iversen: On the contrary, I have been very positively impressed by the reaction that we have had from the Home Office and from Home Office officials, including from the Home Secretary. What we are trying to do is make sure that we have the best possible Bill that will be effective and last and not be challenged. I believe that we are constructively working with the Home Office and Home Office officials. We are of course not actually sitting down at the table and working with them. We are trying to answer their questions as they arise and offer our advice.

Q39 Mr David Winnick: There has been, has there not, in the past with either your immediate predecessor or way back a little, an unhappy state of affairs on occasion between whichever government happened to be in office—it was a Labour Government if I remember—and the person who at the time occupied your position as the chair of the Advisory Council on the Misuse of Drugs. So I am asking is there a feeling where the Government—whichever government it is—is putting the emphasis on the politics of the situation and not taking sufficient consideration of other aspects?

Professor Iversen: I can only answer about the scientific case. I offer the best scientific advice that I can to the Home Secretary and the Home Office officials. Politics is not my expertise and I try not to get involved in it. But I am keen to see that the best possible draft of this Bill is the one that goes forward and at the moment the draft legislation I do not think is the best. I am hoping it will be improved.

Q40 Mr David Winnick: I understand. You have raised concerns, understandably I would have thought, that the Bill has the potential to both criminalise and apply disproportionate penalties to those who supply these substances. You stand by that?

Professor Iversen: In my letter to the Home Secretary on 3 July we did raise the issue of the case of the social use of these drugs by an unsuspecting young person unwittingly importing the drug and causing a crime and thus having a criminal record. We have now been told that this in fact quite an important route for obtaining these drugs and we do not really wish to stand by that correction. I think it would be unfair to make one rule for one type of person and another for another.

Q41 Mr David Winnick: I understand, perhaps I am wrong, that you have been in correspondence with the Home Office or the Home Secretary. Have you asked for a meeting with the Home Secretary or the appropriate Minister?

Professor Iversen: Yes, I have had meetings, more than one meeting, with the Home Secretary.

Q42 Mr David Winnick: With Ministers?

Professor Iversen: With Minister Penning; and I am due to meet the Home Secretary again next week—

Mr David Winnick: Thank you.

Professor Iversen: —so I think there is adequate dialogue.

Q43 Stuart C. McDonald: Professor, you have said this is the most important drugs legislation for 40 years and you are also now clearly very engaged in the process of improving the Bill but were ACMD consulted before the publication of the Bill at all?

Professor Iversen: We were asked some technical questions back in April, mainly about defining psychoactivity. My council at that time had not had the chance to discuss its attitude to the Bill and whether we were going to support it or not. We did that subsequently. So were a bit slow in getting involved but we have picked up speed since then.

Q44 Stuart C. McDonald: Do you think there should have been a broader involvement with the ACMD prior to publication of the Bill? Would that have been useful?

Professor Iversen: It is easy to be wise about history. It would have been nice to be involved in the drafting of the Bill, yes, but we were not consulted.

Q45 Stuart C. McDonald: Okay. Thank you. I suspect we probably know your answer to this question given what you said earlier. You have spoken about how the existing system is slow. If there were sufficient resources would the current system, particularly with the temporary class drug orders, be able to respond adequately to the problems that we face?

Professor Iversen: I would be the first to say that my resources are inadequate but I think the nature of the system is such that it is going to be slow. Even the temporary class drug order requires that the advisory council adduces some evidence of harm and goes to the Home Secretary quickly with an advice. That advice is then acted upon, usually very quickly; however this temporary class drug order is in effect only for 12 months and it is up to the advisory council then to follow up with a more detailed report and to control the substance or substances under the Misuse of Drugs Act. So that is a secondary consequence that takes time and is inherently slow because the advisory council advice has to be accepted by the Minister and passed through both Houses of Parliament before it can be enacted.

Q46 Stuart C. McDonald: So you would accept there is a need for legislation.

Professor Iversen: I do, yes. I approve very much the idea of a proactive approach. I regard this as a potentially dangerous group of chemicals. They are new drugs said to mimic—designed to mimic—old drugs, but brand-new, straight from the laboratory into human beings, with no safety record whatsoever. Sooner or later that could end in a very bad consequence.

Q47 Victoria Atkins: I want to pick up on the point about social supply. That is the phrase used by lawyers and police officers to differentiate people who perhaps give a wrap to their friends in a nightclub as opposed to wholesale drug dealers. That is correct, isn't it?

Professor Iversen: Yes.

Q48 Victoria Atkins: The law, when it comes to prohibited drugs under the 1971 Act, makes no difference whether it is a social supply or a wholesale supply in terms of your not

being allowed to do that. Where the differentiation comes in is in whether or not they are prosecuted and if someone is prosecuted how they are then sentenced. Do you agree?

Professor Iversen: Yes.

Q49 Victoria Atkins: It must be right that the approach for this Act mirrors that of the 1971 Act so that people in nightclubs understand that if they have Ecstasy or a psychoactive drug that is equivalent to Ecstasy but just a little bit different to bypass the 1971 Act, if they are in possession of that and they pass it on to their friends, they are technically committing a criminal offence.

Professor Iversen: Yes. I agree. That is the way it should be. Whether or not it is treated more leniently or not, that is not for me to say.

Q50 Victoria Atkins: No. But so that the law is clear so that people in the clubs understand—

Professor Iversen: You are quite right. The law should be equal for all. Yes. I do agree with that. I am afraid maybe our letter to the Home Secretary was misinterpreted or was not quite read in the way we intended.

Q51 Victoria Atkins: It is precisely to remove the misunderstanding that some people have about the phrase “legal highs” that if they are legal, they must be safe. It is precisely to remove that misunderstanding; to protect people in clubs and elsewhere who are taking these drugs.

Professor Iversen: We try to avoid using the phrase “legal highs” because it is very misleading indeed.

Victoria Atkins: Thank you.

Q52 Keir Starmer: Professor, you have dealt with a number of questions on definition. Can I take you to a different issue under the Bill and that is the question of harm?

Under the Misuse of Drugs Acts 1971 there is a clear distinction between levels of harm. You have category A, category B and category C drugs, classically cocaine, cannabis, and temazepam falling into the three categories, which affects the priority the police give to dealing with the drug; affects the prosecution decision as to whether to take a case; and most fundamentally absolutely affects the sentence, with very different sentencing ranges depending on the harm of the particular drug. So for cannabis, the range would be much lower than for cocaine, based on the harm. That is a tried and tested way of dealing with drugs over the years. This Bill does not have any concept of harm at all in it, as far as I can see. Do you know why that is? Do you anticipate problems? Because if you cannot differentiate between the harm that is caused between two different drugs, it is very difficult to see how any sentencing regime can sensibly be set up.

Professor Iversen: I take your argument but the problem with definition of harm is that it will take some time to amass the evidence that it is or is not harmful and that takes away the proactive nature of the Bill; that is of instant—you know as soon as you try to make a new substance, it will be illegal if it is psychoactive; end of story. So that part of it would be lost.

Q53 Keir Starmer: I understand that; and in order to deal with that it is to be criminalised and in the end people will go to prison and the courts are going to have to decide how long to send people to prison for. Is your evidence that it is simply impossible because we have not got that far for anybody to tell the court what the harm is? Let's say you have two cases, case A and case B, in court, following each other. The court would simply have no idea and no way of telling what the harm was between the person in one situation and the person in the other in what they were supplying, which in all these cases is the critical issue for the court normally.

Professor Iversen: I understand the problem but I do not think it is one that the advisory council is equipped to help with. It might be in future that a banned compound under the new Bill would be shown to be still being used and to be causing harm and the advisory council might then go to the Home Secretary and say this should be brought under the Misuse of Drugs Act. That might happen.

Q54 Keir Starmer: But if not, we have to proceed this Bill without any concept of harm at all.

Professor Iversen: I am afraid that is a legal problem and not one that I can help with.

Keir Starmer: Thank you.

Q55 Nusrat Ghani: You have alluded to what is happening in the Republic of Ireland. Could you explain what assessment you have made of the impact of the legislation introduced in the Republic of Ireland in 2010?

Professor Iversen: I wish I could. It is the closest analogy that we have to our Bill and the Bill has been in effect in Ireland for almost five years, I believe. I not yet seen any formal report from the Irish Government or any other source on the impact of this legislation. We would love to know what the impact has been but we cannot say because the only evidence we have is anecdotal.

Q56 Nusrat Ghani: What anecdotal evidence do you have?

Professor Iversen: Anecdotal evidence of the type I mentioned earlier, of the question of psychoactivity being contested in the court and requiring a medical expert or a pharmacological expert to offer support for the fact that this might be a psychoactive agent but not defined in the rather precise and strong way that I am suggesting should be the case for the UK.

Q57 Nusrat Ghani: You mentioned earlier the impact of shops closing, is that correct, in the Republic of Ireland?

Professor Iversen: Again, that is anecdotal. We believe that is fairly easily validated in that most of the head shops in the streets in Ireland have closed down. For some reason Ireland had an unusually large number of such businesses but they have all been pushed out of business, basically; nearly all.

Q58 Chair: Would it have been better to have had a report on what was happening in Ireland before we proceed with our own legislation, which is quite similar to what they have done there?

Professor Iversen: It would, certainly, since our psychoactive Bill, if you read the expert panel report—I was a member of the expert panel that provided advice on this policy—they mentioned the Irish example indeed in their recommendation, which is a little bit woolly, I must say. The recommendation starts off mentioning NPS—novel psychoactive substances—and then drifts into mimicking the Irish example. So the Irish example is really what we are basing our legislation on and the fact is we have not had a formal report of any sort on the impact in Ireland.

Q59 Chair: Is that what you would like to have seen before we proceed with our legislation?

Professor Iversen: We looked very hard for such a report. We could not find any.

Q60 Mr David Burrowes: Is that really good enough, coming from the ACMD? Should you not be asking these questions as well? You are concerned about the Home Secretary in definitional terms not recognising the potential public health harm of these substances, and you have expressed concern about the misuse of poppers and the rest of it, but surely you should be asking the questions also of Ireland to complete the impact assessment?

Professor Les Iversen: I cannot send a task force out to Ireland to try to find the information.

Q61 Mr David Burrowes: I expect you could write a letter to the Government?

Professor Les Iversen: It seems to me this is a legislative approach. It is not the business of the Advisory Council.

Q62 Mr David Burrowes: But you are concerned, and you have said and you have argued, the expert panel has argued, going back to the issue about harm, you have been seized of the issues yourselves and are concerned about recognising harm and no doubt you have also looked at the issue of the consequences of whether this could go underground as well, I would have thought. I am sure that must be something that your expert panel has looked at.

Professor Les Iversen: I mentioned one of the working groups that we have set up to help with this Bill. Another small working group of social scientists has been set up to help the

Home Office appreciate the impact, and how to measure the impact of this Bill, both acutely and in the longer term, which I think is getting towards your question.

Q63 Chair: Mr Burrowes's suggestion is quite sensible. You have written three letters to the Home Secretary. You have a meeting with her next week. You have cited Ireland as an example. Surely a letter from you to the chairman of your opposite number in Ireland would be perfectly appropriate in the circumstances. No one is asking you to invade Ireland, or send a taskforce. We are just asking whether you have thought of writing a letter.

Professor Les Iversen: Mr Chairman, we have already done that. We approached the equivalent of the Advisory Council in Ireland. We invited them to attend one of our meetings and explain what they saw as the impact of the legislation in Ireland and they did not show up. They refused to come.

Q64 Victoria Atkins: Following on from the point made about harm, you have spoken about synthetic cannabinoids, and we also know that you have identified five or six categories of drugs. Given the point that Mr Starmer has made, would it be possible, do you think, to draw equivalents between the synthetic versions of the drug categorisations we see in the Misuse of Drugs Act? Would that be one way around the very difficult issue that has rightly been raised?

Professor Les Iversen: Yes, as a pharmacologist I could give you my assessment. I think my colleagues would give a collective view that synthetic opiates, for example, of which there are several still coming on to the market, would be inherently more dangerous, more likely to cause harm than synthetic cannabinoids. Yes, I think we could make such a distinction, but I am asking pharmacology to be written into this Bill already. Putting such a nuance in I think might be asking too much, but if I was asked I would respond.

Q65 James Berry: You, or your organisation, have offered to assist the Government in developing and implementing a strategy on information, education and harm reduction. Has that offer been taken up, to date?

Professor Les Iversen: The offer to help the Government?

James Berry: To assist the Government developing and implementing a strategy on information, education and harm reduction.

Professor Les Iversen: Yes. Well, it is not our job to do that.

James Berry: But to assist?

Professor Les Iversen: I believe we can offer advice, yes.

James Berry: Has that offer been taken up yet?

Professor Les Iversen: I am not sure. I think that comes under the recent report that we published on prevention, which I hope will be taken seriously. It is a series of ideas on how you might reduce drug-seeking behaviour, addiction.

James Berry: So you have an open door?

Professor Les Iversen: We are not in the business of educating about novel psychoactive substances. I apologise for using the word “novel” again.

Q66 James Berry: It is not your job to educate but your job to provide the information that forms the basis of the Home Office’s efforts to educate?

Professor Les Iversen: Yes, and the Angelus Foundation you will be hearing from later on are doing a magnificent job in trying to educate people about this relatively new group of drugs.

Q67 James Berry: Thank you. I recently tried to make, or I did make, a Freedom of Information Act request on London hospitals about the number of cases they were seeing involving people who were affected by novel psychoactive substances and the answer was that they do not collect that data. Do you think that it would be helpful for hospitals to collect data on patients they see who are affected by novel psychoactive substances, given that we are affected by this in the UK more than any other UK country?

Professor Les Iversen: Yes, very much so. A member of our council, Professor Paul Dargan, is a consultant in a very busy accident and emergency unit in London and he does note novel psychoactive substances and their harmful, acute effects. He also complains that the system for categorising does not allow him to enter these in any way as a class, because it does not exist. Yes, your suggestion would be a very useful one.

Q68 Mr David Burrowes: So the hospitals need a way of capturing that data and then if I make another Freedom of Information Act request I might be more fruitful?

Professor Les Iversen: Yes.

Q69 Chair: Point 8 in your critique of the Home Secretary’s Bill talks about the substantial impact on the sale of mainly herbal medicines. Has that been addressed yet? What you say in it is, and I quote you, “Purchasing a benign, possibly evidence-based herbal product from a website outside the United Kingdom would appear to attract a seven-year prison tariff”.

Professor Les Iversen: Potentially. I think our case is that we do not think herbal remedies should be included at all in this Bill. We think it should focus as originally intended, I believe, on the legal highs, as they are called, or the novel psychoactive substances, as I call them. We all know what we mean. We mean synthetic chemicals coming in from overseas, mainly from China, mimicking existing drugs and by tweaking the chemistry avoiding the law.

Q70 Chair: So you think herbal remedies should not be included at all?

Professor Les Iversen: No. If the Home Secretary wished the advisory council to review herbal remedies and whether they are causing sufficient harm to be included in the Misuse

of Drugs Act we would be happy to do so. I suspect we will find very few medicines of that type.

Q71 Chair: There was anecdotal comment that laughing gas was also one of the products that would be banned under this legislation. Is that correct?

Professor Les Iversen: Under our definition any synthetic psychoactive chemical would be banned, and since nitrous oxide is made by synthesis and produced in quantities for legitimate and misuse reasons it could be included in this Bill.

Q72 Mr David Burrowes: Would poppers also be banned?

Professor Les Iversen: They could be.

Q73 Mr David Burrowes: Would that be the advice?

Professor Les Iversen: We have advised on both nitrous oxide and poppers in the last couple of years. We see no—

Chair: Sorry, Professor, you do need to speak up. We are not getting your words.

Professor Les Iversen: I am sorry. We do not see sufficient scientific evidence for harm in the case of either poppers or nitrous oxide to justify a recommendation under the Misuse of Drugs Act. However, if the Home Secretary was so minded, they could be included under this new Bill. I think personally, if you were to ask me the question now about nitrous oxide that we answered two years ago, I might have a different view. I think the social harm of the widespread use of this material is perhaps—

Q74 Mr David Burrowes: What about poppers?

Professor Les Iversen: I am not aware of any growth in the use of poppers. I am aware of significant growth in the use—

Q75 Mr David Burrowes: Although, as the Home Secretary noted, the ACMD itself raised concerns about the misuse of alkyl nitrites as long ago as October 2009.

Professor Les Iversen: We raised concerns but we did not recommend they be brought under the Misuse of Drugs Act.

Q76 Chair: Sorry, I am not clear. Do you think they should be banned or not?

Professor Les Iversen: There is not sufficient evidence to bring them under the Misuse of Drugs Act, which requires the advisory council to produce some quite well-rehearsed evidence.

Q77 Mr David Burrowes: So are you comfortable, though, with them coming within this Bill, which would effectively mean that poppers were banned?

Professor Les Iversen: Nitrous oxide I feel—

Mr David Burrowes: I am asking about poppers.

Professor Les Iversen: I am not sure about poppers. It is a policy decision.

Q78 Mr David Burrowes: You are the ACMD. We need to listen to your advice.

Professor Les Iversen: We have already said that the banning of substances under this proposed new legislation would be under different criteria from that used in the Misuse of Drugs Act where I have to adduce some harm. The Home Secretary would not need to adduce any harm in order to ban nitrous oxide and poppers, both of which are synthetic psychoactive chemicals. She could do so. I am just saying that we do not have the evidence to act in the old-fashioned way.

Q79 Keir Starmer: Professor, can I just make sure I have understood, and forgive me if I haven't: is what you are saying that there are some substances that fall into a category where you cannot prove harm and therefore under the old Misuse of Drugs Act regime they simply cannot go in because harm cannot be shown, but they could now go in under this Bill? So no harm, or so little harm, that it would not even be categorised under the old regime?

Professor Les Iversen: As I said, I think I would like to review social harm of nitrous oxide use and how it has grown remarkably in the last two years. That is another factor to be brought into the equation, so if the advisory council were to be asked again about nitrous oxide they might come up with a different view.

Q80 Keir Starmer: To take a different substance, where there had not been that change over the last two years—

Professor Les Iversen: Yes, your argument is correct.

Q81 Keir Starmer: You could have a situation where something is of no or so little harm that it does not come under the 1971 regime at all, but now, absent any harm threshold, slots straight into the new Bill?

Q82 Chair: What might be helpful, because obviously time is short, is if the Committee were to write you a letter on some of these issues that cause concern, and perhaps you could reply back as soon as possible, because it is important that we get our report done quickly. If you could reply by midday next Monday it would be very helpful to this Committee.

Professor Les Iversen: Yes. That is called urgent, I think.

Chair: It is urgent.

Professor Les Iversen: We would be very happy to do so, chairman, and I stand by the definition that the ACMD has come up with. I believe it is an improvement, a genuine improvement, on the existing draft legislation that has a very loose definition of what is meant by psychoactivity.

Q83 Chair: Indeed, and we are most grateful. Professor Iversen, thank you so much for coming in. We will write to you and we would be grateful if you could give us a reply by next Monday.

Professor Les Iversen: Yes. Thank you very much.

Q84 Chair: Order. Could we bring in the Minister for Policing, Crime and Criminal Justice and Victims?

Examination of Witness

Witness: Rt Hon Mike Penning MP, Minister for Policing, Crime and Criminal Justice and Victims, Home Office, gave evidence.

Q85 Chair: Minister, could I welcome you to the Committee? Today we are considering two aspects of the work of this Committee, for two separate inquiries. The first is in respect of the funding formula, and the second is in respect of psychoactive substances. We have just heard from the chair of the ACMD, so we are going to divide up our time between those two, and I would like to start with the funding formula.

Have you been surprised at the level of criticism from chief constables about the current arrangements concerning the funding formula? We have heard threats of legal action from Northumbria police, who say that the formula may well result in a reduction in their budget, and even the Chief Constable of the West Midlands told a meeting of the Police and Crime Board last week that he was considering legal action. Why are they all so upset?

Mike Penning: To be fair, chairman, they are not all upset. Clearly there are 43 authorities within England and Wales that I am responsible for, and there are not 43 police authorities, chief constables and PCCs that are saying that they are desperately upset. What clearly happened—as a constituency MP for England before I got this job, and subsequently—is that my chief constables over the years have come to me and said that the funding formula was fundamentally flawed, as it previously was. Damping and top slicing massively affected them and they wanted a fairer system.

What we have consulted on is not exactly how much each individual force is going to get, but on the principle as to whether we move from saying, “This is how much you are entitled to” and then taking that away by damping or other measures, or saying, “This is the base cost that we would look at and then increasing the amount of money you get depending”—using very layman’s terms—“on what you bring to the party and what you are providing for your areas”.

Am I surprised? No. I am slightly surprised with perhaps the tone of some of the language when the consultation has not finished and we have not even announced fully what the results of the consultation will be and as we are going forward.

Q86 Chair: Let us talk about the process. Obviously this is not your funding formula—you have inherited it from predecessors going back many years—but if you look at the process, Steve Finnigan, the Chief Constable of Lancashire, had these three things to say. He said: “Consultation is totally inadequate. The consultation is rushed. The data to support the consultation is inadequate and the methodology is unclear”. My own chief constable, if I can refer to him as mine, the one for Leicestershire, said, “The formula that has been shared with us is hard to interpret because it does not give any worked examples”. So it is not just a criticism of the formula itself, and obviously there are winners and losers in all this—the winners will be happy and the losers will complain—but it is the way in which the process has been ongoing. I think the consultation ends today.

Mike Penning: At 5.00 pm today, yes.

Q87 Chair: At 5.00 pm; so they still have time, based on what you say to us, to rush in their proposals. These are very senior officers. I know you rate both Steve Finnigan and Simon Cole.

Mike Penning: Yes, I do.

Q88 Chair: They would not be saying this unless they were concerned. Do you think that there is a case for perhaps extending it or providing additional information to help the chief constables and yourselves work together on this issue?

Mike Penning: I rate all of my 43 chief constables, even though I have a couple of temporary chiefs in at the moment. As I always say as you know the police do a fantastic job on our behalf. Would I be fighting my corner if I was in their position? Yes, and probably knowing me as this Committee does, I might be using even stronger and more emotive language, if I was them. However, they desperately called on me to do this. All of the chiefs, really, wanted the funding formula as it existed, that had been tweaked, and they said it was not fit for purpose. We have heard that time and time again.

The issue is that if I am going to get in the 2016 - 2017 formula—and we will have to phase it in, of course we will—we need to move quickly. So that is why I have not extended the timescale of the consultation.

The principle around the numbers game, I come back to the point I made earlier on. What we are looking for here is the principle in agreement that the previous way of formula funding was wrong and that this new way of doing it would be better, rather than saying, “This is how much you will get”. To be fair, chairman, not one of the 43 authorities knows how much the new formula will give them, simply because they have relied on previous data based on damping and other things, rather than the way that we are looking to develop it forward.

Q89 Chair: The Commissioner, who sat in the chair you are sitting in last week, said to us very clearly that this was the wrong time to be changing the formula, given the overall funding allocation was also going to be reduced. He talked about losing £1.4 billion by the end of the spending review. That is a huge amount. I know you are Hertfordshire, I am Leicestershire, but the Met is obviously a critically important police service. This kind of money cannot be lost, can it? I mean, £1.4 billion is a huge amount of money.

Mike Penning: I meet with Sir Bernard regularly and I do not recognise the figure. As I say, I met the chiefs, even though I am not responsible for the previous formula, I cannot shirk that I am very much responsible for the reforms that we are looking at doing now. This did not come as a surprise to the chiefs and the PCCs. We were telling them for months and months this is what we were going to do and with all the leads that were in with me, I think most of the chiefs have met me and they knew exactly what we were looking at doing. I stress there are going to be winners and losers in any change to any funding formula. With the present formula, if you had the Chief Constable of Lincolnshire sitting in front of you today he is in really difficult straits, because his funding is based on a rural funding formula which is not fit for purpose in the 21st century.

Q90 Chair: You mentioned Lincolnshire. They are going to have a 75% increase on the formula you have at the moment. Dorset 71% increase, Warwickshire 68%, Wiltshire 65%, Gloucestershire 60%, Suffolk 59%, Surrey 52%, whereas the Met, the West Midlands, Greater Manchester, Northumbria, are going to have to have a reduction between 43% and 18%. How can you justify that?

Mike Penning: You are referring to a so-called leaked document because we have not given the funding figure out for any of the years that they are referring to at all, so it is frankly a bit of guesswork as to what they are trying to say.

Q91 Chair: So the Met will not be expected to lose 43%?

Mike Penning: The Met is clearly a special case. One of the things that I have been making sure that we also look at is the capabilities. What does each force bring and does each force need to provide that capability on its own, or can it be done with other forces? So for instance in my force, forensics is done with Bedfordshire now. Could we expand that? Could we do more? As you know I released data on procurement last week and some forces did not even give us the data of what they are spending on certain products. I wonder why that might be. When you look at something like a type-approved body armour, a stab vest, £300 difference between one force buying the product and another force, there are clearly a lot of savings that could also be made as well as looking at the funding formula. I stress, it is not over yet. I am slightly restricted as to what we can say, but the principle is not as accurate as some of the figures that have been presented to you, because no one knows, but it has to change. I am quite adamant it has to change.

Q92 Chair: But much of this is not rocket science. Five years ago this Committee produced a report in which they suggested a centralised brochure published by the Minister for Policing, Crime and Criminal Justice and Victims showing where people could buy items from; which was the best possible deal. This was five years ago. Is the fact that you are doing

this now an indication of your frustration at the speed with which the police service has caught up with the changes that have occurred in policing?

Mike Penning: I think it is pretty obvious by listening to my tone that I am frustrated that taxpayers' money is not being spent as efficiently as it should be while exactly those same forces are screaming loudly through the media that they cannot survive on the money that they have.

I think the point that I would make is yes, we could do as the Committee suggested five years ago—and I still just about have the powers to centralise procurement should I wish to do so—but I passionately believe in localism. I believe that PCCs and chiefs should be responsible to their local communities. So if they can buy white shirts, body armour, batons, at the price which is not even the lowest but at the average locally I think that is right and proper, because you are helping to support your local community. What is fundamentally wrong, I would feel, is if you are spending money, say on a baton, which is type-approved by the Home Office—you cannot go and buy a cheap one, it has to be type-approved—yet you are paying £60 more than perhaps the force sitting next to you. That frustration that I know the Committee had five years ago is probably somewhat still with me today, but I want the localism to work and I also want PCCs to work. They are going to go for election in May next year and the public will know how efficient they have or have not been in spending the money.

Q93 Tim Loughton: You are talking to us now about constabularies not understanding the amounts they may or may not be getting. There is lots of speculation. The trouble is, is it not, that the National Audit Office have also said that police forces do not have sufficient understanding of the demand for their services? There was a report by HMIC that estimated that only 10 out of the 43 forces have a sophisticated understanding of demand, and that is part of the problem. Should the Home Office, prior to this consultation ending at 5.00 pm this afternoon, not have done more to help those police forces establish exactly what demand there is on their services and how they can respond to this consultation?

Mike Penning: I think to be fair to both of those reports that came out, that is exactly what we did. So like any report it arrives and we are here today and it is what we are trying to do now.

I have put my own officials into two forces in the last six months to try to help them understand, if you wish, how they can balance their budgets; whether there are savings; how efficient they can be. There is an understandable concern within the forces that many of them feel that they have to provide it within their own silo. I passionately believe that is not the only way it can be done. If we look at Hampshire for instance where, if you go to Winchester fire station you will find it is a police station as well. There is a drill yard where the firemen train but at the bottom of the yard is the Armed Response Unit with all those things together, so one building. That is partly what was announced last week with the Prime Minister in Leeds making his speech where we want the PCCs and the management of the emergency services and the structure and the bureaucracy to come together so that we can get a better bang for our buck, but I fully accept there is more work that needs to be done.

Q94 Tim Loughton: Okay, but we are talking largely about management issues and about efficiency there, but I am talking about the demand issue. We are getting these erratic stories about certain police forces not responding to certain types of crime report and no consistency about that. Surely there should be some more central direction from you and the Home Office about what police forces should be doing, and how that applies to their own particular areas. There are obviously distinctions between rural areas and metropolitan and the Met itself, and there does not appear to have been that sort of guidance that has gone with this quite rushed consultation that has gone out.

Mike Penning: Firstly, I do not think it is for a Minister to give that sort of advice—obviously there are officials there—but Her Majesty’s Inspectorate of Constabulary, that is exactly what they do within their inspections. That is exactly the sort of thing. I do not accept that it was rushed. I would like not to have done it over the summer recess, that is quite clear. I would have liked to have done it in a different period, but if we are to hit the 2016 - 2017, which is what all the officers and constabularies were asking us to do, to have it in place or at least the transition into the new formula in that time, then we had to get it out. As I say, I have been the Minister before the General Election for eight months and since the General Election and from the first day I was in we were talking about the formula changes to the forces, so they knew this was coming. This was no great surprise, and I do emphasise again it tends to be the forces that feel they are going to be possibly worse off rather than the forces that feel that they may be better off or the same that we are hearing from, to be fair.

Q95 Victoria Atkins: As a Lincolnshire MP obviously I am very keen on the idea that we may be getting a 75% increase, and I know how much work the chief constable has done, with the exception of one area. The local paper this week had a report that Lincolnshire police has paid £37,000 for trousers this year, and it rather brings into relief what you have been saying about forces working together to buy items of equipment that they all use. What is the role of PCCs in this, because one would hope that the Police and Crime Commissioners are looking at this with just as much attention as chief constables and the Home Office?

Mike Penning: Well, if the 43 PCCs are not considering this, staring down the barrel of their own elections in May next year, I think they are being very foolish. They are ultimately responsible for the spending of the taxpayers’ money within their force. It is their responsibility and it is their responsibility to query the chief constables and their procurement process. It is not their job to interfere operationally but we are not talking about operational. A type-approved baton is a type-approved baton. The key for me is that money that we need within the frontline, keeping as many people within the frontline as possible, happening, and if the PCCs are not doing that, and I have met all of them, I would be very surprised. However, the report that we published last week and there are only 20 and we could have put a lot more on, and it will be available for the public to see, is very stark. So one force, “Right next door you could have done joint procurement”. And if you are doing procurement you do not necessarily have to be right next door. It would not matter if you were in Cheshire or in London, you could purchase together. I was in Gibraltar only last week and they are looking to buy with our forces.

Q96 Chair: Minister, do you agree with Sara Thornton's statement that it is important now to prioritise certain types of crime, because of the cuts, and that police may no longer be able to attend burglaries?

Mike Penning: No. It is for a chief constable to prioritise how they police their forces in their areas and for the PCCs to make sure that they are very confident and that what they are doing is absolutely right. The issue around what is priority and what is not priority and the types of crimes that go on is very diverse.

Q97 Chair: Sure, but as far as burglaries are concerned you think that she is wrong? They have to attend?

Mike Penning: Yes. I am not saying when they should attend, but I am saying they should attend and a victim is a victim.

Q98 Chair: Durham police have stopped targeting cannabis smokers and small-scale growers. Do you think that is wrong?

Mike Penning: That is a decision for the chief constable in that area.

Q99 Chair: You do not mind that they have stopped doing that?

Mike Penning: It is not a case of whether I mind or not. That is an operational decision for them, not for me.

Q100 Mr David Winnick: Minister, how far would you consider it unfair to say that you are a mouthpiece for the Treasury?

Mike Penning: Very unfair. I have never been a mouthpiece for anybody apart from my wife.

Q101 Mr David Winnick: At the end of it all, as in any Government, would it not be the situation that the Home Office negotiates with the Treasury in order to have the sum that they have in mind to spend?

Mike Penning: Look, of course any department negotiates with the Treasury, and as we come to a spending round, that is what happens in any government at any time.

Mr Winnick: I accept that.

Mike Penning: What is very important is that when you end up with the agreement as to what you have that money is spent the best way possible to deliver the services that the public would expect from us. What is interesting—I think I said this last time I was front of the Committee—is that because of the austerity, if we had not had the austerity, there would not have been as much innovation and change to the way that we operationally police in this country as we have had in previous years. You only have to look at the

percentage of frontline officers in comparison to where we were before. Fewer officers, I fully accept that, but more away from the desk and more on the streets doing their jobs.

Q102 Mr Winnick: But in the reductions—and I will come to that in a moment, in the West Midlands, for instance, my own police force—would it not be the case that the amount allocated to the police forces must depend on what the Treasury authorises and that if the Home Office had a freer hand, the cuts that have occurred in the last five years would not have occurred?

Mike Penning: No. I think successive governments and successive Ministers have been trying to reform the way our police service works for many, many, many years, and I will be honest with you, it probably sat in the too-difficult pile for too long. I think because of the austerity and because we have a Home Secretary who was willing to step up to the plate and do what needed to be done, we have a completely different type of police force, with some of the reforms that were desperately needed coming forward now. Are we at the end of that process? Probably not yet, no.

Q103 Mr Winnick: Are you telling us that what has been done since the Government came into existence in 2010 is precisely what the Home Office wanted, quite regardless of the Treasury? Is that what you are telling us?

Mike Penning: I think the reforms to the police force had to be done no matter whether we were in austerity or not.

Q104 Mr Winnick: No, I am talking about the funding.

Mike Penning: The fact that we were in austerity meant it happened, which is where the Treasury point you are making comes in, but should it have happened? Yes, it should. There are changes in my emergency service that I changed in there and had to change as well. We cannot live on reputation. We have to deliver what is there today.

Q105 Mr Winnick: The Home Office is an unprotected department, is it not?

Mike Penning: It is.

Q106 Mr Winnick: When the Chancellor in July called for a further 40% reduction in Government expenditure, one assumes the Home Office will be in the frontline in being asked to make the sacrifices. Would that be right?

Mike Penning: We have not finished the discussions, which the Home Secretary is continuing to have, and then I will have to try to fight my corner within the department as

well, but until we come to the end of that, the spending round, then we will have to wait and see, because it is speculation at the moment, which I am not very good at.

Q107 Mr Winnick: In the West Midlands, there has been a reduction, as you know, and the figure has been quoted enough times of £127 million. Do you find it at all surprising, the concern—the Chair mentioned the possibility that some have mentioned legal challenges—that there should be so much resentment in the West Midlands, and bearing in mind the formula, which was much spoken about in the Westminster Hall debate last Thursday, should have occurred?

Mike Penning: As I said in the Westminster Hall debate, I am not surprised that the West Midlands MPs were there in force, because that is what the debate was about. It will happen to me at some stage when I become a back-bencher; I may well have been there lobbying just in the same sort of way. Crime has fallen in the West Midlands in the last six years there, and we are doing that with less money and you are getting more for less. It has been touted out very often, but it is a fact, and I think that is very important. The percentage of officers that are in frontline duties today in West Midlands is more today than it was when this Government came into power.

Q108 Mr Winnick: So 1,500 police officers that have gone, certainly in the last five years, not been replaced. You are quite happy with that? You are saying crime is down in the West Midlands, the formula is okay, the officers have gone and no one should worry?

Mike Penning: I would ask, Mr Winnick, where those officers were, because the assumption that they were all in frontline-policing jobs frankly is flawed. That is why the percentage of officers in frontline duties today, even though there are fewer officers, is greater. It is for the Chief Constable to decide how he polices his area, but I know from my own area there were officers that were not fit for duty, to be on operational duties, but stayed in the police force doing desk jobs and I do not think that is the role of a warranted police officer.

Q109 Mr Winnick: What you are saying is that all those police officers were not in the frontline?

Mike Penning: I did not say that.

Mr Winnick: More or less you were implying that, and all is well.

Mike Penning: No, no. I have been around a long time, Mr Winnick. I did not say that. What I am saying to you is crime has dropped in the West Midlands and there are officers that were not in frontline duties that presumably are now in frontline duties, because otherwise the figures would not have gone up.

Q110 Mr Winnick: If all is well, why has the Chief Constable—not the Police and Crime Commissioner, you may say he has a political agenda; obviously he is a politician, though he would deny that his remarks are based on his political view—expressed deep concern over the effect of the cuts and what could happen in the future, but he is also concerned about what has happened in the last five years. Can I ask you, Minister, do you take into consideration such concerns from a senior professional officer?

Mike Penning: I have met that senior professional officer I think on more than one occasion, and of course I do, but at the same time he is fighting in the same corner as my colonel would have done in my regiment when he was trying to get more facilities. Whether that is right or wrong, he wants more of a slice of the cake, but the cake can only be divided up in a certain way.

Chair: Thank you. We must move on.

Q111 Mr Winnick: One last question, if I may. What would you say if the description of your answers to me could be described as absolutely complacent?

Mike Penning: I think, like I said in the Chamber of Westminster Hall, there was a lot of scaremongering going on. Perhaps, Mr Winnick, you are doing the same.

Mr Winnick: Oh, it is all scaremongering, is it?

Mike Penning: You are scaremongering, yes.

Chair: Anyway, we must move on to Keir Starmer.

Q112 Keir Starmer: Minister, the police force is obviously facing a difficult and unknown funding future because the size of the cake is reducing with the spending review and there is a funding formula as well. I accept that the old funding formula needed to change, but obviously what we need to do is have something better, not something worse. The chair quoted to you some figures, which I think come from the Police and Crime Commissioners Treasurers' Society, and were published—you are probably familiar with them—which give the percentages. So the Metropolitan Police a 43% reduction; a 25% reduction to West Midlands and Merseyside and 23% to Greater Manchester. Conversely there are increases in Lincolnshire of 75%, as we have heard, 71% in Dorset, 68% in Warwickshire, 65% in Wiltshire and Gloucester. I have worked with each of those police forces and I do not underestimate the policing challenge in each of those forces, but there are very big policing challenges in those big urban police forces; West Midlands, Manchester and London.

Although the crime numbers may be going down, the type is becoming more complicated, with historic sex offences and cyber offences. I know you say, “Do not take those figures as—” and I am not, but if the effect were that dramatic on those big forces with the workload that I know they have, I would be profoundly concerned that we were replacing something that was not very good with something that is much worse. You or your department must have done some assessment for yourself as to the outcome. In other words, you are not going into this blind, you must know. You say those figures are not right and I accept that, and that

may be other people's extrapolation of figures, but you are not going into this with no idea of the impact.

Mike Penning: What we did when we looked at this—and I sat extensively with the PCCs and the Chiefs and their representatives—is say, “You keep, quite understandably, saying to me that it is fundamentally wrong, this is wrong and that is wrong” and it has been tweaked over the years and you know this as well as I do.

Keir Starmer: Yes, it is wrong.

Mike Penning: What we came up with is the initial idea in principle of switching it 180 degrees around and then consulting on the principle of that, and then we can come out with the figures based on frankly what we manage to get within the spending round. We will then come back out again, as we do every time, with the police funding formula and consult again. What we will do as soon as we possibly can is come up with some extrapolations, but I have purposely not been able to publish them, because I wanted the principle to be there rather than part of the argument that is taking place at the moment, “Oh, we will be worse off so we are against it” or, “We are going to be better off, so we are for it”. Is the old formula fundamentally flawed, which I think nearly everybody accepts is yes? Then we need to come forward with a better formula and a fairer formula.

Q113 Keir Starmer: No, I understand the constraints within which you are working, but just so that I understand: you have done an assessment, as best you can, of what the impact will be, but you do not want to share it for the reasons you have stated, rather than you have not done the impact assessment?

Mike Penning: Correct.

Q114 Keir Starmer: The reasons for not sharing it?

Mike Penning: Because, as I alluded to, we will get into the argument purely about, “We will get this amount of money” or, “We will get that amount of money” rather than the principle: is the principle right that we switch away from a damping system and top slicing to a principle that we build up based on the capability you bring.

Q115 Keir Starmer: But speaking for myself, I would have a view on whether the principle is right or wrong according to the impact. In other words, if I was to see these, the sorts of figures we have discussed, if I thought that was the impact, my instinct would be the principles, whatever they are, must be wrong if it is producing that kind of outcome. How can we follow the debate and even input into the debate as to whether, in principle, it is right or wrong if we are blind to the implications?

Mike Penning: I had a colleague say to me last night, “I have written to you, Mike, and I have said, ‘These are the specialist reasons why I think we should get more money’” and I said, “I am not being rude. Have you read the consultation then, because it is not about money, it is about the principle of how we would deliver the money and how we would build up from that” and of course the answer to that was no, sadly.

I think it is understandable that there is a degree of understandable concern from some forces, a degree of, “I believe those figures were right” from other forces, but I have consciously all the way through not talked about the amount of money, but I have talked about the fact that the previous formula is wrong, particularly for some of the rural forces. The consultation will be over fairly soon and then we can move forward, and we need to move forward on it.

Chair: Thank you. We might have a vote at 4.00 pm, in which case we will return as soon as we have voted. Nusrat Ghani.

Q116 Nusrat Ghani: Minister, representing a rural constituency, I also welcome a fairer funding formula. I grew up in an urban area in Birmingham and now I represent Wealden and East Sussex and I know that policing differs in both areas. Sometimes you need to see high visibility and they need to spend more time nurturing relationships in more urban areas, and that is a contrast to the more rural areas and what the police officers have to do. There is an argument that your proposed reforms of the powers of the police staff threaten to undermine the role of police officers. How would you counteract that argument?

Mike Penning: We want a modern police force that is fit for the 21st century. Does that mean that the traditional bobby, warranted officer, is there for every role as we go forward? I will be very honest. I was very sceptical about PCSOs when they came out, very sceptical in my own constituency, and I have been proven wrong. In some forces, PCSOs are given powers of detention and in some forces they are not. What we need to do is make sure we have the skills within a modern police force. We touched a moment ago on some of the challenges that are out there at the moment in protecting our young people and protecting people from fraud. These are specialist skills that perhaps quite a few people that are coming into the forces now will bring with them, but I am excited about what the College of Policing is doing, and most of the officers are saying, “We welcome what is going on”. Of course you will never make everybody happy, and the majority of the chiefs are going along with it. Some chiefs are not and some chiefs are leaving; it is a rolling thing. But it is a very different police force that we are dealing with now than we were perhaps even 10 years ago, let alone “Dixon of Dock Green” for those who are old enough.

Q117 Nusrat Ghani: How do we manage the public’s perception of what they view that police officers should be doing, because they would like to see police offices in their communities? Whereas when I sit down and have conversations and we talk about police officers behind the scenes on cybercrime or exploitation, there still seems to be a lack of understanding of what the police officers should be doing and the impact on crime that is not visible.

Mike Penning: Yes, you are absolutely right, and the visible police officer, that sort of work proportionately within the 100%, I think it sits around 20% of the work that the police do. One of the things I have had some forces come to me and say is, “We want to keep that badge, our local force, but we are more than happy to almost amalgamate, not fully in name terms, but work together on the rest of that”. That seems to me a very

sensible way to go forward. But one of the other things we have to do is educate as much as we can as well. For instance, I have had the same discussion in my own constituency. That bobby on the beat is not going to protect that young child from an online paedophile, and that is the skill base that we need, if you explain that, and sometimes we do get it. But you are absolutely right, I get the comment, “There are not enough bobbies in my town. I do not see the bobby at all” but my crime rate is so low, even for a new town, and Hertfordshire do fantastically well there, that is one of the reasons we have fewer bobbies out there.

Q118 Nusrat Ghani: Would you agree that policing has fundamentally changed over the last 10 years, someone that entered the police force 10 years ago would be doing—

Mike Penning: Yes, and continuously change—

Nusrat Ghani: —a completely different job now?

Mike Penning: I think not only did it need to, and I have said also, austerity has helped, if you wish, push that on, but it had to change. The type of policing and the type of cases that my honourable colleagues were dealing with in their different skills, whether it be a lawyer or in the honourable gentleman’s case, is completely different now. Of course you still get the burglaries; still you have the assaults; still you have common assaults. You have that, but the other side of it is—and I did child online protection before the reshuffle, and I had to say to the Prime Minister on more than one occasion, “I am worried whether I can do this job. It is really, really disturbing what people are willing to do to children in particular”.

Q119 James Berry: Minister, it is surely right that the work of the police has shifted away from patrolling the beat; you get more results by working behind computers tackling online crime, sex exploitation and so on. However, in some areas the public do want, notwithstanding that evidence, to see police on the streets, and it is right, is it not, that in the system we have of Police and Crime Commissioners, people can make that known through the ballot box when electing a PCC who has that as his policing priority, even if it is not something that is going to produce the best arrest rate or reduction in crime rate?

Mike Penning: I passionately believe in localism, and one of the things—it was all brought in before I came to this department—but accountability of the PCCs as to what type of policing they bring to their community has taken away slightly the operational need of the Chief Constable. The type of policing is fundamentally important, and in May next year they will have an all-up election alongside some of the local elections and they, in their manifestos, will have to explain to the public what they have been doing for the last four years, or if they are the candidates, what they are going to bring to the party that is different to the existing PCCs.

Q120 James Berry: Therefore when the press cherry-picks examples that they are not policing this in this area, they are not policing that in that area, they do have to look at the mandate the local Police and Crime Commissioner has and the priorities he has set for his

area and consider the local position, rather than applying a one size fits all rule to all the different police areas in the country.

Mike Penning: Absolutely, and the press—I can say this as a former journalist as well—will pick the story that gives them the headline, and great low-crime figures in an area tends not to give them what they are looking for. They always will pick on the extreme example. But at the end of the day—and whether some colleagues like it or not—crime is down. I accept it is down across the Western world as well, it is not just us, but we are, I think, moving into a modern type of police force that does what it says on the tin, what the public need it to do.

Q121 Chair: Finally on this subject, general issues of policing, *The Sunday Times* published an article about the number of police officers who had been arrested over the last five years. They obtained the information by using Freedom of Information requests. Do you think this kind of information ought to be published by the College of Policing? I know that you, like this Committee, we are great fans of the College. We believe it has a great future ahead of it. Do you think this kind of information ought to be made available on the website, rather than journalists having to pursue this?

Mike Penning: I woke up Sunday morning to read that and I must say how disappointed I was, as the Police Minister, to see that many officers being arrested and prosecuted. I think it is damaging for other members of the public. If we are talking about headlines in the press, it just does not represent the police. I asked the College today what they are intending on publishing and what they are publishing. They are publishing where an officer has been prosecuted and they have subsequently been dismissed from the force. I have also asked the question as to whether or not we can publish more information. There are areas around data protection, which we have to be aware of, and if the officers are staying within the force, I think we have to be careful as to what data we release. But I was conscious that you may ask this question. I have already asked the question and they are publishing at the moment, quite rightly and transparently, around, for instance, where officers are brought before not just the courts but within the disciplinary action within their own forces. That is now going to be open to the public, but whether or not we can publish every time there is a prosecution against an officer, I think that might be very difficult.

Q122 Chair: Very helpful. Let us move to psychoactive substances. We have heard from the chairman of the committee. He has concerns, and there were eight very serious concerns that they sent to the Home Secretary. He has been writing letters to her. He is seeing her next week. But they seem to be unconvinced that the Bill is going to do what it intends to do, with a possibility of herbal medicines, air-fresheners, poppers, all kinds of things being included, whereas in fact they should not be included. Are you satisfied that the Bill is now fit for purpose, even though the body that is supposed to be advising you is very concerned?

Mike Penning: I met with the Professor last week and we are working very closely together. On the main substantive points that the committee wrote to us about before, we accepted the vast majority. I understand the Professor on possession by a young person, they feel now that probably is wrong. The novelty we do not agree on.

What we have tried to do is learn from New Zealand, Australia, but particularly learn from Ireland, where I have been and met their scientists and met their Justice and Police Minister, so that we can have a better legislation than they have. They are very much looking at us. New Zealand—again, I met with the New Zealand Minister; he was here with me just before the election. Work did take place during the purdah period because there was a commitment to get on with it, and that is partly some of the reasons why knowledge was not in the public domain, because it was during the purdah and that cannot be out. But we will, I am absolutely confident, have a Bill that does what we want it to do, what it says on the tin, which is to save lives and protect people from what they think very often is a safe, legal product.

Q123 Chair: Of course. The Committee has been pressing for legislation in this area.

Mike Penning: I know.

Chair: But the worry that we have and that the others have is that the blanket ban will not deal with the fact that you have two new substances coming on the market every single week. Once you ban, people then go to the internet, they purchase off the internet or it goes underground and it gets worse. Have you looked at all that?

Mike Penning: We have looked at that and fortunately Ireland are quite a way in front of us. The purpose of the blanket ban is to prevent those other products coming on. The Professor, I am sure, talked to you about that we are behind the game line; we are forever chasing the chemists when they tweak the formula and so on. This will be the other way around. I sat in for most of the debate in the other House when they were debating this at length, and I thought some of the comments about it, that you will not be able to sniff a flower because the scent from the flower—it was just, frankly, ludicrous. The one you did mention that would be banned, unlike air-fresheners, is poppers, and poppers will be banned as part of the blanket ban.

Q124 Chair: Is it possible to have that list of legal and harmless substances that are exempt from the Bill, because laughing gas is one of the other substances that is mentioned?

Mike Penning: Laughing gas will be banned. That is one of the reasons why we have looked very carefully at the advice. The expert panel, which the Professor and two other members of his committee sat on, one of the reasons that we have not just gone to a partial ban in certain areas and we have gone to a complete ban is to lock in any opportunity for anything slipping out the side.

Chair: But is it possible to have a list?

Mike Penning: Yes.

Chair: When can we get it?

Mike Penning: We will be working on the list. It will be when we get to second reading, which I hope will be in November, and I think we will be able to publish then.

Q125 Mr Burrowes: We heard from Professor Iversen that ACMD maintains its position in its latest correspondence with the Home Secretary that the psychoactive substances definition needs to be refined to show psychoactive substances that are not prohibited by the UN drug conventions or by the Misuse of Drugs Act, but which may pose a public health threat comparable to that posed by substances listed in these Conventions. Has the Government accepted that refined definition?

Mike Penning: We are still looking at the advice that is coming out. As I am sure the honourable member knows, the committee gives us advice. It is not a statutory thing that we take that advice. We have taken a lot of their advice and accepted a lot of it. We are still minded that at the moment we are confident, but we are looking and we have not formally responded, but I fully accept there is a lot of work that we still need to do to make sure this Bill does exactly what we all want it to do. We will continue to work with the Professor's committee and with our own forensic teams and CAST and others to make sure we have that.

Q126 Mr Burrowes: How do you react to the evidence we heard from Professor Iversen that without those changes, then it is unworkable?

Mike Penning: I would refer to Ireland—which the legislation is not identical to, but we are probably slightly tighter than the Irish legislation—where the head shops have closed. There has been a remarkable lack of prosecutions, interestingly—I think only five have ended up in the courts—where they have used their forensic teams to prove that the product was and then the courts have accepted that. What is interesting to me, and I know this is one of things is whether the courts will accept it, but it been accepted in Ireland and it is working very well.

One of the other things that is a concern, is this going to move this product elsewhere? I know that is not part of the question by Mr Burrowes, but I think it is very, very important that this, for the first time, will be a criminal offence to sell and a criminal offence to purchase, which takes us into a completely area when we are talking about psychoactive substances, or the street language being “legal high”. I know we do not like to use it, but that is what other people use outside the scientific community, so I think that is what we have to do.

Q127 Mr Burrowes: In terms of sentencing, we had a discussion with Professor Iversen around the issue of harms not being included within the Bill as in the Misuse of Drugs Act. How have you pitched sentencing and how do you expect sentencing to be pitched without any inclusion of harm?

Mike Penning: One of the things we were very conscious of is not to be disproportionate with the sentencing. Do not get me wrong, deaths take place and are happening because this legislation is not on the statute book and that is important to put on the record, but the legislation will say seven years, so a maximum of seven years' imprisonment if it is proven that it is a psychoactive substance, for which the forensic information will be provided to the court. Looking at other countries where they have done this, and particularly Ireland, it has not been an issue; it clearly has not been an issue.

Q128 Mr Burrowes: We looked at poppers. Do you see poppers as sufficiently harmful to be included within the Bill when the ACMD advice presently is that it is not sufficiently harmful to be included as a controlled drug in the Misuse of Drug Act?

Mike Penning: It is probably one of the few things I disagree with the Professor on. We will have poppers in. I have seen photographs and images of people that have been severely harmed by poppers and the inappropriate use of poppers. It is a psychoactive substance and it will be banned.

Q129 Keir Starmer: Can I just follow up on that point? You have explained the wide definition and the sort of catch-all, not catch-up, so we have the wide definition, a lot of substances potentially caught, but I do want to pursue this issue about harm that has just been raised because, as you know, in the existing regime on misuse of drugs, harm is important; it makes massive differences to whether you are category A, B or C. The prison sentence or whatever the sentence is that follows will differ and the Sentencing Council will draw up guidelines according to the harm, so the harm that this substance is going to do to an individual is critical to the way the criminal justice system is going to have to respond to all of those. Absent any reference to harm, how can the criminal justice system cope? This seems to me a big flaw. How do the courts know whether to give someone four years or two years or one year depending on the harm unless there is to be a detailed expert report in every single case and the courts will have to work out some harm grid of their own?

Mike Penning: That is certainly not the type of bureaucracy we will be looking for.

Keir Starmer: How do they know?

Mike Penning: I would argue that the Irish system is not hugely different to ours and they have managed to do that quite successfully. We need to look from their examples. But we are looking at this differently, and I fully accept—and I am not legally trained, so I do apologise, chair, sometimes I use terminology that is not right—this is a complete change in the way that we look at prosecuting—

Keir Starmer: I do understand that, yes.

Mike Penning: —and protecting the public. It is very different. The legislation will be that if it is a psychoactive substance, fitting in with the criteria that are set out, then that is an offence in law with a maximum sentence of seven years.

Q130 Keir Starmer: I agree, but then we are not going to have a fixed sentence, so we are not going to say anybody who supplies gets five years, so the courts have to come to a decision. Up until now, they quite understandably have said, “If you supply something that is damaging to another person, is going to cause them real harm, then you are probably at the upper end”. If on the other hand you have provided them with something that is prohibited, but in fact the harm is very low, then you used to go to the other end of the sentencing scale. That has been generally accepted, I think, by the public as an appropriate way to deal with drugs. I do understand the argument you are making; I just want to follow it. Unless we said, “We are going for a different approach. Everything that falls within the category is

prosecuted but we cannot differentiate harm” how does the court decide who to give the big sentence to and who to give the little sentence to?

Mike Penning: Well, I think we have consciously not put it into a category, it is separate.

Keir Starmer: I see that, but it is a big problem.

Mike Penning: Well, it does not appear to be a problem where they are already doing this in other countries with similar judicial systems to what we have. What we are saying is that unlike in previous times where we were looking at whether it is cocaine, which is class A—actually one of these products is an attempted chemical duplicate of cocaine—we have not put it into class A. What we are trying to do and what clearly seems to be happening where other countries have done this is that, frankly, the head shops vanish. There does not seem to be a huge amount of evidence that it goes into the online. Because it is illegal, why would you buy a chemical version of cocaine rather than cocaine? It does not quite work that way. I understand the point and it is different from what we have had before, but we are basically saying if you buy it, it is illegal; if you sell it, it is illegal. Then, of course, if you have two tonnes of it, then I am sure the courts would look at it completely differently.

Q131 Keir Starmer: Two tonnes of a highly harmful drug is very different to two tonnes of a much less harmful drug. Of course, two tonnes makes a big difference, but it also makes a difference what you have two tonnes of. If you have two tonnes of cocaine—

Mike Penning: Yes, but they were not in that category.

Keir Starmer: —you are looking at a different sentence to two tonnes of cannabis.

Mike Penning: But we purposely did not put it into those sorts of categories. We purposely tried to make it simple, like the Irish and the New Zealanders and the Australians have done to make it simple. We do not want to criminalise a whole group of people that have been taking products that were perfectly legal until today but are actually destroying their lives.

Q132 Keir Starmer: But then you trap an inherent unfairness. The person who is supplying something that is not very harmful at all inevitably gets a similar sentence to the person who is supplying something that is really harmful. I think the public are going to say that just does not feel right.

Mike Penning: Well, I disagree. I think the public will want us to protect people and stop them dying. One of the issues here is why we did not delay for more information or whatever. I spoke to a journalist—

Keir Starmer: No, I understand.

Mike Penning: —in Falkirk the other day, talked to him on the phone, and he said, “It is really interesting you are phoning to talk to us about psychoactives. We had a guy, a

gentleman called Jamie, I believe, drop dead today in the street in Falkirk because he took a legal high from a head shop”. That is what we have to try to stop.

Q133 Nusrat Ghani: Minister, I asked the professor about the impact of legislation being introduced in the Republic of Ireland. One of it was the reduction of head shops and we know that you could not link it in. My concern is if it is going to reduce the number of high street shops and if more is available online and it is marketed in a way that is attractive as a recreational item to take that it might increase people taking these substances. It also might become advertised to younger people and it might be seen as an okay thing to buy because you are not walking into a seedy head shop but you can just go online and buy a substance on the internet. You do not have to have interaction with anybody. No one is going to question how many packets you have bought ever. I am concerned that we are not going to be able to manage how it is advertised online, branded online and who will be buying it online.

Mike Penning: Okay. Interestingly, in the honourable lady’s county, Lincoln banned head shops and the head shop is closed in Lincoln. If you do not have the legislation behind it that makes it illegal to sell and to purchase, that is exactly the area where you would be going. There is a lot of evidence about people that buy it buy it because they think it is safe because it is legal. Well, it is no longer legal and it has never been safe. All the evidence elsewhere in the world and where we have run it is it is not a single process. It is not going to be perfect and we will have to make sure that we work with a lot of the voluntary sector and a lot of the schools to make sure that we educate young people around the dangers of this now illegal product, which a lot of people have grown up with being legal.

The difference between it going online is really interesting because only about 6% of these products are sold online that we know about at the moment. We do close down websites on a regular basis. The difference, I think, is around the legality because it is perfectly legal for these young people to take it and they think it is safe. It will not be perfectly legal and it will not be safe. The evidence seems to show—and it is difficult the evidence from Ireland, I accept that, because I would like to have had better evidence from Ireland now but they only publish every four years.

Q134 Nusrat Ghani: Which evidence are you referring to? Because when I asked the professor earlier he was most comfortable in giving me examples of the legislation in Ireland, so which evidence are you referring to, the impact?

Mike Penning: I went there and sat with their scientists and with their Ministers. We publish every year evidence around drugs and the use of drugs. They do not. It is every four years, sadly, otherwise we would have a lot more evidence here now. As I say, people have said to me, “Why don’t you wait for the evidence to come through?” and I am not willing to do that because too many people have died in the interim period and had their lives destroyed, and their families, which is the other people we often forget about with drug use. It does not appear in Ireland to suddenly have re-emerged on the internet. It does not mean to say that all of a sudden drug dealers are selling drugs and making a profit out of doing it, and some of them will try to do this, I am sure they will. But at the end of the day, at least it is illegal now, or it will be, one hopes, should the House make that decision,

whereas before the perception of it being safe based around its legality is where the dangers have always been. I know there is a lot of work that colleagues have done over the years, but these products are, frankly, appalling. I know there is a BBC documentary due out pretty soon that I think will shock the public into realising just how dangerous these are and probably touch on some of the points you have made.

Q135 Stuart C. McDonald: Minister, you have said that you are now working closely together with the ACMD, which is welcome. This is obviously a critical new law. Isn't it astonishing that you were not really as a Government engaging with the ACMD prior to publication of the Bill?

Mike Penning: Yes, we were and, as I touched on earlier on, some of the times when we were engaging with them was in the purdah period so my officials were dealing with that where I could not. Purdah is a difficult period. Three members, including the chairman, were on the advisory panel making the decision on policy. The specialist scientists on the group are not about policy; they were about telling us what is going to damage people. What we made sure on the specialist group is that they were the chiefs who are desperate for it, including the chief constable of the police force of Scotland. They are absolutely desperate for this legislation. All the chiefs are saying to me that they are. A lot of the CPS are very desperate that we can get into this position. The clinicians are. Everybody is up for it. I fully accept it is, as I said a moment ago, a real change but I do not think we can be accused of not consulting or working with the experts when three of those experts sat on the advisory panel.

Q136 Stuart C. McDonald: You have made a very eloquent case as to the urgency of the situation. I do not think anyone would doubt that, but is there a danger that in pressing ahead at such speed we now have lots of folk who are in principle very supportive of legislation but now have very serious concerns about some of the definitions or unintended consequences? Will the Government still listen and possibly amend?

Mike Penning: Of course we will listen and we will amend. We have already accepted that we will bring forward some amendments that will go back to the other House as we hopefully get into committee following a second reading. The type of legislation is enabling legislation. It is not a fixed entity. It cannot be a fixed entity. It will have to evolve. For instance, if we find that the seven years is not right, then we can look at that if we find that we need to work around that. The key for us and for me probably as a Minister or just as a dad, frankly, is that I do not want to read the reports that come across my desk of people's lives being destroyed and their families being destroyed by taking something that they think is perfectly safe because it has the words, admittedly not scientific, "legal high" around it.

Chair: Thank you. Finally on Ireland, David Burrowes.

Q137 Mr David Burrowes: We heard from the ACMD that they invited the Irish contingent down but they did not show up to give their assessment of the impact. Do you have sufficient advice and sufficient information to be able to inform the House about the impact in Ireland?

Mike Penning: We would like more, but the agreement I have personally with the Minister in the Republic is that they will work enormously closely with us. I had the police and justice Minister from New Zealand with me just before the election and they are doing similar things. Interestingly enough, Chair, the whole of Europe is looking at how we are doing this. We are not going to end up doing this on our own. I would have been proud if we had have led this. We are behind the game, probably 10 years behind the game. Some of these products were out in the 1960s when even I was a young man, and we are very much behind the game. We cannot keep trying to tweak here, tweak there, because, frankly, these scientists in China and other parts of the world are vastly ahead of us in a lot that we are doing. By doing it this way, which is a seismic change, I fully accept that, it cannot be impossible for us to do it to protect young people.

Q138 Mr David Burrowes: Perhaps, Chair, through the Minister it would be useful to be able to have published an up-to-date impact—

Mike Penning: Chairman and members of the Committee, I will publish those. We have been as open as we possibly can all the way through this, not least because we need to take the public with us. As I say, it is not for the squeamish but the BBC documentary that I understand will be out before Christmas is frightening and there are people that are addicts begging us for this legislation. There are doctors begging us, policemen, but when you listen to the addicts saying, “I don’t want anybody else in the position I am in now”, you cannot stop everybody but it makes a pretty compelling case, I think.

Chair: Minister, thank you very much for coming to give evidence to us today.

Mike Penning: As always.

Chair: No doubt we will see you again on other issues. Do you have a timetable for the publication of the new formula that is being—

Mike Penning: I don’t, but I will write to the Chair as soon as I have some data and even in the interim probably to clarify some of the points I have made to the Committee today, which I have probably done wrong because I did not open my folders.

Chair: That would be extremely helpful. Thank you very much for coming in.

Mike Penning: You are very welcome.

Examination of Witnesses

Witnesses: **Dr Owen Bowden-Jones**, Consultant Psychiatrist and Lead Clinician for Club Drug Clinic, Addictions Directorate, Central and North West London NHS Foundation Trust, **Jan King**, Chief Executive, Angelus Foundation, and **Jeremy Sare**, Director for Communications and Operations, Angelus Foundation, gave evidence.

Q139 Chair: Good afternoon, everybody. You have sat through some of that evidence so some of the questions that the Committee may ask you are similar to the ones we have

already put to the Minister and to other witnesses. Perhaps I could start with a general question to each of you. In your own way, I think you all have been campaigning for some time for the Government to take action on this and the Angelus Foundation, of course, is a previous witness before this Committee when we conducted our very large inquiry into drugs. Perhaps I could start with you, Jan King. Are you pleased with what the Government is doing? Has it covered all bases or do you think the blanket ban is going to prevent legitimate use of items by the public?

Jan King: On the whole I am and we are very pleased that the blanket ban is coming in. We have, though, of course, listened to a number of the objections that have come out and would hope that there is some agility in the Government to deal with those. Our concern is that young people are at risk and we have seen a number of other groups that have taken the brunt of legal highs, new psychoactive substances, so we want to protect them with whatever way we can. That is our concern, so we do not want a law that is going to make things worse. There is some concern that by including everything in the law it discredits it. We understand, we are not lawmakers, we are only here to try to keep people safe, but we understand it is difficult. We generally are supportive but really want to see much better education and awareness.

Q140 Chair: Jeremy Sare, how many people do you think—and this is, of course, an estimate because you do not know; you cannot look into the future like the rest of us—but what level of prosecutions do you imagine will now happen as a result of this legislation?

Jeremy Sare: I think it will be low—that is the experience of Ireland—because we constantly want to look at this in the same way as other drugs and it is a new phenomenon. The main suppliers, particularly through head shops, are not going to be tempted in the vast majority, I think, to continue supply around the law. They will just move into some other trade. Where it will continue, I think, is some small-scale and middle-size dealers who are dealing now in substances like cocaine and ecstasy and they will be tempted to take some of the market if the suppliers can continue.

Q141 Chair: Dr Owen Bowden-Jones, we will, in fact, be visiting your clinic on Thursday to see the work that you are doing following a suggestion by David Burrowes. Are you pleased with these sets of proposals because the chairman of the advisory council and the council itself have suggested a number of problems that still exist with this legislation?

Dr Bowden-Jones: I think it is as we have heard all afternoon. It is difficult to say because it depends a little bit on what NPS users choose to do. I do suspect that the Bill will close down high street sales and I suspect that some of the people who come to my clinic will stop using NPS as a result, but others will seek out NPS from other sources—so they will look online—and some will turn to illegal drugs. They will say, “I will not bother with NPS, I will use ecstasy or cocaine instead”. I think that lack of clarity just emphasises the importance of evaluating this Bill very, very carefully. We are in new territory and I think it is critical that we try to see as clearly as we can what happens next.

Q142 Nusrat Ghani: This is for Ms King and Mr Sare. Your submissions suggest that there is the possible stockpiling of psychoactive substances before the legislation is enacted. What

evidence do you have for this and what quantities do you expect of stockpiling to take place? How might this be prevented?

Jeremy Sare: I think the lesson from mephedrone, which was the substance that was the real juggernaut that went through and changed the whole landscape; there was a lot of stockpiling around 2010 when that became a controlled drug. The fear is that that will happen also because there is a significant gap between when Royal Assent is envisaged, which is around Christmas I think, maybe a little later, and 1st April when it is commencement. You have that worry that that gap will be filled with those entrepreneurs who see it as a very lucrative business, that those who want to take advantage of the substantial mark-ups will do so. Quantities I am afraid I could not really guess on that.

Q143 Nusrat Ghani: So there is no linked evidence that you can offer?

Jeremy Sare: The patterns with mephedrone may be repeated, yes.

Q144 Nusrat Ghani: How might it be prevented? Is there any way we can prevent this or not? If people know it is coming it is going to be quite difficult, isn't it?

Jeremy Sare: I did speak to our enforcement adviser around this subject and he was suggesting again that the head shops are not going to be so much the problem, but the small-scale dealers may be. A co-ordinated police response, which I think there was a similar one a couple of years back around the supply of NPS and those substances, which included illegal substances, I think that, perhaps co-ordinated through the Home Office, would be a good idea.

Q145 Nusrat Ghani: A targeted online strategy then, I assume, to see what is being made available and having a lot of activity online, if it increases before December? Will we need a separate online strategy or not to stop—

Jeremy Sare: The online is a difficult one because when you survey people and say, "Where did you buy this from?" it comes as quite a low figure, often below 10%, but that is not to say that those who are buying through small-scale dealers and friends did not originally purchase it online. It is a very difficult area. It is going to be a residual problem. We want to see the whole thing eradicated. This will change the market. It will disturb the market very significantly, but there still will be some elements left that will be online, which I am afraid we will not be able to tackle because there are those who have high-risk behaviour and they will still seek these substances.

Q146 Mr David Burrowes: The Committee, of course, are coming on Thursday. I am coming again. I saw it myself first years ago and no doubt we will see it as a special clinic and specialist. How many are coming through the doors every week?

Dr Bowden-Jones: We have been open since the end of 2010 now as a unit and during that time we have seen about 1,200 referrals and we have treated over 800 patients. We have had a fairly steady stream of people coming in asking for help. At the moment we see maybe two or three new people a week, something like that.

Q147 Mr David Burrowes: It is, as I say, special and specialist compared to conventional drug treatment services and compared to elsewhere in the country. Can you comment on that and whether you think what you are doing in your patch needs to be replicated, not least given the prevalence of these drugs?

Dr Bowden-Jones: NPS in general I do think present a real challenge for conventional treatment services because in general drug treatment has relatively poor knowledge of NPS, of what the drugs are and how they work. They have poor knowledge about the people who use them and the context in which they use them. They have relatively poor knowledge about ways of engaging NPS users and treating the harms. The CNWL Club Drug Clinic was established to meet those challenges and, as the name suggests, it was set up specifically to treat people who use club drugs and NPS. In doing so, we have managed to think very carefully about how we engage those users, how we treat those users, and it has also allowed us to develop a lot of expertise understanding the harms and understanding some of the treatments. That has allowed us to do things like host research on these new drugs and to develop clinical guidance. That is what we have been allowed to do by essentially having a specialist service.

Now, whether you replicate that model across the UK really depends on the local need. There is quite an interesting geographical variation in the NPS use. Clearly, a drug service is there to meet the needs of the local population, so what you need is to do a needs assessment and see what the level of NPS problem might be in that area. Where it is high, then clearly a specialist service might be useful. Where it is low, well, probably not. I do think what is a critical message for drug services now is that we need to maintain the focus on things like heroin and crack but we also need to skill ourselves up to manage the new harm to these users. I like to use the analogy of widening the front door, so we need to widen the front door to let these new users through. I think that is a challenge for drug services at the moment.

Q148 Mr David Burrowes: How would you describe the harms of poppers?

Dr Bowden-Jones: In the clinic that I work in, we have seen lots and lots of people using poppers but we have seen very few people presenting with harms relating to them. As far as I can speak as a clinician, I do not think I have ever seen anybody come through with harms related to poppers. Having said that, there are associated harms. As we see with a lot of NPS harms, they tend to be unpredictable. When ketamine came out, we had no idea it was going to damage the bladder. Who would have thought? Now we are getting a link between poppers and eye damage and, again, it is just the sort of thing that is unpredictable. That is one of the challenges.

Chair: We will come back to you again, Mr Burrowes. Keir Starmer.

Q149 Keir Starmer: Can I follow up on this issue of harm? I have been pursuing it all afternoon. There will be a wide category—and it has already been remarked on as to how that might be counterproductive—of substances caught. In your clinical experience, they may be unpredictable but the harm level, for want of a better description, does it vary a great deal between the different substances? Poppers, it sounds as if it is at what you might call the

lower end, possibly; not completely understood. I may be wrong about this, I am not an expert, but I assume that there are other substances where you could say on what we know already the harm is much greater. We may be learning a lot in the future but we will gradually be able to say there is a differentiation in harm according to the different substances or types of substances. Is that clinically right?

Dr Bowden-Jones: Absolutely that is the case. One of the complexities of this discussion is that people tend to talk about NPS as a group of drugs. Within those drugs, the whole point of NPS is to try to replicate the effects of existing illegal drugs. You have stimulants, you have sedatives, you have hallucinogens, you have dissociatives. Within each of those categories you get drugs with different potencies, different lengths of affecting the body, so different harms. We see a huge range of harms within each of those different groups, so talking about NPS as a whole is quite difficult as a clinician.

Q150 Keir Starmer: Are you, therefore, yourself concerned that at the moment at least harm seems to be left out of the equation when it comes to the way the Bill is supposed to operate? Every substance is in but harm is out?

Dr Bowden-Jones: I think it does talk to a broader debate about drugs in general and how we think about them in terms of their harmfulness. There has been some very good work done on the harms to individual and society by different drugs. That shows heroin comes top every time followed usually by crack cocaine, but if we start to build our knowledge about NPS we will find that some of those NPS are really very harmful.

Q151 Keir Starmer: Then we can grade them all. Finally, if I may, Chair, to Mr Sare: none of us know; is one scenario that there is a likelihood if legislation is passed that a number of people who think they are acting legally will stop it, they will stop supplying and they will stop using it and the numbers, as you suggested, will go down? Is there not in addition the likelihood that a number of people will see that as the supply goes down because the market has reduced the price goes up? You will get a changed market, maybe smaller, where people are exploiting it because it starts to make a lot of money, like traditional drugs under the Misuse of Drugs Act. In other words, it becomes a version of the drugs problem, which is you prohibit it, some people stop it or do not use it because it is prohibited, others do not, and because there is a supply somebody realises the price goes up and they supply at a great profit. In other words, you get a pocket or a version of the usual old drugs problem with the drugs type of market.

Jeremy Sare: I think the profits now per substance are if anything higher than traditional drugs such as cocaine. The market is very much determined by legality and I think the expert panel was certainly of that view. It is exemplified when you look at websites such as Silk Road where anything can be purchased, so if people are just buying what they want these substances are of negligible demand because very often they are not very high pleasure. The synthetic cannabinoids are causing quite problematic use, particularly among vulnerable groups, but given the choice of all substances people would not choose to buy them over others.

Chair: Thank you. Stuart McDonald had a question.

Q152 Stuart C. McDonald: Just a quick follow-up on the question of harm, you spoke about the different nature that different NPS substances have. What degree of knowledge do people using them have about obviously the effects that NPS are going to have—I assume they have a significant degree of knowledge when they are making their choice about what they are going to use—but also about the potential harmful effects that they have? Are they aware of the danger that they are putting themselves in?

Dr Bowden-Jones: It varies but I would say that in general people have much less idea about the harms of NPS than traditional drugs. When we set up the clinic we expected it to be people coming through having used a bit of ecstasy and maybe had a bad few days, and instead what we had was this avalanche of patients coming forward with very significant harm, injecting their NPS, becoming dependent on their NPS. It was just a much more serious problem than we thought. Very often we talk to people who said, “I used this and I bought it and it only cost me a tenner and I got a whole gram, but it was much stronger than I thought it was going to be or I had consequences I did not think about”. I do think this issue about legality that has been brought up is important because I think it does give a semblance of safety to the drugs. Having said that, many patients who come to my clinic will use a mixture of NPS and illegal drugs, so NPS will be blended into a broader cocktail or broader repertoire of using, so it becomes more complicated again when you have people using both.

Q153 Stuart C. McDonald: On that point, this might be completely daft as a question but would some substances only have a psychoactive effect in some people because they have already consumed something else? Would it possibly be the case that a substance could only be a psychoactive substance because somebody has already consumed a different substance?

Dr Bowden-Jones: This is a really interesting question and the simple answer is we do not know. We have just written a set of clinical guidance called NEPTUNE and this talks about the harms, acute and chronic, of individual drugs. We have almost no knowledge of what happens once you start combining but of course most people do combine. If you take an NPS with another NPS, or an NPS with an illegal drug, what happens? It is really not clear. That is what we are learning at the moment.

Q154 Mr David Burrowes: When it gets to court the issue of quality is relevant, and obviously relevant in terms of the impact and harm to the individual in both ways, in terms of the quality. Can you judge that quality in different NPS and make a judgment—obviously it would need to go to a lab—in terms of the quality? Is there evidence that it is often mixed, cut, with other substances?

Dr Bowden-Jones: I am not a clinical toxicologist but I can tell you a little of what the clinical toxicologists have told me. A lot of the NPS were 100% pure drugs, initially, but it now seems as if there is more and more cutting and blending going on. Some of the NPS are not even legal because they may have some illegal psychoactive drugs mixed in as well. Again, it is very complicated and it is ever-changing. It really is a moving target and that is why it is an interesting discussion.

Q155 Mr David Burrowes: Just finally, I have heard there is evidence from the National AIDS Trust that they have concerns, particularly in relation to poppers, about it going underground and then creating more harm underground. They said they would expect health harms and even possibly deaths to increase as a result. Obviously you are in the front line, as it were, in your clinic. What would your view be on that?

Dr Bowden-Jones: I can only speak about my clinical experience. It may be that people experiencing harms with poppers are going elsewhere. They are not coming through the door of my clinic and that is all I can say. However, there is clear evidence of poppers causing harm.

Mr David Burrowes: They are saying it is an impact of the legislation, that it would lead to more of that misuse.

Dr Bowden-Jones: I do not think I could comment because I do not see patients using poppers harmfully.

Q156 Nusrat Ghani: Just following on from that question, do you have any evidence that people start using poppers and move on to other recreational drug use?

Dr Bowden-Jones: The use of poppers, again within my clinical experience, tends to be within a much broader repertoire of drug-using. Poppers will be one of maybe four or five drugs used in an evening, typically in clubbing settings. Often the other drugs have higher perceived harm than poppers but, as I said, I am not well-placed to answer questions on poppers because none of those patients are coming through my front door.

Q157 Nusrat Ghani: I have some questions for Ms King and Mr Sare. Education is going to be key. The term “legal high” does not show the impact and the damage that taking these recreational substances can do. You claim that the Government has made only £180,000 available to fund education on the dangers of psychoactive substances since 2013. Where did you get this figure from?

Jeremy Sare: That was from a Parliamentary Question just at the end of the last session. However, we have recently met the Minister and he gave a commitment, not of an amount but certainly that there would be some kind of awareness programme; not education as such, that is still unspecified, but we were encouraged that there was some desire to create awareness among young people through the police and also among the head shop owners. There is a communications plan afoot that we will be involved with, and we are meeting officials very soon about that.

Q158 Nusrat Ghani: What programmes have worked that have been funded, which should be replicated?

Jan King: We have created a number of materials and some films that we have shown in schools—we have gone out to festivals, we have gone to universities—and they have an impact. Young people say to us that has given them some information they did not

otherwise have. Other people, other voluntary sector organisations, are doing similar things. Our concern is there is just not enough. It is not widespread enough and it does not come with the resources that Government have to back it up. We are very keen to continue sharing our resources, certainly, but also to have the weight of Government pushing good education and good awareness.

Q159 Nusrat Ghani: Do you think there should be more work done within schools?

Jan King: Certainly, yes.

Nusrat Ghani: What would be the appropriate age group to start in?

Jan King: We have concentrated mainly on the 14 to 18 year-old group. Some people are working with a younger age group. I met with a group of 14 year-olds in Edinburgh earlier this year and they said, on a very quick survey, one in four of them had tried a legal high. There are a lot of head shops in Edinburgh and a lot of sales in other places. They said, “You need to be telling us this earlier, when we are 11 or 12.” There needs to be something—and teachers need to be aware of this—around drug education generally, as well as around the changing drugs landscape.

Q160 Nusrat Ghani: My concern is that we are never going to get to those children that are most vulnerable early on enough, so not just working within schools. What work are you doing and what work should the Government be doing with other NGOs to make sure we reach those groups of people that are not going to be easily identifiable, that solo person who might go on the internet or might just go into a shop? How do we communicate with them as well?

Jan King: Yes. We are trialling a piece of work in Luton, where they have had particular problems with quite deprived communities, to try to make the community much more resilient to the issues that are affecting them; these sorts of changes in the drugs landscape. We are trialling that. Other NGOs are trying other things. Our concern is about sharing that knowledge. We are a small charity but we are trying to draw in as much knowledge as we can and share that. But again, we want the Government—obviously it does not do this alone—to reinforce this and get behind it with some proper resourcing.

Q161 Mr David Winnick: Leading on from this, assuming that people of my age group or anywhere near it are not your patients—and I would be most surprised if that was the position—you mentioned children as young as 11 or 12. Would there be many in that sort of category who would be taking up these substances?

Jan King: I do not know how many would be taking the substances at that age. The people we have spoken have tended to be a bit older and have told us that they needed to know the information at an earlier age. What we do not know is, across the country, what level of use there is. We have done some surveys. In Edinburgh, it was particularly high. I have been to Lincolnshire, where we know there has been a ban, but in a school outside Lincolnshire the level of knowledge and use seemed to be pretty low. It varies so much around the country and that is why we do need very targeted approaches.

Q162 Mr David Winnick: When we are talking about this anywhere near an average probably is not possible, I accept that, but if you use the term “average age profile” of patients, are we talking about people up to 30 or 35? Would that be right, Dr Bowden-Jones, amongst your patients?

Dr Bowden-Jones: It is a bit wider than that, actually. Again, when we talk about NPS drugs, it is an umbrella term for lots of different types of drugs. When we talk about NPS users, it is a similar pattern. There are lots of different groups of users. You have university students; you have people who define themselves as clubbers; you have higher rates of use in the LGBT population; you have use in prison populations; and you have use in homeless populations. There are these different groups of people who are attracted, for very different reasons, to using NPS. The age range in our clinic goes from about 15 or 16 up to mid-60s. We have a very wide range of people who are attracted to trying these drugs and for very different reasons.

Q163 Mr David Winnick: Would it be right to say, again as a generalisation from a layman, that they have other problems? Does the fact that they are taking these substances arise from personal problems of various kinds, such as psychological or psychiatric problems? Would that be in any way an accurate description?

Dr Bowden-Jones: The way I personally conceptualise this is people take a psychoactive substance either to give themselves feelings they cannot get otherwise or to take away feelings that they do not want to have. Broadly speaking, that would describe most of the motivations of people using drugs who come to my clinic.

Q164 Mr David Winnick: What about gender? To the Foundation and yourself, would it be far more men than women?

Dr Bowden-Jones: Again, it is quite complex because it depends a little bit by drug. We are seeing some drugs where the gender split is 50:50. For instance, within our ketamine users we tend to see the gender split being about equal. For other drugs, say methamphetamine, we are seeing many, many more men using than women. You almost need to think about each drug or group of drugs in terms of the context of their use.

Mr David Winnick: Would that be the position of the Foundation?

Jan King: Yes. In terms of problematic drug use that we have seen, because we have seen a lot of problems in prisons in particular and with homeless people, there is probably a higher level of problematic use among men. But in terms of the young people we talk to, it is probably 50:50, certainly in terms of where people have experimented.

Mr David Winnick: Thank you.

Q165 Stuart C. McDonald: If we are looking back at this legislation after 30 months, which we are apparently going to be doing, how should we be assessing it? What sort of indicators should we be using? I assume some would be obviously the number of deaths, the number of

hospital admissions and so on, but are there other things that we should be looking at? The number that have moved on to other drugs, for example?

Dr Bowden-Jones: Shall I start? This is absolutely critical. We are in uncharted territory and it is very important that we look at the evaluation of the Bill. To do so, we need a range of metrics so that we can understand changes from different perspectives. We already have a range of existing clinical metrics: we can look at the number of people in treatment; we can look at the number of deaths; and we can look at prevalence data. We have other, already available data points such as looking at seizures. We could look at organised crime and how they are responding and of course look at the internet, both the clear net and the dark net.

Then we might need to think of some other ones as well. I am very keen on looking at harms across the full extent of the health front-line: looking at harms in A&E departments; in sexual health clinics and so on. Currently, we do not have any good systems in place for nationally recording those harms and that is an Achilles' heel. The other thing that I think is critical we look at is the impact on research. I know that that has already been talked about this afternoon but it is very important, of course, that this Bill does not have any unintended consequences on legitimate medical research.

Q166 Chair: Your organisation, the Angelus Foundation, where do you get your funding from? Do you get any funding from the Government in respect of the work you do on preventative aspects, stopping young people having these legal highs in the first place?

Jan King: No, we do not. No, we get it all from private and charitable trusts and other foundations.

Q167 Chair: In answer to Nusrat Ghani you talked about the need to go around schools and colleges to try to put people, young people in particular, off taking these legal highs. How do you manage to put together a programme like that when you do not have the funding?

Jan King: We do it through our charitable funding and through the support of volunteers and other interested people. We are very small so we do what we can, but then we try to share our materials with others so that they can use them. We speak at a lot of conferences to, again, put over information and share our knowledge.

Q168 Chair: Presumably this should be done at a local authority level because that is where the schools are.

Jan King: That is right, yes. Exactly. But there is a concern that, while it is a localised issue and it can be changed very locally, it does have a wider significance and things will spread. There are no borders around towns. We have to learn from each other.

Chair: Thank you. Jan King, Jeremy Sare, thank you for coming in today. If there is anything you have missed out telling the Committee, please would you write to us? Dr Owen Bowden-Jones, thank you as well. We will be seeing you on Thursday to be able to see for ourselves all the good work you are doing there.

Jan King: Thank you.

Chair: Thank you. That concludes the session.