

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's Response to the Home Office Consultation 'Entitlement Cards and Identity Fraud'

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Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

1. INTRODUCTION

Liberty welcomes the opportunity to respond to this consultation. Liberty opposes the introduction of a “universal entitlement card” as defined in the “Entitlement and Identity Fraud” consultation paper.

Our objections fall into two categories:

- Principled objections to any form of compulsory national identity card scheme, and how such a scheme might infringe privacy or civil liberties
- Practical concerns about the financial and administrative feasibility of any scheme

This response outlines our extensive and wide-ranging objections to the introduction of an identity card scheme – and to the nature and manner of the public consultation that has taken place. Also included are Liberty’s contributions on a number of the specific areas on which the paper seeks input.

1.1 Background to the present debate on identity cards

It is important to place the present debate on the introduction of ID cards within an historical context. Doing so highlights real concerns about any government’s intentions in implementing such a scheme.

Since the repeal of the National Registration Act in 1952, there have been numerous efforts to re-establish some form of ID card scheme (either nationally or to apply to particular groups or communities). The supposed

justifications for such schemes have varied with the times and – to some extent at least – with the news agenda. Examples include suggestions that ID cards could be used to combat football hooliganism, improve the administration of the tax system or combat illegal immigration.

Prior to this government's first intimations that an identity card scheme might be desirable, the last major consultation over ID cards was conducted by the Conservative government in 1995. Following intense public debate, and considerable internal discussion and division within the government, the idea was shelved. Peter Lilley, a Cabinet minister at the time, recently described the proposal as being the only time he had come across a solution looking for a problem to solve, not the other way roundⁱ.

The current Home Secretary first raised the possibility of introducing ID cards following the terrorist attacks on the United States of September 11th 2001. A substantial public and political backlash led to the government conceding that ID cards would not form part of any emergency counter-terrorist legislative package. Security experts challenged the notion that the scheme would have any meaningful impact on combating terrorism; the Government quickly conceded this fact. It had also become readily apparent that the 9/11 terrorists were using either legal identification papers or very plausible forgeries.

Adrian Beck, of the University of Leicester, had been commissioned by the government in 1995 to look into the possible introduction of identity cards. Following the September 11th atrocities, he wrote "There is a lack of evidence that an ID initiative would have a significant impact upon the problem of terrorism, or indeed on more generalised crime ... If one legitimate person has the technology to make an ID card, then another (illegitimate) person can have it too."ⁱⁱ

Recent history shows us that ID card schemes are often proposed as an elegant solution to a specific problem or – as frequently – as a “magic bullet” to cure many of society’s ills. However, close scrutiny and careful examination has always raised to the fore very real threats and dangers inherent in any national ID proposals as well as an almost complete absence of evidence that they would help solve any of the problems which their proponents claim.

Governments may also have been dissuaded from pursuing an ID programme for fear of exacerbating divisions within their own ranks. Typically, support for ID cards – which has often been shown to be high at the start of a public debate – wanes as the false claims for an ID system are exposed and the implications for privacy and civil liberties are explained.

1.2 The present consultation: observations and concerns

Liberty believes that, once again, the proponents of ID cards have failed to adduce any substantial evidence or to put forward any compelling arguments as part of the present government consultation.

We also have substantial concerns about the nature and scale of the consultation exercise.

Firstly, the terms and definitions of the debate as laid out in “Entitlement Cards and Identity Fraud” are very unusual, to put it mildly.

Para 2.5 of the consultation paper asserts “The debate on identity or entitlement cards is often confused by imprecise use of the adjectives which describe possible schemes. The following paragraphs describe the different ways that schemes are often described and then defines precisely what the Government means by the different options available. The Government hopes that this will be helpful to those participating in the consultation exercise”.

What then follows is a contorted and confusing labelling of various different possible schemes. The very term “universal entitlement card” displays precisely the sort of confusion and imprecision that the paper claims it wishes to avoid.

Because the government has already conceded that the police will have no “stop and see” powers with regard to any new ID card programme and that there would be no legal obligation to carry a card at all times, the paper’s conclusion seems to be that this renders any proposed scheme non-compulsory. On even the most rudimentary understanding of the English language, this is not the case. A proposal in which every British citizen will be legally obliged to register for and obtain a card and to produce it in order to access a substantial range of government services is a compulsory system.

The distinction between a “national” and a “universal” system is that the former would apply only to those legally domiciled in the United Kingdom and entitled to make a claim on public services. The latter might also apply to those temporarily resident in the UK on – for example – short-term working visas. Despite the claim in Para 2.7 that a “universal entitlement card” scheme would be one in which “everyone in the country over a certain age was required to register with the scheme”, our understanding is that only British citizens would be legally required to apply for the card (not, for example, tourists who are legally in the country for only a short period). So the proposal is for a “national” not a “universal” system and the distinction between the scheme outlined in Para 2.6. and Para 2.7. is that the former is a voluntary national scheme and the latter is a compulsory national scheme.

Finally, on the subject of terms and definitions, the use of the term “entitlement” as opposed to “identity” is unhelpful and confusing. The card is an identifier which would display or contain numerous aspects of its owner’s

identity. It would not, however, as far as we can discern, “entitle” anyone to access any goods or services to which they are not already entitled at present. If it provides identity data but offers no entitlement, it is surely misleading to describe it as anything other than an identity card.

The discussion about terms and definitions is not merely a matter of semantics. Using the term “universal entitlement card” to describe what is de facto a compulsory national identity card leaves the unfortunate impression that the government has not approached the consultation about ID cards with absolute candour.

Therefore, through out this paper, Liberty relies on terminology that is common parlance or based on clear dictionary definitions.

The government’s consultation launch had led us to believe that it would seek to hold a wide range of open, public meetings throughout the country, and to advertise and maximise media coverage of the issue, in order to promote the debate and keep it in the public eye. As far as Liberty is aware, only one open public meeting was held during the entire consultation period – and this was co-organised by Liberty, Privacy International and the Foundation for Information Policy Research, not the Home Office. Similarly, much of the media coverage generated around the consultation has been due to the efforts of the non-governmental sector. The consultation may have provided the government with an opportunity to hear the views of various interested parties within the industry and the voluntary sector, but Liberty is sceptical about the extent to which the debate about national identity cards was really taken to the wider British public.

The present consultation exercise is a continuation of the debate begun after the terrorist attacks on the United States of America on September 11th 2001. At that time, there were suggestions that the introduction of a national identity

card could prove to be an effective tool in the “war on terrorism”. By the time of the Labour Party conference, Home Office minister Lord Rooker had stated that whilst ID cards would not form part of the package of emergency measures that became the Anti-Terrorism Crime and Security Bill, the issue would be kept under review.

Since then, both in the run-up to the consultation and during the consultation period, a diverse range of different possible justifications for introducing national identity cards have been advanced. Liberty believes that this gadfly approach, flitting between numerous different possible justifications for the cards, simply underlines the reality that ID cards are a solution looking for a problem and not the other way round.

Given the oft-stated importance of public views in this process, we would be interested to see feedback on the public response to this consultation published in due course.

2. LIBERTY'S PRINCIPAL CONCERNS ABOUT THE INTRODUCTION OF A COMPULSORY NATIONAL IDENTITY CARD SYSTEM

2.1 The relationship between the state and the citizen

Liberty believes that the scheme laid out in *Entitlement Cards and Identity Fraud* – or any similar compulsory national identity card proposal – fundamentally and unacceptably alters the balance of power between the state and the individual. Whilst Liberty welcomes the guarantee that there will be no “stop and see” powers for the police force at this stage, the scheme outlined in the consultation paper would still require many citizens to prove their credentials to public authorities on a regular basis. For many individuals, particularly those most reliant on state services, it would to all intents and purposes be obligatory to carry the card at all times.

Furthermore, it would be a relatively simple matter to add police powers to the scheme at a later date. If the government proceeds with an ID card, it is difficult to envisage the safeguards that could be put in place to prevent a widening and deepening of the role and importance of the card. One can easily imagine that had an identity card been in existence at the time of the terrorist atrocities on September 11th 2001, provisions could well have been made to make it mandatory for members of the public to produce the card upon request by the police or security forces. Liberty believes that the best protection against the threat of “function creep” is to ensure that the apparatus that would allow such significant encroachments on individual freedom are not established.

The state is first and foremost the servant of the public. To create a mechanism by which citizens will continually have to prove their credentials to state bureaucrats threatens to fundamentally unbalance this principle.

2.2. Data protection and privacy concerns

Any form of credible identity card system inevitably involves some form of substantial central database in which relevant information is stored. For the public to have any faith in the integrity of such a system, they would have to be persuaded that the data was accurately inputted and updated, securely stored and sensitively distributed. Given British government agencies' record in operating complex databases (witness, for example, the Passport Agency's set-up problems, or the data security/misuse issues at the DVLA, Inland Revenue and elsewhere) , it is highly doubtful that such assurances could be credibly given or would be widely accepted.

Although the Home Secretary has maintained that he is inclined to favour a card which carries only a relatively small amount of informationⁱⁱⁱ , the data stored in or on the card could be extended with ease and the pressures to do so will be substantial. Once some form of “multi-purpose identifier” is established, it stands to reason that an extensive range of both public and private sector organisations will wish to utilise, deploy and exploit the system.

Our present administrative arrangements, whereby data and information about us are not “joined up”, actually serve as a useful safeguard against invasions of privacy. Liberty is concerned – and believes much of the wider public are equally so – that storing, for example, an individual's health records and police records in the same place would pose a serious threat to privacy.

Government should bear in mind the findings of Cabinet Office-commissioned research by Professor Perri 6, on privacy and data-sharing^{iv}. Published in 2002, his survey of public attitudes to data-sharing and privacy showed a public increasingly concerned about data-sharing and its impact on privacy (which he compares to the growing interest in food safety over the last decade or so).

Perri 6 notes government focus group studies revealing that few people felt very positively about the benefits of data-sharing:

“Even exercises and prompts to elicit benefit perception sometimes tended to elicit risk perception instead. People nearly always found themselves unable to concentrate on benefits without also calling for safeguards against risks.”

The benefit of eliminating or reducing multiple requests for information failed to attract much excitement or interest. As regards benefits for public services, few people felt that they would benefit personally. Interestingly, those who attached greatest weight to the benefits to public services were those who used public services least frequently.

By contrast, the public did identify a large number of risks of data-sharing including errors in data-handling, infection with inaccurate data, malicious provision of data from anonymous sources, unjust inference, unauthorised access to or disclosure of personal information and disclosure of “soft data” in the form of professional opinions etc. Furthermore, significantly more categories of risk were elicited *without prompting* in almost every group questioned, than was the case when asked about benefits of data-sharing. The “emotional charge” associated with the risk was also much greater than the benefits.

In our view, the public attitudes revealed by the government’s focus group study as well as other surveys raise important challenges to the proposals for an identity card, with the inevitable supporting database, as well. In particular, the proposals aimed at convenience do not appear to be of particular interest to the public.

Present public attitudes suggest that, in many cases, consent to an ID card system may not be forthcoming.

Attempts to centralise data via a card system and population register database may have an initial attraction to those exercised by administrative efficiency, but they pose a real danger as far as privacy is concerned. Liberty is concerned that the government's proposals are not complemented by support for an extension in the resources at the disposal of the Information Commissioner.

If the government is to seriously consider introducing a compulsory national ID card and/or a central population register, then the role of the Information Commission requires serious review. In particular, the Commission needs to be seen to be more robust in its investigation of public authorities. Its legal powers of investigation and prosecution may be extensive, but in practice, its ability to use these powers across such a wide remit (and in a fast-developing area) – especially against public bodies – is worryingly resource-limited.

2.3 Groups likely to be most affected by the introduction of a national identity card

Those who regularly require state benefits and services will be considerably more reliant on the card than those who do not. In many cases, these disadvantaged groups may well find the administrative hurdles associated with applying for a card, the hardest to overcome. This would be exacerbated if the card contained biometric data. The consequences to these groups of their card becoming lost or stolen could be substantial.

Beyond the potential inconveniences and trouble for thousands of absent-minded or forgetful people, there are clearly more serious possibilities. What would be the effect, for example, on pensioners who lose the card: will they be unable to access health services or draw a state pension while waiting for a lost card to be replaced? How will homeless people, people mental health

problems or living chaotic lifestyles, be affected by losing the card and how much extra difficulty will they encounter trying to get it replaced?

Liberty's principal concerns about the possible impact on race relations would have revolved around possible police powers to demand production of an ID card, which the Home Secretary has specifically ruled out for the present. However, we note that some ethnic minority groups retain real concerns about the impact of the card, arguing it is likely to lead not to greater community cohesion but to more social polarisation.

2.4 The financial cost of a national identity card scheme

On a purely practical level, Liberty questions whether the financial cost of an identity card scheme can be justified. We believe that the government's estimate of £1.3bn is conservative and that private sector compliance costs could be substantial. We also believe that the ongoing running costs of the system – with the costs of information updates for a mobile population, of reissuing lost cards etc etc, will also run to hundreds of millions of pounds annually.

Liberty is concerned that, given the widely-held concerns about the possible implications of a national identity card and the unproven nature of the supposed benefits, this almost certainly cannot constitute the wisest deployment of funding in terms of tackling terrorism, crime, social security fraud or illegal employment practices.

Liberty is concerned that the costs of an identity card will fall disproportionately on those groups least able to bear them. Given the individual cost of the cards tied in to driving licence and passport, the requirement for regular renewal and the potential cost of loss replacement (not

least for some of the groups outlined in the section above) that the impact on lower-income groups could be significant and should not be lightly dismissed.

3. LIBERTY'S RESPONSE TO SOME OF THE CLAIMS MADE IN FAVOUR OF A NATIONAL IDENTITY CARD

3.1 Assisting the war on terrorism

Liberty does not believe that the imposition of a national identity card would assist in minimising the likelihood of future terrorist attacks, identifying terrorist suspects or bringing terrorists to justice. The Government itself has stepped away from this justification since the initial floating of the idea post-September 11th, but that initial suggestion has remained rooted in many people's consciousness – creating entirely false expectations for the scheme.

The perpetrators of the 9/11 atrocities were all either in possession of legitimate identification documents or held compelling forgeries. Those who are active in terrorist networks may well have the appearance of being average law-abiding citizens in other aspects of their lives. Additionally, organised terrorist groups will have little difficulty in forging even relatively sophisticated cards. The French government discovered that fraudulent production of their new 'unforgeable' smartcard quickly became one of the most profitable criminal activities in the country in the mid-1990s.

3.2 Tackling benefit fraud

Liberty is not persuaded that a compulsory national identity card would provide any real assistance in reducing benefit fraud. The overwhelming majority of such fraud involves lying about one's circumstances rather than about one's identity. The presence of a card will do nothing to prevent or deter such activity. In any event, attempts to tackle social security fraud could best be approached by seeking to make the present National Insurance system more robust. Introducing a national identity card is a hugely expensive enterprise which would not tackle the root causes of the problem of benefit fraud.

3.3 Combating illegal immigration and illegal employment practices

The government already issues ‘smart’ cards to those seeking asylum in the United Kingdom, as an aid to identification replacing the old standard acknowledgement letter (SAL) system. Liberty believes that this system should be reviewed periodically in order to ascertain its benefits and disadvantages. Extending an identity card scheme to the entire British population is an unnecessarily extreme response to the problems of illegal immigration and illegal working.

Insofar as there is a problem of large numbers of individuals seeking asylum “going missing”, this is an administrative failure on the part of the Home Office. Liberty believes that steps could be taken to improve the present administrative arrangements without requiring the introduction of a compulsory national identity card for around 58 million citizens.

Liberty does not believe that a national ID card will assist in reducing the number of people employed illegally in the United Kingdom. Many illegal immigrants are employed with the employer’s full knowledge and appreciation that they do not have employment rights in this country. The black and grey economy will not be thwarted through the introduction of an identity card. Such a system will continue to be ignored by unscrupulous employers and may simply lead to a greater administrative and financial burden being placed on wholly legitimate companies.

3.4 Reducing identity fraud

Identity fraud is a serious and increasing crime in the United Kingdom. However, Liberty is not persuaded that issuing national identity cards will assist in reducing identity fraud. Indeed, it is possible that their introduction

could actually make the present situation worse. If the national identity card were widely treated as a valid and robust means of identification, this would clearly encourage the creation of forgeries by the criminal fraternity. Over-reliance on a single form of proof of ID may, in fact, lead to a “false sense of security ... this could lead to more fraudulent activity, not less”^v. This may have the consequence of facilitating identity fraud.

Liberty believes that there are numerous alternative, cheaper and more credible means of tackling identity fraud. We would be interested in discussing proposals which make it more difficult for fraudsters to access personal information about innocent citizens. These might include mechanisms for ensuring that personal data is more securely stored; or for tightening procedures for remote (phone/internet etc) transactions, for which an ID card would obviously be irrelevant.

They might also include assessment of the success of continental experiments with personal PIN numbers (notably in France); or the scope for financial institutions simply to require photo ID on their own credit cards etc, as mooted over a number of years but apparently ignored in this context. Even changes in day-to-day practice could help in reducing identity fraud. For example, destroying credit card receipts or utility bills rather than simply throwing them into the dustbin.

Again, we would argue that all these possibilities should be explored before resort to a national identity card system that penalises everyone, risks incurring costs on a similar scale to the cost of identity fraud, and still does not directly or effectively address many of the practicalities involved in the commission of this crime.

3.5 Cutting crime more generally

Even given the (welcome) guarantee that police will not have arbitrary “stop and see” powers, there still appears to be a widespread belief that ID cards would assist the police in reducing and solving crime. Liberty believes that such views are misplaced.

The experience of identity card systems in other countries in Western Europe has been that they are not an effective means of combating crime and in some cases they have fuelled an underground criminal industry.

Liberty is also concerned that attempts to portray identity cards as a tool in the fight against crime are likely to lead to calls for an extension in police powers at a later date.

In reality, crimes rarely go unsolved because the police catch the perpetrators but are unable to confirm their identity. The far greater problem is actually catching the perpetrator in the first place. In the UK last year, over 75% of reported crimes went ‘undetected’ – no-one was even arrested, much less charged or convicted, for over 4 million crimes. This is not an issue to which ID cards relate at all; it is far more an issue about police capacity and resourcing.

3.6 Making interactions with the public sector more convenient for citizens

Liberty is deeply sceptical with the argument that the presence of a national identity card would be a convenience for the average citizen. At present, proving one’s eligibility for state benefits or services is not a particularly onerous or complex process. The alleged convenience of having a single identifier is more than offset by the inconvenience of registering for an identity card (particularly if biometric data is required) and the problems if one’s card

were lost or stolen. Even if there was some demonstrable improvement in convenience, it is highly doubtful that such a gain would justify the enormous and ongoing financial outlay that an identity card scheme would entail.

3.7 Improving administrative efficiency through out the public sector

Liberty does not believe there are any obvious efficiency savings which would be yielded by the introduction of ID cards. The history of security breaches and data misuse at the Inland Revenue, the DVLA, the Benefits Agency etc, and the relatively recent administrative chaos surrounding the Passport Agency, do not inspire confidence that an identity card system would be smoothly delivered. An identity card would involve a substantial administrative and bureaucratic burden on the public sector without producing any obvious benefits.

4. CONCLUSION

Liberty is opposed to the introduction of identity cards in principle. Any remotely credible ID card scheme would swiftly become compulsory, in practice if not in law. Consequently, we would not support a voluntary system either.

The potential threats and dangers inherent in an identity card system are substantial and the supposed benefits remain wholly unproven.

The United Kingdom is fortunate in that we have the benefit of direct evidence of the failings of a range of identity card regimes before our eyes – in many other Western European countries. If such countries, which are broadly similar to the UK in terms of demographics, were accruing proven and substantial benefits from operating an ID card system, then the government's consultation would be starting from a rather more solid foundation. But such evidence is almost entirely absent. The experience of identity cards in other countries has been that they have proven to be a substantial public expense, have often contributed to a deterioration in community and racial relations and have not been successful in reducing crime, fraud or the threat of terrorism. Liberty believes that the government would be making a serious mistake to seek to repeat such experiences here in the United Kingdom.

Liberty also believes that the government should pay heed to the fate of the so-called Australia card. Whilst the putative introduction of the card was initially greeted with widespread enthusiasm by the overwhelming majority of the Australian public, this early support swiftly evaporated. Once the card was introduced, there was substantial and significant public unrest and the scheme eventually had to be terminated. Once again, Liberty believes that the government would be most foolish to repeat such an error here.

Identity cards are not a tenable solution to the many serious and substantial threats and problems afflicting society. Indeed, the debate about identity cards is a distraction from seeking real solutions to the problems of crime, terrorism and fraud. The extensive consultation period has failed to provide any real evidence of the merits of ID cards or to suggest any credible safeguards to prevent their misuse.

Liberty urges the government to proceed no further with these proposals.

For more information, please contact Mark Littlewood, Liberty's Director of Campaigns, on 020 7378 3664.

Footnotes

ⁱ In his speech to the PI-FIPR-Liberty public meeting, December 2002

ⁱⁱ *ID cards: Arguments Against*, published by Liberty and Charter88, October 2001

ⁱⁱⁱ In his speech to the Information Commission seminar, January 2003

^{iv} Annex to Privacy & Data Sharing – consultation paper from Performance & innovation Unit, Cabinet Office, April 2002.

^v Adrian Beck, Lecturer in security management, Scarman Centre, Leicester University; in *ID Cards (no2id.com)*, published by Liberty & Charter88, December 2002