

# The Report of the Detainee Inquiry

December 2013

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# Contents

Chapter 1. Introduction	1
Chapter 2. The historical context	9
Chapter 3. Interrogation and treatment issues	22
Chapter 4. Rendition	30
Chapter 5. Guidance and training	44
Chapter 6. Government policy and communication	73
Chapter 7. Summary	88
ANNEX A – List of issues and areas the Inquiry would have wished to investigate	91
ANNEX B – The Detainee Inquiry seminar on international and domestic law on torture, other ill-treatment, and complicity	103
ANNEX C – Glossary	113
ANNEX D – The Inquiry Secretariat and Legal Advisers	115

# Chapter 1

## Introduction

### Background

1.1 On 18 January 2012 the Justice Secretary, the Rt. Hon. Kenneth Clarke QC, made a statement in the House of Commons about this Inquiry. He said:

“... following consultation with Sir Peter Gibson, the chair of the inquiry, we have decided to bring the work of his inquiry to a conclusion. We have agreed with Sir Peter that the Inquiry should provide the Government with a report on its preparatory work to date, highlighting particular themes or issues which might be the subject of further examination. The Government are clear that as much of this report as possible will be made public.”<sup>1</sup>

1.2 This Report summarises the preparatory work of the Inquiry, and highlights those particular themes and issues which the Inquiry believes might be the subject of further examination. The Report does not, and cannot, make findings as to what happened. The Inquiry prepared a closed and an open version delivered to Government on 27 June 2012. The closed version comprised a narrative, supported by illustrative examples. Those examples are generally taken from highly classified source material which, the Inquiry believes, cannot properly be published for reasons explained in paragraph 31 of this Chapter. The closed version is the full Report of the Inquiry. The open version of the Report comprised substantially the same narrative as the closed version and contained that material which the Inquiry, having regard to the criteria set out in paragraph 1 of the Annex to the Protocol, believed could be put in the public domain without risking national security and the other disadvantages which the Inquiry is concerned to avoid. In preparing the open version of the Report, the Inquiry was mindful of the Government’s wish that as much as possible of the closed Report would be made public. Since 27 June 2012, the Inquiry has been involved in detailed discussions with Government concerning the open version of the Report. Those discussions initially gave rise to a considerable number of issues concerning what could appropriately be contained in an open Report. The vast majority of those issues have been resolved. However, in a few instances, agreement could not be reached between the Inquiry and the Government. As a result, in this published version of the Report, the Government has made a number of redactions indicated by the symbol “ \*\*\* ”. These redactions have been made by Government on the basis of national security and in the interests of not interfering with extant legal processes. The Inquiry acknowledges that it is ultimately for Government to determine what it publishes of the open version of the Report submitted by the Inquiry. Importantly, while the Inquiry was not persuaded of the necessity

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1. Hansard, HC, 18 January 2012, vol 538, col 752

for the redactions, the redactions do not significantly affect the substance of the Report. The Report as published may serve to identify areas where action would be appropriate now as well as including themes or issues which might require further examination by a future inquiry.

1.3 The Inquiry's original task was set out by the Prime Minister, the Rt. Hon. David Cameron, when he announced the establishment of this Inquiry on 6 July 2010. He told the House of Commons the Inquiry would:

“...look at whether Britain was implicated in the improper treatment of detainees, held by other countries, that may have occurred in the aftermath of 9/11.”<sup>2</sup>

1.4 The Prime Minister explained to the House the reasons why the Government was establishing this Inquiry:

“For the past few years, the reputation of our security services has been overshadowed by allegations about their involvement in the treatment of detainees held by other countries. Some of those detainees allege that they were mistreated by those countries. Other allegations have also been made about the UK's involvement in the rendition of detainees in the aftermath of 9/11. Those allegations are not proven, but today we face a totally unacceptable situation. Our services are paralysed by paperwork as they try to defend themselves in lengthy court cases with uncertain rules. Our reputation as a country that believes in human rights, justice, fairness and the rule of law – indeed, much of what the services exist to protect – risks being tarnished. Public confidence is being eroded, with people doubting the ability of our services to protect us and questioning the rules under which they operate. And terrorists and extremists are able to exploit those allegations for their own propaganda.”<sup>3</sup>

1.5 The Prime Minister referred to about a dozen court cases. That was a reference to civil litigation brought against the Security Service, the Secret Intelligence Service (SIS), the Attorney General and a number of Government departments by former detainees who had been the subject of rendition to, and held by the USA in, Guantanamo. He said that that had led to accusations that Britain may have been complicit in the mistreatment of detainees. He also referred to ongoing criminal investigations by the police (Operations Hinton and Iden). These were the investigations arising from the referrals to the police by the former Attorney General, Baroness Scotland QC, in 2008 and 2009, of two cases which the Security Service and SIS had themselves referred to the Attorney General and which related to personnel from those two agencies. He said that the Inquiry could not start while criminal investigations were ongoing and that it was not feasible to start while so many civil law suits remained unresolved, but that as soon as enough progress had been made, an independent inquiry, led by a judge, would be held.

1.6 The Prime Minister announced that the Inquiry Panel comprised Sir Peter Gibson as Chair, Dame Janet Paraskeva and Peter Riddell (Mr Riddell resigned from the Inquiry Panel at the end of 2011 to take up a new appointment). The Chair was already a member of the Privy Council. The other two members of the Inquiry Panel were also made members of the Privy Council in order to ensure that they could have access to the relevant security and intelligence material. The Prime Minister referred to a published letter dated 6 July 2010 from him to the Chair, setting out what the Inquiry would cover. He expressed the hope that the Inquiry would start before the end of 2010 and that it would report within a year.

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2. Hansard, HC, 6 July 2010, vol 513, col 176

3. Hansard, HC, 6 July 2010, vol 513, col 175

1.7 Of the two conditions for the start of the Inquiry, one, relating to the civil litigation, was satisfied in November 2010 when, as a result of successful mediation, “16 [cases] were settled in relation to the Guantanamo civil litigation”.<sup>4</sup> The second condition, relating to the police investigations, caused more substantial delay. On 12 January 2012 the Director of Public Prosecutions (DPP) and the Metropolitan Police Service (MPS) jointly announced that no named individuals would be charged as a result of the investigations carried out in Operations Hinton and Iden. Thus the original conditions for the start of the Inquiry would have been satisfied if there had been no further police investigations related to the subject matter of the Inquiry.

1.8 However, it was also announced, in the same joint statement, that the police were commencing a new investigation into two further cases. Allegations of criminal wrongdoing had been raised by a former detainee in respect of the alleged rendition of two Libyans to Libya and their alleged ill-treatment in Libya. The Inquiry had stated publicly in September 2011 that it would look into the allegations of the Libyans, but the DPP and the MPS said that the allegations were so serious that it was in the public interest for them to be investigated by the police immediately rather than at the end of this Inquiry.

1.9 As a result of the announcement of this new investigation, which the Government said might take some considerable time to conclude, the Government decided to bring the Inquiry to a conclusion. The Justice Secretary in his statement said that the Government remained committed to holding an independent, judge-led Inquiry once all police investigations were finished.

## The Parameters of the Inquiry

1.10 In his letter of 6 July 2010 to the Inquiry Chair, the Prime Minister described “the parameters of the Inquiry” which would provide a basis for final Terms of Reference to be agreed between the Inquiry Panel and the Government. He said that the Inquiry and the Government would also agree a protocol on the treatment of information and the balance of public and private evidence.

1.11 The Prime Minister’s parameters included the following statement of the purposes of the Inquiry:

“The purpose of this Inquiry is to examine whether, and if so to what extent, the UK Government and its intelligence agencies were involved in improper treatment of detainees held by other countries in counter-terrorism operations overseas, or were aware of improper treatment of detainees in operations in which the UK was involved. The particular focus is the immediate aftermath of the attacks of 11 September 2001 and particularly cases involving the detention of UK nationals and residents in Guantanamo Bay. The Inquiry is of course free to examine any of these cases it wishes, consistent with reaching general conclusions on the above within the set timescale. Allegations relating to military detention operations in Iraq and Afghanistan post-2003 are being addressed by separate arrangements made by the Ministry of Defence.

The Inquiry should also consider the evolution of the Government’s response to developing knowledge of the changing practices of other countries towards detainees in counter-terrorism operations in this period. This should include how this response

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4. Joint Committee on Human Rights Inquiry into Justice and Security Green Paper, Ministry of Justice Memorandum, November 2011 – [http://www.parliament.uk/documents/joint-committees/human-rights/Memo\\_to\\_JCHR\\_on\\_Justice\\_and\\_Security\\_Green\\_Paper.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Memo_to_JCHR_on_Justice_and_Security_Green_Paper.pdf)

was implemented in departments and the intelligence services. This should include any lessons learned and the Inquiry is free to make recommendations for the future.”<sup>5</sup>

1.12 Other parameters specified by the Prime Minister included the following:

- all relevant parts of Government, including the intelligence agencies, would co-operate fully with the Inquiry;
- it was of fundamental importance to protect national security and particularly important that international intelligence sharing understandings were not undermined;
- the Inquiry was into the actions of the UK, not any other state;
- the Inquiry should not expect to take evidence from the personnel of other countries;
- the Inquiry would have access to all relevant Government papers it required;
- there were limitations on what could be considered in public and almost all of the operational intelligence detail would need to be reviewed in closed session;
- the Inquiry should report within one year of commencement and the Government would publish the Inquiry’s Report, with redactions as necessary to protect the public interest;
- the Inquiry was non-statutory and would not establish legal liability nor order financial settlement;
- staff in Government departments and agencies would be expected to co-operate with the Inquiry’s requests for oral evidence and undertakings would be given to staff giving evidence to protect them from the use of that evidence in criminal and disciplinary proceedings against them.

1.13 The Prime Minister also told the House of Commons on 6 July 2010 that no intelligence material provided to the Inquiry would be made public and intelligence officers would not be asked to give evidence in public.

## Staff

1.14 The Inquiry Panel was assisted by a Secretariat and by Counsel. A full list of the team is at Annex D. None of the Secretariat was recruited from any of the intelligence services. The Panel is very grateful to the team for all their hard work and loyal support in the exceptionally difficult circumstance that the start and duration of the Inquiry were subject to such uncertainty.

## Terms of Reference and Protocol

1.15 On 6 July 2011 the Inquiry and the Government published the agreed Terms of Reference and the Protocol. The terms of those documents had been the subject of lengthy negotiations between the Inquiry and Government.

1.16 The Inquiry’s Terms of Reference focused on the UK Government and its Security and Intelligence Agencies in the aftermath of 9/11. They did not extend to allegations relating to military detentions in Iraq and Afghanistan post 2003 in line with the Prime Minister’s letter. The Terms of Reference were as follows:

“(1) To examine whether, and if so to what extent, the UK Government and its security and intelligence agencies in the aftermath of 9/11:

- i. were involved in improper treatment, or rendition, of detainees held by other countries in counter-terrorism operations overseas; and/or

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5. <http://www.detaineeinquiry.org.uk/2010/07/letter-to-sir-peter-gibson/>

- ii. were aware of improper treatment, or rendition, of detainees held by other countries in counter-terrorism operations in which the UK was involved.

The primary focus of the Inquiry will be the cases involving the detention at Guantanamo Bay of UK nationals and former lawful UK residents.

(2) In relation to the above, to examine the UK Government's policy in response to developing awareness of the changing practices of other countries towards detainees held in counter-terrorism operations, including:

- i. how this policy was implemented by relevant Government departments and the security and intelligence agencies; and
- ii. what guidance was available to guide UK Crown servants in their dealings with detainees held by other countries.

(3) To report to the Prime Minister, identifying lessons to be learned and making recommendations.”<sup>6</sup>

1.17 Even before the publication of the Terms of Reference, and notwithstanding some mischievous press reports to the contrary, the Inquiry made clear that it would examine UK involvement in and awareness of rendition. It pointed out that in-country military transfers (not involving rendition) of detainees to personnel of other countries fell outside the Terms of Reference. It made clear that it would not confine itself to examining allegations relating to Guantanamo detainees but was prepared to examine relevant allegations of UK involvement in, or knowledge of, mistreatment of detainees who had not been detained at Guantanamo.

1.18 The Protocol which was agreed with Government set out the details of the procedures of the Inquiry and, in particular, how evidence would be received by the Inquiry and the circumstances in which evidence would be made public. Because the Inquiry involved an investigation into the actions and knowledge of the intelligence services, inevitably much secret material was and would be received by the Inquiry and the Protocol had to reflect the strong concerns expressed by the Prime Minister in this respect. However, the Protocol made clear the Inquiry Panel's approach that as much relevant information and evidence as possible would be put into the public domain, consistent with public interest concerns. The Panel was and remains of the view that the Protocol, as finally agreed with Government, provided a fair process for the Inquiry to perform its duty to conduct a thorough investigation into the subject matter of the Terms of Reference.

1.19 Not everyone with an interest in the Inquiry shared the Panel's assessment of the Protocol. A number of Non-Governmental Organisations (NGOs), while professing initially to welcome the establishment of the Inquiry, made clear in correspondence and meetings with the Inquiry that they did not agree with the Prime Minister's parameters but wanted a very different form of Inquiry. Assertions were made by them and by lawyers acting for interested detainees that the Inquiry had been, or should have been, set up to comply with investigative obligations under Article 3 of the European Convention on Human Rights (ECHR), despite the Government making clear that that had never been its intention. Some lawyers for detainees even accused the Inquiry of being unlawful. None of these assertions was ever taken by their makers to be tested in court proceedings.

1.20 The detainees wanted to be able themselves, or through their legal representatives, to ask questions of Government witnesses. But particular difficulties arose from the fact that much of the documentary and oral evidence would be secret and discussed in

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6. See the Terms of Reference at [www.detaineeinquiry.org.uk/key-documents/terms-of-reference/](http://www.detaineeinquiry.org.uk/key-documents/terms-of-reference/)

closed session. If the detainees were allowed to ask questions themselves or through their representatives, consistency of treatment would have required that the Government should have corresponding rights. The Government insisted on adhering to the Prime Minister's statement that intelligence officers would not give evidence in public (subject only to allowing heads of the Agencies to do so), and made clear to the Inquiry that it would not agree to detainees or their representatives attending closed hearings. The Inquiry Panel therefore decided that the fair procedure was for the Panel to conduct the questioning of witnesses giving oral evidence, primarily through Counsel to the Inquiry, but provision was made in the Protocol to enable anyone to suggest to Counsel to the Inquiry questions to be put to a witness.

1.21 The NGOs and detainees took particular objection to the provision in the Protocol relating to any case that might arise where the Government disagreed with the Inquiry's view that a particular document or piece of information should be made public. Under the Protocol, if agreement could not be reached, the Cabinet Secretary had the final say. It was suggested that the Inquiry was unusually weak in this respect. However, even in statutory inquiries under the Inquiries Act 2005 the Minister can prevent disclosure. Further, before a disagreement reached the Cabinet Secretary, the Protocol provided an enhanced role for the Inquiry, beyond that provided in other non-statutory inquiries, which enabled it to challenge and test any assertion by Government against disclosure. In any event, even if the Cabinet Secretary prevented release into the public domain of any document or piece of information, that would not have prevented the Inquiry from reading that document or being aware of that information and taking it into account in reaching its conclusions.

1.22 Following the publication of the Terms of Reference and Protocol the NGOs and detainees expressed the view that the Protocol did not sufficiently address their concerns and announced that they were boycotting the Inquiry. The Inquiry was disappointed by that decision and made a public statement to that effect on 4 August 2011, but made clear to the NGOs and detainees that it hoped that they would reconsider their decisions. The Inquiry continued to engage with Government on ways of resolving the impasse.

## **The Inquiry's work to date**

1.23 In his letter of 6 July 2010 to the Inquiry Chair the Prime Minister referred to the Inquiry Panel reading into the existing documentary material in the preparatory phase before the Inquiry commenced. The Inquiry received only a limited amount of the documentation requested from Government before the Terms of Reference and Protocol were agreed with Government. After agreement was finally reached in July 2011, the Inquiry started receiving the bulk of the documents requested.

1.24 Each of the Security Service and SIS had carried out internal reviews of its knowledge, as appearing from the documents in its possession, of detainee treatment issues. The Security Service's review was completed in November 2009 and SIS's review was completed in December 2009. As part of its methodology the Inquiry has considered the two reviews as a starting point for examining the documentation disclosed to the Inquiry but it has not been constrained by those reviews.

1.25 In total, the Inquiry received over 20,000 documents. The vast majority of these have been indexed by the Inquiry and stored electronically and securely on a searchable database. Although some documents (notably some the release of which requires the consent of the American authorities) have not yet been supplied, the Inquiry believes that the vast majority of documents relevant to the Inquiry's Terms of Reference have been

supplied, as requested. The Panel believes that the collation of this documentation is a real achievement which will give a future Inquiry a good base on which to begin its work.

1.26 The documents which the Inquiry received from Government, and other information in the public domain, helped to identify some 200 or so reported instances of the UK's alleged involvement in, or awareness of, mistreatment of detainees. The quality of information available from the documents and the nature of the allegations made were variable. From these instances the Inquiry identified as deserving particular attention 40 cases, including the "16 [cases] ... settled in relation to the Guantanamo civil litigation" involving UK nationals and former lawful UK residents detained in Guantanamo.<sup>7</sup> The Inquiry chose these 40 cases as they best illustrate the key issues it was asked to investigate. The Inquiry has also prepared detailed analyses, which are necessarily confidential, of documents received by the Inquiry on each of the 40 cases, which will be a useful resource for a future Inquiry. The summaries of cases in the illustrative examples used in the "closed" version of the Report are based on these detailed analyses.

1.27 However, the Inquiry Panel, as it made clear to the NGOs and detainees with whom it had meetings, intended at the formal launch of the Inquiry to invite anyone with relevant evidence to produce it to the Inquiry. The Inquiry never considered itself limited to considering only the 40 lead cases and other cases are referred to in the Report.

1.28 The Inquiry identified a number of witnesses from the Government from whom it intended to receive evidence. The list included former Ministers and both serving and retired officials, at a range of grades, within departments and the Agencies.

1.29 During the preparatory phase of the Inquiry, in addition to seeking the relevant documents held by Government and working on those provided, the Inquiry had meetings with the following: some of those previously detained at Guantanamo and their legal representatives; NGOs with an interest in the Inquiry's work; Lord Butler of Brockwell (in his capacity as Chairman of the Committee of Privy Councillors which reviewed intelligence on 'weapons of mass destruction'); Andrew Tyrie MP (in his capacity as Chairman of the All Party Parliamentary Group on Extraordinary Rendition) and the Intelligence and Security Committee (ISC). The Inquiry also had discussions with the Permanent Secretaries and senior officials in a range of Government departments and the Agencies with an interest in the Inquiry's work. Members of the Secretariat also met officials in the Crown Prosecution Service and the MPS. Finally, the Inquiry held a public seminar on 8 June 2011 to examine the legal concepts relevant to the Inquiry's work. It heard from a range of academics and practitioners with experience in international and criminal law. It was helpful in setting out the issues in a complex area of law which is not settled. A summary of the seminar is attached at Annex B.

## The Parameters of the Report

1.30 The Justice Secretary's statement of 18 January 2012 set out what the Government has now asked the Inquiry to do. In the Report the Inquiry does not find facts or make recommendations or draw conclusions. Any findings, recommendations or conclusions it might have made could only be based on the documents thus far received. Those documents would not have been explained through witness statements or tested in oral evidence, as it has not had the benefit of taking evidence from any witness from whom it intended to hear. Further, the Inquiry would not wish to say anything which might prejudice

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7. Joint Committee on Human Rights Inquiry into Justice and Security Green Paper, Ministry of Justice Memorandum, November 2011 – [http://www.parliament.uk/documents/joint-committees/human-rights/Memo\\_to\\_JCHR\\_on\\_Justice\\_and\\_Security\\_Green\\_Paper.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Memo_to_JCHR_on_Justice_and_Security_Green_Paper.pdf)

the police investigations and the work of a future Inquiry. Instead, as the Justice Secretary requested, the Inquiry has highlighted themes and issues that it thinks may merit further examination. It has done this by raising questions, based on the documents it had before it. It is not in any position to answer those questions. It has had regard to the points taken by those of the detainees whose cases in the actual or contemplated litigation against the Government were settled. However, the fact that themes and issues have been identified is not an indication of how the questions raised would have been answered by the Inquiry. It will be for a new Inquiry to decide whether to examine all or any of those themes and issues.

1.31 The purpose of the closed version of the Report is to explain by reference to classified documents which the Inquiry has seen why the Inquiry has highlighted particular themes and issues as meriting further examination. For national security reasons, including the need to avoid undermining international intelligence sharing understandings, the closed version cannot be published. Such publication might also prejudice the work of the future inquiry. In the Panel's view it would therefore not be in the public interest to publish the closed version of the Report.

1.32 Chapter 2 of the Report presents historical context and a chronology. Chapters 3 to 6 set out the themes and issues that the Inquiry believes might be the subject of further examination. These themes and issues are contained in four separate chapters covering the following areas:

- Chapter 3: Interrogation and treatment Issues
- Chapter 4: Rendition
- Chapter 5: Guidance and training
- Chapter 6: Government policy and communication

Chapter 7 provides a summary of the themes and issues.

1.33 Each of Chapters 3 to 6 sets out a neutral summary of what the documents disclosed to the Inquiry show. In some places that summary is supplemented by discussion of other facts and matters which are in the public domain, or relevant law. The inquiry re-emphasises what is said above in paragraph 30, that it has not found facts or made recommendations or drawn conclusions, and the practical reasons why it has not done so. The documents are summarised only as a means of explaining the themes and issues which the Inquiry would have wished to investigate. Different themes or issues might have emerged if witness evidence had been available. No criticism of any individual, Government department or agency should be inferred and none is intended.

1.34 In the main, throughout the Report individuals are referred to by their current title even if they are being referred to at a time prior to receipt of that title.

# Chapter 2

## The historical context

2.1 The attacks in the United States of America on 11 September 2001 by Al Qaeda based in Afghanistan were followed on 14 September 2001 by the US Congress authorising the use of military force in response. On 7 October 2001, the US-led bombing campaign of Afghanistan commenced. In November 2001 the first UK troops were deployed on the ground in Afghanistan as members of a wide ranging international coalition.

2.2 As part of the UK response, on 28 September 2001, the Foreign Secretary (Jack Straw) approved the deployment of SIS personnel to Afghanistan. In November, SIS interviewed three detainees held by the Afghan authorities. Officers from the Security Service and SIS (the Agencies) were first offered the opportunity to interview detainees held in Afghanistan by the US in mid – December 2001. From then on officers from the Agencies and elsewhere took part in numerous interviews with detainees including in Afghanistan, Iraq and at the US detention facility at Guantanamo – whether in the role of sole interviewer, in concert with officers from other countries, or if invited to witness interviews conducted by foreign liaison partners.

2.3 The following is a chronology of the relevant events and developments from 9/11 to the present day. It has been compiled using ‘open source’ material including the reports of the ISC on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq (the ‘ISC Detainee Report’) and on Rendition published in 2005 and 2007 respectively.

Date	Event
<b>2001</b>	
11 September	Terrorist attacks on USA by Al Qaeda
12 September	According to <i>At the Center of the Storm</i> by George Tenet, despite the constraints on air travel into the US, a private plane from the UK was allowed to enter US airspace carrying UK government officials. George Tenet (then Director of the CIA) met the UK group which is said to have included the Chief of the SIS (Sir Richard Dearlove), the Deputy Director General of the Security Service (Baroness Manningham-Buller), the Head of GCHQ (Sir Francis Richards) and the Foreign Policy Adviser to the Prime Minister (Sir David Manning).
14 September	A joint resolution, the Authorization for the Use of Military Force, was passed by the US Congress. It authorised the use of the United States Armed Forces against those responsible for the 9/11 attacks. It authorised the President to “ <i>use all necessary and appropriate force</i> ” against those involved in the attacks. It authorised the use of military force in Afghanistan.
17 September	US President, George Bush, signed a Presidential Finding which gave the CIA new wide-ranging powers. A Parliamentary Assembly for the Council of Europe (PACE) Working Paper from 2007 noted that the Finding gave authorisation to a broad scope of covert actions that, for example, allowed the CIA to establish a secret detention programme overseas.
28 September	The Foreign Secretary (Jack Straw) authorised SIS deployment to Afghanistan.
7 October	Coalition forces began attacks on Taleban targets in Afghanistan.
26 October	An article in News International, Pakistan, speculated on a foreign national being handed over to the US forces and referred to this as rendition.
November	<p>The Security Service held discussions with the Crown Prosecution Service. It was agreed that intelligence interviews would not prejudice prosecutions of detainees.</p> <p>As noted by the ISC Detainee Report, US held first detainees in Afghanistan.</p> <p>SIS officers deployed to Afghanistan.</p>
13 November	President Bush issued a Military Order (PMO) on ‘Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terror’. The PMO permitted the US to detain, at a location anywhere in the world as determined by the US authorities, any Al Qaeda member, anyone harbouring an Al Qaeda member, or any terrorist engaged in acts prejudicial to the interests of the US; and provided for detainees to be tried by Military Tribunal.
12 December	A meeting of senior officials on counter-terrorism, chaired by the Cabinet Office, agreed that Security Service personnel should interview detainees in Afghanistan.

Date	Event
<b>2002</b>	
9 January	Security Service officers deployed to Afghanistan to begin interviews.
10 January	First interview by SIS officer of US-held detainee in Afghanistan, after which the SIS officer raised concerns about the treatment of the detainee with London. According to the ISC Detainee Report, ministers were not informed until July 2004.
11 January	SIS and the Security Service issued guidance to personnel in Afghanistan stating that all prisoners, however described, were entitled to some level of protection under the Geneva Convention and Protocols. US transferred first detainees to Guantanamo from Afghanistan. The first British national was transferred to Guantanamo.
17 January	Security Service and FCO staff granted access to Guantanamo. Article in The Washington Post criticised the conditions at Guantanamo. The Prime Minister (Tony Blair) stated in Parliament that detainees in Guantanamo were being treated humanely.
27 January	Media reported that British nationals Shafiq Rasul, Asif Iqbal and Feroz Ali Abbasi were being held in Guantanamo.
29 January	Amnesty International wrote to the Foreign Secretary (Jack Straw) with concerns about a variety of aspects of the detention of suspected Al Qaeda and Taleban prisoners at Guantanamo.
31 January	According to the ISC Detainee Report: in the margins of a meeting of Government Permanent Secretaries there were anecdotal reports of poor conditions at Guantanamo, and further details were sought but no action was taken; ministers were not informed of this until June 2004.
February	British national Moazzem Begg arrested in Pakistan. British national Richard Belmar arrested in Pakistan.
7 February	US Presidential statement suggested that the Geneva Conventions did not apply to Taleban members as they were unlawful combatants, not Prisoners of War.
6 March	Legal representatives for Feroz Ali Abbasi brought a judicial review asserting that the UK Government was under a duty to make representations to the US Government on his behalf to secure his release from Guantanamo. The application was dismissed on 15 March.

Date	Event
March	<p>The Foreign Secretary (Jack Straw) and Home Secretary (David Blunkett) agreed a submission from SIS and the Security Service that intelligence personnel should conduct detainee interviews at Guantanamo on the basis that an FCO official was present to deal with any welfare issues.</p> <p>SIS officer reported to London an incident that he had heard about (but not witnessed) relating to a detainee in Afghanistan. Ministers not informed until August 2004.</p> <p>Dual British/Zambian national Martin Mubanga detained in Zambia.</p> <p>Martin Mubanga alleged he was interviewed by UK officials in Lusaka.</p>
April	<p>Camp Delta established at Guantanamo.</p> <p>Richard Belmar and Moazzem Begg transferred to Bagram. The Observer reported that Security Service officers interviewed Richard Belmar in Bagram.</p> <p>SIS officer reported to London that a detainee had been held in isolation even though the detainee had previously suffered a nervous breakdown. According to the ISC Detainee Report, ministers were not informed until August 2004.</p>
4 April	UK resident Binyam Mohamed detained at a Pakistan airport.
20 April	Martin Mubanga transferred from Lusaka to Guantanamo.
June	Security Service, SIS and FCO discussed a US report that referred to hooding, withholding of blankets and sleep deprivation of a detainee in Afghanistan. The matter was raised with the US authorities.
July	<p>Security Service officer reported to senior management that, whilst in Afghanistan, a US official had referred to “<i>getting a detainee ready</i>”. The incident was raised with the US official. According to the ISC Detainee Report, ministers were not informed about this until June 2004.</p> <p>Binyam Mohamed allegedly subjected to extraordinary rendition from Pakistan to Morocco.</p>
October	Richard Belmar transferred to Guantanamo.
November	SIS conducted last interview at Guantanamo.
1 November	UK residents Jamil El Banna and Bisher Al Rawi stopped at Gatwick.
6 November	Court of Appeal judgment in Feroz Ali Abbasi judicial review ruled that Government did not have to make representations to US on his behalf.
8 November	Jamil El Banna and Bisher Al Rawi detained in the Gambia.
8 December	Jamil El Banna and Bisher Al Rawi transferred to Afghanistan.
26 December	Article in The Washington Post accused the US of using torture at Bagram.
28 December	Human Rights Watch letter to the Prime Minister on rendition – referring to press reports that US forces were holding and interrogating detainees at US facility at Diego Garcia. This was picked up by The Washington Post.

Date	Event
29 December	An article in the Observer detailed treatment of Moazzem Begg at Bagram.
<b>2003</b>	
8 January	FCO Minister Baroness Amos, in a statement to the House of Lords, denied press stories that the US were holding prisoners on Diego Garcia and said that the US would require permission to bring suspects there, and that no request had been made.
7 February	Moazzem Begg transferred to Guantanamo. Bisher Al Rawi and Jamil El Banna transferred to Guantanamo, possibly via Afghanistan.
1 March	Kuwaiti national Khalid Sheikh Mohammed detained in Pakistan.
6 March	BBC detailed military coroner's report that two Afghan prisoners were killed while in US custody at Bagram and that " <i>blunt force trauma had contributed towards the deaths</i> ".
20 March	Ground offensive in Iraq began.
23 March	Memorandum of Understanding concluded between US, UK and Australia dealing with the procedures for the transfer of custody of prisoners of war, internees and detainees in Iraq.
April	General Officer Commanding 1 (UK) Armoured Division in Iraq ordered that hooding should cease.
28 April	Baroness Amos stated in the House of Lords that the US had assured the UK Government that they were not detaining anyone they regarded as unlawful combatants in Diego Garcia or on any vessel in British Indian Ocean Territory (BIOT). The US would need to ask for permission to bring any such person to Diego Garcia and they had not done so.
June	A group of Pakistani and Afghani detainees were released from Guantanamo. After their release they made public allegations about their treatment whilst being held at Guantanamo.  Two SIS officers interviewed a detainee in Iraq for an hour. He had been brought in shackled and hooded by the US.  SIS officers interviewed a detainee in a US facility. SIS reported that the living conditions were unacceptable and the treatment of the detainees left much to be desired.
10 June	The ISC first raised detainee issues with the Prime Minister.
9 October	The International Committee of the Red Cross (ICRC) issued a public statement noting a " <i>deterioration in the psychological health of a large number of detainees</i> ".
November	US review concluded that Moazzem Begg did not suffer abuse at Bagram.
25 November	In a lecture to the Judicial Studies Board, a British Law Lord, Lord Steyn, said that the prisoners at Camp Delta were being held in conditions of " <i>utter lawlessness</i> ".

Date	Event
<b>2004</b>	
January – March	UK military interrogation team deployed to Abu Ghraib prison in Iraq.
January	<p>An SIS officer became aware of a possible contravention of the Geneva Conventions by the US military at the Battlefield Interrogation Facility at Baghdad Airport. Concerns were raised with the US officer in command. Ministers informed in May 2004.</p> <p>Binyam Mohamed transferred to Afghanistan.</p>
8 January	The ISC wrote to the Prime Minister informing him of decision to report on detainees.
14 January	The Prime Minister wrote to the ISC stating there was no truth in the media stories of detainees being held on Diego Garcia.
16 January	US government announced investigation of reported incidents of detainee abuse at a coalition detention facility.
21 January	Lieutenant General Sanchez, Commander of Coalition Forces in Iraq, confirmed that an investigation into reports of detainee abuse had been launched.
February	<p>The Security Service suspended interviewing detainees at Guantanamo.</p> <p>UK military officer reported that he had observed a US held detainee in Abu Ghraib prison being heavily manhandled whilst being moved from a cell to an interrogation room. This was reported to the US authorities and investigated by the US Judge Advocate’s Department.</p> <p>ICRC produced its report on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation.</p> <p>ICRC reported substantial concerns about US treatment of prisoners at Abu Ghraib.</p>
19 February	FCO announced that an agreement had been reached with the US authorities for the release of five British national detainees.
29 February	Foreign Secretary (Jack Straw) raised with US Secretary of State (Colin Powell) the complaints made by detainees to Security Service officers at Guantanamo.
March	<p>Home Secretary (David Blunkett) raised concerns about conditions at Guantanamo with his US counterpart.</p> <p>Alleged rendition of Libyan national Abdel Hakim Belhadj (aka Abdullah Sadeq) to Libya.</p> <p>Alleged rendition of Libyan national Sami Al Saadi (aka Abu Mundhir) to Libya.</p>
9 March	Five British national detainees released from Guantanamo (Ruhel Ahmed, Tarek Dergoul, Jamal Al Harith, Asif Iqbal and Shafiq Rasul).

Date	Event
15 March	Prime Minister's Foreign Policy Adviser (Sir Nigel Sheinwald) raised complaints made by detainees to UK intelligence officers at Guantanamo with US National Security Adviser (Condoleezza Rice) and US Deputy Secretary of Defense (Paul Wolfowitz).
25 March	Prime Minister visited Libya.
April	A detainee arrested by the Iraqi Civil Defence Corps and held in a joint UK/Iraq facility brought hooded to an interview with an SIS officer and remained hooded during the interview. Ministers informed in August 2004.
28 April	Pictures of the abuse at the US run facility at Abu Ghraib made public.
May	<p>The Foreign Secretary (Jack Straw) raised concerns with US Secretary of State (Colin Powell) about the treatment of detainees.</p> <p>UK Government officially asked the US authorities if interrogation techniques such as hooding, sleep and food deprivation had been used in Guantanamo and Iraq.</p> <p>SIS informed Ministers of 2002/2003 incidents that had been so far identified through a survey of staff.</p> <p>FCO officials raised concerns with the Foreign Secretary (Jack Straw) about interrogation techniques in Afghanistan and unconfirmed reports relating to Guantanamo and Iraq.</p>
7 May	The CIA Inspector General's Special Review on counter-terrorism detention and interrogation activities was published. It concluded that there were few deviations from approved procedures at US run foreign detention centres for terrorists, over the period September 2001 to mid-October 2003.
9 May	An article in the <i>Washington Post</i> detailed US documentation from April 2003 approving "physically and psychologically stressful methods during questioning".
13 May	Shafiq Rasul and Asif Iqbal wrote an open letter to President Bush stating they were subjected to the following whilst in US custody: short shackling, not being permitted toilet breaks, exposed to extreme air conditioning temperatures, exposed to strobe lighting and loud music, dogs were used to frighten detainees, deprivation of diet, and there were assaults on other prisoners.
14 May	The Chair of the ISC (Ann Taylor) wrote to the Prime Minister requesting information about whether interviews were carried out in accordance with the Geneva Conventions.
24 May	The Prime Minister replied to ISC questions regarding detainees.
27 May	Legal representatives for Martin Mubanga and Feroz Ali Abbasi lodged papers at the High Court seeking a declaration that the Foreign Secretary was under a duty to make a request to the US Government to repatriate the detainees, and argued that the factual and legal position had changed since Feroz Ali Abbasi's first judicial review.

Date	Event
June	<p>The ISC presented its report on detainees to Parliament.</p> <p>US administration confirmed that techniques such as hooding, sleep and food deprivation were authorised for a limited period – in Guantanamo between November 2002 and January 2003 and in Iraq until May 2004. US confirmed that these techniques were not applied to UK nationals.</p> <p>The Security Service wrote to the Home Secretary (David Blunkett) to provide him with all concerns that had been reported to SIS and Security Service between January 2002 – February 2004.</p> <p>Formal guidance on the treatment of detainees, based on the Ministry of Defence’s (MoD’s) Standard Operating Instructions, issued to SIS staff in June and Security Service staff in July.</p>
21 June	<p>The Foreign Secretary (Jack Straw) stated in an answer to a written Parliamentary Question: <i>“The United States authorities have repeatedly assured us that no detainees have at any time passed in transit through Diego Garcia or its territorial waters ... and that the allegations to that effect are totally without foundation. The Government are satisfied that their assurances are correct.”</i></p>
25 June	<p>UK Attorney General (Lord Goldsmith QC) said the planned US military tribunals for detainees held at Guantanamo were unacceptable as they would not offer a fair trial.</p>
27 June	<p>Washington Post article stated that CIA had put harsh tactics on hold while memorandum on methods of interrogation has wide review.</p>
28 June	<p>Interim Iraqi Authorities resumed sovereign control of Iraq from Coalition forces.</p> <p>In Hamdi v Rumsfeld the US Supreme Court recognised the power of the US Government to detain “<i>enemy combatants</i>”, but ruled that detainees who were US citizens were entitled to challenge their designation as enemy combatants liable to detention under the 2001 Authorisation for Use of Military Force.</p> <p>In Rasul v Bush the US Supreme Court recognised that Guantanamo detainees were entitled to bring proceedings for habeas corpus, and thereby challenge their detention by the US.</p>
1 July	<p>According to the ISC Detainee Report, further guidance on interviewing detainees was issued to Security Service staff.</p>
31 July	<p>First of the military tribunals for the detainees held in Guantanamo took place.</p>
9 August	<p>According to the ISC Detainee Report, further guidance was issued to Security Service officers on the Geneva Conventions relating to the treatment of prisoners of war.</p>
24 August	<p>The Schlesinger Report was released. The report investigated the abuses of prisoners at Abu Ghraib.</p> <p>The Fay – Jones Report was published. The report investigated intelligence activities at Abu Ghraib.</p>

Date	Event
September	Binyam Mohamed transferred to Guantanamo.
October	In his book, <i>Task Force Black: the explosive true story of the SAS and the secret war in Iraq</i> , Mark Urban states that following a visit to a detention centre at the Temporary Screening Facility at the US military base at Balad, MI6 officers raised concerns about the detention conditions there, and that as a result it was decided that British special forces should only hand over prisoners to the Americans if there was an undertaking that they would not be sent there.
11 October	A Financial Times article stated UK Ambassador to Uzbekistan (Craig Murray) claimed “ <i>Uzbek officials are torturing prisoners to extract information, which is supplied to the US and passed through its CIA to the UK</i> ”.
30 November	The New York Times reported they had obtained a memorandum based on a Red Cross report to the US government that claimed that the “ <i>military has intentionally used psychological and sometimes physical coercion on prisoners at Guantanamo</i> ”.
<b>2005</b>	
6 January	US military announced further investigation into detainee abuse at Guantanamo.
11 January	Parliament informed that US had agreed to release the remaining 4 UK nationals from Guantanamo.
25 January	Return of 4 British nationals from Guantanamo (Martin Mubanga, Moazzem Begg, Feroz Ali Abbasi, Richard Belmar).
1 March	The ISC Detainee Report was published.
5 May	UK General Election.
9 June	The Schmidt-Furlow Report was published. The report Investigated FBI Allegations of Detainee Abuse at Guantanamo Bay. It concluded that there was no evidence of torture or inhuman treatment at Guantanamo.
2 July	A <i>Toronto Star</i> article questioned whether Diego Garcia had been used by the Americans as a secret detention centre.
7 July	Terrorist attacks on the transport system in London.
November	Bisher Al Rawi and others lodged judicial review against Government.
2 November	The <i>Washington Post</i> published an article on ‘black facilities’.
29 November	Liberty wrote to 10 Chief Constables with jurisdiction over airports which it was alleged may have been involved in rendition operations and asked them to investigate rendition allegations.
December	The Foreign Secretary (Jack Straw) issued a statement that the UK had not been involved in rendition.
5 December	US Secretary of State (Condoleezza Rice) made a statement on rendition, stating that the US did not transport detainees from one country to another for the purpose of interrogation or using torture and did not use airspace of other countries for that purpose.

Date	Event
7 December	An official in the Foreign Secretary's (Jack Straw's) Private Office sent a memorandum to the Prime Minister's (Tony Blair's) Office which discussed the limited circumstances in which assistance to other countries' renditions operations might be legal.
12 December	The Foreign Secretary, in an interview with the BBC, said there was no evidence that US 'extraordinary rendition' flights passed through the UK.
19 December	Liberty met Michael Todd (Chief Constable Greater Manchester Police) who agreed to investigate rendition flights on behalf of the Association of Chief Police Officers (ACPO).
30 December	<i>Detainee Treatment Act of 2005</i> passed into US law.
<b>2006</b>	
25 January	Amnesty International wrote to the Prime Minister with concerns that UK airspace and airports had been used to facilitate flights by CIA-chartered aircraft known to have secretly transported detainees to countries where they faced torture or mistreatment. Amnesty International listed three flights concerning a Gulfstream V jet, registration N379P.
23 February	The Foreign Secretary (Jack Straw) replied to Amnesty International's letter of 25 January, noting that: " <i>Your information about Gulfstream V N379P, which we cannot confirm, does not suggest that the US authorities have transferred detainees via UK territory or airspace. While we can insist, as we do, that no foreign aircraft should be used to commit criminal offences within our jurisdiction, we cannot impose restrictions on the use of aircraft outside our jurisdiction.</i> "
22 March	Letter to Bisher Al Rawi's legal representatives informing them of the Foreign Secretary's (Jack Straw's) decision to approach the US Government on Bisher Al Rawi's behalf.
April	US Director of National Security admitted the existence of black facilities.
June	The PACE Committee on Legal Affairs and Human Rights published the final report by Dick Marty on 'Secret detentions and illegal transfers of detainees involving Council of Europe member states'.
29 June	In <i>Hamdan v Rumsfeld</i> the US Supreme Court ruled that Common Article 3 of the Geneva Conventions did apply to detainees in CIA-run prisons as well as to those detained in Guantanamo, and thus ruled the US policy up to that date unlawful.
July	The US Center for Constitutional Rights published a report on 'Torture and Cruel, Inhuman, and Degrading treatment of Prisoners At Guantanamo Bay, Cuba'.
6 September	President Bush publicly acknowledged use of secret prisons.
8 September	US Select Committee on Intelligence report published.

Date	Event
<b>2007</b>	
29 March	The Foreign Secretary (Margaret Beckett) announced that the UK Government had negotiated Bisher Al Rawi's return from Guantanamo.
March	Bisher Al Rawi returned to UK from Guantanamo.
27 June	Gordon Brown succeeded Tony Blair as Prime Minister.
28 June	The ISC Report on Rendition was published.
20 July	President Bush signed an Executive Order banning cruel, inhumane or degrading treatment of detainees.
18 December	Return of UK residents Jamil El Banna, Omar Deghayes and Abdenour Sameur to the UK from Guantanamo.
<b>2008</b>	
21 February	The Foreign Secretary (David Miliband) issued a Commons statement that recent US investigations had revealed that a rendition through Diego Garcia took place on two occasions in 2002.
28 May	The US Convening Authority dismissed all charges against Binyam Mohamed (who had been charged with terrorist offences under the Military Commissions Act 2006), pending a review on 21 October 2008.
12 June	In <i>Boumediene v Bush</i> the US Supreme Court determined that the detainees being held in Guantanamo had the right to habeas corpus under the US Constitution. Further, that the Military Commissions Act of 2006 was an unconstitutional suspension of the writ of habeas corpus.
3 July	The Foreign Secretary (David Miliband) made a Written Ministerial Statement to the House of Commons on the latest exchange with the US on rendition through UK or UK Overseas Territories, stating that he had sent a list of flights to the US that had transited UK territory and were alleged to have been involved in extraordinary rendition. The US had confirmed that, with the exception of two cases related to Diego Garcia in 2002, there had been no other instances in which US intelligence flights landed in the United Kingdom, UK Overseas Territories, or the Crown Dependencies, with a detainee on board since 11 September 2001. The US Secretary of State (Condoleezza Rice) had reiterated that there would be no rendition through the UK, its Overseas Territories and Crown Dependencies or airspace without first receiving UK express permission.
28 July	Binyam Mohamed's lawyers filed a petition in UK court that the FCO should be compelled to disclose the evidence of Binyam Mohamed's alleged abuse.
21 August	First judgment of the Divisional Court in the Binyam Mohamed case. High Court ruled that the FCO should disclose the material related to his alleged abuse. The FCO appealed against this decision.
21 October	US Office of Military Commissions announced that charges were being dropped against Binyam Mohamed.

Date	Event
23 October	The Security Service referred papers to the Attorney General relating to allegations of possible criminal wrongdoing by a Security Service officer in relation to Binyam Mohamed, in order for the Attorney General to consider whether further action should be taken.
<b>2009</b>	
23 February	Binyam Mohamed returned to UK from Guantanamo.
18 March	The Prime Minister announced to Parliament that the Government would publish consolidated guidance to intelligence officers and service personnel about the standards that the UK applied during the detention and interviewing of detainees overseas once it has been consolidated and reviewed by the ISC.
26 March	The Attorney General invited the Commissioner of the MPS to commence an investigation into the allegations against the Security Service officer (Operation Hinton).
15 June	As a result of a voluntary referral by SIS, the Attorney General invited the MPS to investigate possible criminal wrongdoing in respect of an incident involving an individual who had been detained by US authorities at Bagram Air Base in Afghanistan in January 2002 and who was interviewed by a member of SIS there (Operation Iden).
<b>2010</b>	
10 February	The Court of Appeal dismissed the appeal by the Foreign Secretary against a decision of the Divisional Court. The Divisional Court had decided to include within its open judgment seven paragraphs relating to the treatment of Binyam Mohamed and how this had been reported. The Foreign Secretary had stated in Public Interest Immunity Certificates that such publication would lead to a real risk of serious harm to the national security of the UK.
5 March	The ISC sent its Review of the Government's Draft Guidance on Handling Detainees to the Prime Minister.
6 May	UK General Election.
11 May	David Cameron became Prime Minister.
6 July	The Prime Minister announced the Detainee Inquiry.  HM Government published the <i>Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees</i>
16 November	The Justice Secretary announced to the House of Commons that mediated settlements had been agreed for the civil damages claims brought by detainees held at Guantanamo.
<b>2011</b>	
6 July	The Government and the Detainee Inquiry published the agreed Terms of Reference and Protocol.

<b>Date</b>	<b>Event</b>
4 August	Solicitors to the detainees and NGOs announced that they would not participate in the Detainee Inquiry.
September	Human Rights Watch claimed to have obtained secret papers from the offices of Libya's external security agency including correspondence between UK, US and Libya.
5 September	The Detainee Inquiry issued a statement that it was looking at the extent of the UK Government's involvement in, or awareness of, improper treatment of detainees including rendition which would also include the allegations of UK involvement in rendition to Libya.
3 October	Solicitors acting on behalf of Sami Al Saadi sent pre-action correspondence to HMG.
7 November	Solicitors acting on behalf of Abdel Hakim Belhadj and his wife, Fatima Bouchar, sent pre-action correspondence to HMG.
<b>2012</b>	
12 January	<p>Joint statement issued by the Director of Public Prosecutions (DPP) and the MPS stating:</p> <ul style="list-style-type: none"> <li>• that it was not possible to bring criminal charges against an identifiable individual in the investigation of Operation Hinton.</li> <li>• that there was insufficient evidence to provide a realistic prospect of convicting an individual of any criminal offence in the investigation of Operation Iden.</li> <li>• that a joint CPS/MPS panel would be set up to consider other specific allegations of ill-treatment that had recently been made to the police.</li> <li>• that the MPS would investigate the two complaints received relating to the alleged rendition of named individuals to Libya.</li> </ul>
18 January	The Justice Secretary announced to Parliament that the Detainee Inquiry had been suspended. The Inquiry was asked to produce a report to the Prime Minister of the work done by the Inquiry to date.
31 January	Abdel Hakim Belhadj and Sami Al Saadi, announced that they were launching civil proceedings against the former Director of Counter-Terrorism at SIS.
June	Solicitors acting on behalf of Abdel Hakim Belhadj, his wife Fatima Bouchar and Sami Al Saadi brought claim for damages against HMG.

# Chapter 3

## Interrogation and treatment issues

3.1 In considering the documents disclosed in relation to the 40 lead cases the Inquiry identified eight themes and issues related to detainee interrogation and treatment. These themes and issues are based solely on a review of the documents disclosed to the Inquiry. Different themes or issues might have emerged if witness evidence had been available.

3.2 In some cases, witnesses – both officials and detainees – might have been able to explain matters of potential concern satisfactorily. In other cases it is possible that actions or omissions might not have been recorded in full in the available documents, and the complete picture might not have become clear until witness evidence was available. It is not possible to reach a view on such themes and issues without receiving written, and in many cases oral, evidence from witnesses.

3.3 Sometimes, detainees made allegations of ill-treatment, and of UK involvement in and awareness of such ill-treatment, only following their release from detention. These allegations are among the most serious of which the Inquiry is aware. The Inquiry would have wished to investigate the differences between allegations made after release, and the contemporaneous records of detainee interviews made by UK personnel. There may be good reasons to explain why allegations were not made when the detainee in custody was visited by UK personnel, but were only made following their release. These are issues of fact which the Inquiry would have wished to investigate with witnesses.

3.4 The rest of this chapter concentrates on interrogation and treatment issues which emerge from the documents disclosed to the Inquiry. It follows that many of these issues arise independently of any factual conflicts between detainees' accounts and the Agencies' own records.

3.5 The Inquiry is aware, from a small number of documents disclosed by the Agencies, that the UK military conducted a number of separate interviews of detainees in Bagram during 2002 and that this included at least one British national. The Inquiry has not been able to investigate this issue properly from the documents disclosed to it and the Inquiry would have wished to investigate further with witnesses to determine the scale of this activity and whether it gave rise to any treatment issues.

ISSUE 1: Did UK intelligence officers have knowledge of inappropriate interrogation techniques or detention conditions applied by personnel of other countries in some cases? In those cases was there adequate reporting back from theatres/stations and an adequate response from Agency Head Offices?

3.6 Consistent with what the ISC found in their 2005 Detainee Report,<sup>1</sup> and the Agencies found in their own internal reviews, documents received by the Inquiry indicate that in some instances intelligence officers were aware of a range of treatment issues that gave rise to potential concern. In some instances, it appears from the documents that the matter was raised with liaison partners, Head Office or both. In other instances, the documents do not show that any action was taken to address the potential concern. Examples of such treatment include:

- the use of hoods;
- the use of stress positions;
- the use of sleep deprivation;
- physical assaults against detainees;
- substandard detention facilities and questionable methods of transfer between detention sites.

3.7 The reaction to the forms of mistreatment referred to above, both from officers on the ground and at Head Office, was variable. The documents indicate that in some instances officers did not recognise or report treatment issues, which fell short of torture, but were below a proper standard – the ISC Detainee Report also found instances where this was the case,<sup>2</sup> as did the Agencies' own internal reviews. The documents received by the Inquiry show that on occasion, the use of certain questionable treatment techniques – such as those listed in paragraph 6 above – was supported by locally deployed officers, although there are instances where such support was countermanded by Head Office.

**The Inquiry would have wished to investigate cases where treatment issues arose. It is likely that this would link to consideration of what training and guidance was available to deployed officers and staff.**

**The Inquiry would have wished to investigate whether there were instances where officers did not express concern in relation to treatment issues, but the issues should have been recognised and raised.**

ISSUE 2: Was there reluctance in some cases, to raise detainee issues either at all, or sufficiently robustly, with liaison partners?

3.8 A liaison partner is a term used to refer to the intelligence service of another country, which is the counterpart of the Security Service or SIS. A theme that runs through a number of the lead cases considered by the Inquiry is whether treatment issues – such as sleep deprivation, hooding and media reports of waterboarding – were raised appropriately with the relevant liaison partner responsible for the detention and treatment in question.

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1. ISC Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq, March 2005, paragraphs 119 and 125.  
2. ISC Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq, March 2005, paragraphs 87 and 98.

3.9 Documents provided to the Inquiry show that in some instances there was a reluctance to raise treatment issues for fear of damaging liaison relationships, or that when those issues were raised, only limited details were provided.

**There are instances where it is not clear from the documents whether action was taken by UK personnel when they became aware of detainee issues arising. The Inquiry would have wished to investigate:**

- **Whether matters of concern were raised with liaison partners and if not, why not;**
- **Whether the balance between protecting liaison relationships and ensuring proper detainee treatment was correctly struck in a number of cases where this issue arose; and**
- **When treatment issues were raised, whether sufficient detail was provided or sufficient emphasis placed on the concerns identified.**

**ISSUE 3: Did the Agencies inappropriately continue to engage with liaison partners in the cases of individual detainees after treatment issues of concern had been identified?**

3.10 As was noted in the Agencies' internal reviews, documents disclosed to the Inquiry show a number of instances where the Agencies continued to engage with liaison partners after treatment or detention issues had been identified and raised with those liaison partners. As with a number of the other issues identified in this chapter, this links to the issue of guidance and training given to officers at the relevant time, which is considered in detail in Chapter 5.

3.11 The documents show that there are some instances where UK officers continued to engage with detainees held by liaison partners in various locations after ill-treatment had either been witnessed or alleged, and then reported to Head Office. In some instances it is not clear from the documents provided to the Inquiry that anything was done following a concern raised by officers.

**The Inquiry would have wished to investigate:**

- **Whether ongoing engagement with a liaison partner in such circumstances, (by interviewing detainees, feeding in questions and receiving intelligence from the liaison partner) was justifiable; and**
- **Whether officers' concerns were reported to Head Office in the identified cases and if so to whom. What, if any, legal or policy advice was given?**

**ISSUE 4: Was adequate consideration given to obtaining assurances from liaison partners and to the need for any assurances to be specific and credible?**

3.12 The concept and validity of obtaining assurances from another country or liaison partner has been considered on many occasions in both domestic and European courts, recently in the case of *Othman (Abu Qatada) v The United Kingdom* Case (App No.8139/09) [2012] 55 EHRR 1. The Inquiry notes that, although reliance can lawfully be placed on

assurances, the weight which can legitimately be placed on them must depend on the circumstances of each case.

3.13 In their 2007 Report on Rendition, the ISC concluded that the Agencies should always have sought assurances on detainee treatment when sharing intelligence with the US which might have resulted in the detention of an individual subject to the Presidential Military Order of November 2001. The Report concluded that, following the revelations about mistreatment at Abu Ghraib in April 2004, the Agencies properly and routinely sought assurances on humane treatment in operations where there was a risk of rendition and/or US custody. The ISC also noted that where, despite obtaining assurances, there remained a risk of mistreatment, the procedure required approval to be sought from senior management or Ministers. The ISC recommended that ministerial approval be sought in all such cases and the Government responded by confirming that, in practice, this already happened.

3.14 The 2010 Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas ('2010 Consolidated Guidance') now instructs personnel to consider obtaining assurances from liaison partners "*as to the standards that have been or will be applied in relation to that detainee*" to minimise any risk of mistreatment.

3.15 Documents received by the Inquiry suggest a number of instances, before the 2010 Consolidated Guidance was published, where this issue appears to have arisen. These instances range from not seeking assurances at all, to assurances being given that might not have been sufficient or reliable in the circumstances. This issue was also noted in the ISC Report on Rendition,<sup>3</sup> and by the Agencies in their own internal reviews.

**In some of the cases considered by the Inquiry, the documents do not show whether appropriate assurances on treatment were given before intelligence was sought from a detainee. The Inquiry would have wished to investigate whether any such assurances were sought, or consideration was given as to whether a detainee might be subjected to unacceptable standards of treatment.**

**In cases where assurances were obtained, the Inquiry would have wished to investigate:**

- **Whether they were sufficiently detailed, credible or realistic to merit reliance being placed on them; and**
- **Whether there was a suitable mechanism in place for monitoring treatment to ensure that any assurances were being adhered to.**

ISSUE 5: Was the Agencies' own questioning of detainees appropriate having regard to the Geneva Conventions' prohibition on coercion, threats, unpleasant or disadvantageous treatment?

3.16 The Geneva Conventions provide a framework of legal protections to safeguard soldiers, civilians and prisoners during wartime. Documents show that the view of the UK authorities on the applicability or otherwise of the Geneva Conventions to detainees did not accord with that taken by some other liaison partners. The UK considered that the principles

3. ISC Report on Rendition, July 2007, see for example paragraph 106 and Conclusion N, and paragraph 108 and Conclusion O.

of the Geneva Conventions should apply to all detainees. The Inquiry would have wished to investigate the extent to which this was reflected in the interviewing practices adopted by the Agencies and other Government personnel at the relevant time.

3.17 Documents disclosed to the Inquiry show that the UK regarded individuals detained as a result of the international conflict in Afghanistan as Prisoners of War and that those detainees would be subject to the provisions of the Geneva Conventions, and that the policy of treating detainees in a manner “consistent” with the provisions of the Geneva Conventions was adopted by the US, subject to the caveat, that this would be the case, “*unless otherwise instructed by an appropriate higher authority*”. Documents disclosed to the Inquiry show that this was underlined by the US authorities throughout 2002, when it was made clear that detainees should be treated humanely and to the extent appropriate and consistent with military necessity in a manner consistent with the principles of the Geneva Conventions.

3.18 From late 2001, the US envisaged that there would be room to treat detainees as ‘unlawful combatants’ rather than Prisoners of War. In January 2002, the US Secretary of Defense (Donald Rumsfeld) publicly stated that while the US was, “*for the most part,*” treating prisoners “*in a manner that is reasonably consistent with the Geneva Conventions,*” it need not do so because the detainees were “*unlawful combatants*”, who did not have any rights under the Convention.<sup>4</sup>

3.19 The third Geneva Convention (GCIII) requires that:

“Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.... No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.” (article 17)

3.20 The fourth Geneva Convention (GCIV) requires that:

“Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity” (article 27)

“No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.” (article 31)

3.21 Common Article 3 of the Conventions provides for minimum protections for captured persons, which must be adhered to by all contracting States. It bans torture, cruel, inhumane and degrading treatment, as well as outrages against the human dignity of detainees. Under the Article, each Party to a conflict shall be bound to apply, as a minimum, the following provisions:

“(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated

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4. US Department of Defence News Briefing, 11 January 2002, Secretary Rumsfeld and General Myers.

humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

3.22 In June 2006, the US Supreme Court ruled in *Hamdan v Rumsfeld* that Common Article 3 did apply to detainees detained in CIA-run prisons as well as those detained at Guantanamo, and thus ruled the US policy up to that date unlawful. It was in response to this judgment that the US Department of Defense (DoD) directed the application of Common Article 3 to all DoD facilities, including Guantanamo, on 7 July 2006. In contrast, the UK considered the full protections afforded by both Conventions as applicable from the outset of the conflict.

3.23 Documents received by the Inquiry indicate that this issue arises in a number of instances where detainees were interviewed by UK personnel, who encouraged detainees to co-operate and warned that failure to do so could result in negative consequences. A number of detainees have also made allegations about these tactics, which they perceived as threats.

**Which of the articles of GCIII or GCIV applied to any given detainee would necessarily be a fact-specific question in each case. The Inquiry would have wished to investigate whether the Agencies’ own questioning of detainees held by liaison partners was always appropriate, bearing in mind the Geneva Conventions’ prohibitions.**

ISSUE 6: Was sufficient consideration given to the legality of detainees’ detention, including to whether the detention was incommunicado?

3.24 The 2010 Consolidated Guidance sets out a number of factors that should be taken into account when considering the legality of a detention under local and international law and access to due process. These factors include:

- ‘incommunicado’ detention (denial of access to family or legal representation where this is incompatible with international law);
- whether the detainee has been given the reasons for his arrest;
- whether he will be brought before a judge and when that will occur;
- whether he can challenge the lawfulness of his detention;
- the conditions of his detention; and

- whether he will receive a fair trial.

3.25 It does not appear from the documents disclosed to the Inquiry that these factors were considered in all instances before the 2010 Consolidated Guidance was published. SIS also noted this issue in its own internal review of documents. In some cases, SIS and Security Service officers carried out questioning, or provided questions to liaison partners, in circumstances where, at least from the documents provided to the Inquiry, it is unclear whether the legality of the detention had been considered.

**The Inquiry would have wished to investigate the extent to which the lawfulness of the detention was taken into account both by the deployed personnel and the Agencies' Head Offices in these cases and how awareness of this issue evolved over the relevant time period.**

ISSUE 7: Did engagement by the Agencies with liaison partners, in circumstances where there was some co-ordination on interviewing approaches/techniques, always remain within appropriate bounds?

3.26 This issue arises from detainee allegations as to the level of UK participation in interrogations led by liaison partners, which detainees characterise as complicity in the ill-treatment of detainees by liaison partners. In a number of instances it is apparent from the documents that UK and US personnel collaborated over their approach and conduct during detainee interview sessions. The documents disclosed to the Inquiry show that in some cases UK officers adopted a more reassuring and friendly manner, which contrasted with the manner adopted by liaison partners.

3.27 The documents received by the Inquiry suggest that in some instances UK officers and a liaison partner might have coordinated their strategy for detainee interviews. There was no specific ill-treatment alleged or recorded in these instances. The Inquiry would have wished to look at what took place and what was said in more detail, with the benefit of witness evidence.

**The Inquiry would have wished to investigate:**

- **If, and to the extent that this might have occurred, whether a coordinated interview strategy ever went beyond what was appropriate and may, in some cases, have amounted to complicity in the use of inappropriate techniques or threats by others;**
- **Whether in some cases, UK officers may have turned a blind eye to the use of specific, inappropriate techniques or threats used by others and used this to their advantage when resuming an interview session with a now compliant detainee; and**
- **Whether, to the extent that this might have occurred, it was a deliberate or agreed policy between UK personnel and liaison partners.**

**ISSUE 8: Was sufficient attention given to record keeping in relation to engagement with detainees?**

3.28 It appears that in a number of instances, no interview records have been found and in other instances, those that exist contain only limited detail, particularly with regard to a detainee's welfare.

3.29 In the Inquiry's view, the creation and retention of detailed written reports following interviews with detainees is significant for a number of reasons. Such records have the potential to highlight problems and protect a detainee from abuse, in addition to providing those who carry out interviews with a possible safeguard against future allegations. It is also important to have a sound audit trail in the event that any investigative process takes place at a later date. Such concepts are enshrined in domestic law for detainees in UK custody, in particular under the Police and Criminal Evidence Act 1984. The importance of proper record keeping for detainees has also been of significance in military operations. The recently revised 2011 MoD Joint Doctrine Publication 1.10 provides clear guidance and demonstrates the necessity of accurate, detailed and prompt record keeping for detainees.

3.30 In Chapter 5, the Inquiry has set out the guidance instructions given to officers of the Agencies on interviewing detainees. They include the completion by Security Service officers of a Prisoner Interview Report (PIR) in 2002 and by SIS officers of a Detainee Contact Report (DCR) from April 2005. Security Service officers used the DCR process from July 2006. In addition, FCO officials exercising consular, or consular type functions, produced welfare reports on visiting British nationals held by other countries. From the documents disclosed to the Inquiry it is apparent that either some agency interviews were not the subject of reports or, if the reports were made, they have not survived. The Inquiry has identified a number of instances where this issue arises.

**The Inquiry would have wished to investigate why in some cases reports were not completed or retained, despite informal guidance from early 2002 stating that records should be made following detainee interviews.**

# Chapter 4

## Rendition

4.1 There is no universally recognised legal definition of rendition. The term is most commonly used to cover the extra-judicial transfer of an individual from one jurisdiction or state to another (as opposed to legally authorised methods of transfer such as extradition, deportation, or removal that are subject to some judicial process or right of appeal). Over the last ten years, the term ‘extraordinary rendition’ has been used to cover rendition where there is a real risk of torture or improper treatment.

4.2 The ISC, in its 2007 Report on Rendition, identified five different types of rendition:

“**“Rendition”**: Any extra-judicial transfer of persons from one jurisdiction or State to another.

“**Rendition to Justice**”: The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of standing trial within an established and recognised legal and judicial system.

“**Military Rendition**”: The extra-judicial transfer of persons (detained in, or related to, a theatre of military operations) from one State to another, for the purposes of military detention in a military facility.

“**Rendition to Detention**”: The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system.

“**Extraordinary Rendition**”: The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there is a real risk of torture or cruel, inhuman or degrading treatment.”<sup>1</sup>

In the absence of any other more widely accepted definition the Inquiry used these as working definitions.

4.3 The Inquiry’s terms of reference deliberately specified rendition as a primary area of investigation, because:

- for a detainee to be moved across borders outside of any proper legal process may itself be regarded as a form of mistreatment; and

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1. ISC 2007 Report on Rendition, paragraph 7

- the treatment of an individual who has been subject to rendition may be more likely to involve improper treatment than if they were transferred through legal means.

## Background

4.4 Before 9/11, the US Government had a working programme of ‘Renditions to Justice’ which can be traced back to the Clinton administration and the Presidential Decision Directive of 21 June 1995.<sup>2</sup> The ISC Report on Rendition showed that the Agencies were aware of this CIA practice, with both the Security Service and SIS having been formally briefed by the US Government in 1997 on the Renditions to Justice strategy.

4.5 The ISC Report on Rendition also noted that the UK’s policy on rendition to the UK was established in 1999, when the Court of Appeal overturned the conviction of Nicholas Mullen, based on his unlawful return to the UK. In 1988 Mullen had fled the UK to Zimbabwe, he was returned to the UK in 1989, and was convicted in 1990 of conspiracy to cause explosions – following a police find of IRA car bombs and other explosives – and given 30 years imprisonment. In 1999, overturning the conviction, the Court of Appeal found that:

- In 1989, SIS, in consultation with the MPS, had taken active steps to persuade the Zimbabwean intelligence authorities that there were grounds to deport Mullen and to avoid the alternative route of extradition;
- SIS was aware of the instructions issued by the Zimbabwean authorities that Mullen should not be allowed access to lawyers once detained in Zimbabwe, contrary to Zimbabwean law or at least Mullen’s entitlement as a matter of human rights; and
- The British authorities had therefore initiated, and subsequently assisted in and procured, the deportation of Mullen by unlawful means in circumstances in which there were specific extradition facilities between the two countries. They were thereby not only encouraging unlawful conduct in Zimbabwe, but also acting in breach of Public International Law.<sup>3</sup>

With this legal precedent set, the Agencies did not look to conduct any further renditions to the UK.

4.6 Between 9/11 and November 2001, the US Government passed three measures empowering its ‘Global War on Terror’:

- On 14 September, a joint resolution, the Authorization for the Use of Military Force, was passed by the US Congress which authorised the use of the United States Armed Forces against those responsible for the 9/11 attacks. It authorised the President to “*use all necessary and appropriate force*” against those involved in the attacks.
- On 17 September, President Bush signed a Presidential Finding<sup>4</sup> which gave the CIA new wide-ranging powers. A Parliamentary Assembly for the Council of Europe (PACE) Working Paper from 2007 notes that the Finding gave authorisation to a broad scope of covert actions that, for example, allowed the CIA to establish a secret detention programme overseas.<sup>5</sup>
- On 13 November, President Bush issued a Military Order (PMO) on ‘Detention, Treatment,

2. Copy of US Presidential Decision Directive 39 of 21 June 1995 (PDD/NSC 39) can be found at [www.hsdl.org/?abstract&did=462942](http://www.hsdl.org/?abstract&did=462942)

3. R v Mullen [2000] QB 520

4. A Presidential Finding is an executive directive issued by the head of a government. The term is most commonly used in the US. In this case, the 17 September 2001 Presidential Finding was a highly classified document and details of it have not been published.

5. Council of Europe Parliamentary Assembly Working Papers (2007 Ordinary Session (Third Part) 25 – 29 June 2007 Volume VI Documents 11300 – 11339)

and Trial of Certain Non-Citizens in the War Against Terror'. This instructed that detainees should be treated humanely and permitted the US to hold detainees at a location anywhere in the world as determined by the US Secretary of State for Defense.

4.7 These three measures permitted the rendition programme to expand rapidly and change in nature, beyond the previous programme of Renditions to Justice to face US trial, to become a “*vital tool*”<sup>6</sup> of the Global War on Terror, managed and carried out by the CIA. This post-9/11 rendition programme included:

- Renditions to third countries to which the detainee had no obvious connection. This included rendition to countries which the UK Government regarded as having a questionable human rights record in detainee treatment;
- Renditions to some detention centres in third countries that were not open to inspection and kept secret even to a large extent within the host nation – the so-called ‘black sites’ or ‘CIA secret prisons’;
- Renditions to the country of origin of the detainee. This included rendition to countries which the UK Government regarded as having a questionable human rights record in detainee treatment;
- The use of enhanced interrogation techniques. Such techniques included:
  - i. variations on techniques which the European Court of Human Rights had found to amount to inhuman and degrading treatment; and
  - ii. in a smaller number of cases, the use of waterboarding which, following a US public announcement in 2008 that this technique had been used, the UK Government went on record as regarding as a form of torture.<sup>7</sup>

4.8 There is a wealth of material in the public domain – including US and other governmental reports, media articles, NGO commentaries and books – that provides evidence and commentary on aspects of the US post-9/11 rendition programme and what was known about it over time.<sup>8</sup> But it is the UK’s own developing awareness of, and reaction to, these key features of the US rendition programme that is within the remit of this Inquiry.

4.9 Based solely on a review of the documents disclosed to it, the Inquiry has identified four issues related to the theme of rendition, that might be suitable for further examination.

ISSUE 1: When did the Government realise the scope of the US Government’s post-9/11 rendition programme?

4.10 On 7 November 2006, the Chief of the SIS (Sir John Scarlett), appeared before the ISC when it was investigating rendition. In his evidence he explained that:

- After 9/11 the US moved from rendition to justice to rendition to detention and extraordinary rendition;
- SIS were not formally briefed on this significant change of strategy. It gradually became apparent to SIS from operational developments and ad hoc exchanges with the US on specific individuals;

6. “...rendition is a vital tool in combating transnational terrorism.” From a speech made by Condoleezza Rice upon her departure for Europe on 4 December 2005. See [www.state.gov/documents/organization/125132.pdf](http://www.state.gov/documents/organization/125132.pdf)

7. See statement made by Foreign Secretary (David Miliband), Hansard, HC, 21 April 2008, vol 474, col 1726W

8. For example, see: Stephen Grey, *Ghost Plane*, (C. Hurst & Co, 2006); Andrew Tyrie, Roger Gough and Stuart McCracken, *Account Rendered: Extraordinary Rendition and Britain’s Role*, (Biteback Publishing Ltd, 2011); and the Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report’, June 2007

- The first indication that the US government might have changed their strategy was in January 2002 when SIS became aware that the US had renditioned a detainee from Afghanistan to a third country of which he was not a national. SIS believed that this was an isolated incident but suggested to the US that the transfer was inappropriate as there was no connection between the individual and the country to which he had been sent; and
- Over the rest of 2002, SIS became aware of other similar cases and it became clear that the US was renditioning individuals from third countries either directly to Guantanamo or via Afghanistan.

4.11 Relying on evidence collected from witnesses, the ISC Report on Rendition referred to the “*Gradual Awareness of a Change in US Policy*”. The ISC concluded that, while SIS was sceptical about the new powers granted to the US authorities, SIS should have appreciated the significance of these events and reported them to Ministers; and that SIS was slow to detect the emerging pattern of “*renditions to detention*” that occurred in 2002. The Government responded to this ISC conclusion as follows:

“The Government notes the Committee’s conclusion. It is important to remember the context, however: events were moving quickly, the settled direction of the U.S. Government’s response to the 9/11 attacks was not clear, and the priority for the UK and U.S. intelligence agencies was to identify and seek to prevent further attacks. **SIS did inform Ministers of exchanges with U.S. counterparts in November 2001.**”  
[emphasis added]<sup>9</sup>

4.12 The Inquiry did not have the benefit of questioning witnesses on these issues. However, some documents received by the Inquiry give rise to the question whether the Agencies had adequately captured all the relevant information on their records about the new US approach to rendition in their evidence to the ISC. Although SIS did inform Ministers of exchanges with US counterparts in November 2001, it is not clear how complete a picture of the Agencies’ growing awareness of the new scope of US rendition practice was communicated to Ministers both at this stage and subsequently.

**The Inquiry would have wished to investigate:**

- **Whether the Agencies had adequately captured all the relevant information on their records about the new US approach to rendition in their evidence to the ISC;**
- **Whether in any case – as the ISC report suggested – the Agencies ought to have realised sooner the nature and extent of the US Government’s rendition programme from specific cases, intelligence and their liaison relationships; and**
- **The extent to which the Agencies reported to Ministers their growing awareness of the US Government’s rendition programme.**

ISSUE 2: Did the Government respond adequately on becoming aware of renditions or proposed renditions of British nationals and UK residents?

4.13 The US programme of rendition of detainees to detention in Guantanamo, mostly via Bagram, began in early 2002. In some of the cases involving British nationals and UK residents, the documents indicate that the UK was given only very limited advance notice of

9. Government Response to ISC 2007 Report on Rendition, pg 2

the US' intention to transfer the detainee to Guantanamo. However, in other instances, the documents indicate that there was an opportunity for the UK to object to US proposals to transfer British nationals or UK residents. The issue arises as to whether such opportunities were missed or deliberately not taken. If so, was this appropriate given the state of knowledge at the time?

4.14 Documents received by the Inquiry also show that, in the early stages, the Government did not object to the transfer of British nationals and UK long term residents from Pakistan to the detention centres in Bagram and Guantanamo. This was, in part, because such transfers were not considered to be renditions but military transfers arising from armed conflict.

**The Inquiry would have wished to investigate:**

- **Whether adequate consideration was given to the legal basis of the transfers in question, and what was then known about the risk of mistreatment and the likely conditions of detention.**

ISSUE 3: Were there cases where the UK Government became inappropriately involved in renditions?

4.15 Given the Court of Appeal's strong condemnation of the rendition to the UK of Mullen, in the Inquiry's view, there were grounds to exercise extreme caution about any UK involvement in renditions. The documents received by the Inquiry indicate that, at the highest levels within the Agencies, there was an awareness of the need for caution. When appearing before the ISC in November 2006, the Chief of the SIS (Sir John Scarlett) told the ISC that:

“...we find ourselves in a position where we share with [US] key CT interests, objectives and many techniques, but where we have some different methods and a quite different legal framework, specifically but not only on the issue of rendition. Now, this does not and cannot be allowed to inhibit the exchange of what we call “building block intelligence”, by which I mean material which over time contributes to a picture of a terrorist or a terrorist group, or much other vital operational collaboration.... But it does mean that we have for a long time been aware that sharing what I would call “actionable intelligence”, leading to a possible rendition, would require very careful internal consideration and ministerial approval.”

4.16 Against this background, the documents received by the Inquiry suggest that the Agencies may have been involved in some instances of US renditions or post-rendition liaison where the appropriateness of such involvement may be open to question and/or where the involvement may have lacked ministerial approval. The documents include instances where the UK may have had an obligation or right to object to the rendition but, at least on the face of the documents, no UK objection was raised. Some issues similar to these were raised in the Agencies' own internal reviews.

4.17 Based on the documents alone, the Inquiry identified three aspects related to this issue of whether Government became inappropriately involved in renditions, as set out in the next three paragraphs.

4.18 First, did Government promptly develop an appropriate policy on the extent to which the Agencies could be involved or acquiesce in US renditions? The documents indicate that such a policy may have been lacking at least in the early years following 9/11:

- On 21 December 2001, the Foreign Secretary (Jack Straw) wrote to the Home Secretary (David Blunkett) on rendition of fugitive offenders in the context of the war against international terrorism. The Foreign Secretary requested that a “*feasibility study*” be carried out looking to include a suitable provision in the Extradition Bill to restrict the effects of the ruling in *R v Mullen* and thereby enable rendition to justice *to the UK*. On 30 April 2002, after a delay in replying while the suggestion was considered, the Home Secretary replied that “...*the obstacles to this suggestion are simply too formidable...*” and a provision was not made in the Bill. We emphasise here that the issue addressed was rendition to justice to the UK and did not extend to assisting any kind of rendition to other countries.
- The documents disclosed to the Inquiry do not show discussion of a rendition policy *per se* in Government for the next two years. Discussion of rendition in Government during this period principally concerned media reports of the use of Diego Garcia to transit detainees.
- On 14 May 2004, an FCO submission noted that, unless International Humanitarian Law applied, extra-judicial rendition would be “...*almost certainly contrary to international law*”. The submission identified that it would be “*logical to consider the extent to which we should be associated with US rendition operations in the future*”.
- On 4 March 2005, a further FCO submission considered Government’s policy on extraordinary rendition in order to respond to a letter from the Foreign Affairs Committee and increasing media reports on the subject. It noted that:

“The Government’s policy on deporting or extraditing people where they might be subject to torture or the death penalty is well established and known. Similarly, we have long encouraged members of the international community to respect international law and human rights standards. We have not, however, explained our legal view in public or developed a policy position on rendition *per se* or by others, including the US. Our legal opinion is that the particular circumstances of the cases determine whether rendition is contrary to international law.”

- The submission went on to suggest that the issue should be raised with the US Government to clarify details of US planes that had transited UK airspace and the “*US’s legal, policy and operational views on rendition*”.
- By April 2005, the documents indicate that a new Government line had been developed on the legality of rendition being dependent on the “*particular circumstances of the cases*”. These public lines had been expanded by November 2005, confirming HMG’s adherence to international law and that the Foreign Secretary (Jack Straw) was seeking greater assurance from the US on their rendition policy. On 12 December 2005, the Government’s position, including that the legality of rendition was dependent on the particular circumstances of the case, was set out by the Foreign Secretary in answer to a Parliamentary Question.<sup>10</sup>

4.19 Second, was there sufficient guidance available to Agency staff on the extent to which it was legitimate to be involved in renditions whether before or after the event? This is considered further in Chapter 5 of this report.

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10. Hansard, HC, 12 December 2005, vol 440, col 1652W

4.20 Third, did the Agencies take sufficient account of concerns or potential concerns about detainee treatment in countries to which detainees had been renditioned? In a number of instances where the documents indicate that there was some level of UK approval for, or assistance in, a rendition operation by a third country, or the feeding-in of questions afterwards, the renditions or proposed renditions were to countries where there were objective grounds for concern about the receiving country's standards of detainee treatment. In some cases, the UK Courts would not at the time have permitted the UK to deport suspected extremists to those countries because of the risk of mistreatment contrary to Article 3 of the European Convention on Human Rights.

4.21 In addition to the above, there are serious allegations of UK involvement in rendition in relation to the two Libyan nationals, Abdel Hakim Belhadj (aka Abdullah Sadeq) and Sami Al Saadi (aka Abu Mundhir). Their allegations of rendition to their country of origin are now the subject of a police investigation. These would plainly require investigation.

**The Inquiry would have wished to investigate:**

- **Whether Government promptly developed an appropriate policy on the extent to which the Agencies could be involved or acquiesce in US renditions;**
- **Whether the Agencies took sufficient account of concerns or potential concerns about detainee treatment in countries to which detainees had been renditioned;**
- **Whether the Government and Agencies became inappropriately involved in some renditions;**
- **Whether there was an apparent willingness, at least at some levels within the Agencies, to condone, encourage or take advantage of a rendition operation; and**
- **The allegations of UK involvement in rendition in relation to the two Libyan nationals, Abdel Hakim Belhadj (aka Abdullah Sadeq) and Sami Al Saadi (aka Abu Mundhir).**

ISSUE 4: Did the Government do enough to prevent the use of UK airspace and territory, including its Overseas Territories, for rendition operations?

4.22 The provision of information regarding private flights into the UK is governed by international agreement. This restricts the amount of information which the UK receives about private flights entering the UK where passengers do not disembark.

4.23 A submission to the Secretary of State for Transport (Alistair Darling) on 6 December 2005 set out the permissions required by international treaty to be passed between a state and flight operator/commander of each aircraft, noting that:

- Private flights (where payment is not made for carriage of passengers or cargo) and non-traffic flights (those not picking up passengers or cargo but stopping, for example, to refuel) do not require prior permission when flying into the UK.
- Overflight of UK airspace without landing does not require prior permission from the UK.

The submission also described the flight information collected by air traffic control services:

“In operating a flight into Europe in controlled airspace the commander of each aircraft is required to file a flight plan with Eurocontrol. The flight plan contains such particulars as may be necessary to enable an air traffic control unit to issue an air

traffic control clearance, and for search and rescue purposes. For example, the flight plan provides information on the aircraft's identity and equipment, the point and time of departure, the route and altitude to be flown, the destination and estimated time of arrival ... Eurocontrol passes this information to each of the navigation providers on the route, to NATS [National Air Traffic Services] in the case of the UK ... Eurocontrol, NATS and the individual airports will hold data about aircraft for their own purposes and would know that aircraft x landed on a particular date, but would not know the purpose of the flight or the identity of the passengers.”

4.24 It follows that records held by the Government relating to private flights that cross UK airspace or use UK facilities merely to refuel, would not reveal the names of passengers if those passengers did not disembark and enter the UK immigration process.

4.25 The Government has made clear, however, that it would expect the US, or any Government, seeking to transport a prisoner through the UK, to seek permission in advance. For example, as set out on 16 October 2007 in a letter to Andrew Tyrie MP, the Minister of State for the Middle East, Kim Howells, stated:

“The UK opposes any form of deprivation of liberty that amounts to placing a person outside the protection of the law. We are clear that the US would not render any detainee through UK airspace, or that of our Overseas Territories, without permission. Should the US seek our assistance in transferring detainees, we would look at each request on a case by case basis. We would decide whether or not to assist taking into account all the circumstances, including our obligations under domestic or international law.”

4.26 In addition, the Government has, on a number of occasions, sought and the US has provided, assurances that the UK has not been used to rendition detainees. The Foreign Secretary (David Miliband) told the House of Commons on 3 July 2008 that:

“The United States Government confirmed that, with the exception of two cases related to Diego Garcia in 2002, there have been no other instances in which US intelligence flights landed in the United Kingdom, our Overseas Territories, or the Crown Dependencies, with a detainee on board since 11 September 2001.”<sup>11</sup>

4.27 As regards Great Britain and Northern Ireland, and UK overseas territories other than Diego Garcia, no document disclosed to the Inquiry calls into question the assurances provided by the US that it has not renditioned detainees via UK territory. However, Diego Garcia and the separate question of the use of UK airspace and facilities by flights on the way to or from rendition operations but empty of detainees, warrant further consideration.

## Diego Garcia

4.28 The island of Diego Garcia is part of the British Indian Ocean Territory. The island has anchorage and mooring facilities and an airfield, developed to support the large US Navy support base which was first established there over forty years ago following an agreement with the British Government. The Exchange of Notes, dated 25 February 1976, between the UK and US Governments concerning the US Navy Support Facility on Diego Garcia established agreed practices around the usage of Diego Garcia. It shows that access to the

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11. Hansard, HC, vol 478, col 59WS

island by a flight carrying a detainee ought to have been the subject of prior consultation by the US Government, if not a joint decision:

“(3) Consultation

Both Governments shall consult periodically on joint objectives, policies and activities in the area. As regards the use of the facility in normal circumstances, the Commanding Officer and the Officer in Charge of the United Kingdom Service element shall inform each other of intended movements of ships and aircraft. In other circumstances the use of the facility shall be a matter for the joint decision of the two Governments.”

(4) Access to Diego Garcia

(a) Access to Diego Garcia shall in general be restricted to members of the Forces of the United Kingdom and of the United States, the Commissioner and public officers in the service of the British Indian Ocean Territory, representatives of the Governments of the United Kingdom and of the United States and, subject to normal immigration requirements, contractor personnel. ... Access shall not be granted to any other person without prior consultation between the appropriate administrative authorities of the two Governments.

(b) Ships and aircraft owned or operated by or on behalf of either Government may freely use the anchorage and airfield.”<sup>12</sup>

4.29 According to normal practice, an aircraft’s passenger manifest – which is required to be supplied to a port authority at an airport along with an aircraft’s General Declaration – would have contained the details of any passengers disembarking. The documents received by the Inquiry are unclear, but it may have been a particular practice in Diego Garcia that passenger manifests were supplied by aircraft even if passengers were only transiting.

4.30 According to UK records, in November 2001 and January 2002, the UK Government was aware of US officials considering the use of Diego Garcia for holding or transiting detainees. Documents disclosed to the Inquiry do not show that these US discussions were developed any further or formally put to the UK.

4.31 Speculation as to whether UK territory, particularly Diego Garcia, had been used by the US in rendition operations appeared in the media and Parliamentary Questions repeatedly from 2002 to 2008. In response, from 2003 to 2007, the UK Government obtained assurances from the US Government, on more than one occasion per year, that the island had not been transited by aircraft carrying detainees. But in February 2008 the US Government corrected its assurances and volunteered that on two occasions in 2002 a detainee had transited Diego Garcia on US rendition flights.

4.32 It appears that the UK authorities in 2008 no longer held the passenger manifests or General Declarations for Diego Garcia flights in 2002. The NGO, Reprieve, has publicly suggested that the Pakistani national, Mohamed Saad Iqbal Madni, can be identified as one of the two detainees who had been renditioned through Diego Garcia. In 2009 Madni issued proceedings against the UK Government, although the claim did not proceed to trial. The US has not publicly confirmed the identity of the detainees involved.

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12. <http://treaties.un.org/doc/Publication/UNTS/Volume%201018/volume-1018-I-8737-English.pdf>

4.33 From the documents disclosed to the Inquiry, there is nothing to suggest that the UK knew of the use of Diego Garcia for US rendition flights in 2002, prior to the US admission of that fact in 2008. The Inquiry is not aware of any cases in which it has been established that UK territory was transited by US rendition subjects on any occasion other than the two acknowledged Diego Garcia cases. The following are some of the key exchanges on this issue found in the documents disclosed to the Inquiry:

- On 8 January 2003, the FCO Parliamentary Under-Secretary of State, Baroness Amos, was asked about prisoners kept by the US on Diego Garcia. Baroness Amos replied that she was aware of the stories in the press and that they were entirely without foundation.<sup>13</sup>
- On 28 April 2003, in answer to a Parliamentary Question, Baroness Amos stated:

“The United States authorities have assured us that they are not detaining anyone they regard as an “unlawful combatant” in Diego Garcia or on any vessel in the British Indian Ocean Territory. The United States Government would need to ask for our permission to bring any such person to Diego Garcia and it has not done so.”<sup>14</sup>

- In January 2004, in preparing the response to a letter from the Chair of the ISC, Ann Taylor, the Prime Minister requested that assurances be sought from the US again that no suspected terrorists had transited Diego Garcia. The Prime Minister replied to the ISC on 14 January, confirming that the US Government had given these assurances.
- On 21 June 2004, the Foreign Secretary (Jack Straw) stated in an answer to a written Parliamentary Question:

“The United States authorities have repeatedly assured us that no detainees have at any time passed in transit through Diego Garcia or its territorial waters ... and that the allegations to that effect are totally without foundation. The Government are satisfied that their assurances are correct.”<sup>15</sup>

- On 21 February 2008 the Foreign Secretary (David Miliband) made an oral statement to the House of Commons setting out the new information received from the US, as well as formally correcting previous statements given on the subject:

“Contrary to earlier explicit assurances that Diego Garcia had not been used for rendition flights, recent US investigations have now revealed two occasions, both in 2002, when this had in fact occurred. An error in the earlier US records search meant that these cases did not come to light. In both cases a US plane with a single detainee on board refuelled at the US facility in Diego Garcia. The detainees did not leave the plane, and the US Government has assured us that no US detainees have ever been held on Diego Garcia. US investigations show no record of any other rendition through Diego Garcia or any other Overseas Territory or through the UK itself since then.”<sup>16</sup>

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13. Hansard, HL, 8 January 2003, vol 642, col 1020 – 1021

14. Hansard, HL, 28 April 2003, vol 647, col WA57

15. Hansard, HC, 21 June 2004, vol 422, col 1222W

16. Hansard, HC, 21 February 2008, vol 472, col 548

### **In relation to Diego Garcia, the Inquiry, would have wished to investigate:**

- **Although no formal request was put to the UK, whether the FCO response to early consideration of using Diego Garcia (i) for holding, and (ii) for the transit of, detainees was sufficient. It is unclear what was said to the US authorities, by whom and at what level, in response to these US discussions;**
- **In light of the treaty obligations, the Inquiry would have wished to investigate whether the UK could have done any more to ensure that Diego Garcia was not used for transiting detainees;**
- **Whether the General Declarations for the two rendition flights that transited Diego Garcia in 2002 included any information on passengers which should have alerted the UK authorities on the island to the fact that each carried a detainee being subject to rendition;**
- **Whether in 2002 there were adequate mechanisms agreed in relation to Diego Garcia to prevent rendition flights using the facilities on the island.**

## **‘Circuit flights’**

4.34 From the documents disclosed to the Inquiry, it is impossible to know the extent to which UK territory was transited by aircraft on their way to or from rendition operations, but empty of detainees. This type of flight is sometimes referred to as a ‘circuit flight’ or ‘rendition circuit’.

4.35 The Inquiry has received documents from the Department for Transport and FCO which include information on movements of specified aircraft in and out of the UK at RAF Northolt, RAF Lakenham, RAF Brize Norton, RAF Lyneham and Prestwick. However, the flight data alone only demonstrate the presence of an aircraft, and must be used in conjunction with other sources to determine whether the aircraft was connected to the CIA and whether the flight was involved in a rendition operation.

4.36 There have been a number of investigations that make use of flight data alongside NGO reports, information about detainees, and the identification of aircraft likely to have been used by the CIA, to seek to determine the extent of rendition flights. In particular, a PACE report into CIA secret prisons in Europe, by PACE member Dick Marty, was published on 7 June 2007. The report described a “*system of secret detentions and detainee transfers spun out around the world by the US Government and its allies*”. It found that there was “*enough evidence to state that secret detention facilities run by the CIA did exist in Europe from 2003 to 2005*”. The PACE report criticised the UK for too readily accepting US assurances, given that PACE had received information that showed that Diego Garcia was used by the US for processing high value detainees.<sup>17</sup> However, no documents disclosed to the Inquiry support this allegation as to the use of Diego Garcia. Also in June, the Association of Chief Police Officers (ACPO) drew to a conclusion its examination of allegations that domestic law had been breached at UK airports by US Government chartered aircraft transiting them during extraordinary rendition operations. The work was led by the Chief Constable of Greater Manchester Police, Michael Todd, and he concluded that no evidential basis existed on which a criminal inquiry could be launched.<sup>18</sup>

17. Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights, “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report”, June 2007

18. ISC 2007 Report on Rendition, paragraph 193 – 195

4.37 There are reasons, other than for rendition operations, why aircraft associated with the CIA would transit the UK. However, there are a number of cases where UK airports were highly likely to have been used by the US for circuit flights.

4.38 The Government's approach to this issue, as articulated from 2006, appears to have been that circuit flights transiting UK facilities were not rendition or extraordinary rendition, and could not in any way amount to complicity in any unlawful activity, at least unless the UK authorities had full knowledge of what activity had taken place or was about to take place. It is also notable that, throughout the period, the assurances given by the US only clarified that UK territory had not been transited by aircraft *with detainees onboard*.<sup>19</sup>

4.39 On 25 January 2006, Amnesty International raised with the Government concerns that UK airspace and airports had been used to facilitate flights by CIA-chartered aircraft "known" to have secretly transported detainees to countries where they faced torture or mistreatment. Amnesty International listed three flights concerning a Gulfstream V jet, registration N379P.<sup>20</sup>

4.40 On 1 February 2006, in a briefing prepared for the Parliamentary Under Secretary for Transport (Karen Buck) for an appearance before the Transport Select Committee, the proposed response to questions on CIA circuit flights transiting UK territory was that such allegations appear to be "*about empty planes refuelling in the UK. This is not rendition or extraordinary rendition.*"

4.41 On 23 February 2006 the Foreign Secretary (Jack Straw) replied to Amnesty International's letter of 25 January, noting that:

"Your information about Gulfstream V N379P, which we cannot confirm, does not suggest that the US authorities have transferred detainees via UK territory or airspace. While we can insist, as we do, that no foreign aircraft should be used to commit criminal offences within our jurisdiction, we cannot impose restrictions on the use of aircraft outside our jurisdiction."

4.42 In June 2006, an FCO submission was put to the Minister for Middle East Affairs, Kim Howells, on handling rendition developments. The submission covered how to answer a Written Parliamentary Question on rendition; and the publication of new flight data information used by PACE. The new flight data appeared to reinforce Amnesty's claim that US flights had transited the UK on the way to or from alleged rendition operations. The submission noted that the publication of this data would probably lead to a renewed focus on the Government's involvement in rendition operations:

"On 4 May, however, the Department for Transport received copies of flight plan data from Eurocontrol which they had provided to the Parliamentary Assembly of the Council of Europe (PACE)'s inquiry into rendition. This is the second set of such data from Eurocontrol. There are two sets because the PACE initially asked for data on one list of aircraft registrations, and subsequently added a second list. The second set is likely to attract more attention than the first, because three entries in the data confirm that the three flights identified by Amnesty, including the one also identified by the BBC did transit UK airports on the dates in question. The data does not provide any evidence of the alleged prior rendition.

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19. For example see paragraphs 43, 46 and 47 below.

20. [www.amnesty.org.uk/news\\_details.asp?NewsID=16679](http://www.amnesty.org.uk/news_details.asp?NewsID=16679)

... The Eurocontrol data which matches the alleged transits through the UK contained in the Amnesty International 25 January letter are:

— 24 October 2001: Gulfstream V registration N379P recorded as stopping at Prestwick en route from Frankfurt to Washington. (Amnesty allege it was involved in a rendition to Jordan the previous day).

— 20 December 2001: Gulfstream V registration N379P recorded as stopping at Prestwick en route from Cairo to Washington. (Amnesty allege it was involved in a rendition from Sweden to Cairo on 18-19 December.)

— 15 January 2002: Gulfstream V registration N379P recorded as stopping at Prestwick en route from Cairo to Washington. (Amnesty allege it was involved in a rendition from Jakarta to Cairo on 12 January.)”

4.43 On 26 March 2007, the Prime Minister told the Chairman of the ISC:

“The Government has not sought to establish whether aircraft that may have previously or subsequently been involved in rendition operations have transited UK territory (including Overseas Territories) or airspace. However the US has given firm assurances that at no time have there been any detainees on Diego Garcia. Neither have they transited through the territorial seas or airspace surrounding Diego Garcia.”

4.44 On 15 May 2008, the FCO passed to the US a list of 391 flights where the FCO had been alerted to concerns of rendition through the UK or UK Overseas Territories.

4.45 On 5 June 2008, the Foreign Secretary (David Miliband) wrote to Andrew Tyrie MP on the subject of rendition and flights empty of detainees, stating:

“We do not consider that a flight transiting our territory or airspace on its way to or from a possible rendition operation constitutes rendition. Nor do we consider that permitting transit or refuelling of an aircraft without detainees on board without knowledge of what activities that aircraft had been or would be involved in, or indeed whether or not those activities were unlawful, to be unlawful in itself”.

4.46 On 1 July 2008, a submission sent to the Foreign Secretary (David Miliband) noted that after further checks, the US had not found any other instances, other than the two occasions concerning Diego Garcia in 2002, where the UK or UK Overseas Territories had been transited by US or US chartered aircraft containing detainees.

4.47 On 3 July 2008, the Foreign Secretary (David Miliband) made a Written Ministerial Statement to the House of Commons on the latest exchange with the US on rendition through UK or UK Overseas Territories. The statement noted:

“The US Government received the list of flights from the UK Government. The US Government confirmed that, with the exception of two cases related to Diego Garcia in 2002, there have been no other instances in which US intelligence flights landed in the United Kingdom, our Overseas Territories, or the Crown dependencies, with a detainee on board since 11 September 2001. Our US allies are agreed on the need to seek our permission for any future renditions through UK territory. Secretary Rice has underlined to me the firm US understanding that there will be no rendition through the UK, our overseas territories and Crown dependencies or airspace without first receiving our express permission. We have made clear that we would only grant such permission if we were satisfied that the rendition would accord with UK law and our

international obligations. The circumstances of any such request would be carefully examined on a case-by-case basis.”<sup>21</sup>

**In relation to use of UK airspace and territory by planes on the way to or from a rendition operation but empty of detainees, the Inquiry would have wished to investigate:**

- **Whether the Government should have taken action in respect of any CIA use of UK territory for refuelling flights on the way to, or returning from, rendition operations; and**
- **Whether legal or other considerations ought to have led the Government to seek wider assurances from the US that UK airspace and territory would not be used for circuit flights.**

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21. Hansard, HC, 3 July 2008, vol 478, col 58WS – 59WS

# Chapter 5

## Guidance and training

### Introduction

5.1 In examining what guidance was available to guide Agency staff and personnel in their dealings with detainees held by other countries, the Inquiry has examined documents relating to what training the staff received, since the two areas are intrinsically linked. There is some information on guidance and training already in the public domain. For example, the ISC 2005 Detainee Report refers to guidance and training given to SIS and Security Service officers sent to Afghanistan, Guantanamo and Iraq. In addition, in July 2010 the Government published the 2010 Consolidated Guidance.<sup>1</sup>

### Guidance

5.2 Based solely on a review of the documents disclosed to it by Government, the Inquiry has considered the following areas:

- guidance given during the deployment to Afghanistan, Guantanamo and Iraq;
- guidance on rendition;
- the development of guidance from 2004 onwards;
- guidance on working with liaison services;
- guidance given to GCHQ staff; and
- the Consolidated Guidance and how this differed from previous guidance.

5.3 The documents which the Inquiry received from the Agencies included narrative accounts of the evolution of their guidance to staff. The Security Service narrative was a corporate statement written specifically for the Inquiry. The SIS narrative had a different status. It was not a commissioned task but a personal initiative by one of the SIS officers working on SIS's 2009 review. It was annexed to the review and formed part of the SIS corporate record, but it was not a corporate statement on the subject. It was also not subject to peer review or other wider consideration.

5.4 The Inquiry found the ISC Detainee Report helpful and some of the Committee's observations accord with the themes and issues which the Inquiry has identified from the materials disclosed by Government.

5.5 There are three points worth highlighting at the outset. First, there is a difference between guidance on the interviewing of detainees and guidance on the passing and

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1. [http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consolidated\\_Guidance\\_November\\_2011.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consolidated_Guidance_November_2011.pdf)

receipt of intelligence relating to detainees to and from liaison services. Prior to the 2010 Consolidated Guidance, guidance in these two areas tended to be treated separately. Second, while the Inquiry has received a range of documents on guidance from the Agencies, it is likely that they will not capture every instance of guidance being given to their staff. This is not meant as a criticism of the information received, merely recognition that there may have been instances where guidance was given orally, either in person or by telephone, to SIS or Security Service officers and these may not have been subsequently recorded. Third, not having received witness evidence it is impossible for the Inquiry to judge, in any reliable way, how widely written guidance had actually been received, read and understood.

## Training

5.6 At the time of the Justice Secretary's statement in January 2012, the Inquiry's work was more advanced on the issue of the written guidance given to Agency officers than on the training they had received. The Inquiry would have wished to investigate what training individual officers received at different times. Where the Inquiry received documents on training and where training is referred to in this Report, it is with the firm caveat that this is an area where the documentary materials are likely to be incomplete and which would require investigation with witnesses.

## The guidance available to SIS and Security Service officers before September 2001

5.7 The SIS narrative notes that before September 2001, SIS had no formal guidance on interviewing detainees. The Security Service narrative also states there was no formal policy or guidance before September 2001 relating to their officers interviewing detainees in foreign detention. The reason for this appears to have been as a result of a lack of previous operational need. Put simply, neither Agency had played a lead role in interviewing individuals detained overseas, under a foreign jurisdiction, as a result of military action/armed conflict. Neither SIS nor the Security Service had, or indeed has, a power to detain or to compel attendance at interviews. Whilst both Agencies trained relevant staff on interviewing techniques, this was not training for interviewing detainees in the custody of other states.

5.8 The ISC, in taking evidence relating to the handling of detainees in 2005, heard from the most senior officers of SIS and the Security Service on the training and guidance available to officers in advance of their deployment to Afghanistan.

5.9 During the course of his evidence to the ISC the then Chief of the SIS (Sir John Scarlett) and the then Director General of the Security Service (Baroness Manningham-Buller) acknowledged the lack of corporate awareness of an undertaking given in 1972 by the then Prime Minister, Edward Heath, in relation to interrogation techniques used in Northern Ireland. Mr Heath had stated that a number of techniques (hooding, stress positions, the use of white noise, sleep deprivation and restricted diet as aids to interrogation) would not be used in future as an aid to interrogation by UK personnel.<sup>2</sup> In his evidence to the ISC, Sir John made the point that SIS undertook interviews but did not do interrogations and SIS operatives were not interrogators. Interrogation was not part of SIS' professional approach and technique; and that the culture for interviewing was completely different.

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2. Hansard, HC, 2 March 1972, vol 832, col 743

5.10 Sir John was no doubt right to observe that SIS does not see itself as an interrogator and its documents refer more frequently to interviews or ‘debriefs’ of detainees. However, despite Sir John’s distinction between interrogations and interviews, the Heath statement was still of relevance to the Agencies. Indeed, the 1972 prohibition on the five coercive interrogation techniques, used during internment in Northern Ireland, was specifically drawn to the attention of the Agencies. On 29 June 1972, it is recorded that the Cabinet Secretary had requested that they should ensure that any interrogations for intelligence purposes should be conducted in conformity with the 1972 Directive:

*“In the light of instructions from the Prime Minister, the Secretary of the Cabinet requests JIC(A) Departments and Agencies, the Home Department and the Northern Ireland Office to ensure, with immediate effect, that any interrogations for intelligence purposes are conducted in conformity with the Directive.”*<sup>3</sup>

5.11 The Agency Heads told the ISC that the lack of knowledge of this policy position was not determinative of the conduct of the Agencies because the Human Rights Act outlawed the prohibited techniques in any event. In her evidence to the ISC, the Director General of the Security Service, Baroness Manningham-Buller, said that a more pertinent question was whether her staff were fully aware of the Human Rights Act and the European Convention on Human Rights: she felt strongly that they should be. Continuing, she said the answer to the question of whether her staff were aware of the 1972 statement was, therefore, ‘yes’, as the Human Rights Act and the European Convention covered the prohibited techniques.

5.12 Concluding, the ISC summarised the Agencies’ position as follows:

*“They [SIS and the Security Service] therefore regarded the normal levels of training, which emphasised the requirements of the Human Rights Act 1998 as sufficient for the staff deploying to Afghanistan.”*<sup>4</sup>

5.13 In summary, there was no guidance or training for SIS or Security Service officers on detainee interviews before September 2001. The evidence the Agency heads gave the ISC indicates that corporate knowledge of the 1972 undertaking had faded. The Inquiry would have wished to examine with witnesses: first what guidance and human rights training SIS and Security Service officers received; and second, whether this training or other training was sufficient to make officers aware that the techniques banned in the undertaking were not acceptable.

ISSUE 1: Whether guidance was given to SIS and Security Service officers immediately before their deployment to Afghanistan to interview detainees?

5.14 The documents provided to the Inquiry, including the Agencies’ own commentaries on the subject of Guidance and Training, suggest the following.

5.15 The purpose of the SIS and Security Service deployment to Afghanistan was twofold. First, pursuant to their national security role, the Agencies wanted to interview those detainees who were suspected of involvement with Al Qaeda. Second, the Agencies provided staff with relevant linguistic skills to work alongside the US on detainee interviewing. Certain officers were given some guidance in response to specific questions from SIS stations involved in the process. The guidance focussed on avoiding the UK becoming the detaining power with custody of, and responsibility for, detainees and for

3. JIC (A) (72) 21 (Final), Report of the Baha Mousa Inquiry, pg 439

4. ISC Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq, March 2005, paragraph 39

ensuring that those detained would be treated humanely. For example, in November 2001, SIS Head Office explained that access to detainees in Afghan custody was subject to two strict conditions: a) that at no time were they to be under SIS control “as this would mean that we [SIS] would incur Geneva Convention responsibilities for them” and b) that they “would not be subject to coercion or torture and generally treated humanely”.

5.16 The documents show that SIS officers in the region briefed SIS Head Office and the Security Service on detainee issues during December 2001 as events unfolded.

5.17 The Security Service did not already have staff in the region dealing with events on the ground on a day-to-day basis. The Security Service did not issue written guidance to staff in advance of their deployment. There was no mention of guidance or training to staff in either the submission to the Director General to approve the deployment of officers to Afghanistan and Pakistan or the operational plan developed by Security Service officers and submitted to senior managers for approval. However, from an analysis of the documents, it is apparent that the treatment of detainees who might be interviewed by the Security Service was considered, albeit perhaps briefly. A Security Service loose minute dated 21 November 2001 addressed the questioning of detained persons in Afghanistan. In a section that may have reflected MoD input on the legal position, the minute noted:

“Presuming that any prisoners taken by British Forces in Afghanistan are treated as PWs [Prisoners of War] they will be afforded the protection of the third Geneva Convention. Article 17 of the Convention governs the ‘interrogation’ of prisoners.<sup>5</sup> PWs cannot be compelled to provide any information other than name, rank and number to the force that has captured them. They can be questioned for any purpose, but they must not be coerced or forced in any way. A copy of section 17 is attached to this LM [Loose Minute].”

5.18 Military guidance that had already been drafted by this time included that:

“UK Forces and SIS may interrogate detainees, PW [Prisoners of War] and PWPROS [Prisoners of War who may be subject to prosecution]. Inducements may be offered, where appropriate. Although the use of force to gain information from detainees, PW or PWPROS is strictly prohibited. Subject to obtaining consent, UK Forces and SIS may also interrogate PWs held by the Opposition Groups or US. Although they should report any human rights abuses by Opposition Groups (or other foreign forces) to the Red Cross.”

**The Inquiry notes the ISC’s comments in its 2005 Detainee Report relating to the training and guidance provided prior to deployment of Security Service and SIS officers to Afghanistan:**

***“The SIS and Security Service personnel deployed to Afghanistan ... were not sufficiently trained in the Geneva Conventions, nor were they aware which interrogation techniques the UK had specifically banned in 1972.”***

**The Inquiry would have wished to investigate this area further.**

5. See Chapter 3, paragraph 20, for a description of Article 17 of the Third Geneva Convention



5.24 On the following day, 10 January, an SIS officer sent a telegram to SIS Head Office reporting his interview of a detainee. This was the first time that SIS had access to US-held detainees in Bagram.

5.25 SIS Head Office responded to this report by telegram on 11 January 2002. The Security Service asked that the response also be passed to its officers in Bagram. The response was the first instance of specific guidance being issued to officers on the ground. This guidance included legal advice on officers' obligations under the Human Rights Act 1998 and the Criminal Justice Act 1948. The relevant extracts of the telegram are:

“(1) Thank you for making such a good and determined start on interviewing Al Qaida detainees; we can see all sorts of likely \*\*\* benefits.

(2) There are one or two legal points worth repeating and/or clarifying, some with particular reference to\*\*\* some more general. \*\*\* has asked that you share these with

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(4) With regard to the status of the prisoners, under the various Geneva conventions and protocols all prisoners, however they are described, are entitled to the same [*later corrected to 'some'*] level of protection. You have commented on their treatment. It appears from your description that they may not be being treated in accordance with the appropriate standards. Given that they are not within our custody or control, the law does not require you to intervene to prevent this. That said, HMG's stated commitment to human rights makes it important that the Americans understand that we cannot be party to such ill treatment nor can we be seen to condone it. In no case should they be coerced during or in conjunction with an SIS interview of them. If circumstances allow, you should consider drawing this to the attention of a suitably senior US official locally.

(5) It is important that you do not engage in any activity yourself that involves inhumane or degrading treatment of prisoners. As a representative of a UK public authority, you are obliged to act in accordance with the Human Rights Act 2000 which prohibits torture, or inhumane or degrading treatment. Also as a Crown Servant, you are bound by Section 31 of the Criminal Justice Act 1948, which makes acts carried out overseas in the course of your official duties subject to UK criminal law. In other words, your actions incur criminal liability in the same way as if you were carrying out those acts in the UK.

(6) If you require further guidance \*\*\* on this or related issues, please contact either \*\*\* ”

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the questioning of US detainees in Afghanistan and Guantanamo. During the meeting, the Security Service legal adviser commented on the guidance given to its officers in Afghanistan:

“I explained that the Service (like SIS) had given its staff clear instructions that they were not, of course, to become involved in any maltreatment of prisoners, and nor were they to condone the US treatment of prisoners. If they were to see a prisoner mistreated they should report any concerns they had to a senior person. However, beyond this there was little our staff could do regarding their treatment. The prisoners are under US control and we have been given access only on condition that we abide by the US rules. Senior managers are monitoring the situation and retain the option to withdraw our staff if we feel it necessary.”

5.30 The “*clear instructions*” were a reference to the guidance contained in the SIS telegram of 11 January 2002 (see paragraph 25 of this Chapter above) and oral briefings by Security Service senior management. In 2004 a Security Service officer reviewing what guidance had been given to staff at the time, described these oral briefings in the following terms:

“There are no verbatim records of the oral advice given to the [Security Service] staff who subsequently became engaged in the detainee interview programme, but my understanding from references on file and from the recollections of some staff involved that ... senior management briefed staff that:

- interviews must be free from pressure or coercion, not involve any inhumane or degrading treatment, and that staff should withdraw if they considered the interview regime to be unacceptably harsh or unreasonable.”

5.31 Continuing, the officer described what the guidance had been on what should be recorded after detainee interviews:

“Staff were also instructed to make a record of the physical conditions and circumstances of each interview. To support this, a Prison Interview Report form was created which required the interviewing officers to record such details as: name of the interviewee and interviewing officer; date and duration of the interview, physical security measures in place; physical and mental condition of the interviewee; and any demands or requests made by the interviewee.”

5.32 The SIS narrative does not refer to any guidance given to SIS officers at this stage on recording conditions of any detainee interviews.

5.33 SIS did however provide the Inquiry with documents which show that, from at least 2001, it was its policy to record all substantive information, including relevant operational activity.

5.34 In April 2002, SIS instructions to officers at Guantanamo suggested that the practice in Afghanistan was to record a detainee’s physical and mental condition before beginning each interview (see paragraph 44 of this Chapter below).

**The Inquiry would have wished to investigate the nature of the Security Service's oral briefings to staff including:**

- **How, if at all, the information given in them compared to the written advice given, via SIS, in the telegram of 11 January 2002;**
- **Whether the Security Service officers raised any questions or concerns in the briefings and how these were addressed;**
- **Whether the briefings were sufficient to prepare the officers for their deployment; and**
- **Why there was no contemporaneous written record of the guidance that was given?**

**The Inquiry would also have wished to investigate:**

- **The later suggestion that it was the SIS practice to record the detainee's physical and mental condition before beginning each interview. If this was the practice, how did it develop and how consistently was it understood and applied?**

5.35 On 21 January 2002 a senior manager whose staff were to be sent to Afghanistan discussed the deployment with others in his team and a legal adviser. They agreed:

“Each [Security Service officer from the deployed team] would write a factual account of the circumstances surrounding each interview conducted. This would record the terms under which the interview was conducted and any pertinent observation about the American detention regime.”

5.36 One of the Security Service Legal Advisers suggested in a minute dated 24 January 2002 that this record of detainee interviews should also be passed to the Home Office and the FCO:

“We have already agreed that [the Security Service] officers will write up their interviews in such a way as to include a factual account of their own observations regarding prisoner treatment ... we should also ensure that an account of the treatment of the prisoners is passed on to the relevant FCO/Home Office departments ASAP, if this has not already been done.”

5.37 The senior manager responded, on the same day, to the legal adviser's suggestion:

“Treatment of prisoners – as you [*Legal Adviser*] say we are recording the circumstances of each interview. We have also compared lists with the FCO Consular Division and the police do not think anything further is needed.”

**The Inquiry would have wished to investigate:**

- **What caused the Security Service to decide on 21 January 2002 that its officers should complete factual accounts of detainee interviews;**
- **Why this guidance was not given before the first Security Service interviews of detainees in Afghanistan;**
- **What was meant by the senior manager's minute of 24 January 2002 and why it responded to the legal adviser in those terms (the legal adviser's minute had suggested that records of detainee interviews should be passed to the Home Office and the FCO. But that suggestion was apparently not pursued: records of detainee interviews were not routinely passed on to the Home Office and the FCO);**
- **Whether, taken as a whole, the Security Service requirement for factual accounts of detainee interviews was sufficient as a record keeping policy, and whether it worked in practice;**
- **Whether the SIS practice of making a record of detainee interviews was as a result of formal written guidance; and**
- **Whether SIS practice and guidance was sufficient in capturing relevant information about the treatment and conditions of detainees.**

**ISSUE 3: Whether guidance was given to SIS and Security Service officers on rendition?**

5.38 The issue of rendition is considered in Chapter 4 of this Report. As explained in that chapter:

- There is no universally recognised legal definition of rendition and the term has been used to cover the transfer of detainees in a range of different circumstances.
- Both Agencies had knowledge of, and some degree of involvement in, instances of US rendition of detainees. One example is the movement of detainees, including British nationals, to Guantanamo in 2002. But there were later cases too, where the UK had advance knowledge of and/or assisted US renditions.

5.39 The SIS and Security Service narratives do not indicate that the guidance issued to their officers extended to specific guidance on rendition.

5.40 In February 2002, some ad hoc guidance appears to have been issued in one case stating that SIS could not actively participate in the rendition of foreign prisoners and that this included arranging transportation or paying expenses. The guidance added that SIS were not permitted to transport such prisoners to their native countries. However, in a number of instances there is no reference to SIS or Security Service officers having access to written guidance on the extent to which the UK could be involved in, or approve of, renditions being carried out by other states.

### The Inquiry would have wished to investigate:

- Whether SIS and the Security Service should have considered the potential for rendition to be a form of mistreatment and included this in the guidance on detainee interviewing and liaison guidance; and
- Whether, in any event, SIS and the Security Service should have provided: (1) specific guidance on involvement in rendition to their officers including, the circumstances, if any, in which it might be lawful; and (2) guidance on the extent to which the Agencies could assist, approve or otherwise become involved in renditions being carried out by other states.

### ISSUE 4: What guidance was given to SIS and Security Service officers deployed to Guantanamo to interview detainees?

5.41 The documents provided to the Inquiry, including the Agencies' own commentaries on the subject of Guidance and Training, suggest the following.

5.42 Before Security Service officers were deployed to Guantanamo to interview detainees, the documents indicate that senior managers gave an oral briefing on the treatment of prisoners. It would appear that these were the same kind of oral briefings as those provided by the Security Service to the officers who were deployed to Afghanistan. A Security Service senior officer explained the nature of the briefing given to one of his officers before his deployment to Guantanamo:

“P... [the Security Service officer] has been instructed as follows:

...

...to concentrate his questioning on the National Security/Intelligence requirements of the UK. He [the FCO official conducting the welfare role] can use this line to establish personal details which will meet some of the Consular requirements.

...

...P... has obviously been instructed to ensure that the interviews are free from pressure and coercion. He will make no promises. If he feels that the Guantanamo regime is unacceptably harsh or unreasonable he has been told to use his common sense and withdraw.”

5.43 On 22 April 2002 the Security Service informed their officers deployed to Guantanamo that all new British detainees transferred from Afghanistan had to be interviewed by an FCO official, in advance of any intelligence interviews by the Service:

“We understand your frustration regarding British nationals but the HMG line in respect of interviews of any new British arrivals at Camp X-Ray was clear. FCO require the welfare, non-consular, visit by Washington Chancery of any new arrivals before we interview them.”

5.44 In April 2002 SIS provided guidance to their officers who interviewed detainees in Guantanamo. This guidance was agreed in advance with the Security Service. SIS was

interviewing foreign nationals, so the consular difficulties which arose in relation to British nationals did not apply to the SIS interviews. The guidance SIS officers received did however cover treatment. It began by referring to a discussion with an SIS officer to be deployed to Guantanamo and included a section on “*Humane Treatment of Detainees*”:

“In the joint submission to Ministers we stated that ‘There has been no evidence that the detainees have suffered any mistreatment while in custody. But as has been the practice in Afghanistan, SIS and Security Service officers would record each detainee’s physical and mental condition before beginning each interview.’

SIS will base their record on their direct observation of each detainee’s mental and physical condition.... More general questions may be put to the detainee at the opening of the interview – such as “how are you?” – if it is judged to be necessary. If the detainee shows any signs of physical or mental distress, the procedure at Para 6 below [see the quotation in the paragraph below] should be followed. If the detainee makes a complaint of mistreatment this should be noted and passed to the US authorities promptly.

In the submission we also state that ‘in the unlikely event of witnessing any apparent mistreatment [by US guards] or its consequences, the SIS and Security Service officers would ensure that they register their concern with the US authorities at the earliest opportunity.’”

**The Inquiry would have wished to investigate:**

- **The nature of the Security Service oral briefings for Security Service officers who deployed to Guantanamo, whether these were sufficient and whether there should have been written guidance to support them;**
- **Whether the SIS guidance of April 2002 was supplemented and whether the guidance as a whole was sufficient;**
- **The nature of the guidance/discussions between the SIS legal advisers and an SIS officer before his deployment to Guantanamo to interview detainees; and**
- **In the light of the differing circumstances of the Agencies’ deployment to Guantanamo and Afghanistan, whether further thought should have been given to issuing more comprehensive guidance to those deployed to Guantanamo.**

ISSUE 5: Whether guidance was given to SIS and Security Service officers deployed to Iraq?

5.45 The Security Service narrative does not refer to any guidance being given to Security Service officers before they were deployed to Iraq. The documents indicate, however, that the Security Service did consider its potential involvement, in advance of the Iraq conflict, in de-briefing those detained. For example, one of its legal advisers gave advice to a senior manager in the section which deployed staff to interview detainees, on 10 December 2002, about the law on interrogating Prisoners of War:

“The Law of interrogation of PWs [Prisoners of War] is set out in Article 17 of the Geneva Convention III. In short, prisoners of war are only obliged to give their surnames, first names, rank, date of birth and Army serial number. Any other questioning is to be conducted on a voluntary basis. There should be no physical

or mental torture or any other form of coercion in interrogating PWs. However, inducements can be made. The Geneva Convention is silent on the individuals that may question PWs.”

**The Inquiry would have wished to investigate what further guidance, if any, was given to Security Service officers in advance of and during their deployment to Iraq.**

5.46 The SIS narrative does not refer to any guidance SIS gave its officers in advance of their deployment to Iraq. The documents indicate, however, that guidance was given by SIS Head Office when officers in Iraq raised concerns. The nature of this guidance, or the lack of it on occasions, differed depending on the circumstances of each case.

**The Inquiry would have wished to investigate:**

- **Whether the SIS officers involved, both in Iraq and in Head Office, had sufficient guidance and/or training to recognise potential concerns regarding detainee treatment;**
- **Specifically, whether such guidance and training was sufficient to allow officers to recognise treatment that was contrary to British policy such as hooding during interviews and the use of stress positions; and**
- **Whether there was any SIS guidance before June 2004 requiring treatment details to be recorded for detainee interviews, given treatment concerns had already arisen in Afghanistan during 2002.**

5.47 In June 2004 more general written guidance was given to SIS officers in Iraq, and to those deployed in certain other locations. In July 2004 the Security Service also issued written guidance to those officers who were likely to interview detainees. Further details are below, under Issue 6.

**ISSUE 6: How did SIS and Security Service guidance on detainee interviews develop from 2004 onwards?**

5.48 The documents provided to the Inquiry, including the Agencies’ own commentaries on the subject of Guidance and Training, indicate the following.

## **SIS guidance**

5.49 In June 2004 SIS Head Office issued interim guidance relating to the Geneva Convention to SIS officers overseas in five different locations. The guidance was also copied to senior SIS officers in Head Office. In January 2005 it was circulated to two other SIS locations overseas. This guidance was based on guidance (for the Armed Forces) issued in September 2003 in the MoD’s Standard Operating Instruction 390 (SOI 390) on the apprehension, handling and processing of detainees and internees. The Head Office message confirmed more detailed guidance would issue in due course :

“Grateful if the attached broad guidelines on what constitute unacceptable treatment under the Geneva Convention could be shown to all staff before they interview detainees. If staff are concerned that interviewees are being subjected to unacceptable treatment they should, where possible, draw this to the attention of the

detaining authority, withdraw from the interview if not satisfied with the conditions and report the matter to HEAD OFFICE.”

5.50 The broad guidelines referred to in the message were as follows:

“The following forms of treatment of detainees are regarded by UKG [HMG] as unacceptable and contrary to the Geneva Convention:

- Hooding during questioning (also post September 2003 – during arrest or transit)
- Physical punishment of any sort (beatings etc)
- Use of stress privation
- Intentional sleep deprivation
- Withdrawal of food, water or medical help
- Degrading treatment (sexual embarrassment, religious tauntings etc)
- Use of ‘white noise’
- Torture methods such as thumb screws etc.

NB. The blindfolding or obscuring of vision during the arrest or transit on security grounds is regarded as acceptable.”

**The Inquiry would have wished to investigate:**

- **Why such formal written guidance had not been issued prior to June 2004;**
- **Whether it was appropriate for this guidance to include the caveat: “*If staff are concerned that interviewees are being subjected to unacceptable treatment they should, where possible, draw this to the attention of the detaining authority*” [emphasis added]. The Inquiry notes that this caveat was removed from the guidance circulated in March 2005 (see paragraph 51 onwards of this Chapter below);**
- **Whether Security Service officers found the guidance sufficient to answer concerns that may have arisen; and**
- **Why the guidance did not address maintaining records of detainee interviews.**

5.51 The next iteration of SIS guidance was issued to staff in March 2005. This was a message from a Board-level SIS officer, to SIS Stations worldwide. Like the guidance issued in June 2004 this guidance was also copied to senior SIS officers in Head Office. This was the first instance of written guidance being sent to all SIS stations. The message said:

“This guidance is aimed at enabling us to continue successfully to do our CT and counter-insurgency business by ensuring that you understand where the genuine sensitivities reside; that you consult HO [Head Office] whenever operational planning requires it; and that you keep better written records that will protect you and the Service.”

5.52 The guidance was significantly more detailed and broader than the interim advice circulated in June 2004. It reiterated the requirements as set out in the June guidance and went further. For example, it explained that a number of particular sensitivities needed to be considered for detention operations in which SIS might be involved:

“(a) the geographical destination of the target. Where will he or she be held? Under whose jurisdiction? Do we know that detention, rather than killing, is the objective of the operation? (b) what treatment regime for the detainee(s) can be expected? (c) what is the legal basis for the detention? (d) the role of any liaison partner who might be involved.”

5.53 On interviewing detainees, the guidance included that:

“The interviewing of detainees by SIS officers ... requires us to be alert to additional factors: (a) the nationality of the detainee. We would normally expect UK citizens to be interviewed by Security Service officers. UK citizenship will also raise consular issues; (b) the treatment regime witnessed by, or described to, SIS interviewers.

Existing instructions state that interviews must be free from pressure or coercion, must not include inhumane or degrading treatment, and that staff should withdraw if they consider the interview regime to be unacceptably harsh or unreasonable.”

5.54 In addition, it highlighted some of the potential difficulties about issuing intelligence obtained by liaison services from detainees, where this might possibly be obtained by torture. It referred to ongoing discussions between the FCO, the Attorney General’s Office and the Security Service on the topic. It concluded:

“Until final guidance has been approved by the Foreign Secretary and the Attorney General, as a Service we must continue to operate having regard both to our duty to obtain intelligence and with the clearest understanding that torture is completely unacceptable to the Service and to HMG. In practical terms this means that, in circumstances where you are aware that liaison reporting has been obtained from detainees and you know or reasonably suspect the reporting has been obtained from torture, you must report this to HO [Head Office].”

5.55 The Foreign Secretary (Jack Straw), commented to the ISC on the matter as follows:

“But my last point ... is a real area of moral hazard which is that if you do get a bit of information which seems to be completely credible, which may have been extracted through unacceptable practices, do you ignore it? And my answer to that is, the moment at which it is put before you, you have to make an assessment about its credibility. Because, just in terms of the moral calculus, [what] if we had been told through liaison partners that September 11th was going to happen, with all the details [of how the information was obtained]. Now, torture is completely unacceptable and [we would] query whether that was the reason why we got the information ... but you cannot ignore it if the price of ignoring it is 3,000 people dead.”

5.56 The guidance also gave advance notice of further instruction which was to be issued shortly recording “a basic record which should be kept in all cases of interviews of detainees involving SIS officers”. This instruction on recording interviews was issued in April 2005 in a circular to all SIS staff at home and overseas. The documents were also re-sent the next day to all SIS stations by a different officer in SIS Head Office. There were three parts to these messages:

- A DCR template;
- A new chapter of the SIS general procedure manual on detainees and detention operations. This also included instructions for using the DCR; and
- Two new sections of legal guidance, one on international agreements on Human Rights and UK policy and one on detainees.

5.57 The DCR required SIS officers to record, amongst other information: the detainee’s name, the number in the series of interviews, the date and time of meeting, the detaining authority, the name and location of detention facility, whether other personnel were present and their parent organisation, the detainee’s nationality, a description of the detainee’s

physical/mental health (including any concerns the SIS officer may have about their health) and a description of the detention facility (including any concerns the SIS officer may have about the facility). The DCR also required officers to respond to the following questions:

“Did you observe any of the following techniques [*listed in the June 2004 guidance, see paragraphs 49 and 50 above*], all of which are considered by the UK as unacceptable treatment of detainees under the Geneva Conventions, or anything you consider may have constituted mistreatment of the detainee? If so please give details of what you saw and what action you took (e.g. demand that the mistreatment should stop, require the interview to stop or leave).

Did the subject complain of any of the above, or any other form of mistreatment? If so, give details.

If yes to any of the above, was their complaint drawn locally to the attention of the detaining authority? If not, why not?”

5.58 The general procedure manual was a two-volume manual that set out the policy and procedures for the conduct and control of official business eventually running to thirty three chapters (some with multiple parts). The new chapter contained much of the information issued as guidance in March 2005. For example, in line with the March guidance, it had guidance on detention operations, guidance on interviewing detainees and guidance on receiving information from liaison services. In addition, there was a section with instructions for completing DCRs.

5.59 The new chapter of the general procedure manual did however contain more detail than the guidance of March 2005 on what SIS officers should do if they witnessed, or the detainee complained of, mistreatment. It said:

“If an officer witnesses any of the above techniques [*listed in the June 2004 guidance, see paragraphs 49 and 50 above*] being used in interview or any other form of mistreatment in interview, the officer should request the interview to stop, make his concerns known to the detaining authority, withdraw from the interview and report the incident immediately to HO [Head Office].

If a detainee complains of mistreatment during an interview, the officer should draw the complaint to the attention of the detaining authority, unless the officer believes that to do so would provoke further mistreatment against the detainee by the detaining authority.”

5.60 The new section on Human Rights and UK policy, issued in April 2005, explained that:

“The UK has signed and ratified four international treaties relating to the treatment of detainees: the UN Universal Declaration of Human Rights; the Geneva Conventions, which cover the conduct of military action including war and armed conflict; the International Covenant on Civil and Political Rights; the UN convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.... As UK Crown Servants all SIS staff are bound by the provisions of these treaties.

...

In addition to these international agreements all UK personnel are bound by an undertaking made by the then Prime Minister in 1972 that the techniques of hooding, wall standing, sleep deprivation, food deprivation and white noise would ‘not be used

in future as an aid to interrogation'. All UK personnel are also bound by the Human Rights Act 1998, which incorporated the European Convention on Human Rights into UK law."

5.61 The guidance also highlighted relevant extracts from the four international treaties referred to above and listed those interrogation techniques, circulated in the June 2004 guidance, that were deemed to be unacceptable by UK standards.

5.62 The new section of guidance on detainees, also issued on in April 2005, was a short paragraph. It said:

"Whilst SIS is not a detaining authority, SIS officers may be authorised, in the pursuit of the Service's statutory duties, to conduct interviews of detainees held by other authorities for the purposes of gathering intelligence. Any SIS officer conducting or witnessing an interview of a detainee should familiarise him/herself with his/her legal responsibilities under UK and international law by consulting the section above on International agreements on HR and UK policy and Chapter 32 of the [general procedure manual]. Any doubts about the agreements and UK policy should be raised with the [Legal Adviser's] section."

5.63 Later that month SIS sent further guidance to a number of SIS stations overseas and Head Office staff. The guidance was in the form of an internal note for those working on detainee related operations. The message requested the recipients to print off the guidance for reference. The document referred to the guidance issued previously and detailed the specific issues that needed to be considered in engaging with detainees in a counter-terrorism context. For example, it noted that if the detainee was going to be held in a judicial system which accorded with all the basic standards to which the Government subscribed, then SIS officers could proceed with involvement in the operation. It then went on to note that, conversely, if the detainee was going to be held without trial in a state system which was known to have a poor human rights record, then officers would have to think more carefully. It included guidance on debriefing detainees, detainee reporting and a section on training. The recipients were asked to consider where the detainee would be held; how the detainee would be treated; the legal basis for the detention; and the detainees' likely fate (i.e. prosecution, detention without trial etc).

5.64 The document also included guidance on debriefing detainees, for example:

"Anyone who is about to debrief a detainee must talk to one of the [legal advisers] team before they leave the UK. The station will also have to be involved in some of the considerations.

...

In general stations will be able to advise whether the conditions and regime under which detainees are being held is likely to cause us a problem. But the final decision on this must be taken in HO [Head Office]

...

Anyone who meets a detainee has to write a Detainee Contact Report (DCR)."

5.65 Finally, the document included guidance on detainee reporting and a section on training. On detainee reporting, for example, it included:

“Where we are commissioning detainee reporting from a service who SIS reporting indicates has been involved in human rights abuses we need to be sure that the information will not be extracted by the service concerned using methods which HMG will find unacceptable.”

5.66 Following the terrorist bombings in London on 7 July 2005, SIS Head Office re-issued (in July 2005) the guidance sent in March 2005 with a reminder that officers should familiarise themselves with this before becoming involved in detainee operations. In addition, the message was explicit as to the breadth of the guidance’s application:

“Please note that this guidance does not only apply to officers involved in detention operations in areas of military operations. It applies in all cases where SIS is involved, in any way, in facilitating or supporting a detention operation by a non-UK detaining authority, and in all cases where SIS conducts interviews of detainees, whether held by a UK or a non-UK detaining authority. The same rules apply to all stations regardless of the past record of the liaison with whom stations are dealing. There may be differences in the interpretation of International Conventions between the UK and even our closest allies, and of course, SIS officers are subject to UK law at all times.”

5.67 Further guidance was issued in November 2006 by a board level SIS officer to staff in a circular on detainee related liaison operations. This summarised the joint SIS and Security Service liaison guidance (further details are at paragraphs 75 – 85 of this Chapter below). It did not cover detainee interviewing on the basis that this was already covered in the guidance issued in April 2005.

**The Inquiry would have wished to investigate:**

- **Why guidance of the breadth of that distributed in March and April 2005 had not been issued previously;**
- **Whether SIS officers found this guidance sufficient to deal with detainee issues on deployment, including answering any concerns that may have arisen;**
- **Whether the guidance adequately addressed what to do if a detainee made a complaint during the course of an interview;**
- **Whether the guidance adequately addressed considerations relevant to the lawfulness of the detention;**
- **Whether the guidance adequately addressed the limits of verbal approaches that could be used in interviews: was it sufficient to say that interviews must be free from pressure or coercion?**
- **The level of awareness in SIS of the internal guidance note for those working on detainee related operations and whether those officers who were aware of it found it to be a useful addition to the more formal SIS wide guidance; and**
- **Whether the training on detainee interviewing including pre-deployment legal advisers’ talks were revised and if so how, in the light of this new guidance.**

## **Security Service guidance**

5.68 On 1 July 2004 the Security Service issued written guidance to those officers who might be involved in detainee interviews. This was the first instance of generic written guidance being issued to Security Service staff. The guidance included the same list

detailing unacceptable treatment of detainees under the Geneva Convention that was sent to SIS officers in June 2004 (see paragraphs 49 and 50 of this Chapter above). The same list was also circulated by a Security Service lawyer on 16 September 2004, in advance of officers deploying to Iraq to interview detainees. A covering minute explained that the guidelines would be discussed with officers at a meeting on 5 July 2004 and commented that they:

“outline what constitutes unacceptable treatment under the Geneva Convention. You will notice they are quite broad and there may be some ‘grey areas’. We will therefore rely on individual case officers, within the circumstances they may find themselves when conducting such operations, to use their own judgement. This will include whether or not to continue with the operation/interview and what steps are taken to report any concerns on the conditions and/or treatment of the detainee. If there is any doubt err on the side of caution.

If case officers are concerned that interviewees are being subjected to unacceptable treatment or detained in unacceptable conditions they should, wherever possible, draw this to the attention of the detaining authority, withdraw from the interview and report the matter to [Security Service] management as soon as prudently possible.”

**The Inquiry would have wished to investigate:**

- **Why such formal written guidance had not been issued prior to July 2004;**
- **Whether, it was right to include the caveat: “*If case officers are concerned that interviewees are being subjected to unacceptable treatment or detained in unacceptable conditions they should, wherever possible, draw this to the attention of the detaining authority*” [emphasis added];**
- **Whether Security Service officers found the guidance sufficient to answer concerns that may have arisen;**
- **Why the guidance did not address recording detainee interviews; and**
- **Whether the guidance was supplemented and what issues were raised at the meeting on 5 July 2004.**

5.69 On 9 August 2004, the Security Service issued some supplementary guidance to the earlier 1 July 2004 guidance. Its aim was to outline:

“the doctrine, under the Geneva Conventions, for the handling of prisoners of war set out in the Joint Warfare Publication (JWP). Inter alia this also sets out that detainees must be treated humanely and in accordance with British National Standards encapsulated in JSP 469 – Codes of Practice for the Management of Personal in Service Custody”.

This guidance was based on information sent to the Security Service by the MoD on 12 July 2004. It included details of various interrogation approaches (methods), the neutral, friendly, firm, and harsh approaches. When circulated by the MoD, this guidance came with caveats. As to its status, it was not official guidance. As to its purpose, it was not a substitute for training, should not be relied upon to set boundaries of what might be unacceptable in terms of US practice and it was difficult to provide concise documentation that succinctly set out a complete list of unacceptable techniques.

**The Inquiry would have wished to investigate:**

- **Whether the circulation of military guidelines on interrogation techniques was helpful for, civilian, Security Service officers; and**
- **Whether more should have been done sooner to supplement the July 2004 guidance.**

5.70 In October 2005 SIS and the Security Service discussed producing a common set of guidance for both Agencies' detainee interviews. A Security Service legal adviser produced a first draft on 20 December 2005. He did so having seen the SIS guidance. Further drafts were produced and discussed throughout early 2006. The final product was not in fact joint guidance, but guidance for Security Service officers which was drawn from the SIS guidance. This was circulated by the same Security Service legal adviser on 21 July 2006 and all Security Service officers were informed of its existence on 28 July 2006 via a Director General newsletter.

**The Inquiry would have wished to investigate:**

- **Against the background that SIS had issued further detainee interviewing guidance in March and April 2005, why it took the Security Service until July 2006 to issue broader guidance;**
- **Whether Security Service officers found this guidance sufficient to deal with detainee issues on deployment, including answering any concerns that may have arisen;**
- **Whether it was appropriate that this guidance stated, "*If possible and to do so would not provoke further mistreatment, the interviewing officer should raise any concerns with the detaining authority*" [emphasis added];**
- **Whether the guidance adequately addressed considerations relevant to the lawfulness of the detention; and**
- **Whether the guidance adequately addressed the limits of verbal approaches that could be used in interviews.**

ISSUE 7: What guidance was given to SIS and Security Service officers on working with liaison services?

5.71 The documents provided to the Inquiry, including the Agencies' own commentaries on the subject of Guidance and Training, suggest the following.

5.72 The Security Service narrative on this subject states that guidance on the liaison sphere had existed prior to 11 September 2001. The Inquiry was not provided with the version of the Security Service liaison guidance in place before September 2001. However, it is clear from the documents received by the Inquiry that the Security Service did have guidance on passing information to foreign intelligence services where there were concerns about the human rights records of that service. In her evidence to the ISC the Director General of the Security Service, Baroness Manningham-Buller, said that the Security Service certainly had a policy. She made the point that this had been partly in answer to staff concerns given that the Security Service might be asked to pass intelligence to a Service which had used torture. Baroness Manningham-Buller went on to say that the

Security Service had clear guidelines on what was appropriate and that staff seemed to be comfortable with it.

5.73 A version of the guidance as updated on 31 August 2002 was provided to the Inquiry. This guidance included that:

“The Service will only maintain liaison with the security or intelligence services of a country with a poor human rights record where it is necessary to do so in pursuit of the Service’s functions (for example where the country concerned has access to intelligence about threats in or to the UK) or exceptionally, where there are compelling foreign policy reasons to maintain the liaison and to do so accords with the Service’s functions. Judgements in difficult cases are reached in consultation with other departments such as the FCO and the Cabinet Office. In conducting such liaisons, the Service does not condone any abuses by the country concerned. The Service will ensure that it passes only that intelligence which is necessary to achieve the purpose for which the liaison is maintained. The Service will not pass intelligence which it believes is likely to lead to an abuse of human rights by the liaison service (for example intelligence which is likely to lead to arrest and torture).”

5.74 The SIS narrative does not cover whether SIS had separate guidance on passing information to foreign intelligence services where there were concerns about the human rights records of that service. From March 2005, however, SIS guidance issued on detainees also includes aspects relevant to the liaison sphere such as detention operations to which SIS intelligence might contribute.

**The Inquiry would have wished to investigate:**

- **The level of awareness of Security Service staff to this liaison guidance and its adequacy; and**
- **When and in what form SIS started issuing guidance on this topic.**

5.75 The Security Service issued specific guidance, on 13 April 2004, to all officers in its International Counter Terrorism branch and others on passing intelligence to US liaison services. It explained that any intelligence had to be cleared with team leaders where there was a risk that the information could result in the US authorities deciding to rendite the subject to Guantanamo in order to get access to him.

5.76 In July 2004 senior officers in the Security Service discussed updating their liaison guidance. However, due to a lengthy delay in securing cross-Whitehall agreement to a related document (a legal propositions paper on ‘Information possibly obtained by means of torture’), the first draft of the updated guidance was not circulated until 8 September 2005. Comments were received over the following months, both internally within the Security Service and externally from SIS, GCHQ, FCO, Home Office and the Attorney General’s Office. It was finalised on 31 July 2006 and issued as a joint guidance document for both SIS and Security Service officers.

5.77 The documents received by the Inquiry show that the drafting of its liaison guidance was a substantial piece of work, involving both policy officials and lawyers across Government. Within the Agencies the process included their most senior legal advisers and senior policy officials. The Attorney General (Lord Goldsmith), having been heavily involved in the work on the legal propositions paper mentioned above, was also consulted on the draft guidance and approved it subject to revisions.

5.78 The liaison guidance was separately issued by the Security Service and SIS to their respective staff with additional guidance, as briefly detailed below.

## Security Service

5.79 The Security Service issued the liaison guidance on 28 July 2006 under the cover of a newsletter from the Director General, with the instruction that it be read by all officers. Like SIS, the Service provided additional guidance on how the liaison guidance applied to the Service. The newsletter itself said:

“Essentially, the policy and guidance should provide you [Security Service officers] all with an explicit framework within which you can continue to deal with the required range of international liaison services. The framework is a more detailed and structured guide to the approach we already follow, ie using good judgement about when to consult your line management, [the international liaison section] and the Legal Advisors, and using caveats and seeking assurances from the liaison services as necessary.”

5.80 The additional guidance accompanying the liaison guidance gave practical advice to officers on dealing with liaison services. For example, it included (amongst other points) the following advice in a section on passing or seeking information:

“There may however be some instances where, whilst (s)he does not know, the desk officer foresees a real possibility that passing or seeking information may result in mistreatment. In such cases, (s)he must refer the matter to his/her line management ... before proceeding further.”

5.81 The additional guidance also gave advice on receiving information from liaison services. It said, for example:

“If it is not considered possible to obtain reliable assurances, or if there is any doubt about the reliability of assurances received, the matter should be referred to section senior management (AD [Assistant Director] or above) before proceeding further. Senior management, taking advice from the [legal advisers] as they judge necessary in the particular circumstances, will decide whether to authorise the proposed action. In particularly difficult cases, section senior management may need to refer the matter upwards, and in some cases it may be necessary to consult Ministers.”

5.82 On 1 August 2006 the Deputy Director General minuted senior and middle managers in the Security Service about the 28 July 2006 guidance. He asked managers “*[to] make sure that your staff have a chance to see and to absorb the policy and guidance*” and reminded them that they will need to be ready to advise their staff in any instances of concern. The Deputy Director General’s minute also included some specific actions managers might need to take and confirmed the guidance was not issued with the CIA in mind, although it was relevant to them. In November 2006 the Deputy Director General issued a follow-up minute, again to senior and middle managers, briefing them on the change of US policy on the handling of detainees following the Military Commissions Act 2006 (MCA). President Bush had described the MCA as important because it would “... *allow the continuation of a CIA program that has been one of America’s most potent tools in fighting the War on Terror.*”<sup>7</sup> The Deputy Director General’s November minute, consequently, referred to the possibility of the CIA resuming rendition operations to secret detention facilities. The minute confirmed however that:

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7. Statement by President Bush, White House Press Office, 28 September 2006.

“the [Security Service] policy itself stands unchanged. Staff should take no action where they know that it will result in the torture or mistreatment of an individual – such cases should be referred upwards to senior management. And if staff believe that there is a real possibility of torture or mistreatment, they should consider using caveats or seeking assurances, again in consultation with management.”

## SIS

5.83 SIS issued the liaison guidance in November 2006 under a covering message addressed to all SIS officers ‘at home and overseas’. This covering message included more detailed advice on how the more generic liaison guidance applied to SIS. The covering message summarised the liaison guidance:

“the guidance is lengthy (11 pages), reflecting the fact that it is a shared document with significant legal input and that views on some of the legal questions are still evolving.... The guidance provides the level of advice which hitherto has been issued by Legal Advisors on a case by case basis.

The guidance covers in particular the sharing of locational intelligence with a liaison service which results in an individual being detained; and seeking or receiving information from a liaison service who are already detaining an individual of interest to SIS.”

5.84 It also gave further advice for SIS officers involved in detainee operations:

“We recommend that any officer involved in detainee related operations reads the full paper which is reproduced in the SIS Legal Foundations website, and, if in doubt seeks advice from the [legal advisers] Section when dealing with these issues. Copies of the paper will be sent to stations...”

5.85 The covering message included a section on “*roles and responsibilities*”. An example of the advice included in this section is:

“If an SIS officer foresees a real possibility that the consequence of his actions (such as providing intelligence to or seeking information from a liaison service) will be the mistreatment of an individual in detention then he must, before proceeding, discuss the proposed action with his [Department Head].

If a [Department Head] believes that the liaison service will honour any caveats imposed by SIS ruling out mistreatment, the action may proceed subject to appropriate caveats being attached to any material SIS passes across. (All reporting shared with liaisons should in any case contain the caveat that action can only be taken on the reporting with SIS’s permission). It is only acceptable to depend upon a caveat if the [Department Head] believes it will be honoured.”

### The Inquiry would have wished to investigate:

- Why the Agencies decided to produce joint guidance, i.e. for both SIS and Security Service officers, on liaison with foreign intelligence services but not for interviewing detainees overseas, where there remained separate guidance for each Agency;
- Why the Agencies involved the FCO, Home Office and the Attorney General's Office in the drafting of the liaison guidance, but not the drafting of the interviewing guidance;
- Whether the approach set out in the guidance as to when Ministers should be consulted was appropriate;
- Whether the guidance was appropriate in its approach to passing information if there remained a real possibility that it might lead to torture, as opposed to Cruel, Inhuman or Degrading Treatment (CIDT);
- Why SIS did not issue the guidance until November 2006; and
- Whether there were any specific instances of Security Service officers requesting guidance on liaising with the CIA and, if so, what guidance was given by the Security Service management.

### ISSUE 8: What guidance was given to GCHQ staff?

5.86 The Inquiry also received documents from GCHQ on the guidance available to its staff. This included a paper detailing: *"The evolution of GCHQ's policies in respect of detention operations from 2001 to 2008"*. This, and the other documents provided to the Inquiry on Guidance and Training, indicate the following.

5.87 GCHQ's role in detainee related issues is likely to have been significantly less than that of SIS or the Security Service. For example:

- The nature of GCHQ's work meant that some of the concerns that may have applied to the work of SIS and the Security Service did not apply. For example, in the context of discussions about intelligence possibly obtained by torture a briefing paper for the Director of GCHQ's meeting with the Foreign Secretary (Jack Straw) explained the Agency's position as: *"we tended not to deal directly with 'problem' liaison services, and Sigint information generally is felt to be unlikely to be in play here"*;
- GCHQ did not have anything to contribute to the 2005 ISC Detainee Report;
- GCHQ reviewed its records for the 2006 cross-Government Rendition Review. GCHQ's Head of Operations Policy wrote to the FCO on 20 February 2006 with the results of this review, stating:

*"I have now consulted all our Intelligence Production Teams and our US liaison office and I have reviewed our information on Sigint activities in support of the US that might relate to US Rendition or Extraordinary Rendition operations. I thought that you would welcome formal confirmation from me at this stage that we have no evidence to suggest that GCHQ has knowingly assisted or been involved with US Rendition or Extraordinary Rendition operations."*; and

- GCHQ was involved in the drafting of the liaison guidance (see paragraph 76 of this Chapter above) but as the Security Service explained to the Attorney General's Office

in a letter of 7 April 2006 enclosing the draft policy for the Attorney General's (Lord Goldsmith's) approval:

“Whilst the draft policy refers to the Agencies, you will note that in fact it mentions only the legal obligations of the Service [Security Service] and SIS. Given their somewhat different ways of working and the relationships that exist, GCHQ intend to publish separate guidance for their staff in due course, which will be specifically directed to the Signals Intelligence issues arising in this context. They tell me it will, of course, reflect appropriately this draft policy, which they have discussed with us and SIS and with which they agree.”

5.88 However, the GCHQ narrative makes clear that, after the deployment of a single Government Communication Officer (GCO) in a traditional liaison role to the Senior British Military Representative in Afghanistan in September 2002, GCHQ support in Afghanistan grew substantially. There was a similar growth in Iraq. Along with the number of forward deployed GCHQ staff, including military integrees, the range of roles performed by the GCOs also increased. The documents provided to the Inquiry demonstrate a number of instances of how such forward deployed staff were involved peripherally in detainee related issues. For example:

- A GCHQ military integree deployed to the large US military base at Balad, Iraq, as a GCO supporting UK military intelligence personnel. In August 2004 the GCO made what he later described as ‘off colour’ remarks, meant as black humour, on how a detainee held by the US should be treated; and
- In March 2004, another GCHQ military integree was in Iraq (at both Abu Ghraib and Basra) in a support role during the interrogation of members of an insurgency network. The individual was not in the room when interrogations took place but could observe and sometimes listen to the interrogations; he took notes and provided guidance to the interrogators on questions to ask and the veracity of the answers given. The officer received oral guidance from GCHQ on his role, via secure videoconference, before he left the UK. The instructions were to the effect that he was to provide intelligence support and not get involved in the interrogations.

**Having regard to the quantitatively and qualitatively different nature of GCHQ's involvement in detainee issues as compared to the Security Service and SIS, the Inquiry would have wished to investigate:**

- **Whether GCHQ staff who might have been involved in detainee issues received any written guidance in advance, and if so, the nature and adequacy of it; and**
- **The nature of any guidance given in oral briefings to GCHQ officers, and whether the officers found it sufficient to answer concerns that may have arisen.**

5.89 On 23 November 2006 GCHQ distributed internal guidance on working with liaison services. This document was the GCHQ equivalent of the Security Service and SIS internal notes that were drafted following the production of the liaison guidance (see paragraphs 75 – 85 of this Chapter). The guidance outlined the key principles underpinning the liaison guidance. For example, it noted that the Agencies “*do not participate in, solicit, encourage or condone the use of torture or inhuman or degrading treatment*”. It included a section on the legal context, referring to relevant UK legislation. It also explained that:

“Detailed guidance summarising how these general principles are to be applied within GCHQ have been issued to staff directly affected. Staff working in these areas judged

likely to come across these issues must familiarise themselves with this guidance and follow it. If you believe you are working in a relevant area and have not received the guidance, please contact the Head of Operations Policy.”

5.90 The more detailed annex also had a section on receipt of information. This included the following statements:

“The possibility of GCHQ being supplied with information derived from torture or other improper conduct is very low, given the nature of the SIGINT [Signals Intelligence] business and the sort of information (usually communications related) we receive.

GCHQ staff may reasonably assume that SIGINT information (information in the form of SIGINT reports or their equivalent) obtained by foreign partners and passed to GCHQ has not been obtained by the use of torture or inhuman and degrading treatment.”

5.91 The document also included a section on the supply of information.

5.92 The document explained that, for UK customers, GCHQ staff could reasonably assume that it was for the customers to assure themselves of the legality of any proposed actions. However, when supplying information to a liaison service and when “*staff foresee a real possibility that unlawful behaviour will result from the supply of information*” advice should be sought from the Head of Intelligence Policy, consideration should be given to applying a caveat, and if a caveat alone was not thought to be sufficient, the matter should be referred to senior management who would take legal advice as necessary.

**The Inquiry would have wished to investigate:**

- **Whether there was any GCHQ liaison guidance in place before 2006; and**
- **Whether GCHQ staff found the 2006 liaison guidance sufficient to answer any concerns that may have arisen.**

**ISSUE 9: How did the 2010 Consolidated Guidance differ from previous guidance?**

5.93 For three reasons, it is not appropriate for the Inquiry to discuss the current 2010 Consolidated Guidance in any detail in this Report:

- As this chapter highlights, the issues surrounding guidance given to SIS and Security Service officers relate, in the main, to guidance given earlier rather than later during the decade 2000 – 2010 and not as a result of the 2010 Consolidated Guidance itself;
- The Divisional Court examined the 2010 Consolidated Guidance during judicial review proceedings brought by the Equality and Human Rights Commission and Mr Al Bazzouni and, save for one point, dismissed the challenges to the legality of the guidance. The court’s judgment of 3 October 2011 [2011] EWHC 2401 (Admin) [2012] 1 WLR 1389, suggested that the Government revise one aspect (relating to hooding of detainees). The Government accepted this recommendation and amended the guidance accordingly; and
- The Inquiry’s assessment of the 2010 Consolidated Guidance would have depended on evidence from witnesses. Through witness evidence, the Inquiry would have wished to identify what, if any, difficulties had been experienced in the application and

understanding of previous guidance, and whether the 2010 Consolidated Guidance sufficiently remedied them. The Inquiry has obviously not received such witness evidence.

5.94 The Inquiry notes, however, that there are a number of important differences between the 2010 Consolidated Guidance and previous guidance documents. For example:

- The 2010 Consolidated Guidance was the first time that guidance on interviewing detainees overseas *and* guidance on the passing and receipt of intelligence relating to detainees had been included in one single guidance document;
- The 2010 Consolidated Guidance applied to the Agencies *and* members of the UK's Armed Forces and employees of the Ministry of Defence. Previous guidance was either specific to an individual Agency (e.g. the interviewing guidance) or applied to the Agencies alone (e.g. the liaison guidance);
- The 2010 Consolidated Guidance was written for publication and was placed in the public domain by the Cabinet Office. Previous guidance documents were not meant for publication;
- The 2010 Consolidated Guidance was considered by, and agreed with, Ministers. Previous guidance documents were not approved by Ministers before being issued (albeit the liaison guidance was approved by the Attorney General (Lord Goldsmith), but this was in his capacity as chief legal adviser to the Government);
- The 2010 Consolidated Guidance included a greater role for Ministers, in certain circumstances, than previous guidance, both in approving detainee interviews and in the passing and receipt of intelligence relating to detainees;
- The 2010 Consolidated Guidance included a more detailed explanation of considerations relevant to the lawfulness of detention.

5.95 The above points are some of the more general differences between the 2010 Consolidated Guidance and previous guidance. There are also points of detail and emphasis that differ. Two examples are below:

First –

- The 2010 Consolidated Guidance states: *“Personnel should make themselves aware of the departmental views on the legal framework and practices of States and liaison services with which UK personnel are engaged.”*
- In contrast the liaison guidance stated: *“Whilst there is no legal obligation on staff to seek out potentially relevant information, the officer should ensure that he is reasonably well informed of the practices of particular states and liaison services.”*

One reading of this difference is that the 2010 Consolidated Guidance went further in this area than the liaison guidance.

Second –

- The 2010 Consolidated Guidance states: *“...where interviewing personnel have withdrawn from an interview, owing to the standards to which they believe the detainee has been or will be subject or following specific credible complaints by the detainee, senior personnel must be consulted and consideration should be given to obtaining assurances from the relevant liaison service as to the standards that have been or will be applied in relation to that detainee.”*
- In contrast, Chapter 32 of the SIS general procedure manual, as updated in April 2005, instructed the interviewing officer to report the matter to Head Office. Although the concerns were to be made known to the detaining authority, there was no additional

reference, as there is in the 2010 Consolidated Guidance, to obtaining assurances from the detaining authority.

ISSUE 10: What training was given to SIS and Security Service officers in interviewing detainees and related issues (e.g. the treatment of prisoners)?

5.96 The documents received by the Inquiry show that SIS and Security Service officer training included training on the Human Rights Act 1998 and that some officers received training in interviewing.

## Security Service

5.97 The Security Service narrative referred to the training given to their officers pre-2001:

“The historic Security Service training of [Security Service] officers ... was not custody based and certainly not focused on individuals detained in foreign jurisdictions....”

5.98 This appears to support the ISC’s comments on training in its 2005 Detainee Report which stated that: *“UK intelligence personnel were insufficiently trained prior to their deployments to Afghanistan, Guantanamo Bay and Iraq.”*<sup>8</sup> There was training available to Security Service officers on detainee interviewing from, at the latest, August 2006, as a senior officer commented on 24 July 2006: *“[A Security Service officer] will run a day long course on 15 August and 8 September focused on detainee interviewing – in future any [Security Service] personnel taking part in detainee interviews will need to have attended the course”.*

5.99 By August 2007, if not before, there was also training available to Security Service officers on dealing with liaison services who may practise mistreatment. A senior officer explained on 24 August 2007:

“We incorporated the guidance at appropriate points into a range of training events. These include (not necessarily exhaustive): induction training ... middle management training ... and senior management training....”

## SIS

5.100 The SIS narrative referred as follows to training:

“In August 2009 SIS ... initiated a three day training course, mandatory for all SIS staff likely to have direct dealings with detainees.... This course includes a strong emphasis on legal/human rights issues. In November 2009, the course was delivered overseas ...”

5.101 Additionally, documents disclosed to the Inquiry show that:

- In the lead up to the Iraq War a number of SIS officers due to deploy to Iraq attended training on the processing and interrogation of individuals of intelligence value. The draft programme included the law, Geneva Conventions, standard NATO agreements, Rules of Engagement, Law of Armed Conflict and prisoner handling in the interrogation process, including stress, health and safety issues.

8. ISC Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq, March 2005

- There was also discussion of a bespoke course being developed in March 2003 to give officers fuller training on elicitation/interrogation skills.
- The Inquiry has seen documents describing the training that SIS gave to foreign liaison services on the interviewing of detainees. It is likely that SIS training for its own officers would have covered similar ground.
- In April 2009 SIS Head Office canvassed all SIS Stations on the detainee interview training those deployed overseas had received with a view to identifying which officers needed formal training. SIS Head Office explained the issue in May 2009:

“It may be a few weeks yet before the policy is finalised but the indications are that all officers who are likely to have any direct dealings with detainees in the future must attend a detainee interviewing course beforehand. The course will have a theory part and practical role-plays. Those officers having indirect dealings ... will probably require no more than a detailed briefing.”

- By December 2009 SIS had developed a Detainee Debriefing Course and run it at home and overseas.

#### **The Inquiry would have wished to investigate:**

- **What specific interview training was given to SIS and Security Service officers at different stages;**
- **The appropriateness of the content of the detainee interviewing courses/ programmes that were given to SIS and Security Service officers;**
- **Whether those officers who received detainee interview training, and interviewed detainees, felt this training was sufficient;**
- **What human rights training was given and how this contributed to officers' understanding of detainee treatment and liaison issues; and**
- **What training is now provided to the Agencies in detainee treatment and liaison issues and whether it is sufficient.**

# Chapter 6

## Government policy and communication

6.1 Through the documents received by the Inquiry, this chapter examines the Government's policies towards detainee treatment issues and how those changed over time. It examines what the documents show about communication of reported ill-treatment both from the Agencies to Ministers and in terms of what Ministers requested from the Agencies. The chapter also examines what the documents show about the approach that the Government took to its consular responsibilities in respect of British nationals, dual nationals and UK long term residents. Finally it looks at the provision of information on all these issues to the ISC in support of its work.

6.2 It is in the public domain that Government's policy in relation to detainee treatment was based on compliance with its obligations in international law arising from the various treaties and agreements to which the UK was party. These included the UN Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the Geneva Conventions, and the UN Convention Against Torture (UNCAT), all of which the US had also signed. The UK also had obligations under the European Convention on Human Rights, incorporated into domestic law by the Human Rights Act 1998. The documents show that the UK Government expected its own officials to observe the standards set out in those instruments, and expected that its allies would observe similar standards.

6.3 Based solely on a review of the documents disclosed to it, the Inquiry has identified five issues related to the theme of Government policy and communication, that might be suitable for further examination.

ISSUE 1: Should the Agencies have been quicker to identify a pattern of detainee ill-treatment by foreign liaison partners?

6.4 From January 2002 onwards, the Agencies, and officials in departments, became aware of reports and allegations of ill-treatment of detainees held by third countries, in particular the US. From the documents it has received the Inquiry has identified a number of incidents and/or allegations reported to or by officials of the Agencies or other Government departments, as did the Agencies in their own internal reviews of this period, and the ISC in their reports on Detainees and Rendition. This covers the period from January 2002 up to mid-2004, after which the Agencies embarked on the exercise of collating reports of ill-

treatment at the request of Ministers. These reports and allegations were of variable quality and reliability and the Inquiry notes that from the documents disclosed to it that during this period there were many reports which raised no issue of ill-treatment at all.

6.5 So far as incidents relating to Bagram are concerned, the documents provided to the Inquiry indicate that by October 2003, a number of Government Departments and Agencies had received reports that Bagram had a “*bad reputation*” and that allegations of ill-treatment there might well be true; the Security Service recorded Bagram’s “*mixed*” reputation in September 2004, also assessing allegations of ill-treatment there as credible. It is unclear from the documents exactly when and how these views came to be formed, and to what extent they were shared more widely across Government and the Agencies.

6.6 The documents indicate that senior officials within the Agencies were made aware of some, but not all of the reports, at the time they were received. To the extent that senior officials did know about them, it appears that they were considered to be isolated incidents. The Chief of the SIS, Sir John Scarlett, confirmed that SIS had never believed or understood that this was normal practice. He said that when SIS had been aware of incidents of what was considered to be unacceptable behaviour, those incidents were reported, but they were understood by SIS officers to be isolated incidents and were not believed to be examples of a systemic US policy.

6.7 In her evidence to the ISC the Director General of the Security Service, Baroness Manningham-Buller, said that Sir John Scarlett had answered that he thought it had been one-off, that it had not been systemic. She indicated that she had been thinking about this since and wanted to give a slightly different answer, which was that she did not know. Baroness Manningham-Buller made the point that it could have been systemic but that the Security Service did not see, and had not seen enough, to be able to make a judgement.

6.8 In his evidence to the ISC the Director General of the Security Service, Sir Jonathan Evans, said that the Security Service had not perhaps, in retrospect, done a good enough job in constructing from the little bits of information it had, that the Americans had been working to a rather different policy framework than the one the Security Service had assumed.

6.9 The first time, so far as the Inquiry is aware, that either Agency attempted to collate allegations of ill-treatment was in 2002, when the Security Service conducted two internal reviews, one of which set out certain requirements for “*establishing a central record of the treatment of the detainees*” in Afghanistan, Pakistan and Guantanamo. Both of these reports were sent to senior officials within the Security Service, but not to any other Agency or Department.

6.10 It does not appear from the documents received by the Inquiry that any centralised record was subsequently maintained or that there was a system in place within either Agency or any relevant department for collating reports of ill-treatment from officers on the ground prior to 2005. The Security Service had introduced PIRs in January 2002. It was not until April 2005 that SIS required officers to complete a Detainee Contact Report (DCR). It is not clear from the documents whether there was a recognised process for analysing patterns in PIRs or DCRs once they were introduced. As regards records relating to rendition, the information necessary to answer the ISC’s 2006 requests in the context of extraordinary rendition appears to have come from asking officers for their recollections and conducting searches through files, as explained in a letter dated 26 January 2006 from the Director General of the Security Service (Baroness Manningham-Buller) to the Permanent

Secretary of the Home Office (Sir David Normington). That letter went on to state that a central record had “recently” been put in place.

**The Inquiry would have wished to investigate:**

- **Whether the reports of ill-treatment at Bagram in 2002 should have been considered at the time as creating a credible picture of abuse being practised at that facility;**
- **Whether, and if so when, the Agencies should have recognised the possibility that the reports of ill-treatment represented a pattern of behaviour on the part of the US, rather than being isolated instances of bad practice;**
- **Within each Agency, what procedures existed to ensure that reports of detainee ill-treatment were passed to senior management to enable them to decide whether to notify Ministers, raise the matter with liaison partners, or take any other action; and**
- **Whether consideration was, or should have been, given to establishing some form of central record within each Agency of alleged ill-treatment of detainees and whether such a record could have been shared across Government and Agencies.**

ISSUE 2: Should the Agencies have alerted Ministers to, and should Ministers have asked the Agencies to tell them of, specific instances of ill-treatment in relation to detainees?

6.11 The Security Service is under the authority of the Home Secretary (section 1(1) of the Security Service Act 1989), and SIS is under the authority of the Foreign Secretary (section 1(1) of the Intelligence Services Act 1994). Statute requires the Director General (the operational head of the Security Service pursuant to section 2(1) of the 1989 Act) and the Chief of the SIS (the operational head of SIS pursuant to section 2(1) of the 1994 Act) to make an annual report on the work of his or her Agency to the Prime Minister and his or her Secretary of State. Statute also provides that the Director General and the Chief of the SIS may, at any time, report to the Prime Minister or Secretary of State on any matter relating to the work of his or her Agency (section 2(4) of the 1989 and 1994 Acts). GCHQ is similarly under the authority of the Foreign Secretary (section 3(1) of the 1994 Act) and the Director (the operational head of GCHQ pursuant to section 4(1) of the 1994 Act) is requested to make an annual report of his or her Agency’s work to the Prime Minister and Secretary of State (section 4(4) of the 1994 Act). The specific circumstances in which Agency heads should consult the relevant ministers are not described in statute. The process of authorisation under section 7 of the Intelligence Services Act 1994, which enables SIS and GCHQ to obtain an authorisation from the Foreign Secretary in circumstances where “a person would be liable in the United Kingdom for [the act] done outside the British Islands”, is a different procedure and is not an issue in this chapter.

6.12 The ISC heard evidence from SIS to the effect that:

“The SIS is only required to consult the Foreign Secretary when operations are **politically or operationally sensitive**, or if they require specific authorisation....”<sup>1</sup> [emphasis added].

1. ISC Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq, March 2005, paragraph 40

The documents disclosed to the Inquiry do not reveal when or how that requirement was imposed on SIS, or whether there was a corresponding requirement on the Security Service to consult the Home Secretary or on GCHQ to consult the Foreign Secretary.

6.13 The documents show that from January 2002, there was discussion within Government about the consequences of detention of British nationals. It is recorded that on 10 January 2002 the Foreign Secretary (Jack Straw) accepted that the UK should not stand in the way of the US transferring British nationals to Guantanamo. Here, as elsewhere, the Inquiry was not able to explore the context of this exchange with Mr Straw or with other witnesses.

6.14 The first detainees arrived in Guantanamo on 11 January 2002, including a British national. At around the same time, articles appeared in the domestic press raising detainee treatment issues in Guantanamo and elsewhere.

6.15 On 15 January 2002, Baroness Amos, the FCO Minister, asked to be copied in “*on all future correspondence on the whole subject of the British nationals, their detention and possible prosecution*”. This request was circulated widely within the FCO. It is not clear from the documents received by the Inquiry whether it was passed to any other department or to either Agency.

6.16 The Prime Minister, Tony Blair, answered a question about the treatment of Al Qaeda prisoners in the House of Commons on 16 January 2002, as follows:

“I totally agree that anybody who is captured by American troops, British troops or anyone else should be treated humanely in accordance with the Geneva Convention and proper international norms.”<sup>2</sup>

6.17 The Prime Minister spoke to President Bush. The following day a minute was circulated around Whitehall departments referring to the level of concern in the UK about the treatment of detainees in Guantanamo.

6.18 On the same date a note was circulated widely across Whitehall from the Foreign Secretary’s (Jack Straw’s) Private Office stating that:

“we should continue to press for them [the detainees] to be treated in accordance with international law and for the ICRC to have access to them.”

6.19 On 18 January 2002, the Prime Minister was provided with a short update on the current situation with the detainees in Guantanamo. The Prime Minister annotated that note as follows:

“The key is to find out how they are being treated. Though I was initially sceptical about claims of torture, we must make clear to the US that any such action wd be totally unacceptable & v. quickly establish that it isn’t happening.”

6.20 The documents include instances where Ministers were alerted to some reports from deployed officers of ill-treatment of detainees. For example:

- i. By January 2002 the Foreign Secretary (Jack Straw) was aware of reports from UK officials that the treatment of British subjects detained in Afghanistan was unacceptable;

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2. Hansard, HC, 16 January 2002, vol 378, col 284 – 285

- ii. the Foreign Secretary (Jack Straw) saw (and annotated) a report in January 2002 and commented that conditions at Bagram were of concern;
- iii. the Foreign Secretary (Jack Straw) intervened in the case of a British national in 2003 raising treatment issues with US counterparts; and
- iv. the Foreign Secretary (Jack Straw) raised the conditions of detention of two other British nationals detained at Guantanamo with the US Secretary of State (Colin Powell) in 2004.

6.21 By early 2004, there was mounting public concern in some quarters about detainee treatment issues. Foreign and British nationals released from Guantanamo had made serious allegations of ill-treatment at that facility (the first five British nationals having been released on 9 March 2004, namely Ruhel Ahmed, Asif Iqbal and Shafiq Rasul – sometimes referred to as the “Tipton Three” – Jamal Al Harith and Tarek Dergoul). The scandal of Abu Ghraib had received significant publicity in April 2004.

6.22 On 20 May 2004 the Foreign Secretary (Jack Straw) requested SIS to provide him with information on that Agency’s experiences of interviewing detainees in Afghanistan. That request followed a submission dated 12 May 2004, alerting the Foreign Secretary to allegations of abuse by US Coalition forces and Afghan militia forces working alongside them. According to the submission, allegations had been made in March 2004 by Human Rights Watch. SIS replied in July 2004 detailing relevant information.

6.23 On 24 May 2004, the Prime Minister responded to the ISC’s request for information about the involvement of UK intelligence personnel in interviews of detainees in Guantanamo, Bagram and Iraq. This letter was referred to in the ISC’s Annual Report of 2003-04. On 24 June 2004, the Security Service wrote to the Director General of Defence and Intelligence in the FCO, prompted by the imminent publication of the ISC’s Annual Report. In doing so, the Security Service provided the Director General with further background information on its deployments to Guantanamo and Afghanistan and included a list of four incidents of alleged mistreatment reported to its officers by UK detainees.

6.24 The ISC wrote to the Prime Minister on 7 July 2004, indicating its intention to take evidence on the involvement of UK intelligence personnel in interviewing detainees in Guantanamo, Afghanistan and Iraq, and asking a number of questions on that subject. Those questions were answered in a memorandum submitted by the Cabinet Office to the ISC on 7 September 2004. Annex A to that memorandum set out brief details of reported cases of ill-treatment by that time identified.

6.25 In her evidence to the ISC, Baroness Manningham-Buller responded to a question from Joyce Quin (MP), who asked whether she had believed that Ministers had been informed in a timely way of US activity which was contrary to UK policy and the US mistreatment of detainees. In response, Baroness Manningham-Buller indicated that it was a difficult question and on some occasions it may not have been as timely as it should have been. However, over time, she believed it had become more timely.

6.26 In March 2005, the ISC made recommendations about when Ministers should be consulted in relation to the deployment of staff to interview detainees held by another

country, at paragraph 117 of its Detainee Report.<sup>3</sup> The recommendations were accepted by Government, which said in its response:

“The Government believes that Ministers should be consulted whenever intelligence personnel are to be deployed into a situation that is likely to give rise to **significant policy or legal sensitivities**”<sup>4</sup> [emphasis added].

6.27 The ISC made further recommendations about when Ministers should be informed about detainee treatment concerns at paragraph 126 of its Detainee Report:

“We recommend that Ministers are informed immediately when any UK official has concerns about the treatment of detainees....”<sup>5</sup>

Those recommendations were accepted by Government, which stated in its response:

“The Government agrees that, whenever officials have reason to believe that allegations of mistreatment of detainees may be well founded, they should report these concerns and that Ministers should be alerted....”<sup>6</sup>

6.28 Since July 2010, the 2010 Consolidated Guidance has required the Agencies to inform Ministers in any circumstances where an intelligence officer knows or believes that torture will take place, or where there is a serious risk of torture or CIDT which cannot be mitigated by officers through reliable caveats or assurances. At a more general level, current practice is described on the websites of both Agencies: the Security Service regularly briefs the Home Secretary, to whom the Director-General is directly accountable.<sup>7</sup> Likewise, the Chief of the SIS also briefs the Foreign Secretary regularly.<sup>8</sup>

6.29 From the documents it has received from the Agencies and Government departments, the Inquiry has identified a number of cases which could be said to raise policy, legal or operational issues. Some of these issues do not appear from the documents disclosed to the Inquiry to have been briefed to Ministers. This issue is also apparent in the ISC reports on Detainees and Rendition.

#### The Inquiry would have wished to investigate:

- **Whether certain cases or concerns, of which Ministers were not made aware at the time, should have been brought to their attention earlier by the Agencies;**
- **Whether there was a mutual understanding, in writing or otherwise, between Agency Heads and Ministers, prior to the publication of the 2010 Consolidated Guidance, as to when Ministers should be consulted in relation to detainee treatment issues. If so, what was that understanding? And**
- **Whether Ministers should have asked for more information from the Agencies in relation to detainee treatment issues.**

3. ISC Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq, March 2005

4. Government's Response to the ISC's Detainee Report, April 2005

5. ISC Report on the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq, March 2005

6. Government's Response to the ISC's Detainee Report, April 2005

7. <https://www.mi5.gov.uk/ministerial-oversight.html>

8. <https://www.sis.gov.uk/about-us/sis-in-government.html>

**ISSUE 3: Should Government have done more to secure the release of British nationals and UK long term residents?**

6.30 As detailed under Issue 2 above, during 2002 Ministers had some knowledge of the alleged mistreatment of detainees in Guantanamo. Documents disclosed to the Inquiry show that throughout 2003 various high level negotiations took place between UK and US Governments regarding British nationals and the planned military tribunals for Guantanamo detainees. The documents indicate that the UK wanted to be satisfied that the military tribunals and the appeals process met international standards, and that if agreement could not be reached, the US was aware that the UK Government would seek the return of all British nationals. In December 2003 in a phone call to the US Secretary of State (Colin Powell), the Foreign Secretary (Jack Straw) requested the release of all British nationals from Guantanamo. The first five British nationals were released from Guantanamo on 9 March 2004.

6.31 On 8 December 2004 the Foreign Secretary (Jack Straw) wrote to US Secretary of State (Colin Powell) about the four remaining British nationals detained in Guantanamo asking for their return before Christmas. The Prime Minister also wrote to President Bush on 13 December 2004, pressing him to resolve the position on releasing them. On 25 January 2005 the remaining four returned to the UK (Feroz Ali Abbasi, Moazzem Begg, Richard Belmar and Martin Mubanga).

6.32 By 8 February 2005 documents indicate that the policy focus had shifted to how the Government should deal with non-British nationals who were UK long term residents held at Guantanamo. There was increased pressure for the Government to intervene from the media, and from MPs and lawyers representing the detainees. However, documents indicate that there was a concern that to offer formal consular assistance may have consequences for wider consular policy.

6.33 On 8 March 2005, a briefing document by the Consular Directorate of the FCO set out a summary of the UK resident cases, confirming how the actions taken were consistent with policy. The Attorney General (Lord Goldsmith) subsequently indicated that he would favour an alternative approach.

6.34 In early 2006, the Government decided to make an exception in Bisher Al Rawi's case, based on the specific facts of his case. On 6 April 2006 the Foreign Secretary (Jack Straw) wrote to US Secretary of State (Condoleezza Rice) requesting that Al Rawi be released and returned to the UK. The policy in relation to other UK residents remained unchanged.

6.35 From June 2006, UK officials had picked up indications that the US might be willing to consider returning the UK resident detainees, and on 30 March 2007, Bisher Al Rawi was released from Guantanamo. Ahmed Errachididi, also formerly resident in the UK, was released in April 2007.

6.36 Following extensive discussions, and with the Prime Minister's consent, the Foreign Secretary (David Miliband) wrote to the US Secretary of State (Condoleezza Rice) on 7 August 2007 to request the release of the five remaining UK resident detainees.

6.37 Following a series of US/UK formal talks at official level, three of the five were released and returned on 19 December 2007 (Jamal El Banna, Omar Deghayes and Abdenour Sameur). Shaker Amer and Binyam Mohamed remained in detention.

6.38 On 23 February 2009, following further talks between the US and UK focused on Binyam Mohamed, he was returned to the UK. Shaker Aamer is the only UK resident remaining in Guantanamo.

**The Inquiry would have wished to investigate:**

- **Whether there was a delay in developing an agreed policy on British nationals and/or UK long term residents held in Guantanamo, and, if so, what were the reasons for that delay; and**
- **Whether the Government could and should have done more to secure the earlier return of the British nationals and UK long term residents.**

ISSUE 4: Should the UK have adopted a different approach to obtaining consular access to British nationals, dual nationals and long term residents?

## The legal and policy framework

6.39 The Vienna Convention on Consular Relations 1963 is a multilateral agreement codifying consular practices originally governed by customary practice and bilateral agreements between states. Most countries, including the US and the UK, are parties.

6.40 Consular functions are defined at Article 5 to include:

“(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

...

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

...

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;”<sup>9</sup>

6.41 Article 36 is entitled “*Communication and contact with nationals of the sending State*” and provides:

“1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

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9. [http://untreaty.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf), pg 4

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement.”<sup>10</sup>

6.42 Therefore, under the Vienna Convention, State Parties (those States who have both signed and ratified the Treaty) have rights to perform consular functions in relation to their own nationals when held by another State Party, and also have obligations to notify certain types of information to other State Parties, and to permit other State Parties to carry out consular functions in relation to their nationals. Nothing is said in the Convention about nationals of more than one state. However, the FCO does not consider that the Convention gives the UK a *right* of consular access to a dual national who is held in the other country of which he or she is a national, nor does it give an individual rights under international law.

6.43 The UK and the US have a separate bilateral agreement, the Consular Convention of 6 June 1951 (the ‘US/UK Consular Convention’), which covers the following in relation to communication between consular officers and nationals of the sending state:

“ARTICLE 15

(1) A consular officer shall be entitled within his district to

(a) interview, communicate with and advise any national of the sending state;

(b) inquire into any incidents which have occurred affecting the interests of any such national;

(c) assist any such national in proceedings before or in relations with the authorities of the territory, and, where necessary, arrange for legal assistance for him.

...

(3) A national of the sending state shall have the right at all times to communicate with the appropriate consular officer and, unless subject to lawful detention, to visit him at his consulate.

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10. [http://untreaty.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf), pg 15

## ARTICLE 16

(1) A consular officer shall be informed immediately by the appropriate authorities of the territory when any national of the sending state is confined in prison awaiting trial or is otherwise detained in custody within his district. A consular officer shall be permitted to visit without delay, to converse privately with and to arrange legal representation for, any national of the sending state who is so confined or detained. Any communication from such a national to the consular officer shall be forwarded without delay by the authorities of the territory.

(2) Where a national of the sending state has been convicted and is serving a sentence of imprisonment, the consular officer in whose district the sentence is being served shall, upon notification to the appropriate authority, have the right to visit him in prison. Any such visit shall be conducted in accordance with prison regulations, which shall permit reasonable access to and opportunity of conversing with such national. The consular officer shall also be allowed, subject to the prison regulations, to transmit communications between the prisoner and other persons.”<sup>11</sup>

6.44 The Foreign and Commonwealth Office (FCO) currently states publicly that it offers various services to British nationals including:

- Providing general information about the relevant country, prison conditions and local legal system;
- Making sure any medical or dental problems are brought to the attention of the police or prison doctor;
- Taking up justified complaints about ill-treatment, personal safety or discrimination with the prison authorities; and
- Sending messages between prisoners and their families.<sup>12</sup>

6.45 In January 2002, the US informed the British Ambassador in Washington DC (Sir Christopher Meyer) that the US would not allow consular access to UK detainees. This US refusal of consular access was confirmed directly with the Government in London later that month.

6.46 On 19 January 2002, a mixed team of officials, including FCO officials from the Chancery (not consular) section of the British Embassy, and British intelligence officials, visited UK nationals held at Guantanamo.

## UK policy in relation to British nationals

6.47 The Inquiry has received documents relating to cases of British nationals detained at different locations around the world, including at Guantanamo, which suggest that the nature and the level of consular support provided to detainees was variable.

**The Inquiry would have wished to investigate whether the FCO should have done more to seek prompt consular access to British nationals detained abroad, or, failing consular access, to ensure the welfare of such individuals.**

11. See [http://travel.state.gov/law/legal/treaty/treaty\\_1507.html](http://travel.state.gov/law/legal/treaty/treaty_1507.html)

12. See <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/arrest>, as at March 2012

## UK policy in relation to dual nationals

6.48 So far as individuals who are nationals of the UK as well as another country ('dual nationals') are concerned, the current position is stated to be that the British Embassy or High Commission will not usually offer consular assistance in any detention if that detention is in that person's other state of nationality, although exceptionally the British Embassy may become involved if there are special humanitarian reasons for doing so.<sup>13</sup> If a dual national is detained in a third country, he will be offered support of the British Embassy or High Commission.<sup>14</sup> The Inquiry has identified a number of cases from the documents where the nature and the level of consular support provided to detainees who were dual nationals appear to have been variable.

**The Inquiry would have wished to investigate what the Government's policy was in relation to dual nationals in their other state of nationality, whether it was adequate, and if it was adhered to.**

## UK policy in relation to UK long term residents

6.49 In the cases of UK long term residents held in Guantanamo, the Government initially adopted a policy of non-intervention. But that policy changed during the course of 2006 and 2007, leading to a formal request for the return of the remaining detained UK residents on 7 August 2007 (see paragraph 36 above).

**The Inquiry would have wished to investigate:**

- **Whether the reasons which ultimately led to a change of policy in 2007 should have been adopted earlier; and**
- **Whether, in some of the cases of the UK long term residents detained post-9/11, it was realistic to think that their countries of nationality would be in a position to provide them with consular support whilst detained.**

ISSUE 5: Did Government, including the Agencies, respond adequately to the ISC's requests for information in relation to detainee treatment issues and rendition?

## Oversight by the ISC

6.50 The ISC was established by the Intelligence Services Act 1994 to examine the "expenditure, administration and policy" of the three Agencies (section 10(1)). The ISC reports annually to the Prime Minister on the discharge of its functions and may report to him at any time on any matter relating to the discharge of those functions (section 10(5)).

6.51 The Act does not require the ISC to oversee the operational work of the Agencies. But the ISC's own website suggests that the Act does not prohibit it from considering operational matters and states that "*the Committee frequently needs to consider operations in order fully to understand aspects of policy*".<sup>15</sup> It is clear from a review of its reports (particularly those referred to below) that the ISC has, in the context of detainee treatment

13. See <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/arrest>, as at March 2012

14. Ibid.

15. <http://isc.independent.gov.uk/FAQ>

issues, frequently examined the operational details of particular cases in order to reach conclusions about wider policy issues.

6.52 The ISC's 2003/04 annual report first touched on the issue of detainee treatment. The ISC has produced three further reports which have been of relevance to this Inquiry (the first two of which have been referred to throughout this report):

- The Detainee Report sent to the Prime Minister on 1 March 2005,
- The Report on Rendition, sent to the Prime Minister on 28 June 2007; and
- A letter headed 'Alleged Complicity of the UK intelligence and security Agencies in torture or cruel, inhuman or degrading treatment, addressing aspects of the treatment of Binyam Mohamed' (the 'Binyam Mohamed report'), sent to the Prime Minister on 17 March 2009.

6.53 Based on the documents provided to it, the Inquiry has sought to analyse the extent to which the Government made the ISC, in preparing these reports, fully aware of what it knew.

## The ISC Detainee Report

6.54 On 8 January 2004, the Chair of the ISC (Ann Taylor MP) wrote to the Prime Minister, following various press reports of detainee ill-treatment. The ISC requested an explanation of the basis and authority underpinning the Agencies' questioning, or observation of questioning, of detainees held by the US in Guantanamo and elsewhere. On 14 January 2004, the Prime Minister replied:

"Security Service and SIS officers have questioned and observed the questioning of UK and non-UK detainees at Guantanamo Bay and Bagram. The purpose has been to gather information that might prove valuable in the protection of the UK and its citizens from terrorism, rather than to obtain evidence for use in criminal proceedings. The detainees have therefore only been asked questions of direct concern to the UK's national security."

6.55 On 14 May 2004 the Chair of the ISC again wrote to the Prime Minister with a series of questions on Security Service and SIS questioning of detainees at Guantanamo and Bagram:

a. Were all interviews of detainees in Guantanamo Bay, Afghanistan and all sectors of Iraq conducted by or in the presence of Security Service and SIS officers or UK Military Intelligence personnel carried out in accordance to the Geneva Convention?

b. Have any of the people interviewed by, or in the presence of, Security Service and SIS officers or UK Military Intelligence personnel made allegations of abuse?

c. Have any of the UK personnel involved in such interviews reported that they believed the Geneva Convention had been contravened and, if so, what action was taken?"

6.56 The Prime Minister responded to the questions on 24 May 2004 (reproduced in the ISC's 2003/04 Annual Report), stating that the Government had conducted a thorough examination of the records and spoken to as many of the officers involved as possible. The Prime Minister noted that, with one exception:

“Interviews of detainees conducted or observed by UK intelligence personnel have ... been conducted in a manner consistent with the principles laid down in the Geneva Convention.”

However, the Prime Minister also noted that:

“Some of the detainees questioned by UK intelligence personnel have complained – either during their detention or subsequently – about their treatment while in detention.”

6.57 On 7 July 2004 the ISC informed the Prime Minister of its intention to take evidence on the matters contained in the Prime Minister’s letter of 24 May. The Cabinet Office submitted further evidence to the ISC on 7 September 2004 in response (see paragraph 24 of this Chapter above). Following a number of evidence sessions and the provision of further information by the Government and the Agencies, the ISC reported to the Prime Minister in March 2005, detailing its conclusions at that stage on detainee treatment issues.

6.58 The Inquiry has received documents relating to a number of cases which were notified to the ISC in relation to its Detainee Report. Further, the Inquiry has received documents relating to other ill-treatment cases which do not appear to have been notified to the ISC. From the documents disclosed to it the Inquiry has identified a number of cases which give rise to the issue whether the ISC was provided with full information in relation to those cases. SIS noted this as an issue in its own internal review.

## The ISC Report on Rendition

6.59 The Chairman of the ISC (Paul Murphy MP) wrote to the Prime Minister on 11 January 2006, copying in the FCO, Cabinet Office, the Security Service and SIS, following “*continued public, press and parliamentary interest*”. The letter informed the Prime Minister of the ISC’s intention to look into various issues relating to rendition. The ISC requested written clarification on a number of issues, including:

“Clarification of the Government’s understanding of the term ‘rendition’ and confirmation that British Intelligence Agencies are not involved in and the UK does not conduct, its own ‘renditions’.

Clarification of Governmental policy in relation to assisting/facilitating ‘renditions’ by other states; and clarification of the circumstances in which providing assistance would (and would not) put British Intelligence Personnel in breach of UK law, policy or international obligations and conventions.

Clarification of the implications of recent US developments ... in this regard.

Clarification of any assistance or involvement by British Intelligence personnel in the ‘rendition’ of individuals where there were grounds to believe the person would face a real risk of torture, cruel, inhumane or degrading treatment.

Clarification of any assistance given to, or knowledge of rendition (by other Governments) involving UK territory or airspace where there were grounds to believe the person would face a real risk of torture, cruel, inhumane or degrading treatment.

Clarification of the means by which the Government seeks to satisfy itself about the potential treatment of an individual before agreeing to facilitate or assist a rendition in any way (including by granting access to UK territory or airspace).

Clarification of any involvement by British Intelligence personnel in the alleged rendition (recently publicised — Sunday Times 18 December) of Bisher Al-Fawi [sic] and Jamil al-Banna to Guantanamo Bay via Gambia and Afghanistan.”

6.60 As part of the information gathering work in order for the Prime Minister to reply to the ISC, SIS and Security Service had asked their staff to report on any cases since 1995 which could be considered rendition. Additionally, FCO, Home Office, MoD and GCHQ were to search their written records likely to contain relevant information. The Cabinet Office were to collect all the information and co-ordinate a cross-departmental response.

6.61 On 20 February 2006 the Prime Minister replied to Paul Murphy’s letter. He informed the ISC that he had asked Sir Richard Mottram to coordinate a response to the legal and policy points they had raised. He also stated that the Agencies would deal directly with the ISC’s questions about operational intelligence matters.

### The Composite Rendition Review (CRR)

6.62 On 2 February 2006 a meeting took place between the Foreign and Home Secretaries (Jack Straw and Charles Clarke respectively) to discuss the update they had received from SIS and Security Service on their knowledge of renditions. Beyond the work being done to respond to the ISC, it was agreed that FCO, Cabinet Office and the Agencies would produce a jointly agreed historical record. It was subsequently agreed that the Government’s Security and Intelligence Co-ordinator (Sir Richard Mottram) would review the document and present it to Ministers.

6.63 Based on the information received from the Agencies the final document, the ‘Composite Rendition Review’ (CRR), was presented by Sir Richard Mottram to the Home Secretary (Charles Clarke) and the Foreign Secretary (Jack Straw) on 21 April 2006, with a covering submission which highlighted the key points requiring ministerial attention, including what he regarded to be the most problematic cases (the ‘Covering Submission’). Ministers were asked to note the report and comment on Sir Richard’s proposed draft reply to the ISC. Both the Home Secretary and the Foreign Secretary agreed with Sir Richard’s submission, the Home Secretary noting that it was “*absolutely excellent*”. The FCO’s Director General Defence and Intelligence (Sir David Richmond), also informed the Foreign Secretary (Jack Straw) in a submission of 20 April 2006 that he was “*satisfied that the historical record is now complete and that the research has been thorough and comprehensive*”.

#### The Inquiry would have wished to investigate:

- **The extent to which the Composite Rendition Review was a comprehensive and accurate summary of rendition cases known to the Government; and**
- **The extent to which the Covering Submission sufficiently identified the most problematic issues to Ministers in relation to rendition.**

### Evidence provided to the ISC

6.64 Sir Richard subsequently replied to Paul Murphy on 2 May 2006. His letter did not highlight any of the cases, stating only that the Agencies were aware of a number of rendition operations carried out by other countries which would be covered by the Agency Heads at their evidence sessions.

6.65 The CRR was not passed to the ISC. Some of its contents were briefed to the ISC as a key part of the opening evidence by the Chief of the SIS (Sir John Scarlett) on 7 November 2006. A summary of his evidence appears at paragraph 10 of Chapter 4 of this Report. The ISC asked for further details in writing and they were sent a timeline of ministerial knowledge of rendition.

6.66 The ISC's Report on Rendition was subsequently presented to Government in June 2007.

6.67 The Inquiry has received documents relating to a number of rendition cases which were notified to the ISC. The Inquiry has also received documents relating to other rendition cases which do not appear to have been notified to the ISC. From the documents disclosed to it, the Inquiry has identified a number of cases which give rise to the issue whether there were shortcomings in what was notified to the ISC, or where the ISC was not notified of the case at all. The Agencies' own internal reviews noted some cases where not all relevant information had been identified and then briefed to the ISC.

### **The Binyam Mohamed report**

6.68 After it published its report into rendition, the ISC became aware of the Security Service's failure to make full disclosure in Binyam Mohamed's case. In its Report on Rendition of June 2007, the ISC took account of a number of rendition cases including that of Binyam Mohamed. It heard evidence from the then Director General of the Security Service (Baroness Manningham-Buller), and reached conclusions on the facts (as it understood them) in that case.

6.69 In May 2008 the Director General of the Security Service (Jonathan Evans) wrote to the ISC to say that his Agency had uncovered some additional information regarding Binyam Mohamed's case, which had not been previously submitted to the ISC. He said that the information had been discovered when the Security Service undertook searches in response to the judicial review brought by Binyam Mohamed. The new documents included US liaison reporting that Binyam Mohamed had been intentionally deprived of sleep while held in Pakistan. Following receipt of that letter, the ISC called the Director General to give evidence.

6.70 The ISC was concerned that there was no convincing explanation as to why the information contained in the newly discovered documents, which were material to the issue of the Security Service's awareness of cruel, inhuman or degrading treatment, was not made available to the Committee. The ISC felt that it was very worrying that this information was overlooked and had not been provided to them previously. They noted that had the Security Service treated their enquiries with the same rigour as they did when legal disclosure was required, and had their records been fit for purpose, then the information would have come to light during their original inquiry.

**In relation to both the Detainee Report and the Report on Rendition, the Inquiry would have wished to investigate:**

- **What processes the Government and the Agencies adopted to determine which cases should be notified to the ISC, and in what terms;**
- **Whether complete information was given to the ISC in relation to those cases which were notified and whether there were other relevant cases which should have been notified; and**
- **Whether, overall, sufficient information was given to the ISC to enable it to perform its statutory functions.**

# Chapter 7

## Summary

7.1 The Inquiry's terms of reference required an examination of whether the UK Government, and its Security and Intelligence Agencies, were involved in, or aware of, improper treatment or rendition of detainees. From the documents received from the Agencies and Government departments, the Inquiry has considered those issues in Chapters 3 and 4 of this Report. The terms of reference also required an examination of the UK Government's policy response, including implementation of policy and the guidance and training provided to UK Crown servants. The Inquiry has considered those issues in Chapters 5 and 6 of this Report.

7.2 Based on the four main themes taken from the terms of reference, the Inquiry has identified 27 issues which it believes might be the subject of further examination, together with a series of questions that it would have wished to investigate in relation to each issue.

7.3 This concluding chapter highlights what the Inquiry believes are the most important issues that have emerged from the Inquiry's work. Annex A contains the full list of 27 issues identified by the Inquiry, together with the specific matters the Inquiry would have wished to examine further under each of these issues.

7.4 This summary should be read in light of the caveats noted in paragraph 30 of Chapter 1, the introduction. The 27 issues have been identified from an analysis of documents received by the Inquiry. None of that documentation has been subject to explanation by witness statements or to testing by oral examination of the witnesses whom the Inquiry would have called had its work not been concluded following the Justice Secretary's statement of 18 January 2012. In addition, as previously explained, there are significant issues of fact which, without evidence from witnesses, the Inquiry is unable to resolve and which must remain for subsequent investigation. We repeat that no criticism of any individual, or departments should be inferred, and none is intended.

7.5 The Inquiry considers it right to record that some of the Agency staff deployed on the ground in counter-terrorism operations were operating in a challenging physical environment, working under extreme pressures and subject to personal danger. The Inquiry would also want to put on record its recognition of the extreme harshness of the conditions and the treatment experienced by some of the detainees.

## **Theme 1: Interrogation and treatment issues**

7.6 The documents received by the Inquiry indicate that in some instances UK intelligence officers were aware of inappropriate interrogation techniques and mistreatment or allegations of mistreatment of some detainees by liaison partners from other countries. Many of these instances were reported to Agency Head Offices. The Inquiry would have wished to examine whether that reporting was adequate and, in particular, whether the Agency Head Offices then responded adequately or, in some cases, at all. There is an issue as to whether the Agencies raised allegations of mistreatment of detainees with liaison partners with sufficient vigour, and as to the adequacy of assurances sought by the Agencies. In some cases, documents indicate that the Agencies continued to engage with liaison partners in relation to individual detainees where treatment issues may have justified withdrawal or the seeking of appropriate assurances. The Inquiry would have wished to investigate whether the legality of the detainees' detention abroad and the Agencies' own methods of questioning were subject to sufficient scrutiny and consideration.

## **Theme 2: Rendition**

7.7 Rendition may be regarded as a form of mistreatment, as the Inquiry's terms of reference recognise. The US's rendition programme expanded rapidly and changed in nature in the aftermath of 9/11. The Inquiry would have wished to examine when the Government came to understand the scope of the US policy and whether the Government and its Agencies responded adequately once they became aware of renditions or proposed renditions of British nationals and UK residents. There is an issue as to whether the Government and the Agencies may have become inappropriately involved in some cases of rendition, and whether an adequate policy was formulated and guidance issued to personnel, addressing the extent to which it was proper for the UK to support or assist renditions carried out by other countries.

## **Theme 3: Training and Guidance**

7.8 The adequacy of training and guidance for UK personnel is an issue relevant to many of the matters considered by the Inquiry. The Inquiry has not identified significant grounds to doubt that the overall tenor of the instruction to personnel was that detainees must be treated humanely and consistently with the UK's international legal obligations. But officers deployed on the ground, especially to an area of military operations, need clear guidance on when and with whom to raise concerns, mindful of the sensitivities involved in multi-national military and intelligence operations. The question of sharing with liaison partners intelligence relating to individuals who are or may be detained raises questions of moral and legal complexity that are also sensitive and difficult. There is an issue whether, from 2001 – 2004, guidance may have been slow to develop, and may have been too limited, being reactive to individual events and lacking in detail. The combined effect of the ISC's investigations and detainee issues becoming high profile in the spring of 2004 led to formal written guidance in the summer of 2004. This borrowed from military guidance and identified specific forms of unacceptable treatment. From 2004 onwards, the guidance developed and in stages improved in its clarity, detail and the range of issues it covered. The question whether these improvements may have been slower to develop than might legitimately have been expected warrants investigation. It was not until 2010 that guidance addressing both liaison relationships and detainee interviewing was consolidated. Also there are questions as to whether support for rendition operations was adequately addressed in the guidance and, prior to 2010, whether the guidance dealt sufficiently with all the factors relevant to the legality of detention abroad.

## Theme 4: Policy and Communications

7.9 Policy development, together with the scope and nature of reporting and communications to and from Ministers, has been integral to the Inquiry's work. The documents received by the Inquiry raise the question whether the Agencies could have identified possible patterns of detainee mistreatment more quickly, from the various reports they received. The Inquiry would have wished to investigate whether procedures should have been put in place earlier than they were to collect such reports and ensure that senior managers were notified of them. The Inquiry would have wished to examine whether the Agencies should have done more to consult Ministers on issues related to detainee mistreatment, and whether Ministers, in turn, should have required the Agencies to report more about those issues as and when they arose. The Inquiry would also have wished to examine whether Government could and should have done more to secure the earlier release of detainees from Guantanamo. Finally the Inquiry would have wished to clarify how the Government and Agencies went about providing information to the ISC, in response to its investigations into the handling of detainees and into rendition. The documents received by the Inquiry raise the question whether the ISC received complete, timely and accurate information in relation to detainee treatment issues, including rendition, from Government and the Agencies, or sometimes whether they were notified at all.

## Conclusion

7.10 This Report is an interim document. It is intended to help Government in its preparation for any new Inquiry, including in relation to the terms of reference and protocols it may wish to develop. The Report may also serve to identify areas where action would be appropriate now, without awaiting a further Inquiry.

# Annex A

## List of issues and areas the Inquiry would have wished to investigate

### CHAPTER 3. INTERROGATION AND TREATMENT ISSUES

ISSUE 1: Did UK intelligence officers have knowledge of inappropriate interrogation techniques or detention conditions applied by personnel of other countries in some cases? In those cases was there adequate reporting back from theatres/stations and an adequate response from Agency Head Offices?

The Inquiry would have wished to investigate cases where treatment issues arose. It is likely that this would link to consideration of what training and guidance was available to deployed officers and staff.

The Inquiry would have wished to investigate whether there were instances where officers did not express concern in relation to treatment issues, but the issues should have been recognised and raised.

ISSUE 2: Was there reluctance in some cases, to raise detainee issues either at all, or sufficiently robustly, with liaison partners?

There are instances where it is not clear from the documents whether any action was taken by UK personnel when they became aware of detainee issues arising. The Inquiry would have wished to investigate:

- Whether matters of concern were raised with liaison partners and if not, why not;
- Whether the balance between protecting liaison relationships and ensuring proper detainee treatment was correctly struck in a number of cases where this issue arose; and
- When treatment issues were raised, whether sufficient detail was provided or sufficient emphasis placed on the concerns identified.

ISSUE 3: Did the Agencies inappropriately continue to engage with liaison partners in the cases of individual detainees after treatment issues of concern had been identified?

The Inquiry would have wished to investigate:

- Whether ongoing engagement with a liaison partner in such circumstances, (by interviewing detainees, feeding in questions and receiving intelligence from the liaison partner) was justifiable; and
- Whether officers' concerns were reported to Head Office in the identified cases and if so to whom. What, if any, legal or policy advice was given?

ISSUE 4: Was adequate consideration given to obtaining assurances from liaison partners and to the need for any assurances to be specific and credible?

In some of the cases considered by the Inquiry, the documents do not show whether appropriate assurances on treatment were given before intelligence was sought from a detainee. The Inquiry would have wished to investigate whether any such assurances were sought, or consideration was given as to whether a detainee might be subjected to unacceptable standards of treatment.

In cases where assurances were obtained, the Inquiry would have wished to investigate:

- Whether they were sufficiently detailed, credible or realistic to merit reliance being placed on them; and
- Whether there was a suitable mechanism in place for monitoring treatment to ensure that any assurances were being adhered to.

ISSUE 5: Was the Agencies' own questioning of detainees appropriate having regard to the Geneva Conventions' prohibition on coercion, threats, unpleasant or disadvantageous treatment?

Which of the articles of GCIII or GCIV applied to any given detainee would necessarily be a fact-specific question in each case. The Inquiry would have wished to investigate whether the Agencies' own questioning of detainees held by liaison partners was always appropriate, bearing in mind the Geneva Conventions' prohibitions.

ISSUE 6: Was sufficient consideration given to the legality of detainees' detention, including to whether the detention was incommunicado?

The Inquiry would have wished to investigate the extent to which the lawfulness of the detention was taken into account both by the deployed personnel and the Agencies' Head Offices in these cases and how awareness of this issue evolved over the relevant time period.

ISSUE 7: Did engagement by the Agencies with liaison partners, in circumstances where there was some co-ordination on interviewing approaches/techniques, always remain within appropriate bounds?

The Inquiry would have wished to investigate:

- If, and to the extent that this might have occurred, whether a coordinated interview strategy ever went beyond what was appropriate and may, in some cases, have amounted to complicity in the use of inappropriate techniques or threats by others;
- Whether in some cases, UK officers may have turned a blind eye to the use of specific, inappropriate techniques or threats used by others and used this to their advantage when resuming an interview session with a now compliant detainee; and
- Whether, to the extent that this might have occurred, it was a deliberate or agreed policy between UK personnel and liaison partners.

ISSUE 8: Was sufficient attention given to record keeping in relation to engagement with detainees?

The Inquiry would have wished to investigate why in some cases reports were not completed or retained, despite informal guidance from early 2002 stating that records should be made following detainee interviews.

#### CHAPTER 4. RENDITION

ISSUE 1: When did the Government realise the scope of the US Government's post-9/11 rendition programme?

The Inquiry would have wished to investigate:

- Whether the Agencies had adequately captured all the relevant information on their records about the new US approach to rendition in their evidence to the ISC;
- Whether in any case – as the ISC report suggested – the Agencies ought to have realised sooner the nature and extent of the US Government's rendition programme from specific cases, intelligence and their liaison relationships; and
- The extent to which the Agencies reported to Ministers their growing awareness of the US Government's rendition programme.

ISSUE 2: Did the Government respond adequately on becoming aware of renditions or proposed renditions of British nationals and UK residents?

The Inquiry would have wished to investigate:

Whether adequate consideration was given to the legal basis of the transfers in question, and what was then known about the risk of mistreatment and the likely conditions of detention.

### ISSUE 3: Were there cases where the UK Government became inappropriately involved in renditions?

The Inquiry would have wished to investigate:

- Whether Government promptly developed an appropriate policy on the extent to which the Agencies could be involved or acquiesce in US renditions;
- Whether the Agencies took sufficient account of concerns or potential concerns about detainee treatment in countries to which detainees had been renditioned;
- Whether the Government and Agencies became inappropriately involved in some renditions;
- Whether there was an apparent willingness, at least at some levels within the Agencies, to condone, encourage or take advantage of a rendition operation; and
- The allegations of UK involvement in rendition in relation to the two Libyan nationals, Abdel Hakim Belhadj (aka Abdullah Sadeq) and Sami Al Saadi (aka Abu Mundhir).

### ISSUE 4: Did the Government do enough to prevent the use of UK airspace and territory, including its Overseas Territories, for rendition operations?

In relation to Diego Garcia, the Inquiry, would have wished to investigate:

- Although no formal request was put to the UK, whether the FCO response to early consideration of using Diego Garcia (i) for holding, and (ii) for the transit of, detainees was sufficient. It is unclear what was said to the US authorities, by whom and at what level, in response to these US discussions;
- In light of the treaty obligations, the Inquiry would have wished to investigate whether the UK could have done any more to ensure that Diego Garcia was not used for transiting detainees;
- Whether the General Declarations for the two rendition flights that transited Diego Garcia in 2002 included any information on passengers which should have alerted the UK authorities on the island to the fact that each carried a detainee being subject to rendition; and
- Whether in 2002 there were adequate mechanisms agreed in relation to Diego Garcia to prevent rendition flights using the facilities on the island.

In relation to use of UK airspace and territory by planes on the way to or from a rendition operation but empty of detainees, the Inquiry would have wished to investigate:

- Whether the Government should have taken action in respect of any CIA use of UK territory for refuelling flights on the way to, or returning from, rendition operations; and
- Whether legal or other considerations ought to have led the Government to seek wider assurances from the US that UK airspace and territory would not be used for circuit flights.

## CHAPTER 5. GUIDANCE AND TRAINING

ISSUE 1: Whether guidance was given to SIS and Security Service officers immediately before their deployment to Afghanistan to interview detainees?

The Inquiry notes the ISC's comments in its 2005 Detainee Report relating to the training and guidance provided prior to deployment of Security Service and SIS officers to Afghanistan:

*“The SIS and Security Service personnel deployed to Afghanistan ... were not sufficiently trained in the Geneva Conventions, nor were they aware which interrogation techniques the UK had specifically banned in 1972.”*

The Inquiry would have wished to investigate this area further.

ISSUE 2: What guidance was given to SIS and Security Service Officers on the ground in Afghanistan after they had deployed?

The documents provided to the Inquiry raise questions concerning the following issues, that in 2002:

- Officers were advised that, faced with apparent breaches of Geneva Convention standards, there was no obligation to intervene;
- Officers were also advised that such conduct should only be raised with the detaining authority “if circumstances allow”;
- A more forthright condemnation of the reported methods of interrogation used against the detainee was not passed to US officials in any event; and
- Officers were not advised to cease any interview immediately if they felt that the detainee was not being treated in accordance with the appropriate standards.

The Inquiry would have wished to investigate:

- How and why this advice was drafted in the way that it was;
- Whether the advice was sufficiently detailed to be helpful to the SIS and Security Service officers deployed to Bagram;
- Whether there were any specific instances of reported mistreatment at Bagram that called for guidance to be issued; and
- Whether the guidance was sufficient and sufficiently understood by SIS and Security Service officers.

The Inquiry would have wished to investigate the nature of the Security Service's oral briefings to staff including:

- How, if at all, the information given in them compared to the written advice given, via SIS, in the telegram of 11 January 2002;
- Whether the Security Service officers raised any questions or concerns in the briefings and how these were addressed;
- Whether the briefings were sufficient to prepare the officers for their deployment; and
- Why there was no contemporaneous written record of the guidance that was given?

## ISSUE 2: *(continued)*

The Inquiry would also have wished to investigate:

- The later suggestion that it was the SIS practice to record the detainee's physical and mental condition before beginning each interview. If this was the practice, how did it develop and how consistently was it understood and applied?

The Inquiry would have wished to investigate:

- What caused the Security Service to decide on 21 January 2002 that its officers should complete factual accounts of detainee interviews;
- Why this guidance was not given before the first Security Service interviews of detainees in Afghanistan;
- What was meant by the senior manager's minute of 24 January 2002 and why it responded to the legal adviser in those terms (the legal adviser's minute had suggested that records of detainee interviews should be passed to the Home Office and the FCO. But that suggestion was apparently not pursued: records of detainee interviews were not routinely passed on to the Home Office and the FCO);
- Whether, taken as a whole, the Security Service requirement for factual accounts of detainee interviews was sufficient as a record keeping policy, and whether it worked in practice;
- Whether the SIS practice of making a record of detainee interviews was as a result of formal written guidance; and
- Whether SIS practice and guidance was sufficient in capturing relevant information about the treatment and conditions of detainees.

## ISSUE 3: Whether guidance was given to SIS and Security Service officers on rendition?

The Inquiry would have wished to investigate:

- Whether SIS and the Security Service should have considered the potential for rendition to be a form of mistreatment and included this in the guidance on detainee interviewing and liaison guidance; and
- Whether, in any event, SIS and the Security Service should have provided: (1) specific guidance on involvement in rendition to their officers including, the circumstances, if any, in which it might be lawful; and (2) guidance on the extent to which the Agencies could assist, approve or otherwise become involved in renditions being carried out by other states.

ISSUE 4: What guidance was given to SIS and Security Service officers deployed to Guantanamo to interview detainees?

The Inquiry would have wished to investigate:

- The nature of the Security Service oral briefings for Security Service officers who deployed to Guantanamo, whether these were sufficient and whether there should have been written guidance to support them;
- Whether the SIS guidance of April 2002 was supplemented and whether the guidance as a whole was sufficient;
- The nature of the guidance/discussions between the SIS legal advisers and an SIS officer before his deployment to Guantanamo to interview detainees; and
- In the light of the differing circumstances of the Agencies' deployment to Guantanamo and Afghanistan, whether further thought should have been given to issuing more comprehensive guidance to those deployed to Guantanamo.

ISSUE 5: Whether guidance was given to SIS and Security Service officers deployed to Iraq?

The Inquiry would have wished to investigate what further guidance, if any, was given to Security Service officers in advance of and during their deployment to Iraq.

The Inquiry would have wished to investigate:

- Whether the SIS officers involved, both in Iraq and in Head Office, had sufficient guidance and/or training to recognise potential concerns regarding detainee treatment;
- Specifically, whether such guidance and training was sufficient to allow officers to recognise treatment that was contrary to British policy such as hooding during interviews and the use of stress positions; and
- Whether there was any SIS guidance before June 2004 requiring treatment details to be recorded for detainee interviews, given treatment concerns had already arisen in Afghanistan during 2002.

ISSUE 6: How did SIS and Security Service guidance on detainee interviews develop from 2004 onwards?

The Inquiry would have wished to investigate:

- Why such formal written guidance had not been issued prior to June 2004;
- Whether, it was appropriate for this guidance to include the caveat: "*If staff are concerned that interviewees are being subjected to unacceptable treatment they should, where possible, draw this to the attention of the detaining authority*" [emphasis added]. The Inquiry notes that this caveat was removed from the guidance circulated in March 2005;
- Whether Security Service officers found the guidance sufficient to answer concerns that may have arisen; and
- Why the guidance did not address maintaining records of detainee interviews.

The Inquiry would have wished to investigate:

- Why guidance of the breadth of that distributed in March and April 2005 had not been issued previously;
- Whether SIS officers found this guidance sufficient to deal with detainee issues on deployment, including answering any concerns that may have arisen;
- Whether the guidance adequately addressed what to do if a detainee made a complaint during the course of an interview;
- Whether the guidance adequately addressed considerations relevant to the lawfulness of the detention;
- Whether the guidance adequately addressed the limits of verbal approaches that could be used in interviews: was it sufficient to say that interviews must be free from pressure or coercion?
- The level of awareness in SIS of the internal guidance note for those working on detainee related operations and whether those officers who were aware of it found it to be a useful addition to the more formal SIS wide guidance; and
- Whether the training on detainee interviewing including pre-deployment legal advisers' talks were revised and if so how, in the light of this new guidance.

The Inquiry would have wished to investigate:

- Why such formal written guidance had not been issued prior to July 2004;
- Whether, it was right to include the caveat: *"If case officers are concerned that interviewees are being subjected to unacceptable treatment or detained in unacceptable conditions they should, wherever possible, draw this to the attention of the detaining authority"* [emphasis added];
- Whether Security Service officers found the guidance sufficient to answer concerns that may have arisen;
- Why the guidance did not address recording detainee interviews; and
- Whether the guidance was supplemented and what issues were raised at the meeting on 5 July 2004.

The Inquiry would have wished to investigate:

- Whether the circulation of military guidelines on interrogation techniques was helpful for, civilian, Security Service officers; and
- Whether more should have been done sooner to supplement the July 2004 guidance.

## ISSUE 6: (continued)

The Inquiry would have wished to investigate:

- Against the background that SIS had issued further detainee interviewing guidance in March and April 2005, why it took the Security Service until July 2006 to issue broader guidance;
- Whether Security Service officers found this guidance sufficient to deal with detainee issues on deployment, including answering any concerns that may have arisen;
- Whether it was appropriate that this guidance stated “*If possible and to do so would not provoke further mistreatment, the interviewing officer should raise any concerns with the detaining authority*” [emphasis added];
- Whether the guidance adequately addressed considerations relevant to the lawfulness of the detention; and
- Whether the guidance adequately addressed the limits of verbal approaches that could be used in interviews.

## ISSUE 7: What guidance was given to SIS and Security Service officers on working with liaison services?

The Inquiry would have wished to investigate:

- The level of awareness of Security Service staff to this liaison guidance and its adequacy; and
- When and in what form SIS started issuing guidance on this topic.

The Inquiry would have wished to investigate:

- Why the Agencies decided to produce joint guidance, i.e. for both SIS and Security Service officers, on liaison with foreign intelligence services but not for interviewing detainees overseas, where there remained separate guidance for each Agency;
- Why the Agencies involved the FCO, Home Office and the Attorney General’s office in the drafting of the liaison guidance, but not the drafting of the interviewing guidance;
- Whether the approach set out in the guidance as to when Ministers should be consulted was appropriate;
- Whether the guidance was appropriate in its approach to passing information if there remained a real possibility that it might lead to torture, as opposed to Cruel, Inhuman or Degrading Treatment (CIDT);
- Why SIS did not issue the guidance until November 2006; and
- Whether there were any specific instances of Security Service officers requesting guidance on liaising with the CIA and, if so, what guidance was given by the Security Service management.

#### ISSUE 8: What guidance was given to GCHQ staff?

Having regard to the quantitatively and qualitatively different nature of GCHQ's involvement in detainee issues as compared to the Security Service and SIS, the Inquiry would have wished to investigate:

- Whether GCHQ staff who might have been involved in detainee issues received any written guidance in advance, and if so, the nature and adequacy of it; and
- The nature of any guidance given in oral briefings to GCHQ officers, and whether the officers found it sufficient to answer concerns that may have arisen.

The Inquiry would have wished to investigate:

- Whether there was any GCHQ liaison guidance in place before 2006; and
- Whether GCHQ staff found the 2006 liaison guidance sufficient to answer any concerns that may have arisen.

#### ISSUE 9: How did the 2010 Consolidated Guidance differ from previous guidance?

#### ISSUE 10: What training was given to SIS and Security Service officers in interviewing detainees and related issues (e.g. the treatment of prisoners)?

The Inquiry would have wished to investigate:

- What specific interview training was given to SIS and Security Service officers at different stages;
- The appropriateness of the content of the detainee interviewing courses/programmes that were given to SIS and Security Service officers;
- Whether those officers who received detainee interview training, and interviewed detainees, felt this training was sufficient;
- What human rights training was given and how this contributed to officers' understanding of detainee treatment and liaison issues; and
- What training is now provided to the Agencies in detainee treatment and liaison issues and whether it is sufficient.

### CHAPTER 6. UK GOVERNMENT POLICY AND COMMUNICATION

#### ISSUE 1: Should the Agencies have been quicker to identify a pattern of detainee ill-treatment by foreign liaison partners?

The Inquiry would have wished to investigate:

- Whether the reports of ill-treatment at Bagram in 2002 should have been considered at the time as creating a credible picture of abuse being practised at that facility;
- Whether, and if so when, the Agencies should have recognised the possibility that the reports of ill-treatment represented a pattern of behaviour on the part of the US, rather than being isolated instances of bad practice;
- Within each Agency, what procedures existed to ensure that reports of detainee ill-treatment were passed to senior management to enable them to decide whether to notify Ministers, raise the matter with liaison partners, or take any other action; and
- Whether consideration was, or should have been, given to establishing some form of central record within each Agency of alleged ill-treatment of detainees and whether such a record could have been shared across Government and Agencies.

**ISSUE 2: Should the Agencies have alerted Ministers to, and should Ministers have asked the Agencies to tell them of, specific instances of ill-treatment in relation to detainees?**

The Inquiry would have wished to investigate:

- Whether certain cases or concerns, of which Ministers were not made aware at the time, should have been brought to their attention earlier by the Agencies;
- Whether there was a mutual understanding, in writing or otherwise, between Agency Heads and Ministers, prior to the publication of the 2010 Consolidated Guidance, as to when Ministers should be consulted in relation to detainee treatment issues. If so, what was that understanding? And;
- Whether Ministers should have asked for more information from the Agencies in relation to detainee treatment issues.

**ISSUE 3: Should Government have done more to secure the release of British nationals and UK long term residents?**

The Inquiry would have wished to investigate:

- Whether there was a delay in developing an agreed policy on British nationals and/or UK long term residents held in Guantanamo, and, if so, what were the reasons for that delay; and
- Whether the Government could and should have done more to secure the earlier return of the British nationals and UK long term residents.

**ISSUE 4: Should the UK have adopted a different approach to obtaining consular access to British nationals, dual nationals and long term residents?**

The Inquiry would have wished to investigate whether the FCO should have done more to seek prompt consular access to British nationals detained abroad, or, failing consular access, to ensure the welfare of such individuals.

The Inquiry would have wished to investigate what the Government's policy was in relation to dual nationals in their other state of nationality, whether it was adequate, and if it was adhered to.

The Inquiry would have wished to investigate:

- Whether the reasons which ultimately led to a change of policy in 2007 should have been adopted earlier; and
- Whether, in some of the cases of the UK long term residents detained post-9/11, it was realistic to think that their countries of nationality would be in a position to provide them with consular support whilst detained.

**ISSUE 5: Did Government, including the Agencies, respond adequately to the ISC's requests for information in relation to detainee treatment issues and rendition?**

The Inquiry would have wished to investigate:

- The extent to which the Composite Rendition Review was a comprehensive and accurate summary of rendition cases known to the Government; and
- The extent to which the Covering Submission sufficiently identified the most problematic issues to Ministers in relation to rendition.

In relation to both the Detainee Report and the Report on Rendition, the Inquiry would have wished to investigate:

- What processes the Government and the Agencies adopted to determine which cases should be notified to the ISC, and in what terms;
- Whether complete information was given to the ISC in relation to those cases which were notified and whether there were other relevant cases which should have been notified; and
- Whether, overall, sufficient information was given to the ISC to enable it to perform its statutory functions.

# Annex B

## The Detainee Inquiry seminar on international and domestic law on torture, other ill-treatment, and complicity

### Introduction

1. The Panel decided that it would be assisted by hearing from academics and practitioners specialising in the areas of law relevant to the Inquiry's terms of reference. To this end, a seminar was held on 8 June 2011 ('the seminar') at which six distinguished speakers were invited to address and take questions from an invited audience drawn from academia, the law, journalism and relevant government departments and NGOs. Further details of the Legal Seminar can be found on the Detainee Inquiry website ([www.detaineeinquiry.org.uk](http://www.detaineeinquiry.org.uk)). The Panel wishes to thank all of those who attended, and in particular the six speakers who gave generously of their time and provided a series of extremely helpful and interesting presentations.
2. It was the Panel's intention in holding the seminar to make itself aware of those areas of law that are settled and, in respect of those areas that are not, the range of views prevailing among the leading commentators and lawyers concerned with them. The purpose was not to enable the Panel to make judgments on the law, this being outside its proper remit and jurisdiction. Instead it was to assist the Panel, its lawyers and its staff in understanding the legal context in which the events that the Inquiry was investigating took place in order to enable witnesses to be questioned more effectively and their answers to be better assessed.
3. This chapter, which draws primarily on the talks given at the seminar and the leading instruments, legislation and cases discussed within them, considers in turn the following matters: the relevant sources of law; the international and domestic law definitions of torture and other cruel, inhuman or degrading treatment; the prohibitions and obligations placed upon states by international law in respect of such acts; the concept of complicity in international law; related domestic law concepts of joint enterprise and secondary liability; and the issues of arbitrary imprisonment and rendition. What follows is, of course, an overview of the matters discussed at the seminar, which in turn could only provide an extremely brief summary of the main issues involved in these broad, complex and evolving areas of law.

## Sources of Law

4. The international law on torture and other cruel, inhuman and degrading treatment is shaped by various sources.<sup>1</sup> Most directly, there are several instruments that contain specific articles concerning these matters, from which case-law has emerged developing the relevant provisions and principles. The most significant of these instruments, for the purposes of this chapter, are the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('UNCAT'), the International Covenant on Civil and Political Rights ('ICCPR'), the Geneva Conventions and the European Convention on Human Rights ('ECHR'). The United Kingdom has signed and ratified all of these documents.

5. A second source of international law can be found in the statutes and decisions of various international tribunals that have considered cases in which torture and other crimes have been alleged. Such tribunals trace their antecedents back to the post-Second World War Nuremberg Tribunal, but those of most direct relevance to the task faced by the Inquiry are the International Criminal Tribunal for the Former Yugoslavia ('ICTY'), the International Criminal Tribunal for Rwanda ('ICTR') and the International Criminal Court ('ICC').

6. In addition to treaties and conventions a third source of relevant legal principles are the draft codifications of international law produced by specialist organisations convened for this purpose, and in particular the International Law Commission Draft Articles on State Responsibility for Internationally Wrongful Acts ('the ILC Draft Articles') and the Draft Code of Crimes against the Peace and Security of Mankind ('the Draft Code of Crimes'), and their associated commentaries. Professor James Crawford, who as Special Rapporteur on State Responsibility was one of the leading protagonists in the preparation of the ILC Draft Articles, explained their status and purpose in the following terms at the seminar: *"They are a set of informed statements of what international law is, or should be, associated with commentaries, produced by an expert body and thrown on the waters of the practice of international law."* As this statement suggests, and as Professor Crawford went on to explain, not all that is contained in such draft codifications will be universally accepted as representing the present state of international law, and hence they must be used carefully.

7. In addition to these sources of international law a number of United Kingdom statutes are also relevant to this chapter, particularly those that incorporate some of the instruments referred to above into the domestic law. These include section 134 of the Criminal Justice Act 1988 ('CJA 1988', which was intended to criminalise torture in line with UNCAT), the Human Rights Act 1998 ('HRA 1998', which incorporated ECHR rights) and the International Criminal Court Act 2001 ('ICCA 2001' which incorporated the Rome Statute of the ICC). Case law from the Court of Appeal, the House of Lords and the Supreme Court has provided further useful elucidation of relevant concepts and principles and, as we discuss below, the domestic law on joint enterprise and secondary liability assists in understanding when those not directly involved in an act may still be legally liable for its consequences.

## Defining Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

8. The definition of torture in UNCAT comprises three elements.<sup>2</sup> First, torture involves the intentional infliction of *"severe pain or suffering, whether physical or mental"* on a

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1. The relevant instruments concerned with arbitrary detention are discussed below (as is the issue of rendition in international law.)

2. Article 1(1).

person. Second, this is done for such purposes as obtaining information or a confession, punishment, intimidation or coercion, or discrimination of any kind (referred to below as ‘the purposive element’). Third, the infliction of pain or suffering is done “*by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”. At the seminar, Professor Sir Nigel Rodley referred to this definition as the “*most apposite ... starting point*” for a consideration of what amounted to torture, and Professor Malcolm Shaw said that it represented “*the most authoritative statement we have*”.

9. UNCAT refers to, but does not define “*other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture*”.<sup>3</sup> Similar distinctions are made in the ECHR (Article 3), the Geneva Conventions (Common Article 3) and the Rome Statute establishing the ICC (Articles 7 and 8). The question therefore arises as to which acts amount to torture, and which amount to cruel, inhuman or degrading treatment or punishment (‘other CIDT’).

10. The early jurisprudence on this question emerged from cases on Article 3 ECHR considered by the European Court of Human Rights at Strasbourg (‘the Strasbourg Court’). These suggested that, in part, the distinction was one that concerned the degree of suffering that was inflicted – the most serious cases involving the infliction of very severe pain and suffering amounting to torture, while those falling below this level (but still constituting a breach of Article 3) being categorised as other CIDT.<sup>4</sup> These cases have been the subject of extensive criticism and later decisions of the Strasbourg Court have indicated that they would now be decided differently, in that what was previously considered “*inhuman treatment*” may now be seen as “*torture*”.<sup>5</sup> However as Professor Rodley and Professor Shaw explained at the seminar, the Strasbourg Court has not resiled from the principle that one factor distinguishing torture from other CIDT is the severity of the suffering inflicted. In this regard, the Court has held that “*inhuman treatment*” not amounting to torture may include conduct lasting for hours causing either actual bodily harm or “*intense physical and mental suffering*”.<sup>6</sup> Degrading treatment has been said to be that which serves “*to arouse in its victims feelings of fear, anguish and inferiority, capable of humiliating or debasing them*”.<sup>7</sup> It is important to note two points in respect of these Strasbourg decisions. First, whether the acts amount to torture, inhuman or degrading treatment the effect is still a breach of Article 3 of the Convention. Second, there has been considerable criticism of the grading of the different types of ill-treatment in this way, including by Professor Rodley at the seminar.<sup>8</sup>

11. Another aspect to the distinction between torture and other CIDT is the purposive element. Where severe pain or suffering is inflicted by a public official for one of the reasons specified in UNCAT this may amount to torture; where there is no such purpose the act may be one of other CIDT. Professor Rodley told the seminar that in his view, and that of most observers, this was the crucial dividing point between torture and other ill-treatment. However, Sir Nigel also noted that this distinction was not one reflected in all of the relevant

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3. Article 16(1).

4. See in particular ECtHR *The Greek Case* (1969) 2 YB 1 EComm HR and ECtHR *Ireland v United Kingdom* (1978) 2 EHRR 25.

5. See in particular, *Selmouni v France* (2000) 29 EHRR 403 and *Ilhan v Turkey* (Application No. 22277/93) (2000) ECHR 354 (27 June 2000).

6. *Labita v Italy* (2008) 46 EHRR 50; *Pretty v United Kingdom* (2002) 35 EHRR 1.

7. *Keenan v United Kingdom* (2001) 33 EHRR 38; *Jalloh v Germany* (2007) 44 EHRR 32.

8. In addition to Professor Rodley’s critique, see, among others, the comments of Lord Hope in *A v Secretary of State for the Home Department (No. 2)* [2005] UKHL 71, [126], and John T Parry *Escalation and Necessity: Defining Torture at Home and Abroad* in Sandford Levinson (ed.) *Torture: A Collection* (Oxford: OUP, 2004).

international instruments.<sup>9</sup> Recent decisions of the Strasbourg Court have suggested that it considers the purposive element to be an “*aggravating factor*” that may contribute to a finding of torture.<sup>10</sup>

12. In terms of the UK domestic law, the CJA 1988 states that a public official commits torture if he intentionally inflicts severe pain or suffering on another “*in the performance or purported performance of his official duties*”.<sup>11</sup>

13. In the course of the seminar, Professor Philippe Sands stated that after the September 2001 attacks the Bush Administration in the United States, “*obtained legal advice which rewrote the definition of torture so that torture was no longer ‘any act by which severe pain or suffering, whether physical or mental’ was inflicted, but that the threshold was raised to pain that is equivalent to organ failure or death.*” Professor Sands was extremely critical of this advice and the process that led to its adoption. The other expert contributors did not refer to it when discussing the relevant authorities that assist in defining torture and other CIDT in international law.

## The Prohibition of Torture in International Law

14. The prohibition of torture enjoys the enhanced status of being a peremptory norm of international law (or *jus cogens*). A number of consequences follow from this, including the principle that no derogation is permitted from the prohibition.

15. In a wider sense, the status of peremptory norm is an indication of how emphatically the practice of torture has been rejected in international law (even though it continues in practice). While there is no doubt about the prohibition on torture being a peremptory norm, it remains a matter of dispute as to whether this is also so in respect of the prohibition on other CIDT.

16. ILC Draft Article 41 provides that states shall co-operate to bring to an end, through lawful means, any serious breaches of a peremptory norm by another state. It has been argued that this Draft Article places upon states a duty to take positive action to end the practice of torture by other states.<sup>12</sup> This is a highly contentious suggestion. It is widely recognised that Draft Article 41 was, to adopt the words of Professor Crawford, reflective of what the ILC thought international law *should* be, rather than what it *was* at the time when the Draft Articles were adopted. While there is now greater acceptance of Draft Article 41, its precise status remains uncertain (and many governments are opposed to it). Further, Professor Crawford told the seminar that Draft Article 41 was adopted primarily to deal with ongoing breaches of peremptory norms involving territorial situations, rather than with individual acts of torture. Despite these reservations he did suggest that the Draft Article “*may well have some application in respect of continuing practices of unlawful detention or torture*” such as where “*you have a repeated set of events involving, probably, the receipt of information obtained by torture*”. However, it is important to note that his comments were very carefully qualified and not intended as a definitive statement of a settled principle of

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9. See, for example, the Rome Statute and the associated explanation of its terms contained in the ICC document ‘Elements of Crimes’. As Professor Rodley explained, there is no reference to the purposive element in respect of torture as a ‘crime against humanity’ (Article 7(1)(f)), whereas this is the critical distinction between the ‘war crimes’ of torture and inhuman treatment (Article 8(2)(a)(ii)). Professor Rodley suggested various reasons for this seemingly anomalous situation. The ICCA 2000, which incorporates the Rome Statute into domestic law, adopts that Statute’s definitions.

10. *Krastanov v Bulgaria* (2005) 41 EHRR 50; *Gafgen v Germany* (2009) 48 EHRR 13.

11. S.134(1) of the Criminal Justice Act 1988 (‘CJA 1988’).

12. *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No. 1)* [2008] EWHC 2048 (Admin), [178; see also [173-177]. See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004) 43 ILM 1009, in particular [159].

law. For his part, Professor Shaw noted that international instruments that impose positive obligations on states tend to do so in explicit terms.<sup>13</sup>

## Complicity in International Law

17. Article 1 of UNCAT includes in its definition of torture not only severe pain or suffering inflicted directly by a public official, but also acts performed “*by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”. Professor Sands and Professor Rodley interpreted this provision, and associated case law from the ICTY,<sup>14</sup> as meaning that there was a potentially wide range of persons whose involvement in a single act of torture could render them liable as primary participants under international law.

18. Article 4 of UNCAT also prohibits ‘complicity’ in torture, but does not define what this means. As a result, courts, lawyers and academics have looked to other international instruments and cases to provide an answer by inference. The speakers at the seminar agreed that this was an appropriate approach, but warned that great care needs to be taken when transferring concepts and interpretations from one instrument to another. It is important to emphasise that the international law on what amounts to ‘complicity’ is complex and far from settled.

19. ‘Complicity’ implies the involvement of a party as a secondary participant, for example by providing assistance or support, rather than as a primary perpetrator of an act of torture. A distinction may be drawn between circumstances in which a state is complicit in an act, and circumstances in which an individual is complicit. In terms of state actions, the International Court of Justice (‘ICJ’) considered what amounted to complicity in the context of the UN Convention on the Prevention & Punishment of the Crime of Genocide (‘the Genocide Convention’). The Court held that “*complicity, as such, is not a notion which exists in the current terminology of the law of international responsibility*”, and hence it drew on ILC Draft Article 16 in order to define the concept. This Draft Article confers responsibility for an internationally wrongful act on a state (State A) which “*aids or assists*” another state (State B) in the commission of an internationally wrongful act where State A does this with “*knowledge of the circumstances of the internationally wrongful act*”.

20. The ILC’s Commentary to Draft Article 16 provides further explanations as to what amounts to inter-state aid or assistance, and in doing so it limits the scope of the Article in a way that is not necessarily suggested by a literal reading of the text. First, it reiterates that State A must know of the circumstances in which its aid or assistance is intended to be used by State B; if it does not, it bears no international responsibility. Second, the Commentary states that the aid or assistance given has to be clearly linked to the wrongful conduct, in that State A has to intend to facilitate State B’s impugned act by the aid or assistance that it gives. Third, State B must actually commit that act. Fourth, State A’s aid or assistance has to “*contribute significantly*” to the act.

21. In terms of individual responsibility, Professor Sands and Professor Shaw provided the seminar with an overview of the most important of the relevant international instruments – in particular the Statute of the ICTY (Article 7), the Rome Statute (Article 25), and the Draft Code of Crimes (Draft Article 2) – and the leading cases that have shaped the law in this

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13. See for example the UN Convention on the Prevention & Punishment of the Crime of Genocide (‘the Genocide Convention’).

14. See in particular ICTY, *Prosecutor v Anto Furundzija* (Judgment of the Trial Chamber, 10 December 1998) and the other ICTY cases cited below.

area, particularly those heard by the ICTY and the ICTR.<sup>15</sup> As with state responsibility, these sources use the terms ‘aiding’, ‘abetting’ and/or ‘assisting’ rather than that of ‘complicity’, and hence similar caution was expressed about how readily the principles concerned could be transferred. Nonetheless, the two professors agreed that three core elements could be identified as being of central importance in respect of an individual’s responsibility for an act of torture perpetrated by another:

- Knowledge (but not necessarily intent) that torture is taking place, and
- a contribution, either tangible or moral, by way of assistance, that
- has a substantial (but not necessarily causal) effect on the perpetration of the torture.

22. Professor Sands and Professor Shaw went on to consider whether Person X could be liable for an act of torture performed by Person Y where the former gave tacit consent to the latter, for example by receiving information that was obtained as a result of the act, and did not take steps to prevent it from occurring or continuing. Professor Sands considered that Person X could be liable, as the word ‘complicity’ encompasses tacit consent that falls short of the contribution by way of assistance. Professor Shaw disagreed, telling the seminar that in his views the case law did not support such a conclusion and that individual complicity required a positive act performed in circumstances in which the three criteria set out in the previous paragraph are met.

23. Professor Crawford also commented on the concept of tacit consent when considering state (as opposed to individual) responsibility under ILC Draft Article 16. He emphasised that this provision was not concerned with accessories after the fact, but suggested that there could be circumstances in which a pattern of repetitive unlawful behaviour by State B could give rise to a finding of complicity against State A where State A continued to engage with State B in the knowledge of its ongoing conduct (for example, by requesting information that could have been obtained by torture). Again, it is important to emphasise that Professor Crawford’s comments were given with careful qualification and dealt with hypothetical situations of general application. Further, Professor Rodley warned that international law imposes a high threshold before attributing responsibility to a state for the acts of its officials.<sup>16</sup>

24. The Panel also notes two other particularly relevant contributions to the debate on the meaning of ‘complicity’ in respect of torture. First, the Joint Parliamentary Committee on Human Rights produced a report on allegations of UK complicity in torture in 2009 in which it argued that the notion of complicity for states was wider than that for individuals, and that state complicity could include liability for tacit consent to torture.<sup>17</sup> Professor Sands considered that the distinction between state and individual responsibility was an important one, but accepted the point made by Professor Rodley that the same facts could give rise to liability at both state and individual level (subject to the caveat above concerning the difficulty of establishing state responsibility). Professor Shaw doubted whether the principles involved in determining the liability of a state or an individual for complicity were in fact radically different. In terms of the breadth of responsibility, Professor Crawford argued that

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15. See in particular: ICTY, *Prosecutor v Dusko Tadic* (Judgment of the Trial Chamber 7 May 1997); ICTY, *Prosecutor v Anto Furundzija* (Judgment of the Trial Chamber, 10 December 1998); ICTY, *Prosecutor v Radislav Kistić* (Judgment of the Trial Chamber, 2 September 1998).

16. See ICJ *Case Concerning Military and Paramilitary Activities in and against Nicaragua, Nicaragua v United States* (judgment dated 27 June 1986) and ICJ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v Serbia and Montenegro* (judgment dated 26 February 2007).

17. Parliamentary Joint Committee on Human Rights, *Allegations of UK Complicity in Torture* (23rd report of session 2008–2009; 21 July 2009). See also the points made in this respect by Murray Hunt, Legal Advisor to the Parliamentary Joint Committee at the seminar.

international law was, ultimately, made by states, who tended to define their responsibilities narrowly (a point also made by Professor Rodley).

25. The second contribution is that of United Nations Special Rapporteur on Human Rights, who commented in the 2009 *Report on Human Rights and the Countering of Terrorism* that state responsibility for complicity in torture could be triggered by “*creating a demand for intelligence information obtained through internationally wrongful means*”.<sup>18</sup> Although this view was not discussed at length at the seminar, the speakers all considered similar arguments when making the observations that have been set out above.

## The Domestic Law

### Joint Enterprise, Secondary Liability, and the Serious Crime Act 2007

26. A number of areas of domestic law also form an important part of the legal context for the Inquiry’s work, particularly in respect of the statutory prohibitions on torture (to which reference has already been made), and the doctrines of secondary liability and joint enterprise. The latter principles establish the conditions under which an individual can be liable for an offence that is carried out directly by another, and hence are relevant to the Panel’s consideration of what amounts to complicity in torture and the other wrongful acts included in its terms of reference. David Perry QC and Professor Graham Virgo gave extremely helpful papers on secondary liability and joint enterprise at the seminar. Together these concepts are, as Mr Perry said, the most complex and difficult area of the domestic criminal law, and hence do not lend themselves easily to summary.

27. An individual (‘the accessory’) can be liable in a number of ways for a criminal act that was performed by another (‘the principal’). The accessory may be prosecuted for aiding, abetting, counselling or procuring the principal’s act, in which case he will be tried and sentenced for the same crime.<sup>19</sup> This liability is said to be ‘derivative’ in that it is necessary to establish that the principal’s offence has been committed before the accessory can be secondarily liable for it. In this context, ‘aiding’ means assisting the crime either before it was committed or as it was committed. ‘Counselling’ means encouraging before the event, and ‘abetting’ encouraging at the event. In respect of each of these words, it is not necessary to demonstrate that the assistance *caused* the criminal act, merely that there was some connection between it and the principal offender’s unlawful act. ‘Procuring’ means to produce by endeavour and, as this definition suggests, it is necessary to establish causation in order for there to be secondary liability. Professor Virgo noted that in some, very tightly defined, circumstances secondary liability could arise by omission, where a person fails to prevent a crime. However, he and Mr Perry emphasised that the domestic law was very reluctant to impose a duty in this way, with Professor Virgo noting that where this was done by a statute, the statute would need to be very clear.

28. In order for secondary liability to be established, the accessory must be shown to have the necessary state of knowledge and intent. Mr Perry and Professor Virgo agreed that the question of what constituted this mental element (or *mens rea*) was a controversial area of law, with conflicting authorities. They agreed that the accessory must intend the act that *he* performs in order to aid, abet, counsel or procure the crime, but disagreed as to what the accessory must understand as to the principal’s intentions in respect of the substantive criminal act. Mr Perry (and the Law Commission) considered that it is necessary

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18. UN Special Rapporteur on Human Rights, *Report on Human Rights and the Countering of Terrorism* (A/HRC/10/3; 4 February 2009).

19. Section 8 of the Accessories and Abettors Act 1861; s.44 of the Magistrates’ Courts Act 1980.

for the accessory to know or believe that the principal will commit the offence. Professor Virgo thought that the test was lower, and only required that the accessory contemplates the commission of the offence as a possibility.

29. Joint enterprise liability arises when a principal and accessory agree to commit crime A and, in the course of so doing, the principal commits crime B. In these circumstances, the accessory can be liable for crime B if it is established that he shared a common intention to commit crime A with the principal, and suspected or contemplated that the principal might commit crime B. Thus the mental element for joint enterprise is the lower of the two discussed above, and the one that Professor Virgo argues should apply to secondary liability. However, an accessory will not be liable if crime B is fundamentally different from crime A, or if he withdraws from the joint enterprise unequivocally and with timely communication.

30. Mr Perry also drew attention to the Serious Crime Act 2007, which created new offences where one party either intentionally encourages or assists an offence or offences, or encourages or assists an offence or offences in the belief that they will be committed. This Act can have extra-territorial effect, meaning that liability may be engaged by an act committed in England or Wales that encourages or assists the commission of a crime abroad (or vice versa). Mr Perry emphasised that crimes under the Act were offences in their own right and thus liability was not derivative. As a result an accessory could be prosecuted for such an offence even though the crime that he was encouraging or assisting did not, in fact, take place.

## Statutory Prohibitions on Torture

31. As has already been mentioned, two UK statutes are of particular relevance to this chapter. Section 134 of the CJA 1988 purports to incorporate the prohibition against torture contained in UNCAT, and the ICCA 2001 does the same in respect of the Rome Statute. Both of these statutes make it an offence (subject to certain conditions) under domestic law to participate in torture and (in the case of the ICCA 2001) other forms of CIDT.

32. In respect of both of these statutes, it is possible for a person to be guilty of an offence through the secondary liability principles set out above. Thus an accessory can be liable even though he is neither a public official (in the case of torture as defined under s.134 of the CJA) nor the person who directly inflicts the severe pain or suffering. Further, the ICCA 2001 includes a statutory offence of engaging in “*conduct ancillary to*” genocide, war crimes or crimes against humanity (which can, in certain circumstances, include torture and other forms of CIDT).<sup>20</sup>

33. The two statutes also have extra-territorial effect, such that an action committed overseas may constitute a crime under domestic law. At the seminar, Mr Perry and Professor Virgo agreed that they saw no difficulty in that extra-territorial element applying to an accessory in the same way that it would to a principal. Thus it would be possible for a person in England to be liable under s.134 CJA 1988 for aiding, abetting, counselling or procuring the torture of an individual in a foreign country. However, it is important to stress that in order for liability to be established all relevant elements of the offence would have to be established. These would include: the infliction of severe pain or suffering; by a public official; in the course of his public duties; where the accessory in England performed an act sufficient to impose secondary liability; with the necessary state of mind about both his act and that of the alleged torturer; and where no defence in law was available.

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20. Sections 51, 52, 55.

## Rendition and Unlawful Detention

34. The focus of the seminar and this chapter has been on the international and domestic law on torture and other CIDT, and the notion of complicity and related concepts in that context. However, it is important to stress that the Inquiry's terms of reference are to the involvement and awareness of the UK Government and its intelligence and security agencies in *"improper treatment, or rendition, of detainees"*. The Panel consider that the issues of arbitrary imprisonment and the removal of detainees from their country of initial detention without recourse to proper legal process fell within the scope of the Inquiry.

35. In respect of arbitrary imprisonment, there is no separate international treaty (such as UNCAT) that concerns this practice alone. Instead it is referred to in various instruments, which provide prohibitions in different terms and with different qualifications. Each of these provisions falls to be interpreted in its own right, thereby impeding broad statements of principle. For example, Article 9 of the ICCPR states that: *"Everyone had the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."* Other prohibitions on arbitrary or unlawful imprisonment can be found at Article 5 of the ECHR, Article 7(1)(e) of the Rome Statute and Article 18(h) of the Draft Code of Crimes.

36. Professor Rodley told the seminar that in his view the prohibition on arbitrary detention was at least one of customary international law and that while a strong argument could be made for it being a peremptory norm, there was less authority for this point than there was in respect of torture. He also noted that while some treaty bodies (including the ECHR) allowed for partial derogation during a state of emergency, this did not mean that the prohibition as a whole could be disapplied.<sup>21</sup> As arbitrary imprisonment is an internationally wrongful act, much of the discussion above in respect of what constitutes complicity, or aid or assistance, would also apply in this context.

37. The concept of 'rendition' is not one that has – as yet – become defined in international or domestic law. The term has been used disparately since 2001, sometimes in conjunction with other words and often in a way carrying political rather than legal connotations. The presence or possibility of torture, inhuman or degrading treatment is widely agreed to be the feature that distinguishes 'extraordinary rendition' from 'rendition'.<sup>22</sup> However, various bodies have expressed different opinions on how likely such treatment needs to be in order to classify a transfer as 'extraordinary rendition'. For example:

- a. The House of Commons Library refers to the *"clandestine and deliberate transfer ... for interrogation using torture, inhuman or degrading treatment"*.<sup>23</sup>
- b. The Parliamentary Intelligence and Security Committee (ISC) suggested a lesser test in its 2007 Report on Rendition: *"The extra-judicial transfer of persons from one jurisdiction or State to another, for the purpose of detention and interrogation outside the normal legal system, where there is a real risk of torture or cruel, inhuman or degrading treatment."*<sup>24</sup>

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21. See, for example, *Aksoy v Turkey* (1966) 23 EHRR 553.

22. See the House of Commons Library, *Standard Note on Extraordinary Rendition*, March 2006; subsequently adopted by the House of Commons Foreign Affairs Select Committee in its Human Rights Annual Report 2008 (HC 557).

23. *Standard Note on Extraordinary Rendition*, March 2006 (see above).

24. Intelligence and Security Committee Report on Rendition, July 2007 (Cmnd 7171).

- c. The Foreign and Commonwealth Office (FCO) stated in its 2008 Annual Report on Human Rights that extraordinary rendition was, "...generally understood to refer to the extra-judicial transfer of persons between jurisdictions specifically for the purposes of detention and interrogation outside the normal legal system, giving rise to an increased risk of torture or cruel, inhuman or degrading treatment."<sup>25</sup>

38. The Panel found helpful the definitions of various forms of rendition as set out by the ISC in its 2007 report:<sup>26</sup>

**"Rendition":** Encompasses any extra-judicial transfer of persons from one jurisdiction or State to another.

**"Rendition to Justice":** The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of standing trial within an established and recognised legal and judicial system.

**"Military Rendition":** The extra-judicial transfer of persons (detained in, or related to, a theatre of military operations) from one State to another, for the purposes of military detention in a military facility.

**"Rendition to Detention":** The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system.

**"Extraordinary Rendition":** The extra-judicial transfer of persons from one jurisdiction or State to another, for the purposes of detention and interrogation outside the normal legal system, where there is a real risk of torture or cruel, inhuman or degrading treatment.

39. The issue of when a state may be prohibited in international law from transferring an individual from one jurisdiction to another due to the possibility that the individual may be tortured or face other ill-treatment on arrival was not discussed at length at the seminar.<sup>27</sup> The Panel are aware of the Strasbourg jurisprudence that where there are substantial grounds for believing that there is a "real risk" of torture such a transfer would breach the ECHR.<sup>28</sup> It also notes that Article 3 of UNCAT provides that: "No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subject to torture."

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25. Foreign and Commonwealth Office, Annual Report on Human Rights, 2008 (Cmnd 7557).

26. Intelligence and Security Committee Report on Rendition, July 2007 (Cmnd 7171).

27. For further information on this area the following are of interest: J.C. Hathaway, *The Rights of Refugees under International Law*, 2005, p. 300 and following and G. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, 3rd ed., 2007, Chapter 5.

28. *Soering v United Kingdom* (1989) 11 EHRR 439; *Chahal v United Kingdom* (1996) 23 EHRR 413; *Saadi v Italy* (2008) BHRC 123 (GC). The Panel also note the recent decision in *Othman (Abu Qatada) v United Kingdom* (2012) ECHR 56 where the same principles were applied to a real risk of a flagrant breach of Article 6 ECHR (the right to a fair trial).

# Annex C

## Glossary

ACPO	Association of Chief Police Officers
BIOT	British Indian Ocean Territory
CENTCOM	US Military Central Command
CIA	US Central Intelligence Agency
CIDT	Cruel, Inhuman or Degrading Treatment
CPS	Crown Prosecution Service
DCR	Detainee Contact Report
DoD	US Department Of Defense
DPP	Director of Public Prosecutions
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FBI	US Federal Bureau of Investigation
FCO	Foreign and Commonwealth Office
GC	Geneva Convention
GCHQ	Government Communications Headquarters
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ISC	Intelligence and Security Committee
JIC	Joint Intelligence Committee
JWP	Joint Warfare Publication
MoD	Ministry of Defence
MPS	Metropolitan Police Service
NATS	National Air Traffic Services
NGO	Non-Governmental Organisation
PACE	Parliamentary Assembly for the Council of Europe
PIR	Prisoner Interview Report

PMO	Presidential Military Order
PW	Prisoners of War
PWPROS	Prisoners of War who may be subject to prosecution
SIS	Secret Intelligence Service
SOI	Standard Operating Instruction
UNCAT	United Nations Convention Against Torture

# Annex D

## The Inquiry Secretariat and Legal Advisers

### Secretariat:

The following worked for the Detainee Inquiry over the course of the Inquiry.

Name	Seconded from (Department)
Alun Evans (Secretary to the Inquiry)	BIS
James Driver (Acting / Assistant Secretary)	Cabinet Office
Louise Greenrod	MoD
Helen Griffiths	Cabinet Office
Catherine Little	MoD
Sarah Nacey	Cabinet Office
Mike Pigott	Cabinet Office
Wendy Pitchford	FCO
Ian Reakes	FCO
Ben Trim	Cabinet Office
Elizabeth Watts	FCO
Allison Potter-Drake	Cabinet Office (Press Officer)

### Legal team:

Name	
Sara Carnegie	Solicitor to the Inquiry
Philippa Whipple QC	Counsel to the Inquiry
Nicholas Moss	Junior Counsel to the Inquiry
Matthew Hill	Prepared the note on the Detainee Inquiry legal seminar (Annex B)