



INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT



PRESS RELEASE

DETAINEE MISTREATMENT AND RENDITION: CURRENT ISSUES

The Intelligence and Security Committee of Parliament published two reports today on the actions of the UK security and intelligence agencies in relation to the handling of detainees overseas and rendition. The Chairman of the ISC, the Rt. Hon. Dominic Grieve QC MP, said:

The second report we are publishing today covers the current situation. 2009/10 marked a turning point in that the Government published – for the first time – its policy in relation to detainees overseas, in order to ensure that the UK is not involved in torture or mistreatment.

This policy – the Consolidated Guidance – has been in place for over seven years now and therefore we wished to evaluate how it was operating. We found that the Consolidated Guidance has been applied by the Agencies and MOD on average 576 times per year, and in a total of 2304 cases from 2013 to 2016. We sought to establish how many of those 2304 cases were escalated to Ministers – i.e. in how many cases it was considered that there was a serious risk of mistreatment. We were concerned to find that figures have not been kept: full information must be kept in future. From the Committee’s review of a sample of cases, we found no instances of any action in deliberate violation of the Consolidated Guidance. We saw that officers actively monitored whether assurances were being adhered to, escalating concerns and suspending cooperation when needed, and that potential breaches are raised in real time and acted upon as a matter of urgency.

In terms of the policy itself, we reiterate the point we first made in our March 2010 Report on the draft Consolidated Guidance – which the Government has not published before and which we are therefore placing in the public domain for the first time today. The Consolidated Guidance contains little in terms of concrete guidance: it is not a set of rules for personnel. The current title is therefore misleading, and we recommend that this opportunity is taken to rename it to reflect its purpose as a framework which sets the boundaries within which the Agencies must operate - for example, “*UK standards for action relating to detention and rendition*”. We also remain of the view that the public should be given as much information as possible about the underlying decision-making process in this area. While there are limits to the amount of information that can safely be made publicly available, there is more information which could and should be published.

In the course of our Inquiry we found that that there has been remarkably little attempt to evaluate the Guidance over the past seven years: no-one is assessing whether it is achieving its aims, or whether those aims remain the same. The Cabinet Office must take proper and active ownership of the Guidance, rather than leaving it unattended.

The Cabinet Office did conduct a very ‘light touch’ review of the Guidance last year, prompted by our Inquiry and that of the Intelligence Services Commissioner. When we were appointed in November we were provided with their proposed changes and asked for our views. While some are welcome and bring greater clarity to the Guidance, it falls short in a number of areas. In our opinion, a full review is long overdue. This should encompass the points raised by the Intelligence Services Commissioner and by this Committee, and non-governmental organisations with an interest must be consulted.

We have detailed in our report those matters which require substantive change, including:

- greater clarity on Ministerial discretion: in particular, specific reference to the prohibition of torture in domestic and international law to make clear that Ministers cannot lawfully authorise action which they know or believe would result in torture;
- narrowing the potential for subjectivity: all decisions must be based on the same legal and policy advice and within the same parameters. At present individual Ministers have entirely different understandings of what they can and cannot, and would and would not, authorise.
- instruction as to how the term ‘serious risk’ is to be interpreted to be covered in working-level guidance. While the Agencies have training on how to recognise ‘serious risk’, and all err on the side of caution, officers should be given examples of the threshold to be used so as to lessen the burden on them as individuals.
- greater transparency around the use of section 7 authorisations under the Intelligence Services Act 1994: the use of authorisations in connection with the Consolidated Guidance must be explicitly addressed.
- inclusion of rendition in the list of types of CIDT contained in the Consolidated Guidance: the Government’s excuse that it is too difficult to define is nonsensical.
- coverage of joint units: where HMG trains, funds and/or tasks a unit overseas, it must carry some responsibility for the actions of that unit. If it does not, it leaves itself open to accusations that it is outsourcing action it cannot take itself.
- limiting of emergency authorisations to 48 hours, and clear limitation of that power: no official should be able to authorise action where there is a serious risk of torture.
- those organisations subject to the Guidance must be kept under rolling review: the proposed inclusion of the NCA and SO15 is sensible, but the Cabinet Office must keep a watching brief on this issue rather than waiting to be prompted by others.
- finally, there should be a clear statement of the need for the Agencies and their personnel to follow the Guidance not just in letter but in spirit as well.

While there is room for improvement, very few countries have attempted to set out their approach to these matters, and let themselves be held accountable in this manner. It is to the Agencies’ and the MOD’s credit that they have embedded these procedures.

The same cannot be said in relation to policy and process on rendition. There has been little improvement since we last reported in 2007. We find it astonishing that, given the intense focus on this issue ten years ago, the Government has failed to take action. There is no clear policy, and not even agreement as to who has responsibility for preventing UK complicity in unlawful rendition. We particularly note that HMG has failed to introduce a process to ensure that allies cannot use UK territory for rendition purposes without prior

permission. Given the clear shift in focus signalled by the present US administration, the current reliance on retrospective assurances and the voluntary provision of passenger information is completely unsatisfactory. Further, the FCO position that the UK is absolved from complicity in permitting transit or refuelling of a possible rendition flight, because it has no knowledge of what the aircraft has done or is doing, is not acceptable. We are unconvinced that the Government recognises the seriousness of rendition and the potential for the UK to be complicit in actions which may lead to torture or CIDT. We are therefore formally requesting that HMG publish its policy on rendition within three months of publication of this Report.

Finally, this Report addresses the question of agility. The Agencies have recognised that after 9/11 they failed to adapt quickly to significant changes in circumstances, and the pressure they were operating under as a result has been cited by them as one of the key reasons they missed the warning signs on torture and mistreatment. In this context, we note that the Agencies are monitoring the actions of their US liaison partners in order to identify at an early stage any shift in policy on detainees. It is essential that this is taken seriously given the grave repercussions of their failure to detect the change in US working practices after 9/11 – as we set out in our separate report on those events.

NOTES TO EDITORS:

1. The Intelligence and Security Committee of Parliament (ISC) is a cross-party committee of nine parliamentarians from the Commons and the Lords, established under the 2013 Justice and Security Act.

2. This Report reflects work largely undertaken by the previous Committee,¹ which sat from September 2015 to May 2017:

The Rt. Hon. Dominic Grieve QC MP (Chair)

The Rt. Hon. Richard Benyon MP
(from 21 October 2016)

The Rt. Hon. Sir Alan Duncan MP
(until 17 July 2016)

The Rt. Hon. David Hanson MP
(from 21 October 2016)

The Rt. Hon. George Howarth MP
(until 18 October 2016)

The Rt. Hon. the Lord Janvrin GCB GCVO
QSO

The Most Hon. the Marquess of Lothian QC
PC

The Rt. Hon. Fiona Mactaggart MP

The Rt. Hon. Angus Robertson MP

The Rt. Hon. Keith Simpson MP

The Rt. Hon. Gisela Stuart MP

3. The Committee oversees the intelligence and security activities of the UK, including the policies, expenditure, administration and operations of the Security Service (MI5), the Secret Intelligence Service (SIS) and the Government Communications Headquarters (GCHQ). The Committee also scrutinises the work of other parts of the UK intelligence community, including the Joint Intelligence Organisation and the National Security Secretariat in the Cabinet Office; Defence Intelligence in the Ministry of Defence; and the Office for Security and Counter-Terrorism in the Home Office.

4. The Members of the Committee are subject to Section 1(1)(b) of the Official Secrets Act 1989 and are routinely given access to highly classified material in carrying out their duties. The Committee sets its own agenda and work programme. It takes evidence from Government Ministers, the Heads of the intelligence Agencies, officials from the intelligence community, and other witnesses as required. The Committee is supported in its work by a Secretariat provided by the Cabinet Office. It also has access to legal, technical and financial expertise where necessary.

5. The Committee makes an annual report to Parliament on the discharge of its functions. The Committee may also produce Reports on specific investigations. Prior to the Committee publishing its Reports, sensitive material that would damage national security is blanked out ('redacted'). This is indicated by *** in the text. The intelligence and security Agencies may request the redaction of material in the Report if its publication would damage their work, for example by revealing their targets, methods, sources or operational capabilities. The Committee considers these requests for redaction carefully. The Agencies have to demonstrate clearly how publication of the material in question would be damaging before the Committee agrees to redact it. The Committee aims to ensure that only the minimum of text is redacted from the Report. The Committee believes that it is important that Parliament and the public should be able to see where information had to be redacted.

¹ *The following Members were appointed to the Committee in November 2017: the Rt. Hon. Dominic Grieve QC MP (Chair), the Rt. Hon. Richard Benyon MP, the Rt. Hon. the Lord Janvrin GCB GCVO QSO, the Rt. Hon. Ian Blackford MP, Kevan Jones MP, the Rt. Hon. Caroline Flint MP, the Most Hon. the Marquess of Lothian QC PC, the Rt. Hon. David Hanson MP and the Rt. Hon. Keith Simpson MP.*