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Home Affairs Committee

The Home Office's Response to Terrorist Attacks

Sixth Report of Session 2009–10

Volume II

Oral and written evidence

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The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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Tom Brake MP (*Liberal Democrat, Carshalton and Wallington*)
Mr James Clappison MP (*Conservative, Hertsmere*)
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Mr Gary Streeter MP (*Conservative, South West Devon*)
Mr David Winnick MP (*Labour, Walsall North*)

The following Member was also a Member of the Committee during the inquiry:

Ms Karen Buck MP (*Labour, Regent's Park and Kensington North*)

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

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Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Eliot Barrass (Second Clerk), Elisabeth Bates (Committee Specialist), Sarah Petit (Committee Specialist), Darren Hackett (Senior Committee Assistant), Ameet Chudasama (Committee Assistant), Sheryl Dinsdale (Committee Assistant) and Jessica Bridges-Palmer (Select Committee Media Officer).

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Taken before the Home Affairs Committee on Tuesday 13 October 2009

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Keith Vaz, in the Chair

Tom Brake
Ms Karen Buck
Mrs Ann Cryer
David T.C. Davies
Mrs Janet Dean

Patrick Mercer
Gwyn Prosser
Bob Russell
Mr Gary Streeter
Mr David Winnick

Witness: **Lord West of Spithead**, a Member of the House of Lords, Parliamentary Under-Secretary of State, Home Office, gave evidence.

Q1 Chairman: Could I welcome everyone back to the new session. The Committee is today starting an inquiry into the counter-terrorism agenda, in particular the way in which the Government and various agencies respond to terrorist attacks. We will have a series of witnesses over the next 12 weeks and we start today with the Minister for Counter-Terrorism, Lord West. Thank you, Minister, for coming in to give evidence. Before you begin, could I refer all those present to the Register of Members' Interests where the interests of members are noted. Minister, as I said, the Committee is very keen during this short inquiry to look at the way in which the Government responds to terrorist attacks, in particular the operation of the Civil Contingencies Committee, which is codenamed COBR.¹ Having been in the job now for a while and looked at the various coordinating agencies involved in dealing with counter-terrorism, do you feel that COBR as it is currently constituted is "fit for purpose"?

Lord West of Spithead: Thank you very much for giving me the opportunity to speak to you, first of all. I have been in post now for 2 $\frac{1}{4}$ years. My remit from the Prime Minister on being pulled in was he felt that I could maybe help make the country safer. I felt actually and I said to him, "I am sure there are people better than me"; he said, "I don't know them—therefore would you do it"; and I said, "Yes, I would". I have been focussing on that now for 2 $\frac{1}{4}$ years. The first COBR meeting I went to was in 1983; and I have been to numerous COBRs since then—numerous COBRs on all sorts of issues. Clearly now the area that I am focussed on is counter-terrorism, which actually does go a little broader because I am also the Minister for Security, as you rightly say, Chairman. The National Security Strategy—the first one ever produced by this nation was produced last year, updated this year and a much refined and better document—covers a whole raft of threats to this

nation, things that can cause difficulty to this nation; but ranging from natural disasters right on through to state-on-state conflict.

Q2 Chairman: You can take it as read that the Committee does have an understanding of the structures. What we are keen to know from you is whether you think those structures work. You have been to a number of COBRs you have said?

Lord West of Spithead: Yes.

Q3 Chairman: The criticisms of Andy Hayman, a senior police officer who was involved in counter-terrorism at the very highest level, is that there are too many people attending the meetings, and perhaps too many politicians involved in the decision-making process. What he has suggested is that the experts should meet on a regular basis and put their recommendations to politicians. As you are also an expert as well as being a quasi politician, if I can put it like that—I do not know whether after 2 $\frac{1}{2}$ years you regard yourself as an absolute politician—do you think Andy Hayman was right? Should we actually look at that structure?

Lord West of Spithead: I think Andy Hayman was wrong. I was very surprised when I read his article, and I thought some of it was a bit confused really. I think the COBR system is fit for purpose. It is recognised I think around the world as being one of the best ways of achieving what we are trying to achieve by having those COBR meetings. That does not mean that experts do not meet; indeed, there are a lot of COBR meetings that are at official level, and there are other meetings at official level; but there is no doubt, when one looks at some of the incidents we are talking about, that one has to pull in knowledge, expertise and thought from a whole raft of different departments. There are international aspects to these things, and those things actually demand the fact that you have a politician there.

Q4 Chairman: You do not think that there should be a permanent standing committee which looks at this issue, and the issue of the response to a terrorist

¹ The witness later clarified that, the Cabinet Office Briefing Rooms (COBR) is the name given to central Government's crisis management facilities. This is different to the Civil Contingencies Committee which is a Cabinet Committee which can sit in the event of civil emergencies in the UK and may meet in COBR.

attack? Can you remind the Committee, which is the COBR meeting you attended that dealt specifically with a terrorist attack?

Lord West of Spithead: In fact the terrorist attack ones I have not gone to because the Home Secretary has gone to it. I could easily have gone along as the Minister for Counter-Terrorism but, for exactly I suppose the reasons Andy Hayman would say, there is no point in doing that. The operational actions are being done by the police, by the Gold Commander, by the team that is in place. What I have done is, I have looked at the mechanisms within the Home Office, the mechanisms within the Cabinet Office, to make sure that they actually do pull up the right people in the right place to take decisions; and also, within the structure of the police and things like that, that all the things are in place that allow them to do the right operational things, which they are very good at and they do very well.

Q5 Chairman: In between those very serious terrorist attacks there is no standing committee at the moment that deals with these issues involving a membership that includes politicians?

Lord West of Spithead: There is not a standing committee that sits there, that sits every week or every month looking at this.² What we do is we have an exercise programme. I suppose the only slight bit of sympathy I might have had with Andy Hayman—and it is very slight, because actually I think some of the things he said were not actually quite right or appropriate—is that one needs a very thorough exercise programme. All my experience from the military makes me a great believer in exercising and practising things. There had been quite a large-scale exercise in fact, as I understand it, about two or three months before the 7/7 event; but certainly when I came in 2½ years ago I felt we needed a more comprehensive exercise programme. That is now in place; and that goes from right down at the lowest level where there will be a small exercise there, and right up involving more and more, right up to ministerial level. Where I have sat on a “counter-terrorist COBR” is where I have sat there for exercises to make sure the play is going sensibly and to learn all the lessons.

Chairman: Thank you. We will come on to the rest of that.

Q6 Mrs Dean: Do I take it then that we do not think a two-tier system, in which operational plans are decided by experts and then discussed with politicians, would be an improvement to the current system?

² The witness later clarified that, work on security and counter terrorism is overseen by the Ministerial Committee on National Security, International Relations and Development (NSID), chaired by the Prime Minister. It is supported by a number of sub committees which consider issues such as intelligence; nuclear security; Afghanistan and Pakistan; protective security and tackling extremism. Tactical coordination of CONTEST is facilitated by a Weekly Security Meeting (WSM) to discuss the threat and our response to it. This is chaired by the Home Secretary with senior representatives from the intelligence and security agencies, the police and key Whitehall Departments.

Lord West of Spithead: There are certain outline plans of how one would react to certain events—those exist. Certainly, let us say in the area of a Mumbai-style attack, I am very closely involved in making sure we have what we call in the Navy a “pink book”, an outline plan of how we react to that. We all know that any plan only lasts as long as contact with the enemy so that plan, to talk it through in infinite detail, I think is counterproductive. What you need is the outline plan to make sure you get the right sort of people there; that at each level each of those small sub-units have exercised and practised these things; and then it can be pulled together and coordinated. I think that is a better way of doing it.

Q7 David Davies: Lord West, are you satisfied as Security Minister with the legal tools at your disposal, in particular control orders?

Lord West of Spithead: When I came into the post I was concerned, as I think the Government was concerned, about control orders, because it is not something one likes to do. The ideal thing to do of course is to take someone through the courts, find them guilty or not guilty, and if they are guilty put them away for a considerable sentence. That is what I would much rather do. If they are not British nationals and have no right of abode here and can be sent back somewhere then get them out of the country. What is quite clear is there are some categories of people where we cannot achieve that, for reasons of intelligence—lots of intelligence but no evidence; and we have seen issues like this before—who are a very real threat to the nation; and somehow one has to manage that at a sensible cost in terms of not just money but in terms of resource. I specifically asked for a study to be done into this area because I needed to be sure there was no other way of doing this in a sensible way; and that study was done for me.

Q8 David Davies: Lord West, approximately how many people in this country are foreign nationals who cannot be sent back because of human rights considerations but whom you and the Security Services think pose a threat to this country?

Lord West of Spithead: I would have to check the exact figure but we are talking about a handful of numbers—about 15 or something like that.³ That might not be the exact figure because there are variations.

Q9 David Davies: Lord West, there are seven people living in Britain who are listed on the UN list of al-Qaeda members, which is available online. We believe—I believe—there are hundreds if not thousands of people who have come here claiming asylum using the excuse that they were members of the Taliban, so there must be actually rather more than 15 whom we should be concerned about, are there not?

³ The witness clarified that, this is a reference to the number of individuals subject to a control order—which as of 10 September 2009 was 15.

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Lord West of Spithead: Yes—I have forgotten what the exact figure is—there are something like 2,000 people whom we are keeping varying close eyes on because we are concerned, but they are not in the same status as those that we have got control orders on.⁴

Q10 David Davies: Is it not the case that many of them are wanted in the countries which they have come from and cannot be deported because they might not get the same level of service from their judiciary that they would get from a British court, and they use that as an excuse? Would it not be sensible, as a former serviceman yourself, for us to tear up the Human Rights Act; to say that anyone who comes here from a foreign country needs to prove themselves to the Home Secretary or not get the benefit of the doubt, and “if we don’t like you you’ll be chucked out; and it’s your problem, not ours”; rather than pumping hundreds of thousands of pounds in Legal Aid into all sorts of appeals and things which usually fail?

Lord West of Spithead: I think tearing up the Human Rights Act would be an outrageous thing to do. One of the things that marks our country out from actually a huge number of countries in the world is the fact that we do take these things very seriously

Q11 David Davies: And have got 2,000 foreign nationals who pose a threat to us as a result.

Lord West of Spithead: I think sometimes one has to take a certain level of risk—which we manage very carefully, and control orders are part of that—to ensure that one does have these safeties and things that I am so proud of.

Q12 Patrick Mercer: Taking it a bit further on control orders—it is untidy. We have had many more than 15 control orders; but let us agree a number of about 15. Recently, a year or so ago, when one of these control order individuals absconded, well, he just absconded and just disappeared; and there did not seem to be, from the Counter-Terrorism Minister, a great deal of angst about that. If you accept that it is a difficult thing to get round—and I would certainly agree with that—what is the way forward on control orders; where are we going with them, because it is desperately expensive and desperately untidy?

Lord West of Spithead: The last person to abscond on a control order was in June of 2007. Nobody has absconded since I have been Minister for Counter-Terrorism; but that certainly was the last time someone absconded. One cannot say for sure the controls are not so tight that it is not possible; but, as I say, none have done that since then. The costs of doing this, I believe, in terms of resource and probably money as well—but certainly resource—are less than if we monitored them fully with SO15

and with the Security Service to ensure the same levels of security. Lord Carlile has looked at this and believes they are an appropriate thing to do and actually meets the required effect that we want. I would agree with you, it is not something we want. As I said, I would *much* rather not have to have them; but, having looked at it in great detail, I believe that we have to have them. There is the issue of having to go through them, which we are doing one-on-one, to check about what has been disclosed to the defence in terms of the trial—this came out of the judgment because of ECHR—and we are doing that. I think even having looked at that judgment we believe there will still be a number of cases where it is best for the safety of this country, and it meets all of the criteria that need to be met, which will still enable these control orders to be kept. If there was an instant answer and an instant panacea to do it in a different way I would love it; but, as I say, I have looked at this a great deal, I had a big study done on it, and I do not think there is.

Q13 Chairman: The Government is looking at this matter again following the court ruling, is it not?

Lord West of Spithead: It is, and we are working through each case in turn. Basically, you have to disclose more information to the defendant.

Q14 Chairman: How long is that process going to take?

Lord West of Spithead: We should have finished that I think by the end of the year roughly. I do not know the exact date.

Q15 Chairman: By December you are telling this Committee every person who is currently the subject of a control order would have had more information disclosed to them?

Lord West of Spithead: I think I would be wary saying it exactly. As you are probably aware, we dropped a control order on a couple of people because the disclosure of the information would have been very damaging to the nation.

Q16 Chairman: I understand that.

Lord West of Spithead: What we are going to do is we are going to go through and make sure every case is reviewed and looked at. The exact timescale I am not sure; if I could maybe come back, Chairman?

Q17 Chairman: How many people are part of this process?

Lord West of Spithead: As I have said, I need to get advice on exactly how many there are at the moment. We are talking about a number of about 15, something like that.

Q18 Chairman: You hope to have this completed by December?

Lord West of Spithead: We hope to have it completed by the end of the year; but, again, could I confirm exactly the date.

⁴ The witness clarified that, this is a reference to the number of individuals who it is believed posed a direct threat to national security and public safety, because of their support for terrorism (as reported by Jonathan Evans, Director General of the Security Service, in his address to the Society of Editors on 5 November 2007).

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Q19 Chairman: Would you write to this Committee, setting out the numbers who are subject to a control order?

Lord West of Spithead: Absolutely. That of course varies, but I will write in with a specific date.

Q20 Chairman: Also when you think this process will be concluded?

Lord West of Spithead: Yes.

Q21 Patrick Mercer: The two gentlemen who had control orders dropped against them, could you just remind me what their status is now?

Lord West of Spithead: As I understand it, and I would have to check up on this, they are no longer under control orders.

Q22 Patrick Mercer: So they are free to wander the streets?

Lord West of Spithead: They will be dealt with—and when I say “dealt with” that is not a very good expression—in terms of the security of this nation, there will be adequate things put in place to ensure that our people are safe.

Q23 Chairman: That is not an answer to Mr Mercer. If they are not the subject of a control order, if you drop the control order, where are they; what controls are there on them? Could they be in this room watching your evidence session?

Lord West of Spithead: Basically the Security Service and SO15 will be putting in measures they think are appropriate to ensure they are not a risk, rather like the 2,000 people that are being monitored.

Q24 Chairman: So they are under surveillance?

Lord West of Spithead: Yes.

Q25 Patrick Mercer: They are under an expensive form of surveillance?

Lord West of Spithead: Whether it is more expensive or less I do not know. There will have been a judgment made on that. As I say, the really high risk people, the people who are really a great risk to us, the study that was done showed quite clearly that in terms of resources the resources involved would be a lot greater.

Q26 Ms Buck: Lord West, can you confirm that there are around 1,500 interception warrants issued every year? Could you perhaps give us an indication of how that figure might have changed over, say, the last five years?

Lord West of Spithead: I am afraid I do not have that. Could I write about that—I do not have that at my fingertips, I am afraid.

Q27 Ms Buck: Yes. Given that interception evidence is not admissible in court—and I think there are going to be some other questions specifically about that—what is the purpose of it? In what way does that actually enhance our security and enable us to bring people to a successful prosecution?

Lord West of Spithead: It is the difference really between intelligence and evidence. When you get intelligence and gather that, if that intelligence shows that someone is intending to cause harm or do something that is criminal, you hope you will then be able to move forward and get evidence to build around that to build a case. The intercept is often the very first way we get an indication that somebody—and I am talking now in counter-terrorist terms, but it is very, very important of course in serious organised crime as well—might be linked to some group that intends causing us damage, say for example to an al-Qaeda link or something. That can very, very often be the first bit of information we get. I think intercepts are involved in 95% of serious crime investigations.

Q28 Ms Buck: On specifically an issue of counter-terrorism, the proportion of intercept warrants that might result then in a prosecution would be what? I presume somebody is actually analysing the relationship.

Lord West of Spithead: I am afraid I do not know and would have to get back to you on that.

Q29 Ms Buck: I would be very grateful to you. Finally, the fact that most other countries are permitting intercept evidence, how do they actually get round what we understand to be the principal barrier, which is that disclosure about intercept would reveal too much about the way our intelligence services operate?

Lord West of Spithead: I think, first, one has got to be very careful in saying that most countries do this; because there are differences in the sort of intercept and who does it. For example, if one looks at the US, FBI-type intercepts—which very often are what we think of in the old-fashioned phone tapping—are allowed to be used; but the clever stuff—because nowadays there are so many methods of communication which is done by NSA—is not actually used in the same sort of way. It is a bit apples and oranges—comparing it. I think the other aspect is that many, many countries actually have nowhere near the sorts of capabilities that the US and ourselves have. We very often are helping out our European allies by telling them, “Look out, you’re about to be bombed” sort of thing. There is quite a difference there; so it is not quite as clear-cut as one might think.

Q30 Mr Streeter: Just staying with the use of intercept evidence in court, Lord West—and I agree strongly with you, that your preference is that people should be brought to trial and convicted if they are guilty and so on, rather than control orders or other forms of action—the recent airline bomb plot case, where intercept evidence was effectively introduced through the backdoor via California and helped to secure a conviction in that case, does that help you as Security Minister to push the rest of your colleagues in Government for a change in the law over here? It did seem to make a slight mockery of it

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that it was an important part of the case but it could not come directly from the UK but same in via Yahoo! in California.

Lord West of Spithead: I am glad you raised that one because I think there have been quite a lot of misconceptions about it. That was not intercept. During the first trial the defendants declared their email address and said, “These are our email addresses”. Initially we did not pursue the fact that those were their email addresses with great vigour because actually we believed that the original evidence was so overwhelming, including their martyrdom videos and everything else, that we could not believe they would not be found guilty; and I am very glad to say now three of them have been found guilty. Then when we found they were not we thought we had better get every single bit of stuff together. We did not intercept this; we went to the US police and the US State Department, and the US service provider was asked to provide us with all the emails within the box of that particular address, so this was not intercept. That was then provided and that is where they were. So this was not actually a case of intercept being used as evidence; it was done in that way. As regards intercept as evidence, I believe Chilcot was absolutely right, it needs to meet the nine conditions he has got; because this intercept stuff really is the crown jewels. I talk about the 95%—it is so crucial in our fight against terrorism; and we know how quick and how cute these people who wish to kill us are about this. Osama bin Laden back in the 1980s, when I was CDI, used a mobile. There is no way in a million years you would use a mobile now because we have all seen on the television, because it has all come out in court, what this means. Every time every little bit comes up they learn it. Bang, they do not mess about and it makes it harder for us to do things. We need to be really careful I think in that area.

Q31 Tom Brake: Lord West, you mentioned our European partners, and I was just wondering to what extent we do work effectively with other European countries and also the Middle Eastern countries, for instance; and the extent to which their willingness to work with us is driven potentially by other factors, such as political factors or economic factors?

Lord West of Spithead: We have a large number of bilaterals; all the agencies have this, and within the Home Office the OSCT; we have a lot of bilaterals. We talk to Europe also in the context of the EEU. In fact, I was over there last week specifically primarily to talk about cyber terrorism and cyber security; because I am very concerned about cyber security and, as you are aware, we have just produced our first ever British cyber security strategy; and that was the area I was talking about. Within the context of the EEU there has been movement. There are some good things done. There is a bit of work done on the CBRN area; but we need to do more and that is part of the reason I was over there; we need to do more there. Because of the sensitivity of some things—almost inevitably it has always historically been done this way and I cannot see it completely

changing—you do tend to work on a bilateral basis. For example, when you have got very, very sensitive information, which probably you would not normally share but when you know it is to do with an attack in a friendly nation, you would go and tell them that and talk to them specifically one-on-one about that to give them a heads-up because it involves the lives of people of that nation. There are a number of factors, as you say, that are involved in how you have your dealings. There are some people you deal with much more closely. For example, GCHQ and NSA are joined at the hip because of the agreement signed in 1948 which has run ever since; and then you go to the other extreme where there are people whom you deal with a bit arm’s length really; but you need to deal with them because it will affect the safety of people in this country.

Q32 Mr Winnick: One or two questions on other threats, Lord West. As regards the security of our country, are you now satisfied with the 28 days pre-charge detention?

Lord West of Spithead: I am content with where we stand on that. The difficulty always is the difference between intelligence and evidence. If you look at some of the trials that have gone through, we have needed quite a long time to turn intelligence into evidence. The Overt trial, there was no actual evidence on the day we arrested these people; it was all intelligence. The police have this huge job then to go through and get all this together. I am content where we stand at the moment.

Q33 Mr Winnick: You were content when you were interviewed. If you remember, you said, “28 days is sufficient”. Then you went to Downing Street—and I am sure it was a pure coincidence—and, a few minutes or half an hour after your original statement that you were content, you wanted an extension to 42 days. You are satisfied now with the 28 days?

Lord West of Spithead: I think I would probably put that differently. It is not really worth going into that now. I would put it in a different context from that. We were looking at a longer period and I think we needed to weigh up all the pros and cons of that, and that is what we were doing. I am content with the 28 days.

Q34 Mr Winnick: A good politician’s answer, Lord West!

Lord West of Spithead: I am learning, you see!

Q35 Mr Winnick: The threat from mass murderers who claim they are doing this in the name of their religion, however warped, is of course our main concern and must be: but are there other threats to our security—the latest news for Northern Ireland is dissident Republicans, animal rights extremists and so on and so forth? Do you feel the Security Services have sufficient resources to deal with these threats as well as the main one which I have mentioned?

Lord West of Spithead: The resources to our agencies have been increased dramatically. By 2010/11 we will be spending £3.5 billion a year on counter-terrorism, which is a significant increase.

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Q36 Chairman: How much was it ten years ago?

Lord West of Spithead: About a billion. So that is a huge increase. Rather like as an Admiral I always want more ships, then the Security Service I am sure always want more money to do things. One has to look at these things in balance. I am satisfied that these other threats—and you are absolutely right—they are there and they are very real; whether it is the splinter groups of Republican terrorism in Northern Ireland, which unfortunately we have seen a growth of, I hope some of our successes and some of the trials will actually have an impact on that; and I hope as the Agreement moves forward that will have an impact as well; but that is taking quite a lot of effort and the Security Service have put more effort into that arena again, because of that problem. As regards other extremists, you will have seen in the newspapers we do regularly get rightwing extremists, people with certain beliefs or complete nutcases, and a whole spectrum—the animal rights people, we had some huge successes against them because they were violent terrorists who were quite happy to kill, maim and things like that—and I am content that the balance is there. You are quite right raising it. It is a tricky issue, because there is no doubt the biggest threat to us all are the al-Qaeda-inspired terrorists whose sole aim is mass killings, to kill as many people as possible; it is quite horrifying actually. That means we must not forget these others, and we do not. We have had some considerable successes there.

Q37 Mrs Cryer: Lord West, after 2½ years in office and following everything that has been discussed this morning, is there anything further you feel could be done to improve the system?

Lord West of Spithead: I think the system is actually quite good. I think one of your sub-committees actually said that the structure and the underlying system, the underlying strategy, you were very impressed with it. I was pleased about that because actually I do think in the last 2¼ years it has really firmed up and I am very proud of what has been achieved. One would be very bigheaded and pigheaded to say there are not things to be done to improve it, I think there are; and I think we continually need to look at it and refine it and as things happen; and, God forefend, we have been extremely lucky but, my goodness me, they only have to be lucky once. I have huge admiration for our agencies, for the police, our unit SO15, because all of the time they are continually dismantling plots, doing things to keep us safe. Yes, something that can be refined. I go back to this thing, I do like exercises; some people get fed-up with them but it does expose things and it lets you get better and refine things and make changes.

Q38 Mrs Cryer: But there is nothing specific that you want to mention this morning?

Lord West of Spithead: No, there is nothing really where I think there is a real rotting problem that needs to be got at. There are little fine-tuning things that I am involved in that I have told the Cabinet Secretary about and that sort of thing but nothing of

major import. Are there some areas within counter-terrorism that worry me? I mentioned the whole domain of cyber security and that is a real, real worry that area. The other one is CBRN again where, when I came in 2¼ years ago, I did not feel there had been enough impetus and that is a real concern.

Q39 Mr Streeter: Prompted by what you said there, Lord West, about being vigilant and seeing new threats and so on, were you surprised by the ease at which 40 people could get up onto the roof of the House of Commons? If they had been terrorists with hand grenades, not because we are here but because it is our Parliament and they could have blown it up, is that something that would come across your desk now in terms of reviewing security?

Lord West of Spithead: I know that the Commissioner Sir Paul Stephenson has got a sally straight away going into that. I think the Sergeant at Arms is looking at that.

Q40 Chairman: I think what Mr Streeter wants to know is, does that not cause you concern?

Lord West of Spithead: Yes, I think the bottom line is I was concerned *but* we are an open and free democracy. We have put in place a lot of things and I know some people seem to think we are a surveillance society; all I can say is I do not think they have ever lived in a surveillance society, but that is another issue. I think that was rather too easy, the way they were able to do that; and I am sure looking into this will bowl out a way of doing it. It goes slightly towards where we talked about the Mumbai issue, where we are doing a lot of work on that. It is extremely difficult in an open society to stop there being initial casualties, if you have some men who have been trained to military standard, three or four of them, with relatively heavy weapons; the damage they can cause in the first few minutes is dramatic. One has to use other methods of intelligence and the agencies and all of these sorts of things; because if it gets to the stage where they are actually on their 159 bus going up Whitehall carrying that you have got a problem.

Q41 Chairman: A final question from me. Do you think the Prime Minister was right when he appointed you to this extent: has the country been safer because you have been doing this job?

Lord West of Spithead: That is a difficult question for me in a way. My assessment is—none of my immediate people behind me are shrieking with horror because there could be an attack as I am speaking—I believe that we are safer than we were 2¼ years ago. I believe a whole raft of measures are in place that have made a difference and that is because of some very hard work by the OSCT, by people across Government, by the police, by the agencies; and that work I think is accelerating and getting better. I believe AQ have been put under a lot of pressure, and I think we are safer. That does not mean we are safe. That does not mean we are safe.

Q42 Mr Winnick: We did not expect you to say no to the Chairman!

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Lord West of Spithead: I know; I would have had to have left straight away, would I not!

Q43 Chairman: Mr Mercer is bursting to ask you a very, very brief question. We have many witnesses.

Lord West of Spithead: I am always wary of colonels talking to admirals. It is a bit of a worry, is it not!

Q44 Patrick Mercer: Should your post be in the Cabinet?

Lord West of Spithead: A very good question. I think probably I am very happy being a junior minister; and I get the access that I require. There is some fine-tuning I would like to do. I think it is a very good question and something we need to think about very closely for the future.

Chairman: That is a very humble answer and we are very grateful. Lord West, we know you have committee business and parliamentary business later on today dealing with legislation before the House. We are extremely grateful to you for coming in at such very short notice. Thank you very much.

Witness: Rt Hon Dr John Reid MP, Home Secretary May 2006-June 2007, gave evidence.

Q45 Chairman: Dr Reid, thank you very much for giving evidence to the Committee. Welcome back, if I may say so, to the Home Affairs select committee. We are extremely grateful to you because we know that you are unwell and you have left your bed at home to come here specifically to give evidence before us; we are extremely grateful. We believe very firmly in this Committee with short questions and short answers because we have a number of witnesses coming up. As you know, this is an inquiry into the counter-terrorism agenda of the Government—in particular, what are the structures that have been used—some of which organisations you have chaired. You chaired COBR; you set up the Terror Warning System; and you were involved in Operation Overt, which the Minister referred to just now when he gave evidence. I understand you would like to make a very short statement outlining your points, is that correct?

John Reid: Yes. Thank you for your invite and I am pleased to accept for two reasons: one is that I think national security is above party politics and it is an issue that a committee like this can deal well with; and, secondly, while I am here I am not getting investigated in hospital, so I am happier here than I will be later this afternoon! Two things I think: I have done your Committee the courtesy of looking at what you are inquiring into, Chairman, and I would make two points: the first is that, from my own experience, COBR on the specific nature of the questions you are looking at, for all its faults—and any system has personality/power clashes and has difficulty coordinating such a multifarious series of participants in dealing with the problem of counter-terrorism—works very well in general terms. You are right I did chair it; on several occasions I was a participant, so I speak with some experience. I was involved in establishing some of the warning systems and so on. The second point I would make is that what I am probably more pleased with, especially after listening to Admiral Lord West, is the establishment of the Office for Security and Counter-Terrorism. I think that was absolutely essential. It was not unanimously supported at the time, I have to say; there was huge resistance in certain quarters of Government, as there always is when you establish something that is as radical and as new as this; but, in a sense, the strengths of

COBR, which were illustrated during Operation Overt to which you referred earlier, coordination, communication, real-time information, but COBR itself is reactive; it is temporary; it is ad hoc; it is formed for a specific purpose for a limited period. What the Office for Security and Counter-Terrorism did (and this is why I wanted it formed) is it institutionalised that coordination, that exchange of information, that grouping together of MI5, MI6, defence intelligence, Foreign Office and so on, in the Home Office but participated in and owned by all of the counter-terrorist elements pan-government. That is absolutely essential because the threat against us is seamless. It can no longer be divided into foreign affairs, defence, home affairs and so on, and therefore our response has to be seamless.

Q46 Chairman: Given what you have just said, is it now not the time for the establishment of a National Security Council along the American model, where you have a permanent body at a very senior level dealing with the Prime Minister and the Home Secretary that will take what you have established to the next step?

John Reid: Personally that is what I favoured. I wanted to streamline the whole of our counter-terrorist operations and, insofar as we could, coordinate and channel it towards a common effort. Let me take one step back in answering the question. The first thing that I wanted to do was to analyse the threat; and the threat was largely, though not exclusively, from Islamic extremism like al-Qaeda. What were the characteristics of that threat? One, it was seamless. It could no longer be divided into the old compartments; two, it was politically overseen and driven; it was franchised out to local organisations, but globally it was driven by a political narrative and a political drive; three, it was strategic; in other words, it looked over 30, 40 and 50 years; four, it had an ideological base, and therefore there was a narrative and an argument behind al-Qaeda. If that was the nature of the threat, I believe that should be the nature of our response. Therefore, the Office for Security and Counter-Terrorism was formed in order to make it seamless, to coordinate it, to have it politically overseen by the ministers like Lord West and then the Home Secretary, up to the Prime Minister himself, and that it was strategic that

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it looked not only at today's problems but tomorrow's threats as well. If you were going to do the Office for Security and Counter-Terrorism like that you should have a chain of command that went clearly up to one Cabinet committee, which in my view should be entitled and formed as a National Security Committee on which you would have the Chair of the Prime Minister, but you would also have an advisor like Robert Hannigan at present or Lord West, who would be the personal advisor to the Prime Minister, and who would also have a chair at Downing Street.

Q47 Chairman: Very similar to the American system where you have Condoleezza Rice and others coming in?

John Reid: Absolutely. In the nature of all change, I had to compromise because there is resistance to change. The Prime Minister backed me on the Office for Security and Counter-Terrorism. It appears that nobody wants to get rid of that now. Everyone thinks it is a success, although at the time there were pretty much elements against it. Now, of course, the second element, which is the National Security Council, is worth considering.

Q48 Chairman: A recent book on MI5 suggested that the Security Services took a long time to recognise the threat specifically from Islamist terrorists based in the United Kingdom. While you were Home Secretary did you feel that you had sufficient resources to give the Security Services and others to tackle the threat specifically of Islamic terrorists?

John Reid: There was a considerable increase in the resources. There is no doubt at all that the intelligence agencies faced a huge and radical challenge. Why? Because the nature of this new threat was different from almost anything they had formed before. The two elements of threat as you well know, Chairman, are intention and capability. Generally speaking, the intention of terrorists prior to this had not been unconstrained mass murder. It is obvious now that that is an untrammelled intention. Up until relatively recently nor did terrorists have the possibility of having unconstrained capability; but with the development of chemical, biological, radiological, nuclear weapons, terrorists now have both unconstrained capability and constrained intent. So the nature of the challenge was huge for intelligence services. I think we did increase the resources hugely. I think the intelligence services responded with huge efforts; but actually it is not as easy to spend some of these resources as you would think; because in order to recruit new people with new language skills, new cultural appreciation, in new communities when you change towards, say, Islamic extremism, is actually quite difficult. By and large, the intelligence services did their job. My assessment was that we in Government had not created the pan-government systems and structures that fully complemented the new seamless response by bringing people together; that is why the OSCT was so important.

Q49 Mr Winnick: Dr Reid, of course we all wish you a full recovery very soon. MI5 plays a very, very important role, obviously, in trying to defend our country against all forms of terrorism and indeed subversion. The recent book that the Chairman mentioned made the point about what happened in the 1970s that MI5—and I would like your view on this as a previous Home Secretary—was accountable of course to the Prime Minister of the day; that is the rule of law. Yet the person MI5 was responsible for, the Prime Minister Harold Wilson, was indeed the subject of an investigation and inquiry. Does that not seem to you to undermine the rule of law?

John Reid: I am not qualified to comment on what happened then. I have read some of the press reports about what was going on. In theory I suppose no-one is above the law, including MPs, ministers and presumably theoretically also the Prime Minister.

Q50 Mr Winnick: And MI5 itself?

John Reid: And MI5 itself indeed, which is why the job of committees such as this and the Intelligence Committee are so important. Everyone in the country is subject to the law, and presumably if somebody is breaking that law or there is prima facie evidence that they are then the intelligence services have to do their job. As I said, I cannot comment on something that happened long before I was an MP and for all I know, along with many other Cabinet ministers, might have been the subject of the same surveillance.

Q51 Mr Winnick: During the time you were Home Secretary, you were satisfied that all was well as far as MI5 was concerned?

John Reid: Yes. To the best of my knowledge MI5 were operating within the law. They were accountable. They were directing their energies towards the main enemy, which was then and is now al-Qaeda but there are other threats: the dissident Republicans of course that we mentioned; and I think, like everyone at this Committee, I very much welcomed the statement from the INLA the other day, two days ago, that for them the military struggle was over; we will wait and see if that promise sticks, but I certainly hope it does; but there is also espionage from the East, which became an increasingly difficult challenge for the Services to face; but so far as I was concerned throughout this I thought that MI5, under Eliza Manningham-Buller and then Jonathan Evans, MI6, under John Scarlett, performed admirably in the face of huge challenges.

Q52 Mr Winnick: One further question, different from the two I have asked, Dr Reid, is this: as far as 7/7 is concerned, when those atrocities took place 52 totally innocent people murdered and many others seriously injured four years ago, many and that includes me had a strong suspicion that it was not just home-grown—that the terrorists had been involved with al-Qaeda abroad; and yet MI5 gave the impression then and for a time afterwards that they were not so persuaded; they have been since, I understand, because of a video made by the

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ringleader of the mass murderers. I am wondering why it is that lay people involved had a pretty strong suspicion, as I have mentioned, but not MI5 itself?

John Reid: I think like anything else in a fast-changing world all of our ideas and understanding are developing, and there are two things that are developing: one is the nature of the threat itself; and the second is our understanding of it. The nature of the threat that we are now facing I have already said is unconstrained in intention and capability; but it is also—and there is a horrible sociological word—“glocal”; it is global and local. That is why I say it is seamless; it cuts across domestic and foreign affairs. That is one of the reasons, incidentally, why it is better to have one committee dealing with this, rather than divide it up into the old domestic affairs committee and the home affairs committee; it is better to have a national security committee. Basically, there are elements of global and local parts of the threat. The perfect example hypothetically is a plan that is hatched and developed abroad, which concerns a transatlantic airliner, which comes over national airspace, possibly near a local power station where there is a local community. There you have all the elements of a global and a local threat.

Mrs Dean: Dr Reid, can you explain to us what happens in the immediate aftermath of a terrorist attack? How does the Home Office respond?

Q53 Chairman: Before you do that, we are under huge time constraints, Dr Reid, so if you could be as brief as possible in your answer.

John Reid: Basically what happens if you want to run through the various elements of it, once an incident, which looks like a terrorist incident, is declared someone called a “government liaison officer” in the Home Office team (this is certainly how it happened three years ago; some of it is now incorporated within the Office for Security and Counter-Terrorism under Charles Farr) would be dispatched to the police force concerned. Contact would be made with the local commander, the Gold Commander, who would be appointed. The head of the Counter-Terrorism Unit in my term as was—it has now been replaced by a Home Office operational support team—briefs the Home Secretary, and then remains contact between the Gold Commander on the spot and the Home Secretary himself; simultaneously, as the Home Secretary is being briefed, consideration will be given to the raising of COBR within a very short period if it is serious enough; COBR will bring together all of the various elements from the various departments and intelligence agencies who can exchange and coordinate information *but*, and very importantly, COBR does not run the operations; the operation is always run by the Gold Commander. What COBR can do is supply support; make sure that in real time everybody is working on the same information picture, and carry out communications to the public and perhaps internationally and diplomatically. That is as short as I can be.

Q54 Mrs Dean: Do you think COBR is fit for purpose when dealing with terrorist emergencies?

John Reid: Yes, I do. I was in it as a participant during 7/7, I chaired it and I suppose led deliberations during Operation Overt and during Litvinenko, and in my experience it contributed hugely to coordination of effort, communication and support. I understand there have been criticisms, not least by Andy Hayman. Andy is a great cop; was a very good head of the Counter-Terrorist Unit. I do not know why he felt the way he did about some instance of COBR; but I understand at the time he was dealing with it basically there could have been a perception that there was not a clear chain of command; because at that time I think there were two permanent secretaries in the Home Office, for instance; and, secondly, there was this burgeoning question of who was ultimately responsible for the counter-terrorist coordination. Was it the Cabinet Office or was it the Home Office? There may have been elements there that caused that perception to arise on his part, I do not know; you would have to ask him. Certainly from my experience it is a hugely valuable tool. The only limitation is it is reactive and temporary, which is why I tried to institutionalise it in a permanent Office for Security and Counter-Terrorism.

Q55 Bob Russell: Dr Reid, if we do track down Mr Hayman and get him here we will indeed put that question to him, but he is being elusive at the moment. In your experience, is COBR the correct vehicle for coordinating the immediate Government response?

John Reid: Yes; for the immediate Government response, yes. I repeat it is not the operational unit. The operational unit is around the Gold Commander; but, when an incident is as important as some of these counter-terrorism incidents are, it is absolutely essential that everybody has the same information. The first thing you start with at COBR is called CRIP—the common recognised information picture—and so everybody is working from the same basis; and that is very important. So I think it is the appropriate body.

Q56 Tom Brake: The Committee understands that the membership of COBR does vary depending on the situation. If that is the case, could you explain to us who actually decides who should be there?

John Reid: Ultimately, it would normally be the Home Secretary in consultation with the Cabinet Office, who perform a lot of the functions, and the Office for Security and Counter-Terrorism who deal with a lot of the substance and strategic thinking. Perhaps an example is the best thing. If you were dealing with a normal counter-terrorist operation, for instance Operation Overt, a key element of that who obviously would have to be there would be transport; therefore throughout that I was very glad that the Secretary of State for Transport Douglas Alexander, as he was then, was involved in all of these meetings throughout the night in order to work in partnership with us. On the other hand, with the Litvinenko problems, where we were worried about perhaps some sort of spread of disease or chemical attack on the population in London, the Health

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Protection Agency would have been a key element being there, and perhaps AWE, Aldermaston or the Atomic Weapons Authority or some of our scientific-based organisations would be more prominent in other instances. It is, I suppose, a mix and a match according to the nature of the incident itself.

Q57 Tom Brake: From what you have described, in effect the Home Secretary has the veto on who is there or not?

John Reid: The Home Secretary would ultimately be probably in most cases the most determining factor, because the Home Secretary would normally chair COBR, although there would be occasions when, if it was important enough, obviously the Prime Minister might do it; but on occasions it would normally be the Home Secretary; indeed, I can remember chairing COBR meetings where the Deputy Prime Minister came in and sat but played a participant role at his decision and allowed the Home Secretary to get on with the chairing of it.

Q58 David Davies: Dr Reid, you have already mentioned the role of the Government Liaison Officer who goes to the scene, liaises with the Gold Commander and goes back to COBR. Could you tell us whether they get specific training? Without giving away the individual's name: is it one, more than one; what sort of background do they have; are they coming from a military, police or security service background, or a civil service background?

John Reid: One, there are several of them at any given time available.

Q59 David Davies: 24 hours a day?

John Reid: Absolutely, so that they could work in shifts; they could be available at any time of the day; they are very, very important. The Government Liaison Officer would often sit with the Gold Commander, which means that he would liaise between the Home Secretary and the Gold Commander, freeing the Gold Commander to do his operational job. He would be appointed in those days by the Home Secretary, now by the Deputy or the Director of the Office for Security and Counter-Terrorism, and there would be several people who would get specialist training for the job; they might come from any number of different backgrounds; they would traditionally be part of the Office for Security and Counter-Terrorism; they would do on-the-job training; and they would complete several, I think three, live exercises a year.

Q60 David Davies: Would it be reasonable to assume that most of them have had experience of the police, armed forces or the Security Services; or are they quite possibly coming from completely different backgrounds?

John Reid: They would normally. I cannot speak with statistical authority, but normally you would expect them to have at least experience of those backgrounds, yes.⁵

Q61 David Davies: Because of the risk of multiple attacks at the same time, there are enough to ensure that, say, four or five could be available immediately?

John Reid: In my experience, yes. There are several of them who are available not only for multiple attacks but obviously to coordinate throughout the day. When something like this happens everyone goes on a pretty long shift. I would normally have slept in my office in the Home Office; Douglas Alexander would have been up similarly all night; and at least when we were getting some sleep we knew that there was a continuum of liaison officers and officials, because they would work through the night as well, and that is what you would expect.

Q62 Chairman: How many times did you have to do that—stay at night in the Home Office during these events?

John Reid: Other than the odd night, on two occasions there would have been several nights where you were doing that—it just was easier.

Q63 Patrick Mercer: Dr Reid, I hope you get better. Two very brief questions: first, if we could just come back to 7/7 and 21/7, I appreciate it was before your time but why do you think it was, when two attacks occurred on Thursdays at similar times, similar targets, similar modus operandi, carried out by very similar sized teams, the latter team had clearly done its operational analysis of the first attack, why do you think it was that the Home Office and the Government insisted there was no connection?

John Reid: I do not know is the straight answer to that. At the time I presume because those who are answering that direct question have to base their answer on some form of evidence and there is a difference between coincidence and evidence of a relationship and a link.

Q64 Patrick Mercer: Okay. Thank you. Secondly, are we concentrating enough on Irish dissidents?

John Reid: I think we are. Look, given the nature of the threats that are there, you could argue for more to be put into it. It has been argued for more to be put into Irish dissidents. Admiral Lord West mentioned all sorts of groups that are arising, including animal welfare extremists. I think probably we have got the balance right, because the overwhelming threat still comes from organisations like al-Qaeda. At the time of Operation Overt I think we were on the second highest level; I think it was just beneath the highest level; I think we have

⁵ The witness later clarified that, regarding the experience of the Government Liaison Officers should not be read as implying that they were, or are, former members of the Police or the Armed Services. That is not the case. They are in fact civil servants who have extensive experience of working with both the military and the police including three live and some 12 table top exercises each year.

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dropped down one, but there is still a substantial threat; I think it went from severe, up to critical and back to severe; it has now gone to substantial; but there is still a very, very substantial likelihood of a terrorist attack; and, as he said, it only takes once to get through. My own view, and it is a personal view, is that we have come a long, long way since we started to establish the Office for Security and Counter-Terrorism; I think it is doing a great job under Charles Farr, but I would not be the least bit complacent; and personally I would like to see that develop further in terms of our analysis and strategic capability and streamlining, whether that is through a National Security Council or, indeed, further consideration of something like Homeland Security issues. Indeed, that is why I continue to be interested in this area, not just as a Member of Parliament but also as you probably know I am trying to establish an Institute of Security and Resilience Studies at University College London, because I think there is a continual need to update our systems and structures, because the threat continues.

Q65 Tom Brake: Very briefly, Dr Reid, we have heard the news announced today that al-Qaeda apparently is running out of funding to conduct the training that it needs to do. Do you think that perhaps we need to be devoting more resources to trying to tackle in that slightly different way, in terms of cutting their sources of funding? What more could we do in that respect?

John Reid: I think there are two elements: the first is whether we direct increasing effort towards the freezing of funds. The answer is, yes, but this a

hugely complicated, complex and developing area; because if you look, for instance, at elements of the cyber challenge we face, you are now getting a position on the internet where you get virtual money. There are people who are buying and selling on the internet with virtual money. If you are looking ahead on that—and this is why we need to think strategically—that will become, just as the internet has become in some ways a camouflage for paedophiles or others, then the instance of virtual money and the development of new internet capabilities could become another way of transferring and raising funds for terrorism. That is the first thing; so, yes, we need to continually update our capacity to choke off the funds to terrorism. The second thing is the transformation, which will continue, in the nature of the threat even within Islamic extremism; because al-Qaeda may not remain forever the main threat as an organised body; but there are others out there who are equally capable of developing as a threat on the basis of a centralised narrative; in other words, it is almost like a franchise; there is a global centralised narrative but there are others who are pursuing the operational outcomes of that in terms of terrorist attacks.

Q66 Chairman: Dr Reid, thank you very much. We do appreciate you coming in despite your illness. You clearly have an enormous amount of knowledge about these matters. If you feel, as a result of this session, there are other issues you would like to put before the Committee, if you would like to send us a memorandum we would be extremely grateful.

John Reid: Thank you very much. Could I just thank the Committee.

Witness: **Deputy Chief Constable Margaret Wood**, ACPO Lead on Terrorism and Allied Matters, gave evidence.

Q67 Chairman: Deputy Chief Constable, thank you very much. I will not give another long introduction as to why we are holding this inquiry. You have been sitting in the gallery and know what it is all about. At some later date John Yates, the Commander of the Met who is responsible for counter-terrorism, will come and give evidence to this Committee; but can I start by asking you, having heard what other witnesses have said but also bearing in mind your own expertise in this matter, are you satisfied that COBR is fit for purpose?

Deputy Chief Constable Wood: I think we would be satisfied that COBR is a very useful means for the Government coordinating their response. That is a different thing, as other witnesses have said, from the operational response that is coordinated by the police and is probably the police's position to coordinate when they are in the lead for an emergency situation. Obviously it does not just operate in times of counter-terrorism demand; it is a facility that is available across a whole range of emergency incidents. I think to that extent it works extremely well. The important thing I think for us is that it is exercised; that people who are taking part in it are experienced in what they are doing, and that

it enables the operational response to take place within an overall and helpful context of coordination. I think we are satisfied that that works effectively

Q68 Chairman: You have seen the criticisms of Andy Hayman about the operation and COBR. We have not had a chance to look at his book because it has not come out yet but we are hoping to hear from Mr Hayman in the future. Are there too many politicians involved in this process?

Deputy Chief Constable Wood: I think Andy Hayman's experience, whilst he was obviously a clear leader for the service at the time, is now nearly two years ago; and, whilst that does not sound a terribly long time, in terms of the distance that we have travelled within our counter-terrorism capabilities and in the way that the Office for Security and Counter-Terrorism have built up, the new relationships that we have built and the new ways of operating that we have developed, I think things have moved on quite considerably. As far as whether there are too many politicians involved, I do not know what "too many" is; it is a bit like "how

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long is a piece of string". I think it is important the *right* people are there who can make the right things happen and make sure that the operational context is free for us to conduct our business.

Q69 Bob Russell: Are you permitted in open forum to describe for us the structure of British counter-terrorism and policing, and, if so, could you so describe, please?

Deputy Chief Constable Wood: Yes, I can do that. Over the last two and a half years particularly the structures for counter-terrorism have increased and changed dramatically. Until the events of 2005 all of the forces in the country—there are 43 forces in England, Wales and Northern and a further eight forces in Scotland, and the Association of Chief Police Officers supports the officers within England Wales and Northern Ireland—would have a Special Branch of one size or another, some very small and some very substantial. The most substantial resources were held, of course, by Metropolitan Police and the Royal Ulster Constabulary, now the Police Service of Northern Ireland. It was recognised post the 7/7 and 21/7 events that we did not have sufficient capability outside of the capital and we have been putting in place over the last few years counter-terrorism units and counter-terrorism intelligence units, depending on what seemed to be the most appropriate size, in regions up and down the country. We now have three large and one scaleable counter-terrorism unit and also four counter-terrorism intelligence units. That means that with the operational and leadership support of chief constables and with the financial support from the government and with the support and encouragement of the Contest strategy we now have a very significant increase in the numbers who are able to tackle counter-terrorism; not just in numbers but in expertise and experience. Previously, when we needed to support the Metropolitan Police before we had this capability we would often be sending down people who were experienced in crime but not particularly in counter-terrorism investigations, and now we have substantial numbers up and down the country who are experienced in counter-terrorism work and who are available to the rest of the country. It is a resource that can be used, and is agreed by chief constables, outside of the forces to which they are attached.

Q70 Mr Streeter: How closely does ACPO work with the security services, especially MI5? Would you describe that as a fruitful and flowing relationship?

Deputy Chief Constable Wood: Yes, I would. The Association obviously exists to support chief officers and to be the voice of the service to advise government on policing matters. The ACPO Counter-Terrorism Network which has been set up has been set up with very close partnership and relationship with the security services, the Office of Security and Counter-Terrorism and with all of the partners involved in those operations. I would say that the relationship between the security services and the Police Service has probably never been

better than it currently is both in terms of the personal relationships and the way we are able to operate together.

Q71 Mr Winnick: Ms Wood, I wonder if I could ask you if you feel that the work of the security services and the police is so co-ordinated now that no further co-ordination is really necessary.

Deputy Chief Constable Wood: I think we have a lot in terms of co-ordination. Obviously we are not the same organisations, we exist for different purposes. As with any of the other partners we need to make sure that those boundaries are maintained in order that we can each do the important work that we have to do. I think the actual operational co-ordination that we have is very successful and we have co-ordination within the regions of policing and government but also between them that works extremely well.

Q72 Mr Winnick: You see, there has been much in the media recently about extremists who could come close to actual violence and terrorism and obviously both the police and MI5 presumably are working together to try and locate where the main danger lies. Would that be more the work of the police than MI5 or not?

Deputy Chief Constable Wood: I am sorry?

Q73 Mr Winnick: What I am saying is in view of the potential danger from home-grown terrorists and keeping a very close eye on those who could cause the maximum amount of harm and mass murder, like 7/7 and what was attempted a fortnight after, is that more the work of MI5 or the police?

Deputy Chief Constable Wood: I think both of us are engaged in ensuring public safety. Obviously a fundamental issue for policing is to ensure the safety of the public. One of our primary roles is to protect life. That would be absolutely crucial for us. The security service takes the lead in terms of the intelligence gathering aspects of our counter-terrorism response.

Q74 Mr Winnick: That remains the position, does it, MI5 take the lead?

Deputy Chief Constable Wood: That remains the position, yes. Policing takes primacy when we move into the executive action aspects of it. Probably the crossover has altered in recent years because of the necessity to make sure that public safety is protected, which has led us, as we have seen in recent cases I think, to taking executive action earlier in that process of intelligence gathering through to court process and perhaps being in a slightly more difficult position in terms of having actual evidence when we go to arrest people because we need to be sure of public safety because of the change in the threat that we now face.

Q75 Mr Winnick: The position regarding 7/7 was that the main ring leader was being monitored by MI5 and possibly the police, and yet all that evaporated and inevitably the question arises could better co-ordination and more efficiency have

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prevented the horrors of what occurred on that day. Are there lessons to be learnt which hopefully are being learnt?

Deputy Chief Constable Wood: I am not in a position to answer that actual question, but I think in terms of what have we done since, we now have substantially greater resources throughout the country than we had, we are engaged with the security service to try and make sure all our communities are safe, and we are engaging with communities up and down the country to try and make sure that is the case as well. I think a lot of lessons have been learnt but I cannot answer the question about whether—

Q76 Chairman: Mr Winnick's point is with hindsight, now that you have all these resources and engagement in place, it is a judgment call but do you think the situation might have been avoided?

Deputy Chief Constable Wood: I cannot answer that. I think we are in a better position than we were but I cannot answer that question.

Q77 Mr Winnick: Surely it is very important in order to prevent further atrocities, hindsight or otherwise, that every possible lesson should be learnt if there were mistakes if possibly such atrocities could have been prevented. With the greatest of respect, I do not think you can simply say that is not relevant at the moment, it is very relevant in view of the acute terrorist threat.

Deputy Chief Constable Wood: Forgive me, I am not saying it is not relevant, I think it is important that we learn lessons from the past and make sure that we have things in place that we think will make us safer for the future.

Q78 Tom Brake: Deputy Chief Constable, do you have all the necessary legal tools but also the necessary skills to tackle terrorism?

Deputy Chief Constable Wood: I think we have to constantly keep an eye on what we have, what we are using and what we need. This is a very difficult area of business. The problem of trying to make sure that we protect the public and making sure we operate within an effective human rights regime will always mean that there are rubbing points. There will always be difficulties in terms of what have we got that we can actually take into court as evidence and what suspicion do we have. It is not an easy matter to turn the one into the other and we therefore have to make sure that we have as much capability as we possibly can. At the moment there is not anything that we are looking at where we are saying there is a huge gap but I do think we need to keep being aware of what is going on, checking the current environment and considering what that means for our operational practice. That does not necessarily mean that it will be deemed appropriate politically for that to be turned into a piece of legislation.

Q79 Tom Brake: On the legal tools front, are you worried that a couple of control orders have collapsed? What impact is that likely to have on your work?

Deputy Chief Constable Wood: Control orders are one of the tools that we have available to us to keep the public safe. Obviously whilst they remain a legitimate tactic and something that is available to the government to use then we will continue to support that. Where a control order is found to be not appropriate any longer then we do have to find other ways to mitigate that threat and that is what we do, we mitigate that threat.

Q80 Tom Brake: Finally, on the question of skills we have heard from Dr Reid that technical skills and perhaps financial skills, IT skills, are really very necessary, and having visited one of your units trying to de-encrypt data disks I can see the importance of that. Are you confident that the police have got those skills in sufficient numbers to deal with a technical threat which is clearly developing almost on a daily basis?

Deputy Chief Constable Wood: That is not an easy one for us and it is not just us, it is other agencies too on which we have to rely for some of those matters. This is an ever-developing area and we need to keep a constant view about what we have within policing and what we can access from other agencies. I cannot agree that I am satisfied that is the case just yet, it is something we need to keep an eye on and it is a really rapidly developing area, as Dr Reid said.

Q81 Ms Buck: You heard Lord West being asked about the use of intercept evidence and he was quite robust in rebutting criticism that the trial of the airline bombers in some way undermined the British position. I just wonder where you think the balance lies. He was making clear that he felt the value of intercept lay in that initial intelligence process rather than necessarily being a useful tool in court. Where do you see that balance currently lying?

Deputy Chief Constable Wood: We are interested in the Chilcot Report and in the response to that that is currently in preparation and have made our response to go along with that. Certainly intercept is vital to us in terms of the intelligence gathering part of our work and we would share that anxiety that any change in that regime might affect that particular part of our work because it is absolutely vital to us.

Q82 Ms Buck: So if put on the spot now and asked whether intercept evidence should be admissible in court, what would your recommendation be to the Committee?

Deputy Chief Constable Wood: I think I would need to be satisfied in line with the Chilcot principles that we were in a position that we would suffer no detriment before I would support that.

Q83 Ms Buck: I do not know if you heard, I asked Lord West about the number of intercept warrants, which I think we understand to be about 1,500 in the last year. Can you give us an indication of the relationship between the number of intercept warrants issued and the number of cases that were brought to successful prosecution?

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Deputy Chief Constable Wood: I am sorry, I am no better informed than he is. I think the only thing I would say is that the intercept may lead us to a position where we can then gain evidence. It will lead us to a position and from there we may move to another position from which we may be in a position to take it to court.

Q84 Ms Buck: Of course not, and I do not think anybody would expect every intercept warrant to lead to a prosecution but it is quite interesting to have a sense of what the scale of that relationship is so the trend in terms of intercept warrants and how much intelligence is gathered and where that can lead the police and courts to in terms of a prosecution is known.

Deputy Chief Constable Wood: Yes.

Q85 Ms Buck: You do not have that information?

Deputy Chief Constable Wood: I do not have those figures. I agree that in terms of the effectiveness of the tactic it would be interesting to have those.

Q86 Gwyn Prosser: Ms Wood, to what extent would you say that the concentration of counter-terrorism policing on Islamic fundamentalism and the threat of fundamentalists detracts from the work you might be doing combating the far right or dissident Irish Republicans? Is there a conflict?

Deputy Chief Constable Wood: I think it is true to say that we have probably had no reduction in the amount of work that we do on what we would describe as the domestic extremism front as a result of the work we have been doing on the international terrorism. That has been particularly because of the

substantial increase in resources that we had made available to us to give us the increase in the Counter-Terrorism Network that I described earlier. We have not any less people doing that work as a result of the fact that we are doing extensively more on international terrorism.

Q87 Gwyn Prosser: There would be a need to make a decision at some level about where resources should be deployed and priorities should be taken.

Deputy Chief Constable Wood: Yes.

Q88 Gwyn Prosser: How does that decision process take place?

Deputy Chief Constable Wood: We have a decision-making process for domestic extremism which is well practised and relates to each of the areas of domestic extremism we focus on that looks at the level of threat we are facing and will work with the individual forces which may have a threat that is developing in their area and that enables us to make sure that we use all of the resources to best effect across the country. So we do have some well established ways of determining what the overall threat is and how we would go about tackling individual elements of that threat or gathering further evidence and intelligence about the areas which are not yet ready for that executive action.

Q89 Chairman: DCC Wood, thank you very much for coming in to give evidence today. Could you tell Mr Yates we look forward to seeing him in November.

Deputy Chief Constable Wood: I am sure that he feels the same.

Tuesday 10 November 2009

Members present:

Keith Vaz, in the Chair

Ms Karen Buck
Mr James Clappison
Mrs Ann Cryer
David T C Davies
Mrs Janet Dean

Patrick Mercer
Martin Salter
Mr Gary Streeter
Mr David Winnick

Witness: **Assistant Commissioner John Yates**, Head of Specialist Operations, Metropolitan Police, gave evidence.

Q90 Chairman: Good morning. Could I remind all of us present that we have a second session this afternoon, when we will be looking at the Extradition Act and we have another witness the Home Secretary. This is the second evidence session for the Committee's inquiry into counter-terrorism. We are very pleased to see here Assistant Commissioner John Yates, Head of the Specialist Operations (Counter-Terrorism) at the Metropolitan Police. Welcome and thank you for fitting us in. I know you have had a very busy schedule over the last few weeks. I would refer all those present to the register of Members' interests, where the interests of all members are registered. The Home Secretary said last week that some of the counter-terrorism proposals made after 7 July 2005, the London bombings, were "too draconian" and not the right way to go. Do you agree with the Home Secretary that some of the proposals were too draconian?

Assistant Commissioner Yates: It depends which proposals you are referring to, Chairman. I think we just about have the balance right. We need to tease through some of the issues occasionally, particularly around things like section 44 of the Terrorism Act and we need to adapt and adopt proper procedures around these issues as these events go on. I think we have just about got the balance right. The level of scrutiny around many and several issues that we confront on a day-to-day basis is huge, both from committees like this, the police authorities, the media, and I think we respond to that in an appropriate way.

Q91 Chairman: His comment that we went too far you cannot agree with.

Assistant Commissioner Yates: I do not think so. We constantly have to test these issues and we have to consider them in the light of developments and in the light of ongoing cases.

Q92 Chairman: How many police officers are currently engaged in counter-terrorism activities?

Assistant Commissioner Yates: The totality—so this is counter-terrorism and protective security across the country—is about 7,700. That includes all port policing, counter-terrorism officers and other matters as well. In terms of engaging directly with what people think would be counter-terrorism, it is just over 3,000 across the country.

Q93 Chairman: We were told by Lord West, our first witness in this inquiry, that there has been an increase in funding for the security services. Has there been an increase in the funding for counter-terrorism?

Assistant Commissioner Yates: Overall, yes there has, of about 30% over the last three years. About £80-odd million, rounding it down. £80 million roughly. There has been a 30% increase.

Q94 Chairman: Do you think that is sufficient for you to carry out your duties?

Assistant Commissioner Yates: Again it is all a matter of balance, in terms of what we must achieve in counter-terrorism and what the other police priorities are as well. I think the balance is just about right. If events dictate that we should have more, then of course we will make the case out, but at the moment I think the balance is just about right.

Q95 Mrs Dean: Are PCSOs actively involved in counter-terrorism policing?

Assistant Commissioner Yates: Yes, they are involved in a number of areas. They are involved in local safer neighbourhoods, in terms of community safety and the visible presence there. They are certainly heavily involved—you see them around the Government security zone—around Westminster and the broader geography around here. They are an integral part of the counter-terrorism response, particularly in terms of the visible presence they provide.

Q96 Mrs Dean: Are they used in stop and search?

Assistant Commissioner Yates: They have quite unusual powers in terms of that. First, they must be under the direction and control of a fully fledged warranted officer. In terms of section 44, yes, they can be deployed on that. They can stop vehicles, they can search vehicles, they can search articles that people are carrying, but they cannot search that person in terms of the more intrusive powers that a fully warranted officer has. It is under the direction and control of a fully warranted officer. They receive very careful training around these issues, and training and briefing in terms of what they can and cannot do, but, I repeat, they are an important and integral part of the counter-terrorism response.

Q97 Mrs Dean: Are they always with a warranted officer when they do stop and search?

Assistant Commissioner Yates: I believe that is the case, that they must be under the direction and control of a warranted officer, yes. You will see them patrolling on their own and in pairs when it is warranted.

Q98 Mrs Cryer: Assistant Commissioner, is the funding that goes to counter-terrorism work through your department ring-fenced or is there a chance that it may be cut at some point in the future?

Assistant Commissioner Yates: It is ring-fenced in terms of what we can use it for. We have to make it very clear that the funding that is provided for us is used for that purpose. There is very significant oversight and audit of that. In terms of the overall funding pot, that of course is a matter for the Home Office and the Office of Security for Counter-Terrorism (OSCT). I do not know what the future holds. We have a generous settlement at the moment in terms of the current CSR period. Clearly there is likely to be pressure in the future on all funding pots, so I do not really know, but it is not really a matter for me, it is a matter for the Home Office and the Treasury.

Q99 Mrs Cryer: For the immediate future, is the counter-terrorism pot of money ring-fenced?

Assistant Commissioner Yates: Until the end of this financial year, yes, and, in theory, until the end of the 2010-11 period, yes, but I am also a pragmatist and understand that there is significant pressure on budgets on all fronts.

Mrs Cryer: Thank you.

Q100 David Davies: Assistant Commissioner Yates, you have said in one report that section 44 should be replaced. A new scheme has been tried out in four areas: Brent, Newham, Southwark and Tower Hamlets. Section 44 is meant to be entirely random, so that you are not singling people out who look suspicious, whereas section 1 can be done on suspicion and section 60 can be purely at random, on passers-by who may look suspicious to a police officer. Is this new scheme going to be some combination of those three sections?

Assistant Commissioner Yates: Yes and no. I think the report you are referring to was a report for the Police Authority of about six months ago, which was in terms of community feedback, Lord Carlile's oversight and the like. We acknowledged that the application of section 44, particularly in the Met, was too draconian. In essence, on a monthly basis, I provided an authority, signed by the Home Secretary as well, that anybody in London could be stopped under section 44. In terms of prescribing what you can and cannot do and where you can do it, we felt that was too draconian and so we responded to those concerns. Now it is much broader than the four boroughs; it has now gone across London—so there have been developments since that date. It is a patchwork authority. Clearly it is on a monthly basis, responding to the intelligence picture. It can change. It is very distinctive every month in terms of the intelligence that I look at and I sign in order to provide the authority, but every borough is now

being asked to provide where they think they need the power, in terms of either iconic sites (particular threat sites), transport hubs and the like, so you have a patchwork authority where you can use the authority under section 44.

Q101 David Davies: Is it not the case that one of the flaws there is that it is meant to be random? If you saw somebody coming along who in your opinion looked a bit like a terrorist, but you had just stopped to search somebody else who did not, really it might be quite hard to justify randomly picking out the next person you see.

Assistant Commissioner Yates: Section 44 now operates around the more iconic sites, where it can be random, taking account of the intelligence picture. We found that a lot of the stops under section 44 were actually under section 43, where you require reasonable suspicion, so it was a misguided, mis-briefed use of the powers, if you like. Section 43 of the Terrorism Act, which is with reasonable suspicion, operates anywhere—and that still is the case. Section 44, which is the catch-all slightly draconian power, is now operating in London—and I can only speak for London on this point—in particular areas where the local borough will respond in terms of: "This is an iconic site, this is of particular area of concern to us, with critical infrastructure and the like, where we think we ought to have that power operating." As a result of that, we have reduced our use of the power by about 46% over the past three months. It is a proper, legitimate response to feedback and public concerns around an overuse of power.

Q102 Patrick Mercer: Using similar powers in Northern Ireland, we did not get much negative feedback because, frankly, it was just a fact of life. It settled down and the people were used to having their time wasted, for the most part. From time to time, when we apologised and said, "I am frightfully sorry for having to do this," people would say, "No, not at all. This makes us feel more secure." How much positive feedback do you get from people?

Assistant Commissioner Yates: I am not aware of any positive feedback, but that is not to say there is not any. It is not the sort of information that may filter up to me.

Q103 Patrick Mercer: No-one says, "Thank you for stopping us."

Assistant Commissioner Yates: No-one says thanks. It depends what the current perception of the threat picture is. I am sure after 7/7 in 2005 people would have been delighted to have been stopped under those powers. As that perceived threat dissipates, then I think it would become less acceptable, even though the threat may remain broadly similar in a certain sense. It is that sense.

Patrick Mercer: Thank you.

Q104 Ms Buck: Is the issue that section 44 was perceived to have leaked over into broader stop and search powers. I say this from some experience, having a 15-year old son growing up in London.

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Virtually all of his friends have been stopped under section 44, when normally you would expect, if there was going to be a stop and search of teenagers, that it would be under the section 60 or whatever powers. To what extent do you think that was happening in parts of London and why was it happening? Perhaps you could tell us, in answering, what the trend figures were that led to the report on the review of section 44.

Assistant Commissioner Yates: On the first part, on whether there was there a leakage over into section 1 and section 60 powers, that may be the case. But the issue was that we had become broadly reliant on this power post 7/7, post the very significant threat, and there was probably an absence of detailed briefing and understanding amongst a lot of our staff that: "This power needs to be used in this way. This is what it is for. There is section 43, reasonable suspicion, which you can use at any time and any place." There may have been an overuse of the power in that sense. We recognise that. In terms of the trend you talk about, again, post Haymarket in 2007, we saw a massive spike. You would expect that and I think people would understand that in the sense that they would probably welcome it. There was a spike. As I say, it has gone down considerably now by a factor of almost half in the last several months. I think it is being used appropriately, properly and proportionately now.

Q105 Ms Buck: Do we have the specific data?

Assistant Commissioner Yates: I can certainly share that with you.

Q106 Ms Buck: We accept there will be spikes, but the broad trend date since 2005 would be helpful.

Assistant Commissioner Yates: We can certainly provide that. I think we publish them on the website, to be honest. The Police Authority require them on a regular monitoring basis, but certainly we can provide those.

Q107 Ms Buck: We do not live in a perfect world, so I accept that not every single officer on the street is always going to use their power proportionately, but it does worry me that the sheer scale of extended use of section 44 could have occurred because people did not necessarily have a grasp of what they were doing. What went wrong with the training and guidance to operational officers, such that it could have been so vague as to allow that explosion of the use of section 44 to have occurred?

Assistant Commissioner Yates: There was an explosion of use, as I have said, after a particular iconic event. That is to be expected. That is what we would want to happen, to be honest. In terms of the specific details of section 44, in terms of its use, our attention may not have been as thorough as it could have been. I am not saying it has gone wrong but I think we could have paid more attention to that. In the last six months, we have paid very particular attention to the quality of the briefing on a daily basis at our boroughs across London. It is one of the issues I look at on the monthly authority signing. What does the briefing look like? What is the quality

of the briefing? What is the quality of the intelligence supporting that briefing? We make sure, as is appropriate in terms of the level people can receive in terms of their intelligence, that boroughs are aware of that and that all the staff are aware of it. We pay particular attention to it.

Mr Clappison: You were asked a moment ago about positive response. I would suggest to you that there is a large silent majority of people in this country, including many of my constituents, some of whom suffered in the London bombings, who support the work of the police in this area and do not wish to put their work under the microscope in order to generate criticism of them.

Chairman: Is that your question, Mr Clappison?

Q108 Mr Clappison: Yes. Will you take that into account, please?

Assistant Commissioner Yates: Yes. I noted it.

Chairman: Normally Mr Clappison has several questions to put to our witnesses.

Q109 Mr Streeter: Assistant Commissioner, you talked earlier about getting the balance right. Following on from Ms Buck's questioning, you have now reined back slightly on the use of section 44—as I understand it, in the last six months. No doubt that goes down better in terms of community relations and is more proportionate, but are you confident that you are not now damaging the counter-terrorism activity reining back in this way?

Assistant Commissioner Yates: No, I do not think we are. We do keep it under constant scrutiny in terms of safety. The authority will change instinctively every month to reflect the intelligence picture we are receiving. It is not as if it is a blank authority I sign every month. There is an abundance of material that I will see every month. It is different every month. For example, in the coming month we will be looking at the Christmas markets, the Christmas shopping areas and all those areas where the threat is likely to rise in terms of people's perception of public safety. It changes every month. We monitor it very carefully. We are looking at the quality of the stops as well. It is kept under constant scrutiny.

Q110 Mr Streeter: Presumably the State Opening of Parliament is something that could give you palpitations.

Assistant Commissioner Yates: Yes. You will be pleased to know that the 44 authority is in operation in all of Westminster, in the Government security zone, for obvious reasons.

Q111 Chairman: But it is not able to manage to open Carriage Gate, which has been shut for a few days because of a missing screw!

Assistant Commissioner Yates: Another problem for me.

Q112 Mr Streeter: Neither could it stop the climate change protesters getting up on to the roof. Do you have any observations about how they were able to access the Palace of Westminster within about 30 seconds using ladders?

Assistant Commissioner Yates: That is a most regrettable incident, but it is under review at the moment and I am sure we will be reporting back to the appropriate authority once the findings of that review are produced.

Chairman: We are quite certain they were not pass holders and they got in on their own.

Q113 Mr Winnick: Mr Yates, you recognise, as we all do, the overwhelming majority of Muslims in this country are law-abiding, they loathe terrorism and recognise that when terrorism come about, like 7/7, they are as likely to be victims as anyone else. That is not in question at any serious level. Of those elements/individuals, few in number within the Muslim community who so distort their religion as to justify and perhaps carry out terrorism, how many would you say at this stage, in so far as you can give a number—and Lord West did give a number last year—could be considered an acute danger to the security of Britain?

Assistant Commissioner Yates: It is probably unwise of me to speculate about numbers. Clearly the Security Service have the lead in terms of intelligence, in terms of counter-terrorism, but I think Jonathan Evans is on record as saying about 2,000 people—

Q114 Mr Winnick: That is the number Lord West used.

Assistant Commissioner Yates: Yes. That is a number on public record from the DG in the Security Service. The intelligence lead is a matter for them. We work very closely with them in what is an excellent working relationship, and for me to speculate on a numbers beyond that I think would be unwise.

Q115 Mr Winnick: Would it be right to say that the feeling generally amongst the police and security agencies is that it has not in any way been reduced but there is a number of people—and you yourself do not want to give a number, for reasons I perfectly understand—who present, as I mentioned a moment ago, an acute danger to the security of our country?

Assistant Commissioner Yates: I think that is a fair assumption, yes.

Q116 Mr Winnick: There are other groups, are there not, which could be described here as racist and fascist elements—most of whom presumably do not wish to engage in terrorism of any kind, although some do? For example, a BNP election candidate called Robert Cottage was found last year with the largest amount of chemical explosives ever found in this country. There remains that danger of such groups, not necessarily just the BNP.

Assistant Commissioner Yates: That is correct. In recent months and recent years we have seen a growth around some of the far right extremism movements. Mostly, I have to say, they tend to be less organised. It tends to be the concept of the ‘lone wolf’. We have seen several manifestations of that over the past months and several arrests, and there are ongoing cases which of course I cannot comment

upon. This is something we take extremely seriously. We make sure we balance our resources appropriately, to ensure we can devote sufficient to the growth of that threat, the intelligence picture, and of course the response, should that be required.

Q117 Mr Winnick: My final question about those who want to commit murder for what may be described as political or religious reasons concerns the dissident Republicans, who have surfaced again, I am told, in Northern Ireland. Do they in any way present the same sort of danger, in your view, in Northern Ireland and the mainland, as the IRA in the early days, when the IRA started again, the Provisional IRA, if we take as an example 1970-71-72? Does this group of thugs I have just mentioned present the same sort of danger?

Assistant Commissioner Yates: Throughout the 1970s, the 1980s and the early 1990s we saw the most dreadful carnage in Northern Ireland and on the mainland. The very fact that has not happened in recent years would indicate that the threat is not at that level. That being said, I know the Independent Monitoring Board for Northern Ireland reported this week that the threat from Dissident Republicans is as great as it has ever been in the last six years, so clearly the threat remains. The security services work very closely with the PSNI over in Ireland in terms of countering that threat and of course we monitor that very closely on the mainland as well. There have been very worrying developments in Northern Ireland in recent months, as demonstrated in the recent report of the Independent Monitoring Group.

Q118 Martin Salter: Building on Mr Clappison’s remarks, would you also agree that if there is an overuse of the counter-terrorism powers and an inappropriate use of them, constituents like mine who suffered in the London bombings—we had a casualty in my constituency as well—are put at greater risk if, as a result, that shuts down the flow of intelligence from communities. It is very important to get the balance right.

Assistant Commissioner Yates: It is a constant battle to get that balance right. We saw with the recent events up in the North West of England the effect on community confidence. When we disrupt what we consider to be a significant plot but it does not manifest itself in charges, those issues really do hit home. We have to work constantly with communities, which is why it is so important that a lot of our counter-terrorism effort is based in local communities and we get that feedback to us.

Q119 Martin Salter: Would it be fair to say that we collectively have destructed more terrorist plots as a result of good quality information coming out of communities than we ever have through the use of section 44 powers or other stops? I get the impression that it is intelligence that one needs in the first place.

Assistant Commissioner Yates: There is not really a benchmark to compare it with, but, as I say, we work very closely with the security services around these issues. The absence of an attack should not be seen

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as the absence of a threat, but, again, it is good news that we have not been subjected to the attacks in 7/7 and 21/7 in recent years.

Q120 Martin Salter: I have the dubious pleasure of representing Mr Lewington in Reading, the rightwing extremist who was found with the bomb-making material and all the rest of it and the Ku-Klux-Klan manuals. To what extent are these rightwing people who wish to use violence and acts of terrorism linked into other European networks? Or are they slightly disturbed freelancers getting their inspiration from the internet and other sources—in the way that Lewington appeared to be?

Assistant Commissioner Yates: It is much more the latter. The internet is a fertile feeding ground for some of these issues. You can receive briefings from around the world about these matters and act upon them through that medium. My assessment is—and it is not a detailed assessment—that it is not well organised. It tends to be lone individuals acting in that way, but, nevertheless, presenting considerable danger to public safety.

Q121 Martin Salter: We have successfully put in place legislation making it an offence to download extreme images of rape and torture for private profit. Is it an offence to have in possession on your PC manuals on bomb making?

Assistant Commissioner Yates: Yes.

Q122 Martin Salter: It is. Under what legislation?

Assistant Commissioner Yates: The Terrorism Act.

Martin Salter: Thank you.

Q123 Chairman: Assistant Commissioner Yates, there is a report in the *Guardian* of 17 October concerning security services and their activities under the Prevent Strategy, that they were gathering information about people unconnected with terrorist activities—basically innocent members of the Muslim community. Did you see that report? Do you have any comment to make as to whether or not it is correct?

Assistant Commissioner Yates: I have certainly seen the *Guardian* reporting on the Prevent matters. I do not agree with it. Prevent has to be at the heart of everything we are doing around counter-terrorism. I have never known a policing strategy since 1829 that has not included prevention as one of its primary objectives. The *Guardian* article was misleading in that sense. It is not a spying operation; it is us working with communities to keep communities safe. The Prevent Agenda is much more than the police. Many of the 16 government departments have an interest in Prevent. Why would we not do it? It is crazy to suggest that we would not have Prevent at the heart of what we do. We do it with everything else in policing. Be it drugs, be it basic criminal activity, Prevent should be at the heart of everything we are doing. If there is a selling issue in terms of how we have sold Prevent, then we may need to address that.

Q124 Chairman: You have absolutely no evidence, no information that innocent people have in any way been targeted?

Assistant Commissioner Yates: I have no evidence. In the early 1990s and the Irish problem to which Mr Winnick referred, the strapline was “Communities Defeat Terrorism”. It is exactly the same now. We must not get away from that.

Q125 Patrick Mercer: How do you ensure good cooperation between so many of the different agencies that are involved in counter-terrorism policing?

Assistant Commissioner Yates: It is a constant challenge—I would not say otherwise—but the working relationships that have evolved between the police, the security services, our international partners in terms of the ‘pursue’ angle are world class. Everyone is aware of their role: we talk, we share and we discuss matters. The broader challenge is around things like Prevent and Protect, where it is not just a policing matter but we have to corral all the efforts across all of government to ensure that all the resources are targeted in the best way. That is probably the broader challenge. In terms of the ‘pursue’ issue, in terms of investigation and intelligence, I think the current arrangements work extremely well. Of course there are little rubs—there are bound to be—but we get through those pretty quickly.

Q126 Patrick Mercer: Are you convinced that the Counter-Terrorism Units are working properly?

Assistant Commissioner Yates: Yes, I am. Our Counter-Terrorism Units across the country are the envy of the world. No-one does it like we do it in terms of that local community connection, which we then lift up into a national response as it is required. We have a clear understanding that agreed with all chief constables about how this would work, both in day-to-day running and in crisis running. We have more work to do. Interoperability is a constant challenge for us, in terms of making sure we have the same doctrine around command and control, the same doctrine around surveillance, but again there is a huge will and support from law enforcement colleagues across the country to make this work. We really do have an excellent system here, and, as I say, it is the envy of the world.

Q127 Patrick Mercer: My perception is that the Counter-Terrorism Unit did not really get into step, it did not really get into its pace, until after the aircraft plot of 2006. There was then a huge impetus which forced it forward. That was intercepted, thank God, but we had been bombed in 2005, with the Twin Towers happening in 2001. Why so slow?

Assistant Commissioner Yates: We did not have CTUs until after 11/05 clearly.

Q128 Patrick Mercer: Why not?

Assistant Commissioner Yates: I cannot really speak of the past, but clearly events do drive activity and the appalling events of 2005 provided the impetus to make this happen. Incredibly quickly, the national network was built and set up, both infrastructure

and people in training, within two years of a three-year programme. It was built a year ahead of its time. Yes, there may well be reasons why we did not do it before, but the fact of the matter is we have done it now. It works well, it is well-trained, well-led and it operates very effectively, in my view.

Q129 Patrick Mercer: I take absolutely that we are where we are. My own view is that it is working well. I think particularly OSCT is doing a smashing job—I really do. Do you think a National Terrorism Agency (call it what you will) is the next logical step?
Assistant Commissioner Yates: No, I do not. The real power and value of the current network is that it is embedded at the local level, where it picks up local intelligence. It is closely engaged with the communities; Chief Constables' accountability and oversight of it locally is very, very clear. It is also very, very clear to Chief Constables what happens in a crisis and where the might of the national network will pull together. I would be loath to remove that distinction from the mother ship, if you like, that a national agency could foresee full time.

Q130 Chairman: Your predecessor Andy Hayman disagrees with you in the comments that we have seen he has made. He will be giving evidence to us on 8 December. We have finally tracked him down. He is very clear that he does not think that COBR works very well. He says that too many politicians are involved in making these decisions, that it is too reactive, and that what you need is a regular body where senior people, such as yourself and others, can get together—a national security council along the same lines as they have in the United States. Surely Mr Hayman has a point.

Assistant Commissioner Yates: Andy did an immense amount of valuable work in terms of counter-terrorism and he is entitled to his view. I do not agree with his views round COBR. I think COBR works very well. I have seen it operating on numerous occasions.

Q131 Chairman: Is it not reactive, Assistant Commissioner? It only meets when there is a crisis. Should it not meet more regularly in order to review the current situation?

Assistant Commissioner Yates: There are other bodies. Of course COBR is reactive, by the very nature of it. It is there in emergencies. But there are other bodies that meet on a regular basis that discuss the very issues that you were advocating then.

Q132 Chairman: How many bodies meet on a regular basis to discuss the issues?

Assistant Commissioner Yates: On a weekly basis? There must be around 40 people who meet on a regular basis.

Q133 Chairman: On a weekly basis?

Assistant Commissioner Yates: On a weekly basis, across all the government agencies involved in the CT Unit. That is a meeting at which the threats and the like are discussed and appropriate action is

considered. Of course operational matters remain entirely a matter for the police and security services. There is a clear distinction.

Q134 Martin Salter: Building on what Mr Mercer was saying, the Counter-Terrorism Units came into being, as you said, very quickly after 2005.

Assistant Commissioner Yates: Yes.

Q135 Martin Salter: The 9/11 atrocity fairly shook the world, changed the landscape considerably. At what point did budgets for counter-terrorism start to rise? Was it post 2005 or was it post 2001?

Assistant Commissioner Yates: I have not been involved in that distinct part of history, but my recollection is that there was a significant rise in the budget post 9/11 and a considerable amount of work done by people like David Veness before me in terms of creating resilient infrastructure to deal with a similar incident to 9/11 in the UK. But it is my understanding that it is really only in the post 2005 world where we clearly saw the need to have a more resilient structure away from London as well in terms of a regional response to these matters.

Q136 Ms Buck: To go back to the Prevent Agenda, there was very powerful co-operation from mosques and community leaders and faith leaders with the Prevent Agenda. I know this first-hand from my local constituency. They, like everyone else, are involved in a balancing act of maintaining support within their own communities for the relationships they have with the police. What is your assessment of the extent to which that co-operation is being maintained? What lessons are being constantly learned and reviewed about how to maintain that level of co-operation without in some way compromising those who are leading the community and in the mosques?

Assistant Commissioner Yates: My assessment is that the co-operation is still excellent. There are very good examples, like the independent case down in Bristol where a radicalised man, who was turned in by his local mosque, was preparing to do carnage in Bristol. There are some great examples of that. But we must not be complacent. We must ensure, in my view, that Prevent is much broader than the local community. It is about the far-right, it is about extremism in all its constituent parts, and that is what we have to make clear. We must not be complacent about the relationships. We have to work with them all the time.

Q137 Chairman: Assistant Commissioner, you said that our units are considered to be the best in the world as far as counter-terrorism issues are concerned. Which is the European body that you deal with most? Is it Europol? Where would you go to in order to get co-operation from other countries?

Assistant Commissioner Yates: It tends to be Europol, but it tends to be the direct relationships with the particular countries concerned, to be honest. That is a much more productive avenue from our perspective. We spend a lot of time building up

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our own networks and relationships across Europe and with Canada, America and Australia, because events over there clearly play out here very quickly.

Q138 Chairman: It is bilateral.

Assistant Commissioner Yates: Bilateral, trilateral, however many times you can go up.

Q139 Chairman: If you are not using Europol, is there another organisation that we should be using?
Assistant Commissioner Yates: We do use Europol, particularly some of the databases, which grow all the time, particularly our forensic links and the like. It tends to be the CT counterparts that you tend to use the most.

Chairman: Assistant Commissioner, thank you very much indeed for coming to give evidence to us today. We are most grateful to you.

Witness: **Sir Ken Macdonald QC**, gave evidence.

Q140 Chairman: Sir Ken, welcome back to the Select Committee. Thank you very much for coming to give evidence to this inquiry into counter-terrorism that we are currently conducting. We have been told that interception is most used as a tool for gathering information rather than evidence. Do you think that is correct?

Sir Ken Macdonald: No. I think it is fundamentally incorrect.

Q141 Chairman: Why?

Sir Ken Macdonald: In 2004 I was asked by Lord Goldsmith, who was then the Attorney General, to conduct an investigation in a number of jurisdictions which used intercept evidence. I travelled on that occasion to the United States and then to Australia and on other occasions to Canada. In the United States I met with the National Security Agency, the Drugs Enforcement Agency and a number of other representatives of agencies involved in law enforcement. Their experience of intercept is that it is an absolutely critical forensic tool in criminal trials. As they informed the Chilcot Review, and as is repeated in the report, they regard it as quite invaluable. The Australians and Canadians take the same view. I am not sure what it is about British criminals which means that if we are here and intercept their conversations, somehow this material will be of less use to us than the recording of American, Australian or Canadian criminals prove to be in those jurisdiction. I think it is a lack of imagination that fuels the view which you have cited, Chairman. If we had intercept available as an evidential tool and if we were directing intercept capability towards the gathering of evidence, I am absolutely confident that our experience would mirror the experience of other jurisdictions where it is used very frequently to great effect, and results in the saving of considerable expense because more expensive investigative tools, such as, for example, surveillance, are not required.

Chairman: Mrs Dean will want to explore further with you the practice in other countries.

Q142 Mrs Dean: As you have said intercept evidence is acceptable in other countries. Do you know why the UK does not allow prosecutors this option?

Sir Ken Macdonald: It never has. The UK and Ireland are the only countries I am aware of that forbid this practice. There are numerous cultural

reasons why we do not. There are numerous other reasons that I do not want to go into if you do not mind. It is largely a cultural response on our part. We have never allowed it. The NSA in the United States said to me, frankly, that if they had no intercept regime there, they would probably oppose it too—because what organisation involved in that sort of work wants to be involved in criminal trials? But having had it instituted there, it works perfectly well for them. It is largely a cultural response. It is a powerful cultural response. There is serious concern within the agencies in particular that the use of intercept as an evidential tool would result in significant bureaucratic burdens upon them in terms of having to retain material and examine material for potential exculpatory effect and so on. One of their concerns is that they would have to divert some resource from frontline spying, if you like, into backroom retention and consideration of material. And that is true. It is really for us to decide whether we think that extra investment in this area is worth it. I am sure it is. One of the primary effects of intercept evidence in prior jurisdictions is to drive an increase in the guilty plea rate so that we have less contested trials. Contested trials in serious cases consume an enormous amount of public resource. The costs—and I gave this in evidence to the Chilcot Committee—would more or less balance themselves out. There would be some upfront costs of course. That is not a terribly precise answer but I do not think there is a single precise answer to your question.

Q143 Patrick Mercer: Is it instructive that the two jurisdictions you have mentioned who are reluctant about this are Southern Ireland and the UK—in other words, Northern Ireland. Is this a legacy of the intercept difficulties that we had with principally Republican terrorism?

Sir Ken Macdonald: That may certainly feed into it. It is also true that our intelligence agencies have played a role in intelligence gathering for law enforcement, and so there has been a relationship between our agencies and law enforcement has not historically existed in other jurisdictions and they are concerned about that being disruptive. I am sure, as you will be aware more than most, the Irish experience has had many legacies for us and that may well be one of them.

Q144 Patrick Mercer: What benefits would admitting intercept material have in court?

Sir Ken Macdonald: It increases the guilty plea rate. It has the potential to make trials swifter because the evidence is so compelling. I am sure it would develop the conviction rate. The conviction rate is already high in serious criminal cases but we have a very high contested trial rate in our jurisdiction and lowering the contested trial rate is a significant prize here.

Q145 Patrick Mercer: My memory goes back at least 20 years on the use of intercept material. We have constantly been struggling with this matter. Why is it taking so long to reach a conclusion?

Sir Ken Macdonald: There were three separate reviews while I was DPP, and they always started with a firm indication from the Prime Minister or the Government that they wanted to do this. During the course of the review problems were always thrown up. I have said before, Mr Mercer—and I am not casting aspersions on anyone here—that if you want to achieve a change as fundamental as this, it is absolutely essential that all parties come to the discussions and the negotiations willing them to succeed. I am not sure we have been in that territory.

Q146 Chairman: I know you are not casting aspersions on anyone in this room, quite rightly, but who do you think is holding it up?

Sir Ken Macdonald: I have already said the agencies have significant perfectly plausible concerns.

Q147 Chairman: When you say the agencies, do you mean the security services?

Sir Ken Macdonald: Yes. They have entirely plausible and understandable concerns.

Q148 Chairman: Is it the security services that have stopped this happening?

Sir Ken Macdonald: I do not want to put it that crudely. It is much more complex than that. There is a feeling that this is a reform that would be burdensome and might impact on the relationship between the agencies and law enforcement in a way which is unattractive. I understand those concerns. I am not in any sense suggesting that they are real and sincerely held concerns. We need to approach this problem in problem-solving mode, if I might put it that way, rather than intent to throw up difficulties the whole time.

Q149 Chairman: When you were told of these concerns, did you try to persuade either the Government—which would be the Attorney General—or indeed the security services that they were wrong?

Sir Ken Macdonald: Of course. Lord Goldsmith was the Attorney General during the time that this was relevant. To me as the DPP he was well known as a strong supporter of this reform. I did not need to persuade him.

Q150 Mr Winnick: The view has sometimes been expressed that those who are not very keen on anti-terrorism measures of a certain kind—and it is not

my view, but nevertheless it is a view that is held—use interception evidence as a sort of panacea: that we need not do this or do that in combating terrorism but interception would provide the answer.

Sir Ken Macdonald: No, there is no such thing as a panacea in this area. The field is much too complex. I hate to slip into this sort of managerial jargon, but we need a toolbox that has a variety of tools in it and intercept, it seems to me, is a crucial tool. On its own, it will not achieve what it is capable of achieving if it is placed within the right environment. We need a much more developed system of co-operating witnesses in serious crime, we need to develop concepts of plea bargaining, we need to move into a territory which encourages minor players in a conspiracy who have been intercepted to co-operate with state prosecutions on the basis of their interception evidence in exchange for lower sentences. We need a whole suite of measures, it seems to me, to crack our high contested trial rate. Intercept is a vital part of that but it is not a panacea on its own.

Q151 Mr Winnick: You would not overestimate interception evidence as being the cure-all for dealing with the obvious dangers that this country faces.

Sir Ken Macdonald: No. Nothing on its own is a cure-all. Along with another suite of powers, in the right criminal justice environment—as the Americans have found, as the Australians have found and as the Canadians have found—it becomes critically important and critically useful.

Q152 Mr Winnick: The Chilcot Review said that: “The limited evidence available suggests that there would be a modest increase in successful prosecutions, at different levels of seriousness, as a result of the use of intercept as evidence.” Clearly as far as they see it, there will be more successful prosecutions but on a pretty modest level.

Sir Ken Macdonald: As my opening remarks indicated, I challenge that. I do not think it is the experience overseas. The problem is that we are trying to look at cases that we prosecute at the moment without intercept. Look at the numbers of cases in that category that contain intelligence intercept and then ask yourselves in how many of those cases could that intelligence intercept be converted to evidentiary intercept. The point is that if you have intercept as an evidentiary tool, you start to use it, and you start to target people with that tool. Inevitably, it seems to me, the use of intercept evidence increases. It is very well known in the United States that the bulk of their serious crime cases proceed on the basis of intercept. I am quite confident if we had it as a tool in our jurisdiction it would be used more and more frequently. I have huge respect obviously for the Chilcot team and for the work they did, but on that conclusion I have to say I take issue. It is not my experience of what is happening overseas. If you look at what overseas agencies told the Chilcot Review, it does not seem to gel with their own view about what is happening in their countries.

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Q153 Mr Streeter: Sir Ken, turning to control orders, you have apparently said that they are a “small gasp of defeat” and a “hopeless device in the modern democracy”—from which I discern that you are not really in favour of them. Could you expand on how you think they fit into the system and why you do not like them?

Sir Ken Macdonald: We need to acknowledge when we are discussing this—as I usually do when I discuss it—that the Government faces a genuine dilemma. When it is confronted with people it feels are a threat to security but it cannot prosecute them because it does not have enough evidence and it cannot deport them because of Article 3 of the European Convention (which prevents us from deporting people to countries where they might face mistreatment), what is it to do? My answer—and this may be a counsel of perfection, but I am afraid sometimes due process requires counsels of perfection—that you have to develop investigative tools to try to acquire evidence that can be deployed in a due process environment—as I say, in a court of law in a trial—against individuals, if you want to interfere with their rights and take away their liberty in any way. No other jurisdiction that I am aware of has thought it necessary to go down the control order route. The Americans do not, the Canadians do not, certainly no other common law country does. I think we made a mistake in doing so. The reality of the control order regime as it exists at the moment is that it does not work. A number of these men disappear. The others are confined to their homes to a greater or lesser extent. I am quite sure that the degree of surveillance that is required to ensure they stay that way is pretty immense. Intercept is something which could have a role to play in this area. But not just intercept: other investigative techniques, trying to turn witnesses, trying to obtain co-operating statements and so on and so forth. Sometimes, if you are going to be loyal to a constitutional due process system, you have to accept that that comes with an element of risk; otherwise we would lock up people without trial on suspicion in a wholesale fashion. We do not do that because we recognise that there is a trade-off here between risk and constitutionality. I do not like control orders. I do not think they have worked. I think, frankly, they have brought our system of government into disrepute.

Mr Streeter: Thank you for that excellent answer.

Q154 Chairman: Presumably you said all this when you were DPP. You are not just saying it now because you are the ex-DPP. You said this to the Attorney General and to the Home Secretary.

Sir Ken Macdonald: When I was DPP, I spoke publicly about issues which impacted upon prosecutors where I thought it was necessary—often when you asked me the question, Mr Vaz. You asked me the question about 42 days and that was the first time I made my views plain. When issues did not concern prosecutors, I did not address them. Control orders are not a criminal justice issue. It is a part of the civil jurisdiction. I do not think anyone would have been under any illusion about what my

views would be likely to be about control orders, but whenever I was asked about them, and I think I was asked about them in this Committee, I said that they were not an issue for the DPP.

Q155 David Davies: Britain is the only country with common law which has accepted the Human Rights Act which incorporates Article 3. When you compared us just now to other countries, it is not quite a straightforward comparison, is it?

Sir Ken Macdonald: I take your point, Mr Davies. The United States would certainly have difficulties deporting individuals to countries where they would be likely to suffer, in the American Constitutional term, “cruel or unusual punishment”. I think there is a similar provision in the Canadian Charter. I am not sure about Australia.

Q156 David Davies: One has the feeling that the Americans would not have allowed such people in in the first place.

Sir Ken Macdonald: That is a different point. You are quite right, they may have taken them to Guantanamo Bay which was an institution precisely designed to—

Q157 David Davies: Or turned them back at the airport.

Sir Ken Macdonald: Yes. It was an institution which was precisely designed to be outside the embrace of the US Constitution. I think they made a mistake. I think they should have had more confidence in their Constitution to protect them as well as to guarantee their rights. That is my position on that. But you make a valid point, which is that Article 3 of the European Convention prohibits us from doing that. My own view is that the British state should not deport people to countries where they might suffer torture or mistreatment. I think that is an uncivilised thing to do.

Q158 Patrick Mercer: There are two other devices we ought to look at on which I would be interested to hear your views: questioning after charge and plea bargaining.

Sir Ken Macdonald: I have always supported questioning after charge. When I was a defence barrister at the Bar I could see no difficulty with it. It is one of the rules that developed a long time ago when people in custody were virtually unprotected. If you have questioning after charge of a prisoner who is legally advised, who has all of the protections which our constitution now offers prisoners, I see no difficulty in it. There is a significant advantage to the prosecution—and this is a fair advantage—that if we put questions to a defendant, a prisoner, which he refuses to answer, we can, with the judge’s consent, invite the jury to draw an adverse inference from his failure to answer those questions. If we discover evidence against a man after he has been charged, under the current rules we cannot put that to him to gain the inference if he refuses to answer. I think that is unfair to the prosecution. I fully support questioning after charge with appropriate safeguards. A man should be represented. He should

not be dragged from his cell. If he does not want to come from his cell to be questioned, he should not, but if he declines to be questioned, the prosecution should be entitled to an adverse inference if the jury think it is right to draw one. I support plea bargaining. I know it is a sensitive area, but I have always supported plea bargaining.

Q159 Ms Buck: Lord West told us—it is no secret—that he would much rather not have control orders, but you have set out very clearly that it is a dilemma and a very fine balancing act that governments have to deal with. You have also explained to us a number of approaches that you think might be effective in that context to allow us to go down a different path. Why do you think that the Government does not feel about to take those particular steps? What are the barriers that prevent the Government going down the road that you have now outlined for us which would perhaps provide a viable alternative to control orders?

Sir Ken Macdonald: Partly the Government got itself into a bind, into a sort of war of attrition with the courts. The original scheme was to keep just foreign nationals in detention. The courts said that was no good: “You have to keep everyone in detention.” Then the courts said, “You can’t keep people in detention anyway without a due process trial. The Government is where it is. It is always difficult to extricate yourself from a policy which has failed. I think this policy has failed. I suppose if the Government was setting out to try to deal with the situation now, it would not go down the route of control orders, and we will have to see what happens if there is a change of government. I think this is just a question of it being difficult to extricate yourself from a failed policy. I really do acknowledge the difficulty the Government are in. When I was DPP and the July 7 bombs went off, I had a reaction to it which was quite unexpected on my part, which was a sense of failure and guilt that something like this had happened while I was DPP—although there was nothing I could have done about it, in essence. That must have been massively magnified for the Prime Minister, the Home Secretary and everybody else. People react sometimes to these events in a hyperactive way. Many Western governments were guilty of that. I quite understand why it happened and I think control orders are one example.

Q160 Ms Buck: Your sense is that this is an inability so far to extricate themselves from the dilemma they are in, not, in a sense, a weighing up of the pros and cons of various alternatives and seeing practical measures to introduce in each of them so great that we are not yet in a position to be able to offer an alternative.

Sir Ken Macdonald: I am sure that is a part of it. I do not mean the Government is sitting there staring into the headlights like rabbits. They obviously are thinking about how they can get out of this and what alternatives might be. The trouble is they have to come up with an alternative that is going to be acceptable to the courts. If anything which represents a serious interference with liberty is not

acceptable to the courts, it is rather difficult to see what else they can go for, other than doing everything that can possibly be done to mount prosecutable cases against individuals who represent a serious risk.

Q161 Mr Clappison: You are very fair in the difficulties which you ascribe to the Government in the very understandable dilemmas that they faced and the reaction which you had yourself. Going back to the question about deportation, you obviously have a strong view about that. Nobody wants to see people exposed to torture and treatment. Do you think there is anything worthwhile in exploring guarantees, given for people who can be deported back to another country to ensure that their treatment in another country does not contravene human rights?

Sir Ken Macdonald: Yes, I do. That is part of the Government’s duty. The Government has a Foreign Office and it has intelligence services and it has ambassadors abroad, and it is clearly in a position to negotiate with foreign countries and ought to be in a good position to determine whether treaties which it enters into are likely to be adhered to by other countries. I should have thought that if the Government enters into a treaty with another country guaranteeing the safe treatment of individuals who are going to be deported, the Government should be given a high degree of respect for its view as to whether that treaty is likely to be upheld or not. The Government should be in the best position to make that determination—I should have thought, in many circumstances, in a better position than the courts. As I say, the Government has a diplomatic service and intelligence agencies and all the rest of it. Assuming the Government enters into those negotiations with good faith—and I am sure that it does—if it concludes a treaty with a foreign jurisdiction, it seems to me that that treaty should be accorded a high degree of respect in this country and indeed by the courts in this country.

Q162 Mr Winnick: Sir Ken, now that you can speak more freely, having given up carrying out your duties, if I may say so, in such a distinguished way for those five years you were the Director, bearing in mind the acute danger that Britain has faced from the latest terrorist threats over the last nine or ten years, how far do you feel there has been, if there has been, a serious erosion of civil liberties in our country? I assume that you recognise the necessity of those measures which have been brought in. How far has there been any serious erosion of civil liberties?

Sir Ken Macdonald: I think we avoided the most serious erosions that we might have suffered. My experience was that the Government was not composed of conspiratorial figures who wanted to destroy liberty; it was composed of people who were genuinely wishing to respond to serious security threats and making very difficult and fine judgments in some areas—42 days would be one, and some of the terrorism legislation on the fringes, encouraging terrorism and so on, are others. But we have managed to avoid any diminution of our due process

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principles. We maintained open trials. We avoided vetted judges, we avoided vetted lawyers, we avoided special courts and we avoided changing the rules of evidence, for example, on the burden of proof. We managed to protect the integrity of our trial system in the face of quite a lot of pressure at one time. In 2004 it should be remembered the Prime Minister floated the idea of reducing the standard of proof in criminal cases. We said publicly that we cannot be sending people to prison in the face of reasonable doubts about their guilt. There was a genuine conversation between the Government and others, and in the end—and this is my personal view, obviously—the Government did a pretty good job, but it did it within the context of parliamentary democracy and all of the pressures that came to bear upon it in this Place and outside. I think we broadly came out of it with a sense that our system was working.

Q163 Mr Winnick: Partly due to you, Sir Ken.
Sir Ken Macdonald: No, I do not think so.

Q164 Chairman: Earlier in evidence, I put to Assistant Commissioner Yates that the Home Secretary had said last week we had perhaps been “too draconian” with some of the measures that were adopted following the London bombings. Assistant Commissioner Yates said he disagreed with the Home Secretary. Do you think the Home Secretary was right? Were we too draconian?

Sir Ken Macdonald: Yes. I think he was absolutely right. Looking back in years to come, I think people will say that, whilst we protected the fundamentals, at the edges the Government at times wanted to go too far. I repeat what I have just said, that it was because of the parliamentary context and the public context that the Government was dissuaded from doing so and the Government was sensible enough to be dissuaded. That is a good thing.

Chairman: Sir Ken, thank you very much for coming today.

Witness: Mr Keir Starmer QC, Director of Public Prosecutions, gave evidence.

Q165 Chairman: Good morning. Thank you very much for coming to give evidence. I know you are extraordinarily busy and we are most grateful to you. It is exactly a year since you were appointed DPP in 2008.

Mr Starmer: Yes.

Q166 Chairman: Are you enjoying the job?

Mr Starmer: Yes, thank you.

Q167 Mr Winnick: I hope you say so at the end of it.

Mr Starmer: I will let you know.

Q168 Chairman: Do you think you would benefit as Director of Public Prosecutions from the admission of intercept material as evidence?

Mr Starmer: Yes, I do. Evidence obtained by interception would be of benefit to prosecution in this country, particularly in respect of counter-terrorism and organised crime. I base that answer on an analysis of the cases where we have been able to use foreign intercept evidence. There have recently been 11 such cases involving organised crime. In eight of those cases, there were pleas of guilty based on foreign intercept evidence. It is on an analysis of those cases. I am not able to carry out an analysis of our prosecutions and answer the question “Would they have been enhanced by evidence obtained by intercept?” because obviously we do not routinely see that material and there would be no point in us carrying out the analysis. In so far as I have done it with foreign intercepts, it is clear that there would be a benefit in terms of prosecution.

Q169 Chairman: You have conveyed your views to the Attorney General and the Home Secretary, have you? Ministers are aware of what you would like to see happen as far as intercept evidence is concerned?

Mr Starmer: Yes. My view is that I am, in principle, in favour. I do think it would be of benefit for the reasons I have just outlined. In addition to that, I should say that, as an organisation, CPS, we have been participating in the workings of the Chilcot team, looking at the question of whether the evidence obtained by intercept could be put into a model that would be consistent with the nine operational principles, but my ‘in principle’ position has been made known.

Q170 Mr Streeter: We have been told that interception is of most use as a tool for gathering information rather than evidence. We have heard from your illustrious predecessor a second ago that he did not agree with that. What is your view, please?

Mr Starmer: It is of great benefit in terms of intelligence gathering. I am aware in other jurisdictions where evidence obtained by intercept can be used that it is of benefit and has been used in a wide range of cases. That tends to suggest that the same would be true here. As I have said, on the analysis of foreign intercept—which is our best evidence, in a sense, because it is intercept in this jurisdiction in our court proceedings—there is clearly benefit. What I am not able to do—and I really do not think I should do—is to suggest that it is possible to give any analysis of our prosecutions, that they would in fact have benefited or not, because that analysis simply has not been done by me or anybody else.

Q171 Patrick Mercer: Can I ask you to throw your mind back to Operation Overt, the intercepted plan to bring down aircraft in the summer of 2006. The procuring of emails from California was crucial in this. Can you clarify the distinction in this particular case between information and evidence?

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Mr Starmer: I have to be slightly circumspect about this case because, as you know, I consider there should be a retrial of the three remaining defendants. That, if it goes ahead, is going to go ahead next year and so the case is still live to that extent. In that case, some email traffic between alleged conspirators was captured by internet service providers overseas. Efforts were made to obtain it and, eventually, through legal assistance it was obtained. There were a series of court orders in January and February of 2009 that released those emails from a US court of law in the district of California in accordance with a request from the UK. Then it was deployed by us in the second trial, the retrial, in that case. We considered that it added to the strength of the prosecution. It was used as evidence.

Q172 Patrick Mercer: Is the distinction between information and evidence as rigid and absolute as the Minister for Security Lord West suggested?

Mr Starmer: As a matter of law I think it probably is because evidence can only be evidence if it complies with the evidence of the rules of admissibility in this jurisdiction. That is a real difference. That is not to say that information which is currently collected as intelligence could not be used for evidential purposes, but there is a clear distinction in law between the two.

Q173 Mrs Dean: Obviously many other countries, both in the EU and the Commonwealth, allow the use of intercept evidence in court, albeit in tightly controlled circumstances. Why do you think the UK does not allow prosecutors this option?

Mr Starmer: In a sense that is a question of policy which is not for me to answer, but it is important to appreciate—and I think most people do appreciate—that the legal regimes in other jurisdictions are different. By that I mean the legal regime by which intercepts are captured. I do not think there is another jurisdiction that has the same set up as we have here and it is important to appreciate that because it does have practical consequences. In other words, I do not think you can simply transpose one model from another country with a different legal regime and assume that it will automatically apply here. The work of the Chilcot Review was to look at a model that might work here, given our regime.

Q174 Mrs Dean: Are you of the opinion that that is possible? Do you think that we can introduce a regime that can allow it?

Mr Starmer: As a matter of principle I think that a legal regime could be devised, in which evidence obtained by intercept could be admissible in evidence. The more difficult question is the question that the Chilcot Review is confronting, whether a model can be devised that is consistent with the principles that they have set down for their review. But I accept that in principle it can be done; you can devise a legal model that would permit evidence obtained by an intercept to be used.

Q175 David Davies: Mr Starmer, we heard what the former DPP thought about Control Orders; what are your personal views on control orders?

Mr Starmer: I do not think, for the reasons that my predecessor just gave, that it is appropriate for me to give my personal views about control orders. I recognise the difficulties that the government face and faces in dealing with the threat of terrorism. I accept that measures have to be taken to protect the public. As DPP my involvement with control orders is on the question of whether or not a prosecution could be brought as an alternative to the control order in the first place, and that is a review decision during the currency—

Q176 David Davies: As DPP you do not think it is appropriate to comment on control orders, but obviously they have been brought in because the Human Rights Act prevents us from sending these people back even though they pose a threat to our security. Why do you think it is not appropriate to comment on control orders but that it is perfectly appropriate to comment on what political parties may or may not think of the Human Rights Act?

Mr Starmer: I have limited my comments today and in the past to matters which touch on the prosecution and I have not made any comment on the government or the opposition's policy on anything. I simply make comments that the passing of the Human Rights Act as law is useful to us as prosecutors, in particular in protecting the rights of victims and witnesses.

Q177 David Davies: And people who have posed a threat on our security?

Mr Starmer: I have not touched on that in any public comment either, no.

Q178 David Davies: You do recognise that the only reasons we have control orders is because the Human Rights Act prevents us from sending people back who may pose a threat to our security?

Mr Starmer: I am very aware of the history.

Q179 David Davies: So you would accept that it is perfectly reasonable for political parties to have discussion as to whether or not the Human Rights Act is working?

Mr Starmer: Of course I do; I think it is a perfectly legitimate and proper thing.

Q180 David Davies: And as DPP it is not really appropriate for you to get any more involved in that discussion than it is for you to get involved in a discussion about control orders?

Mr Starmer: It is appropriate for me to make any comment that is relevant to the programmes of offences in this country. The Human Rights Act has been a useful tool in protecting the rights of victims and witnesses. My anxiety is if that Act is repealed our ability to protect victims and witnesses could be undermined. I think that is a legitimate thing for me to comment on.

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Mr Salter: Can I refer my colleague David Davies to a speech I made several years ago calling for a derogation of the Human Rights Act.

Mr Winnick: It is in the collective works downstairs.

Q181 Mr Salter: You are not the only one. I have looked, Mr Starmer, at the reaction of Lord West to the Law Lords' ruling where he said he would much rather not have them—they are a kind of necessary evil. But the government's current position as set out by Lord West's letter of 22 October states that the government's current assessment is that the control order regime remains viable; but surely in the wake of the Law Lords' ruling it is difficult to see how it remains viable in any shape or form, is it not?

Mr Starmer: Again, I am in danger of trespassing on an area—

Q182 Mr Salter: I am happy for you to trespass.

Mr Starmer: The difficulty is this. My involvement is in relation to the question of whether there could be a prosecution before or a prosecution for a breach afterwards. I have obviously read and studied the House of Lords' judgment on due process; it is the law of this country and it seems to me that it gets the balance about right in terms of due process. Some of those cases have been remitted back to the courts and are being considered right now. Frankly, with everything else that I have to do I have not had the time to study each and every one of those cases as they go back through the court system now, but they are being looked at. From our point of view the only concern is that if any of the orders are deemed invalid at the end of the exercise it makes any prosecution of a breach impossible. So we do have that interest, but a detailed study of what has happened on the remitted is not something I have undertaken.

Q183 Mr Salter: Can I just follow up on that. If the review of the case is concluded and if invalid prosecutions follow as a consequence of that review then what future for control orders?

Mr Starmer: The difficulty for me as DPP and as prosecutor is this: if there is a breach we must obviously consider prosecution and bring a prosecution where it is appropriate to do so. If at the end of the exercise that the House of Lords has dictated our courts must go through now any control order is deemed to have been invalid, then it is likely to have been invalid *ab initio*, from the start, and that means that it will be probably impossible for us to prosecute the breach; so that is our concern in terms of the discussion and the cases on validity.

Q184 Mr Winnick: Lord West told us that he would rather not have the control order system. I do not suppose that anyone, to say the least, is over-enthusiastic about such a system, but is there really an alternative? If it is not possible to prosecute and such people are considered an acute danger, what alternative is there?

Mr Starmer: I agree with many others that prosecution would be far better than preventative measures and that includes control orders. So there

ought to be, in my view, a presumption in favour of prosecution. It is therefore quite right that we consider prosecution; it is right that we review whether we can prosecute during the currency of the control order. You posed the question if not control orders what else and I think that is a very valid question and I do not have a ready answer, and to that extent I do recognise the difficulty that the government is in. If it has a duty to take some measures to protect the public and there cannot be a prosecution, then anybody who argues that control orders should not be used needs to come up with an alternative which is viable, and I am not able to do so.

Q185 Mr Winnick: In a very minor sort of way, compared to the situation at the time, this is a kind of 18b regulation, is it not?

Mr Starmer: Yes.

Q186 Mr Winnick: We know that 70 years ago when the very existence of our country was at stake and people were locked up when there was no evidence against them, but in view of the danger there was considered no alternative, so Mosley and co went to Brixton and stayed there until, I think, 1943; so in a sense this is nothing particularly new as such.

Mr Starmer: I accept that. One of the difficulties—and this is well recognised—of the control order regime is the length of time for which they can realistically remain in place and I think that is a real challenge for the government and I do not pretend to have an answer. But that would be the difference, that potentially at least they would last for a lot longer if renewed on an annual basis.

Mr Winnick: One final question. Bearing in mind, as we all do, the terrorist danger that is going to exist for some time, can you see the ending of control orders in the near future?

Q187 Chairman: The courts have made a judgment on this that they have to end.

Mr Starmer: Yes. I am not sure that I am in a position to answer that but, as I say, there is an anxiety about how many times a control order can be renewed and I think that on each renewal the courts become increasingly anxious about the appropriateness of renewing the order.

Q188 Chairman: Mr Starmer, later on today we will be taking evidence from the Home Secretary on extraditions, specifically the Extradition Act between the United Kingdom and the United States, with reference to the Gary McKinnon case. Have you been involved in any way? The case is obviously over; it has gone through its processes. Are you involved in any way in extradition matters in your office?

Mr Starmer: We have an extradition team on difficult, sensitive cases. I am briefed and will be involved in the decision-making process.

Q189 Chairman: In order to prosecute?

Mr Starmer: In terms of the decision whether to prosecute in the first place and/or whether to extradite.

Q190 Chairman: So have you completed all your deliberations in respect of this matter? It is now in the hands of the Home Secretary, is it not?

Mr Starmer: It is in the hands of the Home Secretary; I do not think it can be guaranteed that the case is over and there will not be further legal proceedings, so I need to answer any questions carefully.

Q191 Chairman: So do it in a broader sense; you know of no circumstance which will prevent representations being made to ministers on this case, clearly because the Home Secretary is considering it at the moment? In terms of general extradition cases it is quite possible for representations to be made and discretion to be exercised by ministers.

Mr Starmer: That is right. Representations are also made to us as prosecutors.

Q192 Chairman: Yes, exactly.

Mr Starmer: And taken into account, and that happened in the Gary McKinnon case.

Q193 Chairman: Finally, you made some comments recently about the criminal justice system and out of court penalties. Why are you concerned about the number of out of court penalties?

Mr Starmer: I was concerned not so much by the numbers but by the fact that over time out of court penalties have developed in a rather piecemeal way with different options being added at different times, and my concern was that if you now stand back and look at the product of all those changes the system lacks some clarity and I was expressing the view that I thought a structured approach indicating which offences could be dealt with by what out of court disposal and which body would oversee it, going up in a graded way which was transparent, would be far better. I was also indicating the fact that as far as

conditional cautions are concerned, which are the out of court disposals over which I have supervision, I have issued guidance to say that conditional cautions should not be given in any case which is more serious than a common assault.

Q194 Chairman: And your views have been echoed by the Commissioner who also agreed with what you said, and we understand that today the Lord Chancellor has just announced a review of these matters as a result of presumably comments that you and the Commissioner has made, and he is obviously also concerned about it. Are you aware of that?

Mr Starmer: I am aware of that. I cannot answer as to why he has done that, but there is concern as to the overall scheme, I think.

Q195 Chairman: Finally, you have inherited the CPS. We have none of stories that seem to have affected your predecessors—no lost files in court. Are you quite satisfied and happy about the way in which the organisation is functioning at the moment?

Mr Starmer: Yes, I am. I think it is an organisation which is now performing to a high level; it is an organisation that needs to perform to a high level all of the time and I am determined to bring forward such changes as are necessary to achieve that. But all of the external touch points—we have the Inspectorate and our Capability Review—have recognised all the hard work that has been done over the years to put the CPS now in a different position to the position it was in ten years ago. I am now determined to drive quality into the organisation from top to bottom and consistently.

Q196 Chairman: How are you doing on diversity?

Mr Starmer: Very well. In terms of our staff profile we are one of the best across Whitehall; in terms of our community engagement we are very active on questions of equality and diversity. We take it very seriously. I personally take it very seriously.

Chairman: Director, thank you very much indeed for coming to give evidence to us today; we are most grateful.

Tuesday 8 December 2009

Members present:

Keith Vaz, in the Chair

Tom Brake
Ms Karen Buck
Mrs Ann Cryer
David T C Davies
Mrs Janet Dean
Patrick Mercer

Gwyn Prosser
Bob Russell
Martin Salter
Mr Gary Streeter
Mr David Winnick

Witness: Mr Andy Hayman, Former Assistant Commissioner for Specialist Operations, Metropolitan Police, gave evidence.

Q197 Chairman: Can I refer all those present to the Register of Members' Interests. Good morning, Mr Hayman, I gather you had a little difficulty getting into the Palace.

Mr Hayman: Yes, I apologise for the delay.

Q198 Chairman: It is nice to see you, thank you very much for coming. The Committee is conducting an inquiry into counter-terrorism and obviously as the former head of counter-terrorism your thoughts on this issue are very important and very relevant, so we are very grateful to see you here today. You have written a book recently in which you have highlighted a number of criticisms that you have had about COBR and the processes dealing with emergencies. You talk about political considerations being one of the issues and you said they tended to dominate considerations while COBR was meeting. Can you expand on that and tell the Committee why you feel that?

Mr Hayman: From the outset I must stress the point that in no way do I think anyone who goes to COBR, who either sits around the main table or who sits in the back room, is there other than to be very constructive and want to get things back on an even keel; therefore it is well-intended people from all different quarters of Whitehall and also the services. It is no one's fault that what you are doing is you are putting loads of different people into one room, while they all have different functions and roles. The politicians have got a very clear mandate—decision-making—the police and security agencies have an equally important clear role, and when the first time you ever come together is in the same room, there is a real potential—in fact I witnessed it—where those roles and the demarcation between those roles gets blurred. I am not saying it is anyone being mischievous or intending to do it, I just think the circumstances of bringing people together in that fashion creates that environment. I do not know whether anyone in this room has actually sat active in COBR—has anyone?

Q199 Chairman: No, none of us has been the Home Secretary yet.

Mr Hayman: Or a minister. I will try and describe to you what happens for those who obviously have not seen it. What happens is a kind of default position sort of emerges really where I think people realise

that is what is going on and that is the dynamics that are happening, so people come into what they call pre-meets.

Q200 Chairman: You went further in your article in *The Times* on 27 June, going by the headline in *The Times*, you said “COBR: the UK emergency committee that makes chaos out of a crisis” and you suggested another approach which is a two-tier system.

Mr Hayman: Yes.

Q201 Chairman: Where the operational people get together and decide on the way forward and then options are presented to politicians.

Mr Hayman: That is exactly what happens; it is a default position when you are in live action. You have a forum where the operational colleagues sit together and thrash out what, from their professional experience, they believe to be the options, and then they come into the main COBR and present that to ministers. I think that is a really good way of working because ministers then have got all the information at their fingertips, they are well informed and they can make a decision on the basis of that, an absolutely clear demarcation. What I thought was strange was that that was going on underneath everyone's noses but it was as if it was the unspoken word, no one talked about it, and I felt that was a bit disingenuous because how do you feel if you were not part of that group that met before? What was discussed there? All I am trying to do here is not to in any way be difficult, I am just trying to get out into the open what people find difficult to discuss.

Q202 Chairman: That is an absolute given but of course the Committee is keen to look at the current system and see how it can be improved. It is not any criticism of the overall strategy, your concern is to make it a streamlined process which would enable decisions to be made quickly and you actually talk about pulling people away from an event into a situation where they are basically sitting—Members of this Committee actually visited COBR last week and we looked at the structure that had been set up. Your concern is about delayed decision-making, is it?

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Mr Hayman: Yes, the structure is fine. You have got the back room team who are doing the research for you while you are sitting around the table, I just would not want people to get confused as to why they are there. When everyone really wants to be positive and constructive and get things on an even keel, people chip in from all angles—I put my hand up, I probably overstepped my mark and started getting involved in things that I should not get involved in. What would be helpful is if there was a two-tier system where ministers, who have got a very clear mandate, are allowed to be away from that. They have no fingerprints on the formation of the options and then when it comes into the main forum which is clearly their role they have all the information and there is better, informed decision-making.

Q203 Chairman: Is there another model somewhere else in the world that you think we should look at? For example, the United States and the National Security Council?

Mr Hayman: I am not briefed on that, Chairman. The one fear I have got—and this is the difficulty, this is the real frailty—is that people would argue there are minutes taken, but actually I have never seen them and I attended most meetings. There might be notes or bullet points which is fine, but let us just say something goes badly wrong and we crawl over the decision-making process. If we have not got records of meetings and we have a forum where people cannot remember what they said they were going to do, and indeed they overstep the mark inadvertently into a role and function that they are not either trained or experienced to do, or is not their remit, that is difficult territory.

Q204 Chairman: Is there not an action list that is written out as and when people say they are going to implement?

Mr Hayman: Yes, there is a bullet point action list but minutes need to be sensitively compiled. Is it not the case when we go back over on public inquiries that we look at not just the action list, we look at the decision-making process and the considerations that led to the action. What if that process and discussion is flawed? For others it needs to be objectively looked at in the cold light of day, who were not actually in the hot seat.

Chairman: Yes. Martin Salter.

Q205 Martin Salter: Mr Hayman, I along with other colleagues visited COBR last week and I have to say your criticisms and your published criticisms came up. We were not talking to politicians, we were talking to senior operational personnel—the police and security services—and they absolutely rejected your criticisms, did not recognise your descriptions—we realise you have got a book to sell—and they did say—

Mr Hayman: That is a little bit harsh, a bit harsh.

Q206 Martin Salter: I am sure you are not giving it away. They did say that COBR is being used as a model for other jurisdictions facing terrorist threats

to follow. If it is so dysfunctional, as you have described, why are the Australians, the Jordanians and others, people facing similar threats to ourselves, actually using our model in their jurisdictions?

Mr Hayman: I cannot comment for others that do not recognise what I am saying but what I do know is that that is my experience. Yes, I did choose to share that; indeed, I am aware having talking to former colleagues of a recent exercise where some of those things I described were played out again. If people choose not to want to talk about it that is fine; all I am saying is it was not to sell a book. This was an informed decision on my part to say other things in that book where I think if things are going really well we should comment on that, but if I felt from my perspective constructive observations would help the process then I have done that. If that gets ignored that is other people's decision; I just thought I wanted to do that.

Q207 Martin Salter: Do you think the Australians are wrong to follow?

Mr Hayman: No, no, I did not say that; I said look at the success we have had, it cannot be that bad. What I am saying is that if I lay out the fact that I was there, I experienced it, side meetings—would you be comfortable if you were part of a main group and you were aware that there were side meetings going on but you had no vision on that whatsoever?

Martin Salter: It happens all the time in the real world.

Chairman: That is very helpful. Bob Russell.

Q208 Bob Russell: Mr Hayman, in your detailed responses to the Chairman and then to Mr Salter and your book are there any other aspects of how you would improve on the system that you have not mentioned, either today or in the book?

Mr Hayman: No, I have covered most of it.

Q209 Bob Russell: When you served on the COBR committee surely it must have proved useful as a forum—notwithstanding your criticism—to co-ordinate the governmental response and share information between separate bodies.

Mr Hayman: Absolutely, and that is a function it performs as well as it can do. What I am saying is that there are improvements. People might see those improvements as being marginal and probably insignificant, but I did not, that was not my experience. I felt that those improvements would be helpful.

Q210 Bob Russell: When you have your reunions with chums who were there with you, who may still be there, have they all indicated 100% support for the view you have taken?

Mr Hayman: It is for others to express that but I have not seen many dissenters privately. It is always difficult for people to speak publicly, is it not?

Chairman: It is; that is why we are very grateful to you for coming here. David Davies.

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Q211 David Davies: Thank you, Mr Hayman; I thought it was a very good book actually. One of the other concerns that you had was over the impact of devolved parliaments on policing and on the ability of anti-terrorism police if you like to deal with Scotland and Wales. Would you have concerns, bearing in mind what you said about the Scottish Parliament, if the Welsh Assembly also got powers over policing?

Mr Hayman: The toing and froing that you are referring to there was over one particular operation and, as it turned out, some of those wrinkles were ironed out a bit.

Q212 David Davies: I felt they were ironed out mainly because of personal relationships; that seemed to be the case you were putting.

Mr Hayman: Absolutely. One of the reasons why up to now it has been difficult for me to come here is that the view that I was expressing was not necessarily totally shared by colleagues over the border. It is for others to decide whether or not they would be comfortable with devolved parliaments but I think there is a real comparison here to be held with police services. I have also made observations, and it may be something you want to hear about later, but when you look at the way we deal with serious crime on SOCA or the Border Agency with immigration, it seems to me it flies completely in the face that those two agencies have a national remit where they can travel across the country and not worry about force boundaries and not have this ridiculous situation where, on one operation we had, which was an armed operation, before we could go across each force boundary we had to get authority from the Chief Constable of that force to allow that to happen. That cannot be right and with terrorism being of international flavour and with a national or international footprint we should be breaking those barriers down. The reason I rehearsed that argument is that the same could be said for the political and parliamentary argument because, provided you have got good will and the personalities are right, it will work, but you cannot have a structure on that, can you?

Q213 David Davies: If, for example, you had a government of one political party in one place and of another in the Welsh Assembly or Scottish Parliament then that could cause problems for policing.

Mr Hayman: Yes, absolutely.

Q214 Ms Buck: Going back to your criticisms of COBR, I am finding it a little bit hard to follow to what extent you are recommending that there should be structural change and to what extent it is to do with processes, clarity of information and clarification of roles because they are two quite fundamentally different approaches to the issue.

Mr Hayman: I am not going to come here and trash something; I do not think I trashed it in the book.

Q215 Ms Buck: It came over as trashed.

Mr Hayman: I wrote it as it is; sometimes that sticks in people's throats but that is the way it is. What I am saying is that what is going on informally should be formalised because why people might not recognise it is because actually they are making it work. I accept the point that in the real world, Mr Salter, there will be other meetings going on but this is not something that you can just put to one side as policy development; this is the real world where actually they will probably be making life and death decisions and it is absolutely right as a minister that you would want to know what the decision-making and discussion was that was going on in a meeting over there, that could lead to an operational deployment that actually you had not had full vision of and sight of. What I am saying is some of the things that are going on informally to make it work by the practitioners should just come out from underneath the carpet, let us just put it on the table and formalise it.

Q216 Ms Buck: It is not the structure that you are objecting to, you do not find that structure in which different meetings feed into the decision-making process is the problem, it is the fact that those processes are not properly minuted and the advice that they are giving is not laid out in such a way as to clarify decision-making.

Mr Hayman: I am accused of being two-faced over this but what I was writing in my account here was that we have got all these people in the same room, all vying for position, trying to do the best thing they possibly can which blurs things, so what happens is informally we have a structured forum and I think a really good model was when Dr John Reid was the Home Secretary and there was an operation involving Litvinenko. What he insisted on doing there was that he did not want to be involved in the development of operational options, he left that to MI5 and me to do, we came to him with those options and he made a ministerial decision. That is what goes on in part informally in COBR and I think that is great. All I am simply saying is rather than play games about this why do we not do it, why do we not formalise that so that people know what is going on.

Q217 Ms Buck: Is it possible to carry that example forward into emergency planning in the same way that you might do when you are preparing an operation for which you have lead-in time?

Mr Hayman: I reckon if you sat in the room at the time of the recent dreadful floods up North, I bet you at a similar but much lower level the Chief Constable would have said what the aim is, which is let us get things back to normality and save and preserve life. Then he would deploy other people to develop the operational decisions and take options as a result of it. That is no different to what I think we are saying here and we could say in any other emergency.

Q218 Patrick Mercer: Mr Hayman, you have called for the creation of a national terrorism agency or something of that ilk; what would that give us that the relatively new Counter-Terrorism Units (CTUs and CTIUs) do not?

Mr Hayman: Just so colleagues are aware of my stake in this, I was at the helm when we introduced those, so for me it was a middle ground between carrying on with 43 forces, some of which are not viable in this territory of operations, and going into something that was national. Going back to the point that Mr Davies was making earlier, even with that structure the Chief Constable has the ace card in his or her pack so if my successor, if it was reliant on personalities—and it is reliant on personalities—came across an obstructive, difficult, Chief Constable colleague who could actually play the ace card, there is not an awful lot left that that person can do. The Met constitutionally has got the lead on investigating terrorism and I just think that constitutionally that is difficult, if you are relying on something that is just reliant potentially on relationships. Also, whilst those resources located around the country can be marshalled anywhere within the country, you are actually operating a pseudo-national outfit anyway. It goes back to my earlier point, what we are doing in practice is we seem to be skirting around the uncomfortable constitutional discussion which puts people's hairs on their neck up because they can see, maybe, fiefdoms being threatened. It is actually an informal working practice that I am arguing should be more formal.

Q219 Patrick Mercer: If you equate, rightly or wrongly, the three regions in Northern Ireland with small to medium sized constabularies, with one guiding organisation above them and in the regions what used to be called TCGs, task and control groups, which roughly equate to the regional counter-terrorism units, is that not the model we should be looking at?

Mr Hayman: Yes.

Q220 Patrick Mercer: Has nobody opened their history books and looked at how long it took us to establish that?

Mr Hayman: I am absolutely with you, it makes complete sense. I just think it is really significant—and I mention this just as a matter of interest—I am aware that my successor is now instigating a review, being conducted by the Chief Constable of Gloucestershire, Dr Tim Brain, who is absolutely going through with a fine toothcomb the structures that are now being put into place for policing, working with other agencies to deal with counter-terrorism. I have met with the guys who are doing that and I do not think if they were sitting here that they would dismiss me as being completely crazy and off my head.

Chairman: We have some quick supplementaries on this theme. Gary Streeter.

Q221 Mr Streeter: I certainly do not think you are crazy and off your head and I have got a lot of sympathy with the points that you are making, particularly on a national terrorism agency or something like it. Why stop there, why not go the whole hog and have a single police force for the entire country? What about that idea?

Mr Hayman: I have nailed my colours to the mast in the past and I just think there has been a really uncomfortable history here in recent times where previous Home Secretaries have tried to not go the whole hog but have tried to come back to a merger. Look what happened there, that all ended in tears and because it was seen as a battle and those scars are still painful in some people's minds, there is a natural resistance now to even go there let alone try and move forward. It probably needs a completely fresh set of eyes to look at it, someone who is seen as having no baggage at all, to look at it more objectively and independently.

Q222 Gwyn Prosser: Mr Hayman, can you just give us an idea of how much time COBR meetings actually absorb in the course of a major exercise such as 7 July. All we hear is that COBR met this morning; does it take a long time or a short time?

Mr Hayman: I will answer that question but there is a little health warning: I do not think we should draw any conclusions from how long a meeting is or the frequency. Sometimes when things are so fast-moving it is actually healthier to get together and make you sure you have got information exchange. An initial meeting is actually relatively short, that could be within an hour, once the chair has set the strategic direction and tasked people to go away and get on with it. Then you are normally on a battle rhythm of two hours because you need that kind of time to actually achieve something. There is a danger and I find myself criticising having to attend loads of meetings, but actually that creates a whole machinery below you because when you have been to a meeting you have to come back and create your own cycle of meetings and before you know it, if you are not careful—and I do not think it ever got to this stage—all you are doing is running around servicing meetings but you are not actually achieving anything.

Q223 Tom Brake: I just want to come back to something you said earlier, Mr Hayman. You talked about people playing games in relation to meetings taking place elsewhere that perhaps key players were not aware of. Do you have anyone specific in mind when you say people are playing games?

Mr Hayman: I am not going to sit here and say that. It is my judgment and that is not fair on other people. What I see is that there is posturing and I do see that inevitably—and I am not naïve in saying this—people will be jostling for position from wherever they sit around that table. It takes a good strong chair to ensure that they see through that and chair the meeting appropriately. It just seems to me that if all we could just do is make sure that we are focused in one direction, and that is to make sure that we are getting things back on an even keel to

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make sure there is no loss of life and that if there is a threat to this country, whatever it might be, that is being managed. I am asking that maybe all we should do is make sure we are all focused in that way.

Q224 Tom Brake: Are you saying that the posturing as you describe it is something which is delaying or endangering the operational response?

Mr Hayman: No, that would be overstating it. Again, you know, going back to the point that was made by a colleague observing, this is in the real world and posturing and playing games is in the real world. I just think you have to manage that.

Q225 Tom Brake: Can I just come back to the issue of the national terrorism agency and indeed a national police force. How would you ensure, if there was a national agency, that the priorities or the flavours of local communities would actually be understood by a national agency?

Mr Hayman: That is the strongest objection from those who do not see it as I do and it plays out also in reducing the number of forces—how could you have a headquarters, let us say where I have come from, Suffolk, Norfolk and Essex, how could a headquarters in Norfolk ever relate to the southern parts of Suffolk? I do not buy into that because, actually, those who are at a senior level could be sitting anywhere and they actually have no contact really with what is going on on the ground. I went to West Midlands—and I would really advocate anyone who has got a spare half day to go there—and I have actually commentated on it; they have a fantastic initiative there. What they are doing is they have got counter-terrorism officers that are branded that, in uniform, working alongside their neighbourhood policing colleagues. They are unashamedly saying to the neighbourhoods and the communities that they are policing “This is what I represent. I am not hiding it, I am not trying to be something I am not” and therefore they are developing trust and confidence which we all know is the toughest challenge at the moment. That person, who I sat down and had a cup of tea with, chatted to, is a very bright officer, two years service or so. She does not actually relate to what is going on well up here, she just knows what the brief is, and the brief is to make sure that she could develop the trust and confidence of the people she is policing in that neighbourhood. So I do not buy the argument that suddenly if you get big and you are looking at a national footprint you are going to lose that contact. As a matter of fact I do not buy the argument that by having fewer larger forces you are going to lose the same cohesion.

Q226 Chairman: Thank you. Actually what you are saying is not that radical, is it? You are saying that the strategy is working, the practical implication has to change slightly, but what you are suggesting is that at the moment we have four different types of agencies where people meet together. You have got the Home Secretary’s weekly security meeting—presumably you attended that.

Mr Hayman: Yes, I did.

Q227 Chairman: Did you do that on invitation or did you regularly attend?

Mr Hayman: The Home Secretary introduced that, gave mandatory seats, so you dare not not go to it.

Q228 Chairman: You are there every week. You then have the ministerial committee on national security which is another group that meets, presumably ministers only though, others are invited, then you have the police service and the gold command at an event and finally you have COBR. What you are actually suggesting is it should not be necessarily preventative, it should meet perhaps in a non-emergency as well. What concerns members of this Committee is that COBR only tends to get going, like the situation room in the *West Wing*—if we can put it like that for those of us who watch Channel 4—after there is an emergency, and what you need is a group meeting together with everyone on a regular basis to make sure all that information is around and then operationally you will put options before ministers.

Mr Hayman: Absolutely, and the other spin-off from that is would you want to go and play in a cup final when you have never played with the players in the team?

Q229 Chairman: Yes.

Mr Hayman: You would want to know how people operate, their strengths and their weaknesses, you would want a relationship with them over and above what you see on a day to day basis, so that actually you are a well co-ordinated, oiled machine.

Q230 Chairman: How important is the personality of the Home Secretary? You have been particularly praiseworthy of John Reid and the way in which he took decisions; is that role extremely important, the personality of the person who is doing that job?

Mr Hayman: I used that former Home Secretary to illustrate that point; I would not in any way single anyone out as better or weaker.

Q231 Chairman: Should they have more training before they do this job?

Mr Hayman: Jacqui Smith actually said publicly that she felt she was going into a role where she was basically running a billion-pound agency and had not got the background to do it. That is obviously her choice to make that comment. When you are looking at what the minister is supposed to be doing, they come to the party with absolutely the public mandate, it will not be a walk in the park for anyone but they come there with the experience. What they want is to be informed by the operational options which have been blessed by the operational experience.

Q232 Chairman: But on appointment should ministers also be given the opportunity of more training in the situation room, in the COBR room?

Mr Hayman: There are training exercises but they are only once a year I guess.

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Chairman: Thank you. Mr Davies has a question.

Q233 David Davies: You made a very interesting anecdote in your book about a professional assassin who landed in London and was deported by you to a friendly country. You do not want to tell us where he came from do you?

Mr Hayman: I cannot do that.

Q234 Martin Salter: It was not Wales!

Mr Hayman: That would not be very impressive, would it?

Q235 David Davies: The continent?

Mr Hayman: I cannot say.

Chairman: We will have to wait for the film, Mr Hayman. Mr Salter has the final question.

Q236 Martin Salter: Mr Hayman, can I say how much I agree with you on the merging of forces, we do need to.

Mr Hayman: There is some common ground.

Bob Russell: It is not the unanimous view of the Committee.

Q237 Martin Salter: It never is. My question is—it is a nice sound bite, the FA Cup analogy, you have not played with the players, but when we went to COBR

again we were impressed at the programme of exercises that take place to ensure that people are familiarised with themselves. Did that not happen under you then?

Mr Hayman: All I would ask you to do, in addition to looking at the programme, look at the attending list and not only look at the attending list but look at how long people stay for. It is one thing to have an operation or a training exercise going, it is another to have the right people there. Just have a look at the exercise that was framed a couple of weeks ago and ask yourself the question how many people who attended that exercise would be the main players should an operation start off? I think there would be a dubious number that should have been there were not there.

Q238 Martin Salter: You could still have ministers there.

Mr Hayman: And.

Q239 Chairman: Mr Hayman, thank you very much indeed for coming here and I am sorry you had difficulties getting into the Palace but it might be easier on your way out. Thank you very much indeed.

Mr Hayman: Thank you.

Chairman: Could I call to the dais Sir Ian Blair, the former Commissioner of the Metropolitan Police .

Witness: Sir Ian Blair, Former Commissioner, Metropolitan Police, gave evidence.

Q240 Chairman: Sir Ian, good morning, thank you very much for coming to give evidence to our inquiry on the Government's counter-terrorism strategy. We are specifically concerned, as you heard in our exchanges with Mr Hayman, about your experience as Commissioner as far as the response of the Metropolitan Police to a suspected terrorist incident is concerned. Could you tell us something about how the process works as soon as you have an incident of that kind?

Sir Ian Blair: It is possibly wise, Chairman, if I say a couple of preliminary remarks first. Obviously I can only talk about the period of time while I was the Commissioner and Deputy Commissioner and that ended a year and a bit ago, so I am not familiar with any changes that have taken place since. Secondly, I do not think it is necessarily seemly for previous police officers to disagree about opinions and all the rest of it. Mr Hayman has clearly got his opinions of his experience and I have got my opinions of my experience. The difference between the two of us is that Andy would go almost to every COBR that was called, unless it was flooding or natural disaster which is not necessarily the place for an anti-terrorist chief, whereas my experience of COBR was perhaps the four big ones 9/11, 7/7, 21/7 and the Glasgow bombings, the Prime Minister in the chair. It is a very different experience from some of the things that Andy was expressing. My position is that in those kinds of meetings I believe COBR is extremely effective because that is bringing the full Cabinet

together with a national disaster pending and there is a very clear distinction, it seemed to me in those meetings, between operational responsibility for the police and security services and the political dynamic that was also having to be dealt with in that room and the communications with the public and so on. I do not feel the same kind of disquiet about COBR in my experience in those circumstances as Mr Hayman has obviously reported, both here and in his book

Q241 Chairman: We will come on to some specific points that he has made because they illustrate a number of issues concerning the structure but do you think that the Government's counter-terrorism strategy can be improved in any way, either in terms of the overall vision or the specifics of structure or process? Some have said, for example, that the difficulty with COBR is that it meets after an event and with so many other committees also meeting at the same time—presumably you were there on a Thursday morning at the Home Secretary's weekly meeting.

Sir Ian Blair: No, that would be the counter-terrorism chief and specialist operations.

Q242 Chairman: Did you attend the ministerial meeting?

Sir Ian Blair: No.

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Q243 Chairman: But you could if you wanted to.

Sir Ian Blair: I could if I was invited and from time to time I would imagine the Commissioner would be invited.

Q244 Chairman: Is there a case for COBR meeting outside the emergency situation, that there should be one co-ordinating body that meets on a regular basis, people can stand down or be added to that meeting as and when it is appropriate.

Sir Ian Blair: I am not sure I would agree with that process. COBR seems to me to be about response to either a pending or an actual emergency of a major category. I do agree with the issue about training and what Mr Hayman just said about the attendance of ministers and permanent secretaries is very important. The position of Jacqui Smith is slightly unusual in so far as she was appointed as the Home Secretary at about eight o'clock at night and bombs went off at six o'clock the next morning; it is a little difficult to get the training in between, but I do think it is right that we should be insisting that senior officials and ministers do attend the training. There are, as I understand it, three counter-terrorist exercises a year of which only one involves ministers and I am not sure, in the present circumstances, that that is enough.

Q245 Chairman: Obviously you do not know who the Prime Minister is going to appoint as Home Secretary.

Sir Ian Blair: No.

Q246 Chairman: It may be more appropriate to make that a wider invitation so that other ministers could attend such training.

Sir Ian Blair: I am sure that is right.

Q247 Mr Winnick: In a piece in today's paper, Sir Ian, you again argued that there should be 90 days pre-charge detention. You lobbied for that amongst politicians at the time some four years ago.

Sir Ian Blair: Two things: at no stage did I or any other senior police officer lobby for 90 days. What we actually said was we wished to see an extension of pre-trial detention in a series of seven-day periods and there had to be an outer limit somewhere and the outer limit was 90 days. I have explained this many times, Mr Winnick; it was the police service who came up with the idea of extending detention, there was a whole series of reasons why we believed it was appropriate and it would have been, in my view, very odd—in the same way if you had an avian flu threat and you did not hear from the chief veterinary officer—in the circumstances of an unparalleled threat to the United Kingdom since the Cold War that you did not hear from the police service about what they believed they needed.

Q248 Mr Winnick: How do you explain, Sir Ian, that whilst you held and continue to hold that view, because you argue the point as I have said in today's newspaper, that one of your predecessors who was the Police Commissioner from 1993 to 2000, now in the House of Lords, Paul Condon, was very much

not only opposed to 90 days but 42 days and in the recent debate in the Lords argued that even 42 days was discounted and quite wrong, so clearly there is not a unanimous view among those who have held senior police positions.

Sir Ian Blair: There are two things. The 90 days is an outer limit, an outer limit beyond which you are moving in my view, and many other people's view, towards internment; that is not a good plan. You cannot just have an empty space out there, which is of course the European process as we have just seen in the trial of the people who murdered Kercher. That is investigative detention which is for as long a period as the magistrates decide it should be. In the United States were that situation to arise an individual can only be held by the police for about 48 hours, after that he or she would be declared a "material witness" and bail would be set at such a level that he or she could never step outside the jail. Every country deals with this in a different way. In terms of Lord Condon of course I respect his opinion but, to be fair, he was not Commissioner during the unique period after the fall of the twin towers to the present day, with a threat of a very, very different nature than the one that the Provisional IRA posed.

Q249 Mr Winnick: Parliament rejected that view.

Sir Ian Blair: I know they did.

Q250 Mr Winnick: And so did a number of your predecessors and also of course the former Chief Constable of the West Midlands force over the policy.

Sir Ian Blair: I understand that.

Q251 Mr Winnick: Do you find it surprising that you were under fire for the plan then and you gave the impression when you were Commissioner that you were lobbying actively amongst Members of Parliament?

Sir Ian Blair: I do not think that is true, Mr Winnick, you are actually mixing up some things here. I make this clear—I am sorry to mention the book so often but it is clear in my book—that I believe that the lobbying that was initiated by the Association of Chief Police Officers was in itself a mistake, it was wrong, but for those people charged with counter-terrorism responsibilities, which includes the Commissioner and the Assistant Commissioner Specialist Operations and the national counter-terrorism chief, it is legitimate for those officers to say "We have a view and this is the reason why we have that view."

Q252 Martin Salter: Sir Ian, do you not think it is a bit unseemly for people like yourself and Andy Hayman, who were in senior positions, responsible for important parts of our national security, privy to national security secrets and operations, to actually be allowed to write books so soon after they leave office, which are—let us be honest—written for personal gain as well as public interest?

Sir Ian Blair: I used the word unseemly about disagreeing in public but, on the other hand, many people write books about their experiences and one

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of the things that I said and did was to place the relevant pages of my book in front of the Cabinet Office and ensure that what I was writing was consonant with maintaining national security.

Q253 Martin Salter: Thank you. Moving on to the practice of COBR, as we understood it from our visit there the other day COBR really came into existence post the 1972 Munich outrage and has developed ever since. I got the impression that it had been developed by operational practitioners to ensure that it was as effective as possible and it was difficult for us not to come away feeling that it was a relatively impressive operation and it was as co-ordinated as you are likely to get for the purpose that it was set up to do. In what ways do you think it could be improved and do you share—I am going to invite you to disagree with Mr Hayman again—or recognise Mr Hayman’s criticisms of it?

Sir Ian Blair: As I said in my opening remarks to the Chairman I do not in the sense that the meetings that I attended were at the highest possible level of significance and everybody in that room was very conscious that things were happening which were endangering the United Kingdom, whether that was the fall of the twin towers or the bombs of July 2005, so I do not feel that. If I have got any criticisms of it then one of them is something that Mr Hayman did mention which is we need to be clear about the frequency of the meetings. I would be suggesting that that is a standard arrangement so that it is the event plus two hours, then four hours after that or whatever so that the other meetings can take place. Everybody sitting in that room, particularly the operational staff, need to go back and do things, they need to have structures that they can do things with and if the recalling of COBR is at the whim of the chair as it were as opposed to a fairly structured process everybody accepts, then that is unfortunate. There is the occasional danger, particularly in London, of operational drift upwards. I remember, I think on 21/7, an earnest discussion going on as to whether the buses should be allowed to run again and myself and the Transport Commissioner had already authorised that, and if people had looked up on the screen they would have seen the buses moving—it was that sort of day. The area I would like to expand on, which is in the wide brief that you gave me, Chairman, about the future of counter-terrorist strategy—

Q254 Chairman: Do not expand on it too much because we have a number of other questions on that area.

Sir Ian Blair: What I meant was in terms of overall strategy it comes back to this discussion about a national terrorist agency.

Q255 Chairman: We will come on to that in a minute.

Sir Ian Blair: What it means is that in terms of COBR the question is who is representing the police at COBR.

Chairman: We are coming on to that as well. Tom Brake.

Q256 Tom Brake: One point that you have mentioned, Sir Ian, that you think could be improved on is the issue of training, and I am wondering if you could elaborate what sort of training do you mean? Clearly it is very difficult for anyone to be trained for an event like 7/7 so what picture have you got of the training programme you advise?

Sir Ian Blair: Actually, Mr Brake, I do not think it is very difficult because the training process currently, the national counter-terrorism programme, is a set of huge exercises, each one of which usually lasts from two to three days, so in the end the pressure of that place becomes almost real to the people who are taking part in it. It is actually going through a scenario in which the individual minister or permanent secretary does not know what is going to happen next. It takes quite a long time to set these things up and it is disappointing if the top players do not come.

Q257 Tom Brake: Can I just ask, are you advocating for instance that as part of the Home Secretary’s induction plan within the first fortnight of being in office they should be conducting or taking part in an exercise of that kind?

Sir Ian Blair: I do not think that can be done in that way because it takes months to set one of these things up.

Q258 Chairman: Months to set what up?

Sir Ian Blair: These training exercises.

Q259 Chairman: Not months to get COBR together.

Sir Ian Blair: No, not months to get COBR together, COBR is called in half an hour.

Q260 Chairman: That is the point that Mr Brake is making, the simulated emergency situation, how soon after a Home Secretary is appointed can you give them a bit of simulation?

Sir Ian Blair: I do not think I am the expert to answer that. In fact I was an exercise director of one of these big exercises many years ago but it is going to take a matter of some days and weeks at least to do that, to make it real enough that somebody is not going to sit here and say “I am wasting my time”.

Chairman: Thank you. Gwyn Prosser.

Q261 Gwyn Prosser: Sir Ian, you have told us that your experience of COBR was a very clear separation if you like between the operational issues and then the input from the politicians, from the minister or the Home Secretary. During those different times did you ever feel that the ministers or the politicians were actually compromising your operations?

Sir Ian Blair: No, I did not, but they would ask questions which were very natural. I remember the Transport Secretary at the time asking me at what stage the Tube was going to be able to run again through Russell Square and I just looked at him and said “It is a crime scene; it is days and days.” If

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people are expressing their genuine ministerial responsibilities it does not mean that they override the operations, because that cannot happen.

Q262 Gwyn Prosser: In terms of the length of the meetings would there be times when you would feel “I want out” if you like and to be commanding operations rather than talking?

Sir Ian Blair: Yes, and that is almost this bit about structure again, so it is the structure and the timing so that we know how much time we have got afterwards before we have to come back. In general, as I say, at the top level, for the most serious emergencies, this is the best system imaginable with just one or two tweaks.

Q263 Chairman: And you would rather be sitting in that room with the top guys or girls than be in absolute constant contact with the Gold Commander at the scene.

Sir Ian Blair: You have to have a measure of both and that is why I think the meetings could be shorter, as Mr Prosser has said. The one issue I have not raised is that after 7/7 and particularly after 22/7 with the death of Jean Charles de Menezes, the Met re-examined its own process, which is the Met’s management board meeting in emergency measure, and developed a new briefing system. One of the things that does happen in COBR is the chair will ask for what is happening and everybody around the room says what is happening but we have no method of knowing necessarily whether that is actually true so we developed a thing called the knowledge management centre, which I am sure the present Commissioner would be happy to share, which is a single briefing officer giving a single briefing to the meeting on what is known, what is believed, what is possible.

Q264 Mrs Cryer: When you are attending these COBR meetings what sort of notice did you get, half an hour or an hour?

Sir Ian Blair: Half an hour for the first one and then a time would be set for the second and the third one. But when the bombs have gone off, the call comes in to say “Please be in COBR at half past ten, the Prime Minister in the chair”.

Q265 Mrs Cryer: For 7/7 how many meetings did you go to?

Sir Ian Blair: On 7/7 I went to three, I think.

Q266 Mrs Cryer: Did you always feel that your presence was essential or did you sometimes feel a bit superfluous?

Sir Ian Blair: With an incident of that scale the Prime Minister will want to look across the table—admittedly he was in Gleneagles so it was the Home Secretary on the first occasion—he is going to want to look across the table at the man or woman in charge and not somebody else.

Q267 Mrs Cryer: For every COBR meeting did you always feel then that it was necessary not only for you to be there but for there to be a police presence? I am not sure how many officers would be there.

Sir Ian Blair: Probably two.

Q268 Mrs Cryer: It was always essential for those COBR meetings.

Sir Ian Blair: The ones I went to, yes. There were many COBR meetings that I did not go to but the ones that I went to, yes, I do believe it was essential that I was there.

Q269 Bob Russell: I suppose the pertinent question is why is the Civil Contingent Committee called COBR?

Sir Ian Blair: Because it is the Cabinet Office Briefing Room A.

Q270 Bob Russell: Thank you for that. Sir Ian, why did it take until 2006 for regional counter-terrorism units to be set up?

Sir Ian Blair: This is actually to me the main question that I would hope the Committee would consider, which is have we got a fit for purpose anti-terrorist structure, and there is no question I believe that these hubs are very, very effective in the sense of a middle round as to what needs to be done. They are centred in the places where there is most concern about terrorist activity beginning and they bring into play the smaller forces around, but in a sense this is a continuous compromise because I do not agree with a national terrorist agency. What I do agree with is that the primacy of the Metropolitan Police should be established in statute.

Q271 Bob Russell: Is it a practical evolution from the incidents that you were responding to?

Sir Ian Blair: It is, but we are still in the position that if we take the raid at Forest Gate where the devices which were suspected were not found and a person was shot, which you will remember, that was in the Metropolitan Police district under the command of the Metropolitan Police Commissioner. Had that been in Wiltshire, as an example, and a lot of furore had then started about who was actually responsible, you would have seen some very, very difficult issues. What I look for is not a separate agency—because the experience of the United States with its Department of Homeland Security and its division between that and the FBI and policing is very unhappy—but a situation in which the primacy of the Metropolitan Police is established in statute so that at the moment that the national co-ordinator declares for executive action then there is no doubt that he and, through the chain of command, the Metropolitan Police are responsible and the local Chief Constable is not.

Q272 Bob Russell: That would be the outcome of a fictional case in Wiltshire.

Sir Ian Blair: That is not what would happen now because at the moment now although there is a gentleman’s agreement with the Chief Constable of

Wiltshire there would be, in my view, a considerable chance of a lot of infighting afterwards as to who was responsible for something going wrong.

Q273 Bob Russell: Sir Ian, can I just pursue that point because there is a very serious point. What would be your resolution then to the fictional Wiltshire Police incident?

Sir Ian Blair: The resolution is that in statute the national co-ordinator for terrorism investigations works to the Commissioner of the Metropolitan Police and that at a certain point, which is when executive action is declared, that is the chain of command and the Chief Constable for the local area is acting in assistance.

Q274 Bob Russell: At the moment we could have confusion.

Sir Ian Blair: You will not have confusion on the ground as it is happening, my concern is that you will have an awful lot of confusion on the ground if it has gone wrong.

Q275 Chairman: Thank you, Mr Russell. I just have a quick question, why did it take five years to set these organisations up?

Sir Ian Blair: Partly because it was quite a big thing to do; secondly, there was an awful lot of money to be found to do it; thirdly, there were long and difficult arguments inside ACPO and in my view insufficient political will to drive the solution that I have just suggested which is a statutory position for the Metropolitan Police with primacy for counter-terrorism.

Q276 David Davies: Sir Ian, you may have heard me put this question to Andy Hayman but I want to put it to you as well because one of the points that you appear to agree upon in your separate books is what were the problems caused by devolved Parliament in Scotland with control over policing. Do you recognise that if the Welsh Assembly therefore got control over policing the same sorts of problems could arise?

Sir Ian Blair: The way that the Scottish position was dealt with actually worked quite well, which was that policing was a devolved activity in Scotland and counter-terrorism was not.

Q277 David Davies: It seemed from reading your book that the personal relationships also played their part and that at some point you had to stamp your feet a bit to insist that you got in there. I felt that the problem came from the politicians and not from the police.

Sir Ian Blair: That is correct, but after that a clear protocol was developed between the Scottish Executive and London, so I do not think there is a problem provided that there are protocols and provided that the politicians follow the police view that in a counter-terrorism engagement the whole of Great Britain is a single crime scene and you do need single investigators.

Q278 David Davies: To paraphrase that—and I have a special interest in this—it would be fine for the Welsh Assembly to have powers over policing provided they recognise that ultimately in some areas the Metropolitan Police will be in charge—and I would tend to agree, by the way, with that viewpoint.

Sir Ian Blair: I would tend to agree with you except that I am not the expert to say whether or not policing powers should be devolved to the Welsh Assembly.

Q279 David Davies: I am and I say no, but just in case they were.

Sir Ian Blair: If they were then we would have to keep counter-terrorism with Met primacy.

Q280 Mr Streeter: Sir Ian, I want to ask you a couple of questions on funding in a second but may I first take you back to the point you made about the Metropolitan Police having responsibility for counter-terrorism outside London and the area of primacy law. I represent part of Plymouth and we have some very sensitive assets—Plymouth dockyard, the naval base and so on. If, God forbid, there were a terrorist incident at the moment the Metropolitan Police is four hours away so who in practice would be in charge of the initial response?

Sir Ian Blair: What happens is that the local police force would—and of course you have then got the Ministry of Defence police fitting into that as well. If we take the concept of a geographically distant force exactly the same would happen as happened in Glasgow, that the local force, the Strathclyde force, takes command but within minutes the phone call is into the counter-terrorism command in Scotland Yard and within half an hour a group of Scotland Yard detectives are on their way to Glasgow or to Portsmouth because they have the information and the contacts about whether this is a one-off or this is connected to a series of events. In Glasgow it was very quickly apparent that that was connected to Haymarket, so it was one crime.

Q281 Mr Streeter: The situation is fine you think, but it could be improved by making it clear in law that the Metropolitan Police have the ownership.

Sir Ian Blair: Yes. There is a very convoluted way of establishing that under one of the police acts, the Home Secretary can require a Chief Constable to give assistance to any other Chief Constable. I do not think that is the right way to do it.

Q282 Mr Streeter: On funding, there has been a 30% increase in counter-terrorism budgets since 2005; do you think that money has been spent wisely?

Sir Ian Blair: As far as I know, yes. It has mostly been spent on people, which is very important. The hubs seem to me to be a great success. There was a problem as to how the funding was allocated in that it was actually allocated to ACPO itself and ACPO itself is not a body that can deal with that kind of funding in terms of auditing, but that has been

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changed so that it now goes to the Metropolitan Police Authority acting on behalf of the Association of Police Authorities, so yes.

Q283 Mr Streeter: Who actually then provides oversight of that spending?

Sir Ian Blair: There is—or there was in my time—a committee of the Association of Police Authorities and the chair of the Metropolitan Police Authority in those days chaired that and then reported to the Home Secretary.

Q284 Chairman: Sir Ian, your book of course deals with a number of other issues and you mentioned today the de Menezes case; do you think there is now closure on that issue and that there is nothing further that can be done in respect of compensating the family or dealing with any of the implications of what happened to this particular gentleman?

Sir Ian Blair: I would have to go back to my original statement that issues about what is currently happening in terms of compensation or anything else is not a matter for me.

Q285 Chairman: What about the statements of Sir Hugh Orde because you were on *BBC Breakfast* last week when you were talking about the policing controversy, that there is a feeling that policing has become even more politicised and Sir Hugh of course has particularly talked about the idea of the election of police chiefs. You had some views to express about that; can you help the Committee because we are also looking at that?

Sir Ian Blair: I certainly can, Chairman, but I do want to make clear that this is not a political statement by me. I actually believe that the concept of a single elected person on a large public mandate to deal with policing is historically ignorant and ill thought out because it completely destabilises the balance of power that has been established over 150 years. In terms of the concept of operational independence of the police it becomes really very difficult to imagine how that can be sustained where you have got a one-on-one relationship. I am very proud of the Metropolitan Police and one of the things that I am very proud of is that we were able to investigate cash for honours. It would be not a comfortable feeling were there a single relationship between the Commissioner and somebody or the Chief Constable of so-and-so and somebody with a power of hire and fire with no particular reason.

Q286 Chairman: Some would argue that the Met is actually too big and structurally it should really be a number of forces. Do you think that it has probably reached saturation point?

Sir Ian Blair: The Met is too big but it has got a reason for being too big, Chairman, which is because London is too big, and the idea of splitting it up North and South or East and West is a recipe for confusion and I would not agree with it at all.

Q287 Tom Brake: Could you elaborate further on what you think might be the operational implications for the police in having a single person elected?

Sir Ian Blair: The concept has been that the chief officer of police is operationally independent, is not independent of explanation, is not independent of reasonableness but if you are in a position in which the phrase hire and fire is just used as some kind of shorthand, that a police chief can be dismissed in effect at a whim, then you are going to replace independence with acquiescence over a period of years. It is as simple as that. You cannot be absolutely independent if one person can just fire you at will.

Q288 Tom Brake: Do you support the view that has been expressed that this might be a resignation matter for some senior police officers?

Sir Ian Blair: I think that it is a bit unfair for the person who has crossed over to the other side of the fence to start calling for resignations of people with mortgages! However, I do think it is a very serious constitutional issue: so serious that, as you may be aware in my book, along with some other things, I actually believe the Police Service has reached the moment when a further Royal Commission is required. There is not only this; it is the structure of policing which you have already talked about, in terms of the number of forces, the different agencies and, my particular issue, it is the cost of policing and the way in which the workforce is currently constituted. All of those are issues which politicians, for various reasons, would find it very difficult to deal with on a single party line—because the other parties would attack.

Q289 Mr Winnick: Sir Ian, anyone who wanted to see the Met carry out their duties at all levels without prejudice would say that you started off and continued, in all fairness, along the lines to make that a reality. That is highly commendable, but do you feel on reflection that you made a number of statements over the time you were Commissioner—not one or two but a number—that simply gave ammunition to your critics, who perhaps did not quite want the kind of Met that you wanted?

Sir Ian Blair: I am sure that, in your no doubt careful reading of my book, Mr Winnick, you will note that I do say that, yes, I did make some mistakes. I also say that whoever does not make mistakes does not make anything. I was also the first Commissioner to operate in a global, 24-hour news media. We were also dealing with the biggest story in the world at the time. That does create pressures, and I did not get everything right—no.

Q290 Mr Winnick: When the Mayor of London indicated that he did not want you to continue, presumably that did not come as a particular surprise?

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Sir Ian Blair: Yes, it actually did come as a major surprise. It came as a major surprise because I believe that constitutionally what he was doing was just wrong. It was inappropriate for a senior police officer to be placed in the position that resignation was almost inevitable, without an explanation being provided.

Q291 Mr Winnick: Did you point that out to him?

Sir Ian Blair: I pointed out a number of things to him, which are recorded in my book very carefully. You did say was it a surprise. If it is a surprise, you do not always remember what you should say; therefore you do not always work out what you should say in that particular moment. However, my view remains the same: that it was an inappropriate thing to do.

Q292 Mr Winnick: Did you consider standing your ground and saying that you were not willing to accept?

Sir Ian Blair: Mr Winnick, I very much did but, as I said in my resignation statement, that would have placed the Metropolitan Police in a very hostile position with its authority. I was the steward of the office to which I was appointed and, if it was necessary to protect the organisation for the steward to step aside, then that is what I would do.

Chairman: Thank you very much for that and thank you for allowing us to move on. Incidentally, this Committee has recommended in our report *Policing in the 21st Century* the creation of a Royal Commission to look at the very issues that you have mentioned in your book. Thank you for coming to give evidence to us.

Tuesday 15 December 2009

Members present

Keith Vaz, in the Chair

Mr James Clappison
Mrs Ann Cryer
David T C Davies
Mrs Janet Dean
Patrick Mercer

Gwyn Prosser
Bob Russell
Mr Gary Streeter
Mr David Winnick

Witness: Mr Charles Farr, Director-General, Office of Security and Counter-Terrorism, Home Office, gave evidence.

Q293 Chairman: *****

Mr Farr: *****

Q294 Chairman: Thank you very much. Thank you for coming to this session. You probably already know this, that we are going to see the Head of MI5 this afternoon for a briefing on the current situation. Mr Farr: Yes.

Q295 Chairman: In evidence to the Sub-Committee in February you seemed to suggest that the institutional structure around counter-terrorism could not be improved upon. Is that still your view? Mr Farr: Fundamentally, yes. I think the overall structures are fine and that the focus of our work should go on the consolidating of those structures dealing with a raft of really pressing issues in the light of the threat we face and in particular the prospect of the Olympic Games in 2012. There are some relatively minor changes, some of which have been mentioned in previous evidence sessions to your Committee, which should be pursued further, but I do not think we either need or would want a big whole scale change in responsibilities or structures now.

Q296 Chairman: I put to the Home Secretary—obviously you were not in the session—about the need for further work on this, but he, like you, was satisfied that what they had done in America was not something we needed to repeat here. Mr Farr: That is exactly my view.

Q297 Patrick Mercer: Thank you for coming in, Mr Farr. Taking that on a stage further, there are at least ten agencies, bodies, offices, committees, et cetera,

which are involved in counter-terrorism. Are you content with the cooperation between those bodies? Is it easy to manage them? Mr Farr: I think the cooperation has got steadily better since certainly OSCT was created in 2007, and even from before then. I am sure it has got a way to go and that partly reflects the fact that some Government departments inevitably have CT as a relatively small part of their business, they do not know very much about it—and I do not criticise them for that—and they are not used to dealing with the world in which we are used to living. It is part of our job to bring them together and create capacity and a strategy for them. I think we are doing that, but the answer to your question is there is still some way to go before we are at the point where I think we can all be satisfied with coordination or capability.

Q298 Patrick Mercer: I am not going to ask you to enumerate them, but do you see bodies that might profitably amalgamate or merge? Mr Farr: Broadly, no. If you are pressing on structural change—

Q299 Patrick Mercer: Yes. Mr Farr: Andy Hayman, in his evidence to you, mentioned that John Yates was looking at the structure and role of something called ACPO TAM—the ACPO Terrorist and Associated Matters—which is a key organisation for us in the management of the police CT effort which, after all, is £600 million a year of very significant investment for the Government. I think he is right to be worrying away at that. It is not an amalgamation as such, it is a structural adjustment, an evolution. I think there is a particular issue which we are looking at which is about civil nuclear constabulary, which at the moment is run by DECC *****

***** There are one or two issues of that order, but they are not, as you will see, really fundamental and relating to the responsibilities and structures of the principal counter-terrorist players in this country.

Q300 Mr Winnick: *****

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Q306 Bob Russell: Why is the National Security Secretariat not housed within OSCT?

Mr Farr: Because the National Security Secretariat does a whole raft of business way outside counter-terrorism and, therefore, it is more appropriate that it sits at the centre in the Cabinet Office.

Q307 Bob Russell: So presumably there are advantages to that. Are there any disadvantages?

Mr Farr: To be honest, no. Under any administration, under any government of whatever complexion, you will always need Cabinet Office as it is at the moment with some responsibilities for counter-terrorism and wider security matters, and I think it is our job to plug into that, not to supplant it. That works very well.

Q308 Chairman: In answer to what Mr Mercer raised with you and, indeed, Mr Russell, why should we not have a National Security Council bringing together all these various bodies able to advise the Prime Minister and the Home Secretary on these serious matters with a kind of public figure, such as Henry Kissinger and Condoleezza Rice? They do not necessarily have to be Members of Parliament, but they can be those figures that people actually know and identify with while others in an operational way do their job, so the public know there is someone the Prime Minister can turn to who has stature, understanding and ability to do these pieces of work.

Mr Farr: You are talking, as I understand it, about a rather more public and high profile National Security Secretariat.

Q309 Chairman: Exactly.

Mr Farr: You could develop an entirely workable model with that at its core. It has been thought of before and is still under consideration by some people, I believe. I would say I think the NSID structure that you are familiar with, the ministerial structure, does do part of what you have just mentioned at a ministerial level, but it is not sitting continuously, which I think is what you had in mind by a National Security Council.

Q310 Chairman: We will come on to questions on COBR. It is just that everything seems to be so reactive. We know that you are all doing good work and promise to keep the country safe, for which we are extraordinarily grateful, but it seems to me the only time they get together is in a kind of national emergency and what we need is the ability to make this continuous. If we believe politicians that this is a very, very serious threat and it is ongoing and you accept what Mr Winnick said about a seamless threat, surely we need a structure that will reflect that. Do you go to the Thursday morning meetings?

Mr Farr: Yes, absolutely. I have read the evidence on this and seen some of your comments about COBR sitting in more continuous mode, as I understood it. There are a number of proactive regular meetings which I think are important to factor into this debate. At the top as you know, Chairman, you have the NSID architecture in various configurations:

NSID dealing with public security, or NSID dealing with extremism, or NSID dealing with foreign policy issues. Those meet regularly on a, if not weekly basis in certain cases then certainly a monthly basis, and beneath that you have the CONTEST Board, which I chair, which is the senior officials meeting looking at the development and implementation of our counter-terrorist strategy. That meets on a regular basis. Beneath that you have regular meetings of what we call—forgive the jargon—the four P committees: Pursue, Protect, Prevent and Prepare. Those meet regularly every month looking at the development of our programme, is it working or is it not, what do we need to do differently and are we getting value for money. That is before you get onto the weekly security meeting which meets every Thursday. There is quite a lot of steady state activity. I am not necessarily suggesting it is enough but it is more than may have been suggested to you in some evidence sessions that I have read.

Q311 David Davies: You have sort of answered my question but I am going to put another one to you. I am trying to understand this structure here. There are ministers at the top, various ones, then the OSCT, you answer to ministers, and then MI5 and MI6 you set the strategy for. So far so good. But MI5 and MI6 also answer separately back to their own respective ministers and the Cabinet Office, again they obviously are ministers and I cannot quite see where they fit in, and JTAC as well are scrutinising MI5 and MI6 as product and also anything that comes out of local government and anything else. Is that roughly where we are? It is very complicated, is it not?

Mr Farr: It is certainly complicated. I hoped we had given you a diagram, but if we have it obviously has not made it any simpler and I apologise for that. Your description on the Cabinet Office is not quite right, if I might say so. The Cabinet Office are there, remember, to staff and organise all the ministerial committees, all the NSIDs that take place on a regular basis, to ensure the paperwork is in place, the actions are taken, the minutes are recorded and all the rest of that. They are also there to act as a gateway into Number 10 in both directions: our material going in, Number 10 views coming out. That is really important to factor into that diagram.

Q312 David Davies: Is there not a fundamental problem here that you are answerable to a minister, MI5 and MI6 are answerable separately to their respective ministers, Home Secretary or Foreign Secretary, and yet at the same time are receiving strategy from you?

Mr Farr: I do not think it is a problem with MI5 because remember that part of the role of OSCT is to handle, on behalf of the Home Secretary, oversight issues connected to MI5, so the strategy and the accountability come together at official level inside OSCT. The issue with MI6 looks more complicated on paper but is less complicated in practice. MI6 is responsive to the Foreign Secretary on a whole range of business way beyond counter-terrorism and its operational actions and priorities. Where it concerns

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counter-terrorism, we would expect to be briefed on its broad strategy and for its operations to be broadly reflecting the priorities of the CONTEST programme. I believe that is the case. I do not envy you the job of trying to work your way round this strategy. In reality it is much easier to manage than it looks on paper and that is partly, of course, a reflection of size and the numbers of people working at various levels, which are comparatively small.

Q313 David Davies: This probably is not where we would be if we were starting from scratch, is it?

Mr Farr: I am not sure about that. This goes to the earlier evidence sessions we have had on this. I do not think that the advantages of very big organisations are proven, certainly not in this country. Remember that all these organisations do a lot more than counter-terrorism so you cannot brigade them together for counter-terrorism without that having an impact on everything else they do as well.

Q314 Mrs Cryer: Can I ask you how many times a year do you carry out a simulation of a terrorist attack? Can I also ask you where do they take place, are they always in the Met area or in the provinces? Would the Permanent Secretary and the Home Secretary be present at all of these events?

Mr Farr: I did make sure that I checked that you did ask the Home Secretary that in the earlier session. The answer to your questions, in turn, are we have three big exercises a year. They rotate and since 2007 have all been outside London. Those exercises involve somewhere between 200 and 1,000 people. They take between three and nine months for us to organise and the organisational work is done inside OSCT.

Q315 Mrs Cryer: What sort of people?

Mr Farr: Police officers, sometimes intelligence officers and sometimes the military, or more usually all of those, in a number of police areas, adjacent constabularies. Between 200 and 1,000 people. The exercises usually last between two and three days, largely because if you take that many people out of circulation you cannot keep them going much longer than that. A report is then written and that report comes to me and the Home Secretary, and just this morning I got a report on *****
***** the June exercise, the middle one of this year's three. That is a 30 page report with detailed findings. It then goes to the police and learning development programme within the terrorist bit of policing which takes account of those recommendations and implements a programme to address them. That is broadly the cycle we are looking at. I hope that gives you a bit of a flavour. The answer to your question, therefore, is three a year and, yes, they rotate outside London.

Q316 Mrs Cryer: It is just the reports that go to the Home Secretary and Permanent Secretary, they would not be present to observe?

Mr Farr: I am sorry, I did not address that point. They would both be present, not always together but often one or other of them, at the COBR end of the exercise, not in the field.

Q317 Mr Clappison: I heard what you just said about three exercises having taken place outside London because various things which the Committee picked up might have created the impression that counter-terrorism policy was too London-centric. What would you say to somebody who has possibly gained that impression?

Mr Farr: I do not think it has really been true since the creation of the regional CT hubs from 2005 onwards, and I know you have taken evidence about that. We have a very significant number of dedicated counter-terrorist police officers in Manchester, Birmingham, Leeds, Thames Valley, and an awful lot of activity goes on in all of those areas, they are all pretty much working at full capacity in addition to the work that goes on in London. It does not feel London-centric to me any more. The situation before 2005 may have been different, I am not best placed to comment on that.

Q318 Mr Clappison: In 2005 we had that experience, and I would not ask you to comment on it, of people who rather shockingly came out of Leeds from nowhere and were involved in this terrible bombing.

Mr Farr: Yes, that is right. Reading some of the evidence that has been given to you, the impression may have been created that CT started after 2005 but it did not, there was a huge amount of work going on, but the restructuring certainly took place after 2005.

Q319 Chairman: Do you have access whenever you want to the Prime Minister? Can you pick up the phone and say to the Private Secretary, "I need to talk to the Prime Minister"?

Mr Farr: I have access to Robert Hannigan, the Prime Minister's Security Adviser, and he is my initial point of contact inside the Cabinet Office for matters concerning Number 10. Likewise, if he gets something from Number 10 which is connected to counter-terrorism then he will usually come to us.

Q320 Chairman: On an urgent emergency issue, if you pick up the phone and ring Mr Hannigan and say you want to see the Prime Minister, how quickly is that arranged? You would have to have reason to do so obviously.

Mr Farr: I have not had reason to have that telephone call so I cannot speculate what the response would be, but my impression from operations with which we have been engaged is that the Prime Minister is very, very quickly on the scene either in COBR or, as it were, as an influence.

Q321 Chairman: If you wanted to see him, or if the head of MI5 or MI6 wanted to meet the Prime Minister urgently to discuss a matter on counter-terrorism, how quickly is this done?

Mr Farr: I have not had to do it so I cannot say. Jonathan Evans would be able to comment.

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Q322 Chairman: Presumably you have met the Prime Minister and discussed matters with him?

Mr Farr: Yes.

Q323 Chairman: On the issue of Home Office threat levels, we see this when we go into Government buildings although I do not know whether you have a threat level as you enter the Palace. You have it on the screens. What is the purpose of them and who are they supposed to inform?

Mr Farr: Can I just clarify one issue. You described it as the “Home Office threat level” but there is not such a thing, the threat level is set by JTAC, the organisation that Mr Russell referred to earlier. It is set by JTAC because it needs to be set completely independent of ministers, and JTAC is, in effect, a part of the Security Service, a configuration that Jonathan Evans might be able to describe to you this afternoon if you are interested. JTAC use a particular set of criteria which are very precise to evaluate threats to this country and to work out whether they are going up or down. I simply wanted to say that. Although I talk to the head of JTAC regularly about threat levels, and have done so quite recently, I am quite scrupulous about giving any suggestion that I think it should move up or down because that really is her view and we guard that independence very carefully for obvious reasons.

Q324 Chairman: Presumably if it goes down you might be concerned and say, “Why has it gone down?” It went down from “severe” to “substantial” on 20 July this year. Does that affect your ability or your desire to do any further work as far as counter-terrorism operations are concerned?

Mr Farr: No.

Q325 Chairman: You just carry on regardless?

Mr Farr: Somewhere between the two, if I may say. I do not think a move down of that order would itself be significant enough to warrant the redeployment of resources or a change of strategy in and of itself. One would have to see whether that reduction was sustained over a much longer period of time before we would consider approaching ministers and saying, “This has happened, we think you need to consider the following actions”. I was not at all disappointed, my job is to get the threat level reduced and that is my ambition very fervently, so I am always looking for that, but at the same time I think it would be wrong to act on the reduction of the threat level without seeing whether it was sustainable over a period of time.

Q326 Chairman: A figure was put on the number of suspected terrorists in this country by Jonathan Evans in a speech that I think he gave in Manchester.

Mr Farr: Yes.

Q327 Chairman: I think he put it at 2,000. Do we know where these people are?

Mr Farr: I was trying to remember whether it was actually him. I do not mean to quibble but I think it was his predecessor. He may perhaps talk to you

about his view about using numbers because I am not convinced, and I understand why you are asking, that it is an easy subject to talk about in terms of numbers.

Q328 Chairman: *****

Mr Farr: *****

Q329 Chairman: *****

Mr Farr: *****
**** That is an operational matter that would be best raised with the Security Service.

Q330 Patrick Mercer: Mr Farr, we are hearing a lot about Republican activity at the moment, are we alive to it?

Mr Farr: Yes.

Q331 Mr Winnick: The Cold War lasted, if we start from 1946, which is as good a date as any, to 1991 when the other side’s political and economic system collapsed otherwise presumably the Cold War would have continued up until now or later. With your senior experience, would you say that this war against international terrorism will last as long, longer or shorter? Can you give any sort of assessment bearing in mind that there is no weakening as far as one can see on the international scene of the main terrorist group and what is happening almost weekly in Pakistan and the atrocities in Iraq last week where hundreds were killed?

Mr Farr: I want to try to be as concise as possible. It is possible, and perhaps probable, that international terrorism will indeed be with us for that sort of length of time. However, I qualify that by saying that the particular organisations who are creating the threat will undoubtedly change during that period and it is perfectly possible that in ten years we will be looking at something which has replaced al-Qaeda and may even have a different name and certainly have different people in it, but I fear may pose a threat of the same degree. The threat may be with us for that length of time.

Q332 Mr Winnick: Our lifetime, apart from me obviously?

Mr Farr: Yes, it will go up and down, but I do not think it will disappear. I think the shape of it will change very significantly.

Q333 Chairman: *****

Mr Farr: ****

Q334 Chairman: *****

Mr Farr: *****

Q335 Chairman: *****

Mr Farr: *****

Q336 Chairman: *****

Mr Farr: *****

Q337 Mr Winnick: *****

Mr Farr: In the counter-terrorist strategy the Government released in March this year, I think I recall we made the very clear point that al-Qaeda was very likely to survive the death or capture of Osama bin Laden and, indeed, of his right-hand person, Zawahiri, and that remains our view. It would look a different organisation but it would still survive because the ideology is still there and, as you rightly say, bin Laden himself might then have the status of a martyr as well.

Q338 Chairman: *****

Mr Farr: *****

Q339 Chairman: *****

Mr Farr: *****

Q340 Mr Clappison: I am just wondering, and this could apply to this country or globally, do you look at ways in which the swamp could be drained in the sense that we could get more support from populations to counter terrorism, more assistance coming from members of certain communities.

Mr Farr: In this country?

Q341 Mr Clappison: Or abroad for that matter. What are the messages we can send out that would make people more inclined to cooperate, as many of them already do in fact?

Mr Farr: We have done a lot of work, as you may know, in this country to try to bring Muslim communities, because in the short-term those communities have most at risk from what we are talking about, fully behind and explicitly in support of counter-terrorism. Of course, many members of those Muslim communities need no persuasion of that at all, the number of people who are engaged in violent extremist activities, supporting it or perpetrating it, are very, very small. You ask what more we can do and I think the answer is a lot, but to pick out one single point on which we have spent a lot of time, we need to consider very carefully the language we use to describe the threat that we face because the language that we use can easily alienate people inadvertently. Talk of the war on terrorism, for want of a better term, I think at times has risked doing that. We have tried to engage with Muslim communities using a language which is faithful to the threat we face, in other words does not evade it, but at the same time is of a kind that will get communities behind us, as indeed I think they are at the moment.

Chairman: Thank you very much. Mr Farr, we are very grateful, we know how very busy your schedule is. Thank you very much for coming here to give us your views. We might pursue some of these themes with Mr Evans, although if he is as good as they say he is he already knows what we are going to ask him! Thank you.

Written evidence

Letter to the Chairman from Lord West of Spithead, Parliamentary Under-Secretary of State, Home Office, 22 October 2009

When I appeared before your committee to give evidence on the Home Office's counter-terrorism policy I agreed to write with more details on a number of issues. In particular more information was requested on control orders (the number of individuals currently under a control order and the timescales for the completion of the review of each control order in light of the House of Lords judgment in *AF & Others*) and on the number of interception of communication warrants in the last five years.

CONTROL ORDERS

The most recent Written Ministerial Statement on control orders was laid before Parliament on 16 September 2009. As of 10 September 2009, the last date covered by that statement, 15 individuals were subject to a control order.

In June 2009 the House of Lords handed down judgment in *AF & Others*. The House of Lords maintained the Lords' October 2007 read down of control orders legislation, but felt obliged to take into account the February 2009 European Court of Human Rights' (ECtHR) judgment in *A & Others*. The Law Lords concluded that they had to replicate the test of the February 2009 European Court of Human Rights judgment in *A & Others* (handed down shortly before commencement of the House of Lords hearing) for the stringent control orders before them. Consequently, in order for such control order proceedings to be compatible with Article 6, the controlled person must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations. The three cases before the Law Lords were remitted back to the High Court to consider in the light of this judgment.

As set out in the 16 September Written Ministerial Statement, the Government has already completed its review of all current control order cases to see what further disclosure will be required in the light of the June 2009 Lords judgment—and whether it was possible to make that disclosure despite the fact that to do so would cause damage to the public interest. The Government considered that some control orders would not be adversely affected by the judgment. But the Government recognised that the judgment would require a greater degree of disclosure to be made in many control order cases. In those cases, the Government is making representations to the special advocates and the court on the extent of disclosure required within the timescales set down for the High Court proceedings in each case. The High Court will consider the compliance of each individual control order with the right to a fair trial, in the light of the *AF & Others* test. Where the Government concludes in relation to any control order that it will not be able to make enough disclosure to the controlled person to comply with Article 6, we will consider revoking the order.

As of 10 September, only one control order had been revoked and not replaced by a new one as a result of the judgment—the order against AF. As you will know, there has subsequently been publicity surrounding a similar revocation in the case of AE. In these cases we reached the view that it was not possible to make the required further disclosure because of the serious damage that would be caused, and so revoked the orders without replacing them by new orders.

As the Government has made clear, where the disclosure required by the court cannot be made for the protection of the public interest, including our national security, we may be forced to revoke control orders even where we consider those orders to be necessary to protect the public from a risk of terrorism.

You will appreciate that the Government cannot comment on the detailed measures being taken to mitigate the threat posed by individuals in relation to whom control orders have been revoked. In such circumstances we will take all steps necessary to protect the public. The police and Security Service seek to investigate and monitor the activities of those believed to pose a threat to national security.

In some cases, such as these, the Government will face difficult choices as to how best to protect the public interest. We have to balance the importance of protecting the public from the risk of terrorism posed by the individual against the risk of disclosing sensitive material. Disclosing this material would reduce the Government's ability to protect the public from a risk of terrorism and in some cases could put lives at risk. In these cases we decided that the risks posed by disclosure were too great. However these decisions can only be made on a case by case basis. In the case of AM, the assessment has been made that some damaging disclosure can be made.

The Government's current assessment is therefore that the control order regime remains viable following the House of Lords judgment and that the national security reasons for maintaining the regime have not changed. However, as further control order cases are considered by the courts during the autumn we will be keeping this assessment under review.

The Government will in due course publish as a Command Paper its memorandum on post-legislative scrutiny of the Prevention of Terrorism Act 2005, as part of its commitment to a new mechanism for post-legislative scrutiny of Acts that received Royal Assent from 2005 onwards. Post-legislative scrutiny memoranda will allow the relevant Parliamentary Select Committee, in this case the Home Affairs Select

Committee, to decide whether it should undertake full post-legislative scrutiny of the Act in question. The memorandum on the 2005 Act will provide an opportunity for the Government to explain its developing thinking on the regime.

In addition to this ongoing review within the Home Office, the Home Secretary has formally asked the independent reviewer of terrorism legislation including the 2005 Act, the Lord Carlile of Berriew QC, to review the impact of the House of Lords judgment and to consider whether the assessment that the regime remains viable is right. This will form part of Lord Carlile's next annual report on the operation of control orders legislation, which will be published early next year. His report will of course helpfully be informed by the High Court's consideration of further control order cases over the coming months.

INTERCEPTION WARRANTS

The Committee also asked about the number of intercept warrants that have been processed in the last five years and in particular on counter terrorism issues. The following is the total number of intercept warrants issued in each of those years as reported by the Interception Commissioner:

<i>Year</i>	<i>Interception warrants authorised by the Home Secretary or Scottish Executive</i>
2004 (1.1.04–31.12.04)	1,973
2005–06 (1.1.05–31.12.06)	2,407
2006 (1.4.06–31.12.06)	1,435
2007 (1.1.07–31.12.07)	2,026
2008 (1.1.08–31.12.08)	1,712

The Interception Commissioner's reports, containing these statistics, are lodged in the House Library. In the Commissioner's most recent report for 2008, he states (at paragraph 5.3) that he is "not persuaded that there is any serious risk in the publication of the number of warrants issued by the Home Secretary and the First Minister for Scotland". He goes on to state that "This information does not provide hostile agencies with any indication of the targets because [...] the total includes not only warrants issued in the interest of national security, but also for the prevention and detection of serious crime".

A further breakdown of the statistics would give an indication of the pattern of interception and capability and therefore I regret that I cannot provide a further breakdown, nor comment on the number of counter terrorism cases in which intercept product might have utility as evidence, without damaging national security.

Memorandum submitted by the Home Office

SECTION A: INTRODUCTION

The Threat

1. The UK faces a real and serious threat from international terrorism. The current UK threat level is judged—independently of Ministers—by the Joint Terrorism Analysis Centre as Substantial, meaning an attack is a strong possibility and could occur without warning.

2. The current international terrorist threat is quite different from terrorist threats we faced in the past. The threat to the UK now comes primarily from Al Qa'ida and similar groups. They claim a religious justification for their actions and have a wide ranging religious and political agenda; they are no longer concerned with a single cause. Many seek mass civilian casualties and are prepared to use unconventional techniques (including chemical or radiological weapons); they conduct attacks without warning; and they actively seek to recruit new members in the UK and elsewhere in the world.

The Response: Contest

3. The Home Office is the lead government department for counter-terrorism in the UK. The Office for Security and Counter Terrorism (OSCT) was established in 2007 in the Home Office, in order to bring more cohesion and greater strategic capability to our fight against terrorism.

4. The Government's response to the terrorist threat we face is well developed. Since 2003 we have had in place a comprehensive strategy for countering international terrorism—CONTEST—and on 24 March 2009 we published a revised and updated version.¹ For the first time in an unclassified document, CONTEST sets out a detailed account of the history of the threat, the impact that this has had on the UK, our understanding of its causes and our view of its likely direction. It also sets out the principles that govern our response to the threat, particularly our commitment to human rights and the rule of law; and our

¹ Further details can be found at <http://www.homeoffice.gov.uk/counter-terrorism/>

intention to address not only the immediate threats from terrorism but its causes. Finally, it explains who does what in counter-terrorism, sets out what we have achieved to date and outlines comprehensive future programmes of action here and overseas.

5. CONTEST is divided into four work streams:

Pursue: to stop terrorist attacks;

Prevent: to stop people becoming terrorists or supporting violent extremism;

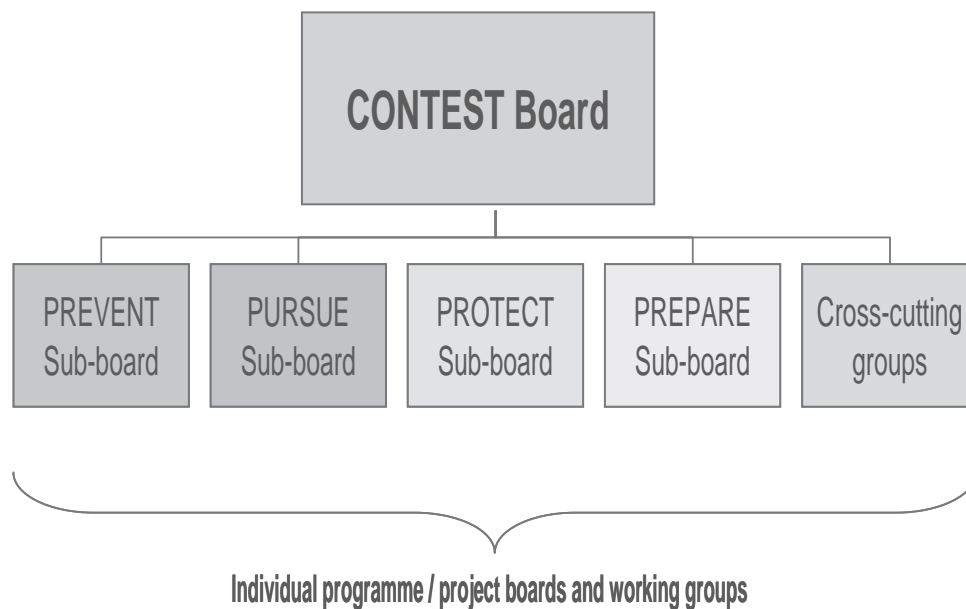
Protect: to strengthen our protection against terrorist attacks; and

Prepare: where an attack cannot be stopped, to mitigate its impact.

Governance of Counter-terrorism

6. The Home Secretary has lead responsibility for co-ordinating the strategy and is supported in this by OSCT. Underpinning delivery of the strategy is a CONTEST Board, chaired by the Director General of OSCT, and a series of sub-boards to oversee delivery of each strand of CONTEST and its cross-cutting aspects.

7. *Governance of Contest (non operational matters)*



Cabinet Committee Oversight

8. At the same time as OSCT was established, the then Prime Minister announced a new Cabinet committee structure to support the more cohesive and strategic focus on counter-terrorism. Work on national security and counter terrorism, including international terrorism and counter-radicalisation, is overseen by the Ministerial Committee on National Security, International Relations and Development (NSID).² NSID is chaired by the Prime Minister and also includes the Home and Foreign Secretaries, the Chancellor, other relevant Ministers, the heads of the security and intelligence agencies, the military and ACPO as appropriate. This committee, and its attendant sub-committees, is responsible for all aspects of counter-terrorism and national security *policy* (as distinct from operational matters which are the responsibility of the police and the individual agencies involved).

Weekly Security Meeting

9. The Home Secretary also chairs a Weekly Security Meeting attended by senior representatives of the intelligence agencies, the police, key government departments and the Cabinet Office. The meeting provides an opportunity for Home Office ministers and the wider Whitehall CT Community, to be kept regularly updated on the latest threat to the UK and the international aspects of the terrorist threat by the Intelligence Agencies and the Police. It also allows tactical coordination of CT strategy, policy and communications.

² Further details can be found at <http://www.cabinetoffice.gov.uk/secretariats/committees.aspx>

SECTION B: OVERVIEW OF SPECIFIC ISSUES BEING CONSIDERED BY THE INQUIRY

The immediate response of the Home Office to a terrorist attack (including the effectiveness of COBR) in coordinating an immediate Government response.

10. The Home Office has responsibility for leading Central Government's response to a terrorist incident in the UK and will work primarily alongside the Police Service (which has operational responsibility in a terrorist incident) and the intelligence agencies.³

11. In the event of such an incident the Home Office would immediately contact the Police Gold Commander (the officer in overall command who has responsibility and accountability for the incident) to gain information on the nature of the attack, the impacts, the initial response and to provide a point of contact for any Government assistance or support. A decision would be made on whether to deploy a Government Liaison Team, led by a Home Office Government Liaison Officer (GLO), to support the Gold Commander and provide a single channel of information between the local and central response. Trained Government Liaison Officers and a 24/7 duty rota is in place to ensure rapid deployment of a GLO in the event of a terrorist incident. The GLO is a Home Office official, with experience of working with the police and the military. The role and responsibilities of the GLO are regularly rehearsed through the National Counter Terrorism Exercise Programme. The GLO may be supported by a Government Liaison Team (GLT), consisting of Home Office press officers, support staff, and representatives from other relevant departments and organisations such as the FCO, MOD, the Security Service and the Regional Resilience Team. The exact make-up of the GLT will depend on the nature of the incident.

12. Another immediate priority would be for the Cabinet Office in consultation with the Home Office, as lead Department, to decide whether to convene a Strategy Group in the Cabinet Office Briefing Rooms (COBR) at either ministerial or official level representation. Unless the Prime Minister decides otherwise these meetings would ordinarily be chaired by the Home Secretary. Once convened, the Strategy Group is kept fully up to date on developments in order to provide strategic direction and effective decision-making. The Group may have to make decisions in relation to the adequacy of resources, the mobilisation of national assets, the authorisation of military assistance requests to the civil power, the public information strategy and national protective security measures (taking account of the intelligence assessment and the threat level).

13. The GLO ensures not only that the Gold Commander's operational interest is taken into account by the Strategy Group but will also advise the Gold Commander of the Government's considerations.

Intercept as Evidence

14. The value of intercepted communications in tackling serious crime (including terrorism) and protecting the British public is beyond question. Almost every serious counter terrorist and most organised crime operations involve interception. The safeguards in place mean that interception is used proportionately and respects peoples' privacy.

15. The challenge is to find an approach that enables intercept to be used as evidence in criminal trials to increase the number of successful convictions, whilst ensuring that defendants receive a fair trial and national security is protected. This is the task that the implementation team based in OSCT, working with intercepting agencies and prosecutorial authorities and supported by an Advisory Group of Privy Counsellors (AGPC), has been taking forward. The intention, as set out in the Home Secretary's Written Ministerial statement in July, is to issue the final report of this implementation programme to Parliament shortly.⁴

Control Orders

16. The protection of human rights is a key principle underpinning our counter-terrorism work. We aim to protect individual liberty whilst maintaining our nation's security. This is a challenge for any government, but we have sought to find that balance at all times—including by introducing control orders. Control orders are the best available disruptive tool for addressing the threat posed by suspected terrorists whom we can neither prosecute nor deport.

17. As a result of various judgements—including the June 2009 House of Lords judgment in *AF & Others*—control orders legislation is fully compatible with human rights.

18. In June 2009, the Lords concluded that, for the stringent control orders before them, for control order proceedings to be compatible with the right to a fair trial the controlled person must be given sufficient information about the allegations against him to enable him to give effective instructions in relation to those allegations. This means the Government faces difficult decisions in certain cases as to how best to protect the public interest. In those cases we must balance the importance of protecting the public from the risk of terrorism posed by controlled individuals against the risk of disclosing sensitive material, which would reduce the Government's overall ability to protect the public from a risk of terrorism and could put lives at risk.

³ Further details can be found at <http://www.cabinetoffice.gov.uk/media/132685/conops.pdf>

⁴ Further details can be found at <http://security.homeoffice.gov.uk/ripa/interception/use-interception/>

19. The Government has reviewed all current control order cases to see what further disclosure will be required in the light of that Lords judgment—and whether it was possible to make that disclosure even though it would damage the public interest. We considered that some control orders would not be adversely affected by the judgment, but recognised that the judgment would require a greater degree of disclosure to be made in many other cases. In those cases, the Government is making representations to the special advocates and the court on the extent of disclosure required within the timescales set down for the High Court proceedings in each case. Where the Government concludes in relation to any control order that it will not be able to make enough disclosure to the controlled person to comply with the right to a fair trial, we will consider revoking the order.

20. The Government's current assessment is that the control order regime remains viable and that the national security reasons for maintaining it have not changed. However, as further cases are considered by the courts during the autumn we will keep this assessment under review. We will report the outcome to the HAC in due course in our memorandum on post-legislative scrutiny of the Prevention of Terrorism Act 2005. The Home Secretary has also asked the independent reviewer of terrorism legislation to consider whether our assessment is right as part of his next annual report on control orders.

The misuse and misapplication of Anti-terrorism powers

21. The nature of the terrorist threat requires specific powers to protect the public. We will only bring in an anti-terrorism power if it is necessary and proportionate to do so. Similarly, if it subsequently comes to light that those powers are not being used appropriately we will take action. Two recent examples of that are with regard to section 44 of the Terrorism Act 2000 and the Regulation of Investigatory Powers Act 2000.

Section 44

22. Authorisations made under section 44 of the Terrorism Act 2000 allow police officers to stop and search vehicles, persons within vehicles and pedestrians if the authorising officer considers it expedient for the purposes of preventing acts of terrorism.

23. There has been criticism of the use of section 44 and Lord Carlile has expressed his concerns about its use. The Home Office and ACPO have responded with a number of measures aimed at reducing the use of section 44. These include publishing updated guidance and the implementation of a number of measures to ensure an enhanced level of effectiveness and scrutiny in the processing of section 44 authorisations. In June 2009 the Metropolitan Police also adopted a more targeted use of section 44 with the aim of bringing about a significant reduction in the number of stops in London. A number of other forces have also either redefined or cancelled their use of s44 since April 2009. Provisional statistical data indicates this new strategy has met its intended aim and Lord Carlile has described this collective work as “*significant progress*”.⁵

RIPA

24. Contrary to a great deal of misleading reporting, the Regulation of Investigatory Powers Act 2000 (“RIPA”) is not anti-terrorism legislation. It was introduced to regulate—in some instances for the first time—the use of a range of investigatory techniques, by a range of public authorities, for a range of purposes including the prevention or detection of crime, the prevention of disorder, public health and public safety, as well as national security.

25. There have been some instances when local authorities have used techniques under RIPA when most people would say they should not have done. These instances, however, were not and could not have been in relation to terrorism. Local authorities are not permitted to authorise techniques under RIPA for the purpose of investigating national security. Nevertheless, the Government is committed to preventing any repetition of these instances and recently carried out a consultation exercise on its proposals to restrict local authority use of RIPA. It will announce the outcome of the consultation shortly.

Counter-terrorism measures at the European level

26. Close cooperation with EU partners is vital in our efforts to combat international terrorism. Primary responsibility for combating terrorism lies with individual EU Member States, but the EU has an essential supporting and facilitative role, and the UK has led and actively participated in various EU initiatives to tackle international terrorism.

27. It is clear that the nature of the threat and the EU's free movement of goods, people, capital and services require an EU wide response; working together Member States can more effectively target the threat, and multiply domestic efforts. EU citizens have already benefited from good co-operation—attacks have been prevented, arrests and convictions have been secured.

⁵ Paragraph 43, Report on the Operation in 2008 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, Lord Carlile of Berriew, June 2009

28. Engagement on CT with our European partners brings significant benefits, enabling us to import best practice to strengthen our own capabilities, and multiply our efforts in key areas. It also provides us with an opportunity to export our own best practice and to improve the skills of our closest neighbours, who rely on our experience, knowledge and resources in contributing to making the European space, and ultimately the UK, a safer place.

29. The EU CT strategy, effectively incorporates the four pillars of the UK's own CONTEST strategy into an EU-wide strategy. Significant achievements have already been made for example on *Pursue* the European Arrest Warrant, allowed for the return of Hussain Osman, suspected of involvement in the failed bombings in London on 21 July 2005, who was traced to Italy and arrested on 29 July after a European Arrest Warrant (EAW) issued by the UK.

30. The EU Common Position 931 is an EU held list of individuals and organisations concerned in terrorism which enables UK CT tools to have a more disruptive effect throughout terrorist networks with individuals and organisations subject to an EU wide asset freeze, travel ban and arms embargo, which in turn reduces the threat to British citizens.

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