



Joint Committee on Human Rights

Oral evidence: [The work of the Independent Reviewer of Terrorism Legislation](#), HC 765

Wednesday 31 January 2018

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Members present: Ms Harriet Harman (Chair); Fiona Bruce; Ms Karen Buck; Alex Burghart; Joanna Cherry; Baroness Hamwee; Baroness Lawrence of Clarendon; Jeremy Lefroy; Baroness O'Cathain; Lord Woolf.

Questions 1–9

Witness

Max Hill QC, Independent Reviewer of Terrorism Legislation.

Examination of witness

Q1 **Chair:** Thanks very much, Max, for joining us. As you know, we are the Joint Committee on Human Rights and therefore we are very interested in the issue of preventing terrorism and protecting human rights at the same time. We are very grateful to you for coming to talk to us about your new role as Independent Reviewer of Terrorism Legislation, which is very much defined and shaped by the person who is in it at the time. We will be very pleased to hear what you have been doing so far. I know that you want to be very transparent. You have engaged a lot, not least with tweets, speeches and interviews and also holding consultation meetings. Please briefly describe what you are aiming to do with this work and how you see it going ahead—before we ask you lots of other questions.

Max Hill QC: Yes, thank you. I am conscious that I will not be able to describe myself as a newcomer for very much longer. I am 10 months into post and the publication of my first annual report means that I am off the mark—however well or badly is for you to judge. On coming into this role, it seemed to me that there were two important things.

The first was to recognise and to stay within my remit, which is strictly defined in relation to the four statutes which I review: the Terrorism Acts 2000 and 2006; the TPIM—Terrorism Prevention and Investigation Measures—Act; and TAFA, the Terrorist Asset-Freezing etc. Act. Because as a practitioner I have experience with some but not all of those statutes, there was a learning curve which I had to undertake.

The second thing which is inextricably linked, in my view, is to engage as widely as possible in order to pick up the views of everybody nationwide on the legislation. It seemed to me, picking up from where my predecessors left off, that both of them—Lord Carlile and, more recently, David Anderson—had set the mark at open, frank engagement, going around the country or beyond to speak to anybody who had a view to express on the legislation. I sought to do the same, and in doing that I deliberately did not set a bar on what I was willing to listen to, either in terms of whom I should listen to or the subject matter. As we may or may not pick up later, that has involved me listening to some forceful and thought-through views on matters that are strictly beyond the legislation—let us mention Prevent for the first time this afternoon; that comes up very regularly in conversation—and I welcome that because it is a route to me understanding the view and the perception countrywide about the legislation. But I emphasise at every turn that I am neither a reviewer of Prevent, nor is it my function to change it or alter it. That is for others.

So I can make reflections in the sense of setting out the soundings that I have taken, the community engagement that I have undertaken and the round-table meetings that I have referenced in my annual report and which are referenced in a previous report brought out by an NGO called Forward Thinking. I am very pleased that some of those whom I met at round-table meetings have come here today to listen to this evidence. It seems to me that I can give weight to their voices because I am the one giving evidence and not them, but I emphasise that I must and do stay within my remit in reviewing the four statutes that I mentioned.

Chair: So while you stay within your remit of those four statutes, would you say that the thing that is most often raised with you that people feel affected by is Prevent?

Max Hill QC: It is Prevent and Schedule 7 to the Terrorism Act 2000. If there is a single sentence that mentions particular factors again and again, it is community perception in relation to port stop under Schedule 7 and community perception in relation to Prevent.

Baroness O'Cathain: I am very new here. I have never read anything that satisfied my knowledge, or lack of it, on Prevent. Is there something that I should be reading?

Max Hill QC: It is a statutory duty, imported by statute in 2015, for certain stakeholders to bear in mind the risk of individuals being encouraged into terrorism. Prevent, which was a strategy on a non-statutory basis until a few years ago, now has statutory form. That takes us to consider the fields of education and health. Guidance is published by the Home Office on how Prevent is to be conducted around the country by different stakeholder groups. But none of that has statutory force under the Acts of Parliament which I review, which is why there is a proper detachment between my function and Prevent through the Home Office.

Baroness O'Cathain: That is very helpful.

Q2 **Ms Karen Buck:** The report acknowledges the fact that Daesh and Daesh-inspired terrorism remain the single biggest threat, but you also talk about the trends in terrorist violence in Ireland. You also refer—you do not go into that much depth—to the trends in far-right violence. Could you tell us a bit about where you see those emerging trends and whether, in our approach to this issue, there is any downside to the fact that the current terrorism debate tends to focus largely on Islamic terrorism?

Max Hill QC: I will give a standard lawyer's answer, if I may. Terrorism, as defined under Section 1 of the 2000 Act, mentions religion but mentions no particular religion or sect within a religion, nor does it mention territorial boundaries. From that, the first fundamental point to be made is that terrorism, in its definition since 2000, has application worldwide, and I mean worldwide, because in later statutes the territorial jurisdiction of UK terrorist offences has been extended so that we are able to prosecute in relation to activity beyond this country as well as here. If I may say so, you are also extremely accurate—more accurate than many—in using the phrase “Daesh-inspired terrorism”, where many other commentators use the words “Islamist terrorism”. It is fundamentally wrong to attach the word “terrorism” to any of the world religions. To put that another way round, those who adhere to any of the great religions or none can be terrorists within the Section 1 definition. It is necessary to look across the whole piece.

As a prosecutor of many years' experience, which was the only basis on which I had any attraction as being a possible successor to David Anderson, I have spent significant periods of time prosecuting non-Daesh-inspired, non-AQ, non-eastern or Middle Eastern terrorism. The phenomenon of extreme and far right-wing terrorism is nothing new. To pick up on your question, I would suggest that we are not necessarily seeing the emergence or the creation in 2017-18 of new extreme right-wing terrorism where previously there was none; what we are seeing is an increased detection and increased reporting of violent extremism from that quarter, which I recognise because I used to prosecute it many years ago.

Going back for a moment to community engagement, one of the great myths that is often repeated to me is that, by definition and by application, we—the UK authorities, of which I am not one, of course—deal with only a segment of the community and only a certain species of terrorism. That is manifestly wrong. What has happened, though, during 2017-18, and I have tried to deal with it in my report, has been a spike, a rapid increase, in incidences particularly of Islamophobia, because of the nature of some but not all of the atrocities on our streets last year. We are seeing a very troubling spike in Islamophobic activity, which, even more troubling, does not seem to be returning to the same base level after every spike. That is an alarming development. In part, as I say, that is because there is more reporting, more awareness and more coming to the attention of the police, allowing them to intercede. It is their function to intercede right across the spectrum.

Ms Karen Buck: Thank you. We will ask you a number of questions about Prevent. I would like you not to answer this question too broadly, if you do not mind. You said in your opening remarks that Prevent and Schedule 7 were the main issues that were fed back to you in consultation. Do you find, in respect of Prevent, that you are getting responses from communities around the extreme right-wing terrorism that you referred to? I say that because the last Prevent figures indicated a really quite sharp rise in Prevent referrals relating to right-wing threats. Have you had any feedback on that, or has the feedback on Prevent been largely from within Muslim communities?

Max Hill QC: When I attend Muslim communities—and I am very grateful to be made so welcome, whether it is in Manchester, Bradford, Leicester or London—the predominant concern that is voiced with regard to both the legislation and the Prevent policy is one of isolation; sometimes the word used is “segregation”; sometimes the phrases used are “top-down imposition” on to communities or “disenfranchisement” of communities which want their own voice and want to be regarded as part of the solution and not, wrongly, as part of the problem. All the views that are expressed to me come from an understanding—and it is often a misunderstanding—of the intention both of the legislation and of Prevent.

Secondary to that is the sheer backlash from Daesh-inspired events that results in a spike in Islamophobic activity. Not all of my engagement involves travelling around the country—I think of Tell MAMA, an NGO which I name in the report, which keeps its own records on reports to it of hundreds, in fact thousands, of Islamophobic events. That is where my answer in relation to spikes in activity comes from. So, yes, it is a particular concern.

The other thing I would say is that there is perhaps little appreciation—and why should there be?—in some parts of the community and in some communities around the country that

Prevent can apply in non-Daesh, non-Islam-based situations because those in, let us say the Libyan community in Manchester, do not tend to see that. That means that we have some distance to cover in making it plain—in my case, the legislation and in the case of others, Prevent—that this is all intended to deal with problems from wherever they arise.

Ms Karen Buck: This is my last question. David Anderson referred in his last report to the fact that at that point it was notable that the number of terrorist-related incidents was not as great as might have been expected, given, he said, the reputation of London as being the jihadi subculture capital of the world. What do you think of that? Is a town or city—London, Luton, Leicester or any other place—having a label of this kind helpful or unhelpful?

Max Hill QC: It is plainly unhelpful for there to be a perception that in one particular city in one country we are living in the centre of jihadi-based culture. I would suggest that more recent events have demonstrated that that is not entirely accurate. That is not to say that I disagree with David and his appreciation of slightly earlier times, but the declaration of the so-called caliphate in July 2014, which was a fundamental shift, led to a problem which in particular is western-Europe wide; it is not in relation to the UK only, still less in relation to London only.

The previous perception that living in a state of stability, albeit in a foreign land, brought with it a covenant of security—often quoted—has been swept away as a result of propaganda coming out of what would have been al-Qaeda territory but is now so-called Islamic State territory. When the fatwas, which they are called although they are not because I have not seen anybody with any authority to administer a fatwa operating under so-called Islamic State, have been administered, they have been to the effect of giving a new message and saying, “Yes, you are still welcome to conduct hegira, to emigrate from your country to a land where Islam thrives”—namely, Syria—“but you no longer need to do that. If you cannot do that for whatever reason, you should plot and plan in your country of domicile”. That is very different from the picture that we faced a decade ago, where people were travelling for terrorism but were not planning to commit it here.

We are seeing, therefore, an increase in actually low-sophistication, suicide-based attacks, sometimes with knives, sometimes with crude improvised explosive devices, which are utterly lethal—witness Manchester Arena—but we are seeing that in Paris and Brussels; we have seen it in Madrid and cities in Germany. I would move away from any suggestion that London is the centre. London, being part of this country, being situated in western Europe, has a problem which is common to many other countries. It is then down to individual legislatures and Executives to decide how to deal with it and there are some variations between the way this jurisdiction

deals with terrorism and the way it is dealt with and addressed in France and in Germany.

Q3 Baroness O'Cathain: In our inquiry into freedom of speech in universities, we had a sharp disagreement between witnesses about the extent to which exposure to radicalism was a university problem. We note that the most recent statistics on Prevent referrals show that the highest number are aged 15 to 20, the second highest are those under 15, and that 33% of referrals came through the education sector. Are the Government right to be concerned about higher education institutions?

Max Hill QC: I preface my answer by repeating that I am not influential in respect of Prevent, nor is it within my remit, but I will try to assist. I realised in my community round-table meetings that there is great anxiety around the country about the application of the statutory Prevent duty, in particular in the way that it impacts in education. I would add that I do not think, from those who have spoken to me, that it is restricted to higher or tertiary education. Much of the impact that concerns people is in secondary or even primary education. We are all familiar with the examples of very young children who find through their parents that they have been reported to Prevent officers because of a childish sketch in an art class at a primary school and a fear on the part of the teacher that there may be some reference to terrorism. My soundings suggest that, in the field of education, there is actually a broad impact and broad consequences if and to the extent that the statutory duty to safeguard individuals against encouragement into terrorism is not rolled out or deployed in an effective fashion. I do not say that it is being done ineffectively; nor do I say, because it is not for me to say, whether the resource that is applied is effective or leads to efficiency. But I am bound to echo the voices of those who have said to me that in the education sector it is a matter of concern just as much as it is in the health sector.

Of course, the soundings that I take are by no means only from community round tables, be it in Leicester, Bradford or Manchester. I also take soundings from Prevent officers—police officers in the Metropolitan Police or elsewhere—who are charged with this duty and attend mosques and other places of worship, community centres, family homes, schools and hospitals in order to carry out their duty. Often what is expressed to me, even at senior levels within the Metropolitan Police, is that prevent with a small p is something that policing in this country has been used to dealing with over many decades. They would tend to use a word beginning with an s—namely, safeguarding—rather than a word beginning with a p, but they recognise that that is part of the function of effective policing, just as, in order to deal with terrorism in whatever form, solutions that come from general policing rather than bespoke counterterrorism policing can be of great utility. For example, lessons learned from gang culture, drug-taking—group activity by rootless individuals on the streets—can also be deployed

in drawing individuals back who, without encouragement in the right direction, might be drawn into terrorism. The picture is quite complicated. I would not want it thought that in my view, Prevent is being inaccurately applied in education. But to answer your question, the concerns expressed to me are not restricted to higher education. They are broader than that.

Q4 **Lord Woolf:** Focusing on the concerns you have just been referring to, is part of the problem determining what constitutes extremist views?

Max Hill QC: Reverting to being a lawyer—in answering a question from one of our most senior and experienced lawyers—I think it is of fundamental importance to distinguish the terminology. I am not saying that anyone is to blame for this, but it is unfortunate that “extremism” is a word that is deployed in relation to the new Commission for Countering Extremism—that is something the lead commissioner, now appointed, has to deal with—and extremism is also a term of art in relation to violent terrorism, which we deal with in our courts. I go back to the Section 1 definition. We know that the threat or use of violence on the basis of the background causes that we know about from the Section 1 definition is terrorism. Our legislation—rightly, if I may say so—concentrates on dealing with violent extremism, both in the commission of activity and at the preparatory stages for activity. We can talk about discrete offences in that regard. The shift we have seen in the past year or two has been, it seems to me, away from legislating against non-violent extremism—that is possibly a positive development—and towards a commission, but a commission that will need to define its territory and therefore what extremism is. It is not for me to define extremism in the terms of the commission but I am absolutely sure that whatever definition is settled upon, it will and must be different from the Section 1 definition of terrorism that we deal with in our criminal courts. I am very interested, from the point of view of remit and of avoiding confusion, to ensure that there is clear water between the two. There is a very real task to be undertaken by the new commission but it is not legislating. What I am dealing with is that particular space where the threat that is present from the threat or use of action in the name of extremism as defined under Section 1 is what our courts and police are dealing with.

Lord Woolf: You recognise—correct me if I am wrong—that there can be different degrees of observance in most religions.

Max Hill QC: Certainly.

Lord Woolf: To some, a particular view of the right requirements of the religion would be described by an onlooker as being as extreme. But you are saying that they should not necessarily be assimilated with the sort of extremism which can result in violence.

Max Hill QC: Yes.

Lord Woolf: You are making a very clear divide in your approach.

Chair: Some of our discussion about the process of countering non-violent extremism that the Government were engaged in hinged on the notion that there was an escalator, which started with conservative Islamic religious views, went on to extreme conservative Islamic religious views and then went on to violence. There was an argument from some that actually you could have very fundamental Islamic religious views of extreme conservatism but be not at all likely to break the law in any way, shape or form; challenging the notion of that kind of escalator seems to lie behind Prevent.

Max Hill QC: In a sense, we are on the edge of my territory, so I need to be careful. If I take an example that is firmly within my territory, the offence under Section 12 of the Terrorism Act 2000 of encouragement of terrorism, of which one notorious individual, Anjem Choudary, was convicted recently, is more than the expression of a view—is more than thinking in a particular way, whether or not you call that religious conservative views. In parenthesis, of course there can be conservative views about every religion; it is not merely Islam. That is not the target of Section 12 of the Terrorism Act 2000. The judge who tried the Choudary case was very clear in his sentencing remarks that it was not just what Choudary said, it was what he said in his position of particular knowledge about who was going to receive that message; in other words, speaking with a particular audience in mind, whom—I paraphrase—he knew were likely to be spurred to particular types of violent action by his words. That is why he was guilty and sentenced for the Section 12 offence. Looking at it through that prism, we can see that it is not merely holding a view which others within your religion or any other religion might disagree with; it is then taking steps. To put that another way, it is thought with action.

Lord Woolf: I will give an illustration from my own experience as a Jew. There are members of the Jewish faith who feel that it would be quite wrong to press a button on a lift rather than climbing the stairs; on the other hand, if the lift worked automatically, stopping at each floor, they would take it. To me, that is a clear example of extremism, but it has nothing to do with the field that you are focusing on. Is that correct?

Max Hill QC: That is correct. Of course, in those cases you are thinking of it is not impossible but almost unthinkable that those who hold an extreme view on how to move around a building would go on to commit or even to contemplate acts of violent extremism. I am glad you have used the lift analogy because it allows me to say that the elevator analogy really does not work when subjected to a moment's scrutiny. However, it does not mean to say that those who start by espousing conservative views in relation to the religion of their birth cannot go on to commit violent extremism. Any of us can. Fortunately, very few do, but to suggest that an

extreme view, an extreme way of thinking, is an elevator to extreme action in every case, even a substantial number of cases, is not right. Whether it is a good example or not, the Choudary case is interesting, because we have a particular, educated individual who knew the boundaries of the law.

We hear that there were multiple attempts to see whether he breached the law. Ultimately, he plainly did. He was correctly charged and convicted under Section 12. It was not in relation to what he may have said or done years before; it was in relation to particular aspects of his speeches, with a targeted audience in mind, which allowed the jury to recognise that here was an individual who had only one thing in mind, which was the commission of terrorist acts. Of course, when terrorism is mentioned on any occasion in a criminal court, that can only mean terrorism as defined in Section 1. Simply to say something with which many of us would disagree is a very long distance away from satisfying the Section 1 definition or indicating that non-violent extremism will morph over time into violent extremism.

Q5 **Baroness Hamwee:** In their review of the counterterrorism strategy, the Government are largely remaining with Prevent. Are you involved in that? Do you have any clues that you can give us about the Government's thinking on what is effective? We would be glad to hear your views about what effectiveness means, including confidence on the part of the community.

Max Hill QC: I will answer that in two parts. You refer to the Prime Minister's speech on 4 June, which, along with everyone else, I listened to with interest. In terms of the delivery of the Prevent strategy, it is necessary to have a strategy and it is necessary to deliver it effectively. It is not for me to say whether that is currently being done effectively or not, although I am concerned to hear from many whom I have spoken to that they lack confidence, which should ring alarm bells. It is for others to ensure that that confidence returns to a strategy which has correct aims, which is intended to deliver something for the good and which should be given a chance to grow in the way that the Government and, to the extent that it is now involved, the new commission are responsible for.

In terms of the actual review of the strategy, as announced on the day after the London Bridge attack, to answer your question I am not, of course, directly involved in the review and I am not the author of what emerges from it, but, as I hope you would expect, I have had unfettered access to what is being discussed around the table. I have observed at Home Office level—the Home Office has been superintending the review, as it were, on behalf of No. 10—that multiple departments are involved. That has provided, I suggest, the welcome opportunity—for anybody involved in the delivery of investigation and prosecution in the field with which I am concerned—of an open window lasting several months to reflect

on what we have on the statute book and what we may want on the statute book.

I think, but I do not know, that a counterterrorism Bill is likely to emerge in the near future. I would expect, but I do not know, that there will be a number of proposals in the Bill that look again at offences that are already on the statute book and look again at the effectiveness of those offences, bearing in mind the modern world. As I said in the report, the telecommunications possibilities and infrastructure have changed over the 17 years since this place passed the 2000 Act in many ways that we know about—just think of the capacity of the devices that we use now as opposed to 17 years ago. There is a question of the application and efficacy of the offences over the passage of time. That is welcome, provided that, in restructuring or redefining any of the existing offences, the necessary norms, which are best expressed under the European convention—the fundamental rights that we all enjoy—are not inappropriately interfered with. I can expand on that later if you wish.

The other aspect, which is partly to do with the passage of time as well, is that the sentencing powers of those few experienced senior judges who deal with terrorism cases are capable of helpful review. I have given the example in what I have been able to write of the offence of assisting an offender under Section 38 of the Terrorism Act 2000, which, as we know, can be committed before the principal act or after the principal act. It is very serious indeed when somebody, however closely connected to a principal offender, knows that that person may be about to go on to commit, at its worst, the sort of act that we saw at Manchester Arena a few months ago. Yet the sentencing power at the time of the 2000 Act was limited to a discretionary maximum of five years' imprisonment.

I beg to question whether that is sufficient as a discretionary maximum and I would not be surprised if, in a forthcoming counterterrorism Bill, the Government did not set out an intention to increase that. Where I have had the opportunity to consider that—and I wrote about it even before the strategy review—I have made the point, which I will stress for your examination, that it should only be an increase on a discretionary maximum sentence that a court may impose. I am not in favour of minimum mandatory sentencing. That is not to undermine minimum sentencing in some other areas: repeat offences of burglary, let us say, which has been on the statute book since the beginning of the century; offences involving the possession and use of a knife, where a minimum sentence applies; and minimum sentences for carrying a firearm. I have absolutely no argument with any of that, but a minimum statutory sentence for committing an offence of assisting an offender strikes me as a discourtesy to those very senior judges, who know what they are doing and who are specifically authorised

to try these cases, and carries the possible impediment of visiting on individuals who are at the bottom of the spectrum, even though they may have committed the offence, the same as is visited on those at the top of the spectrum. That is why a discretionary power is needed.

There are examples where a higher discretionary maximum may be appropriate. It is not my purpose to talk about individual cases, but the Choudary case, which I have mentioned, might be a case in point. Some commentators were surprised at the sentence that he received, given the gravity of his offending, but the judge applied the statutory maximum, discounted in the various ways that he is enjoined to do. It seems to me that there is an argument for a higher discretionary maximum.

That leaves the question of whether, if there is a counterterrorism Bill this year, there are any entirely fresh terrorism offences. You may have other questions about that later, but I have been at pains to say that it seems to me that we already have a patchwork quilt—and it is a pretty big quilt—of existing terrorism offences. If I may say so, even with my experience as a prosecutor over many years, I am struggling to identify any completely fresh offence that is needed. I would add for your consumption that that is absolutely my view if we were to see a proposal for a fresh preparatory or precursor offence if that threatened the fundamental rights and freedoms that I mentioned a few minutes ago. In other words, if there was an attempt to draw back from the existing precursor offences, which all require thought or mindset plus action, into legislating against thought alone, I would have great difficulty in seeing how that could be correctly applied and how it could be effective. A number of things could come out of the review. I have an inkling of what is under discussion, but I do not know, because what will come forward is not a matter for me.

Baroness Hamwee: You have answered one of the follow-up questions that I was going to ask, which was about any new offences. Early on in your incumbency you made known your view about not adding lots to the statute book. Do you think that your role and your remit should be expanded now that you are a little way into the job?

Max Hill QC: I am certainly not asking for that and, if I may say so, I have more than enough to do in trying to cover the four statutes. If we go on, as we may, to discuss the sanctions Bill, I have a view on the impact that that might have on my remit. I am happy to take questions on that if there are any. But I am not looking to expand into other areas. My interest is in domestic counterterrorism and the way we deal with that through statutory vehicles and bringing people before the courts. It seems to me that I already have sufficient latitude to review and to comment essentially on the whole output, which is why I was at pains to try to include a chapter in my annual report on the significant cases

that were concluded in 2016. It is a selection only but you can see the breadth of activity that is already being brought before the courts.

My views on whether or not we need fresh offences should not be interpreted as any weakness in the face of terrorism or any rowing back against the robust laws that we need. On the contrary, it is my experience that we have those offences in place. By the way, as I know you recognise, many of those offences are ones in common law or other earlier statute which are still the choice of prosecutors, like I used to be. I would indict an individual tomorrow who had committed a murder in the name of terrorism under the common law for murder, and I would indict an individual who committed an offence using improvised explosive devices under the Explosive Substances Act 1883—because those offences work. They are of real utility. They are of practical use to prosecutors. We do not have to put a legislative label of terrorism in the name of the statute, provided we all recognise that we know what terrorism is when we see it. Therefore, the murder of a Member of this place, Jo Cox MP, was undoubtedly, unquestionably, terrorism. The fact that the perpetrator was rightly tried, convicted and sentenced for murder makes him no less a terrorist. He undoubtedly was, just as the killers of Fusilier Lee Rigby in Woolwich were terrorists, but they, too, were charged with murder. It was not necessary to construct a special statutory offence for them.

Chair: You have mentioned the sanctions Bill so we will go to Fiona, and then we will dive back via Doreen to Schedule 7 and the issue of ports and borders.

Q6 Fiona Bruce: Good afternoon, Mr Hill, and thank you for saying you are happy to take questions on the sanctions Bill because we have some about the proposed threshold change and also about your oversight powers. My first question is: under the current law, Ministers can impose terrorist-related sanctions on individuals if they reasonably believe they have been involved in terrorist activity, but the sanctions Bill would replace that threshold of “reasonable belief” with a lower threshold of “reasonable suspicion”. What, in your view, are the implications of this? What do you think the threshold should be for the imposition of terrorist-related sanctions?

Max Hill QC: We have seen in the debate, in scrutiny, and indeed in correspondence with Ministers, that they rightly point to the existence of a reasonable suspicion threshold in other European jurisdictions. Therefore, they rightly say that applying a new sanctions regime with designation for reasonable suspicion will not meet criticism from Europe. Does that mean that it was necessary to fall back from belief to reasonable suspicion? That is a very good question. It does not strike me as being necessary to fall back from the high watermark that we had established in this jurisdiction, bearing in mind that much of the legislation that you make in this place actually forms a template for other countries to follow—it is

not so much the other way around. The fact that reasonable belief used to be the standard but we have fallen back to reasonable suspicion is a matter of regret on the part of many commentators. It is true that it is in common with the state of mind of the investigating officer, whomever it may be—or indeed Minister—in other areas concerned with the legislation, so there is an argument that there has been a levelling of the field by bringing the sanctions designation test down from reasonable belief to reasonable suspicion.

In my discussions around the country, many are confused about what reasonable suspicion amounts to. There would be enormous concern if it were thought that reasonable suspicion meant that for almost no reason a sanctions designation could be made. Plainly, that is not what the Government intend.

There are other aspects of the Bill that excite comment, which perhaps we will turn to. But my answer, in short, is that reasonable suspicion is understandable but, to a degree, regrettable, when we had advanced a standard above that, which, had it been possible to keep it, from the lawyers' perspective would have been very welcome.

Fiona Bruce: Under the current law, you have a statutory duty to report annually on the implementation of the Terrorist Asset-Freezing etc. Act. The sanctions Bill would remove your oversight of terrorist-related sanctions, without, apparently, replacement by some alternative independent oversight mechanism. What is your view on this?

Max Hill QC: I am very glad you have asked that, because one thing I did in preparation for coming here today was to consider where we have actually reached in terms of the sanctions and money laundering legislation. My take on it—and I hope I am right and not wrong—is that in the first place it is necessary to legislate because of the consequence of this country leaving the European Union. I understand that. It was explained to me very early on in this role that the imposition of sanctions, whether terrorist asset-freezing or more broadly, needed to be put on a fresh statutory footing because of the EU cut-out, if I can put it that way. So I understand that.

Given that the new regime is far broader than terrorism, and that the sanctions and designations that fall under the new Bill are far broader than terrorism, I can also understand that in the draft Bill there is no reference to my remit because I would not expect, nor would it be right, for me to review the entire sanctions regime. My focus, as I said in answer to an earlier question, is exclusively on counterterrorism, particularly domestic counterterrorism. On that basis, I can understand why the draftsmen of the Bill left out my remit.

However, I am not sure that it is the Government's intention to leave me out when it comes to reviewing those sanctions—provided the Bill goes through—that are terrorist designations. I am in conversation, and indeed correspondence, with the Home Office, the Foreign Office and Her Majesty's Treasury. I am reasonably confident that there is no intention to remove my review of any measures that relate to domestic counterterrorism. I await a suitable solution to make it clear that I will still have the power to review sanctions designations where they are driven by concerns over terrorism-related activity. It is too soon to be certain. It is something I am looking at and that I am entitled to look at. I believe, as of now, that the right answer will be arrived at because it would be the wrong answer, in my humble opinion, to say that my remit, which already covers financial sanctions of different sorts—remembering that there are terrorist-financing offences in the other statutes which I review; I am already engaged to the extent that we intercede with financial measures and financial prosecutions—is suddenly barred from this area of activity. But I do not think that is what the Government have in mind, although I entirely agree that looking at the black letter of the draft law and even at the correspondence that I have seen, no solution has yet been provided—perhaps to your satisfaction or to mine—but I think there is an intention there.

Fiona Bruce: Thank you for that comprehensive reply. My third and final question is: your predecessor, David Anderson, has said, with regard to the Terrorist Asset-Freezing etc. Act 2010, that, "exceptional powers require exceptional safeguards". Do you think that the safeguards in the sanctions Bill, as currently drafted, are sufficient?

Max Hill QC: My answer to that would be to draw focus, which I hope is at least part of what you intend, on to humanitarian and peacekeeping work, and exemptions and licensing, which form an important part of this area. I know, following my predecessor's recommendation in his own reports on the Terrorist Asset-Freezing etc. Act, that there is a working group, I think under the superintendence of the Home Office, in which many of the lead NGOs in this area are directly engaged. They are meeting with a view to finding solutions so that the new sanctions regime does not operate against what we can all agree is necessary and continuing humanitarian and peacekeeping activity.

Quite how those solutions will be found is clearly a matter of detail. When I have met leading charities and NGOs, which I have recently, they have pointed to their own input at the Bill stage. They have expressed the need, which I entirely understand and endorse, if I may say so, for safeguards for their work. I think they are anxious at the moment lest any support seems to be *ex post facto* or piecemeal. We can all understand that a humanitarian project may involve any number of ventures and more than one jurisdiction and associating with multiple state actors, here and

abroad. Unless, in advance, there is some general licence that can be provided and assurance provided for those NGOs, the valuable work, resource and input into the project could fall at a late hurdle, and that would be counterproductive.

Beyond that I cannot go because I simply do not know the level of detail but knowing, as I do, that David's reports into the asset-freezing Act were fuelled by his own personal experience, being invited to visit NGOs carrying out humanitarian projects, I volunteered immediately to do the same and I look forward to being able to do that. I hope in the meantime that their expressions of this need for exceptions and licences specifically for humanitarian and peacekeeping work are not forgotten. I am sure the Government will not forget but this is something that needs to be worked through.

Chair: Following up Fiona's first question in relation to your oversight, presumably you would expect that the assurances that you have oversight of the terrorism-related issues in the sanctions Bill would be in statute, not just in a reassurance or the minutes of a meeting or a letter. Presumably, if everything else you do is laid out in the statutes that you cover, you would expect this to be in the same form.

Max Hill QC: I will go as far as to say that since my remit in all other respects is a matter of primary legislation, it would be most convenient and most welcome for there to be a confirmation of my remit in this primary legislation. That is not to undermine my understanding, which I was trying to express, that for the broader sanctions regime I would not come to mind.

Chair: We have got that. We have Members from the Lords and from the Commons, which will no doubt be all over this. Let us turn to ports and borders with Doreen.

Q7 **Baroness Lawrence of Clarendon:** You have recommended that there should be "reasonable grounds to support" the exercise of Schedule 7 powers. What difference would this make in practice, given that the code of practice already says that, "the decision to select a person for examination must not be arbitrary"? Why do you consider it necessary? Should the Committee be concerned about the numbers of people of Asian origin stopped under Schedule 7 powers?

Max Hill QC: This is a huge topic, one of great concern, and, if I may say, one of the areas in which there is confusion about the power, what it is there for and how it is exercised. My proposal, which I will come to, if it were acted upon, in part would cure confusion and move away from the perception of random stopping or stops based on ethnicity alone, both of which are among the things that have been expressed to me when I have gone around the country. Of course, I can say, which is true—taking it from the code of practice, which you have accurately quoted—that there is no such thing as a random border stop, nor is there a stop based on

ethnicity alone. Since the Beghal case, the code of practice has been amended to make it plain that that should not happen. Does that mean that we simply stop there? No, in my view. I have seen several annual reports where my predecessor has advocated "reasonable grounds for suspicion", which is a legal term that we can all grasp. I have seen the Government, for reasons they have stated over the years, refusing to import that. I had to make a decision on whether or not to repeat, as I could have done, what my predecessor had advocated. It seems to me that there is, if I may put it this way, a stalemate on that issue, but we should not remain static.

In areas of practicality, the question I ask is: how much more difficult would it be for an officer who is already adhering to the code of practice, as he or she must, to make a brief record to indicate how she or she has adhered to the code of practice? Although I appreciate that thousands are stopped—some for very short periods of time, some for up to six hours—and that paperwork in every case can multiply, it does not seem too onerous for ports officers to make an entry, to indicate on a device or a piece of paper, that the stop under question was undertaken because of the following factors in the code of practice. The code already says, "You will not stop for ethnicity alone. You are looking for other indicators". How difficult would it be to express that? If that could be done, and I can see no reason why it should not, that would provide a more robust answer to those who believe that ethnicity alone is enough.

Having said that, you are quite right to point to the disproportionate number of citizens of this country who are Asian as opposed to white who are stopped. As I have said, and as I think some are surprised to realise—and they have been when I have gone around the country—actually, at the point of stopping as many white people are stopped at borders as Asians. They are within 1% of each other: 28% to 29%. But, as you would immediately point out, Lady Lawrence, one has to look at the proportion of the national population and we know that that does mean that disproportionate numbers of Asians are stopped, even though the actual headcount is the same. We know that when those stops turn into formal detention of from one hour up to six hours, there is a greater disproportion.

Those difficulties in the section of the legislation would in part—I am not saying wholly—be swept away if we could have a demonstration of the basis on which a stop is conducted. "Reasonable grounds to support" struck me as a move in the right direction but I do not wish to distance myself from my predecessor, who rightly said that we should strive to achieve reasonable grounds for suspicion, which is the test applied in so many other statutes and should be applied here. I wait with interest to see what the reaction will be.

The final thing I will say, though, about the disproportionate effect of Schedule 7 in relation to the Asian community is that it is in part understandable. We cannot simply take a statistical view on this. For example, when I went to sit with the Libyan community in Manchester, one of the things that was expressed to me was a concern that a Libyan-born UK citizen who chose to fly to visit his or her family back in Libya would be stopped disproportionately frequently, merely because they were flying to Libya. The view expressed to me was, "That is wrong. It should not happen". I am afraid the answer I had to give was that it may be wrong in some cases—that is why "reasonable grounds to support" would allow us to work through the proper application of the power—but in other cases it would not be wrong.

The reason I say that is where the police know that dedicated terrorists have used a particular route to travel, and have been in the course of planning an atrocity when they have travelled—that applies to Abedi, the Manchester bomber—those who take the same route must anticipate and expect that there is going to be greater attention on the part of the authorities to those routes. It is not a case of saying simply, "You will not be stopped". The system is much more sophisticated than that. We already have the code of practice. We also have the level of discretion that ports officers use. We know that in many instances very little discretion is applied to a stop at the port itself, because the individual is a designated subject of interest and there is, in effect, an instruction to stop that person.

There are other cases where an individual may not be a subject of interest but where, by careful application of the codes, there may be one or more features of that individual's travel, including their behaviour or the route they take, which justify a stop. So the Libyan community in Manchester, because of what happened in the Manchester Arena, up to a point must expect a degree of interference.

Baroness Lawrence of Clarendon: Would that not come under intelligence, which is what I feel at times should be used to override the arbitrary stops?

Max Hill QC: The counterargument to that on behalf of the ports and border police would be that of course intelligence must be used in every case where it is available, but they would point to instances where, in the complete absence of intelligence, a correct stop has been made; in other words, violent extremist material has been found on a laptop, a mobile phone or another device, even though there was no intelligence to suggest that this individual traveller would have that material. The effectiveness of this gate-stop—I often use a medical word: this triage system—at point of entry into the country cannot be too greatly overstated. There are known examples where criminal charges under terrorism legislation have followed on from a Schedule 7 port stop, either because of a

breach of the statute in terms of providing access to devices, which is an offence in itself, or because, on provision of the device, it transpires that there is violent and extreme material on it which must lead to charge and prosecution.

I give credit to the police, because they are experienced in this area, when they argue that we cannot draw back to intelligence-only stops. Where I challenge them is in the non-intelligence cases, where, given the position we have already reached under the codes of practice, I argue that they should do a little more to verify and justify the stops, because if they do not, the perception of many that it is random will perpetuate and will not be answered. What we are interested in is a robust system which is necessary but which at no stage is used on a random basis.

Chair: Doreen, you meant intelligence in relation to, for example, the routes—

Baroness Lawrence of Clarendon: Yes.

Chair: —not necessarily in relation to the individual. But that was a very helpful answer.

Max Hill QC: Just to expand on that, the overall statistics suggest that intelligence in that broader sense has worked to real advantage. In conjunction with far better data—passenger manifest information—we have seen the use of Schedule 7 drop from 60,000 travellers being stopped five or six years ago down to 17,000. That is in part because of the use of intelligence and greater information, but there is still a level of complexity with regard to the circumstances in which an experienced officer applying the codes should be entitled to stop some where he or she would not stop others.

Q8 **Jeremy Lefroy:** Following on from that, when I have travelled back to Europe from destinations which are potentially known for criminality such as drug crimes and other crimes into an airport such as Schiphol in Amsterdam, I have noticed very considerable police and border security activity around everybody coming off that flight. On similar flights back into the UK, sometimes it is the same, sometimes slightly less. Do you compare notes with your European colleagues to find out whether our system is similar to theirs in terms of the number or percentage of people coming from particular destinations who are searched? Is that part of your remit?

Max Hill QC: It certainly would be within my remit, although my answer to the direct question is that I have not yet been able to find the right individuals to ask that precise question. There is no independent reviewer sitting, as it were, at a desk like mine in any of the other European jurisdictions. Some are quite similar—for example, the French defender of rights—but actually, we have to go to Australia to see a national security monitor whose job description

is very close to mine. That is still work that—thank you—I need to undertake, to look at the comparison between this country and other parts of Europe.

However, harking back to what I said earlier about learning lessons from general crime and applying them to detecting terrorism, you are absolutely right, as I know from being a trial lawyer for three decades, that in terms of detecting serious drug importations, that is precisely what the authorities look at, not just in this country but abroad. It is the individual or individuals who fly back by an indirect route when you would expect them to take a direct flight who are going to be the focus of greater attention. That is a very simple, crude example, but that way of thinking, that way of detection, obviously applies when we come to consider those coming into this country—those who have never been here before but are travelling in with terrorism in mind, or those who are commonly called returning foreign fighters, who may be British citizens who are coming back. The route they take—the mechanism they choose to travel by—is one of the triggers the code of practice under Schedule 7 is there to look at and rubberstamp, saying, “Yes, it is appropriate to look at that”.

Information-sharing between this country and other countries is of enormous importance. I do not need to ask any counterparts in Europe in order to know that that already goes on and is hugely effective. If I may say so, it is why, although this country has suffered, particularly last year, in particular ways, the incidence of successful terrorist plots has been so low in this jurisdiction, and, frankly, so late in comparison with other countries, which suffered on 9/11 or in 2004 with the Madrid rail attacks; the first plot that got through in this jurisdiction was as late as 2005. It may be an odd way of putting it because 7/7 was an appalling event but the domestic authorities’ hard work, fuelled by international liaison from wherever in the world, kept us safe for actually quite a long period of time and continues to do so, which is why even in 2017, when there were four or five plots that succeeded or partially succeeded, the statistics still demonstrate that far more plots and preparatory acts were detected than those that were not.

Q9 Joanna Cherry: Good afternoon, Mr Hill. Going back to Doreen’s question about Schedule 7 to the Terrorism Act and your recommendation about the “reasonable grounds to support” test, which you made in your annual report issued just last week, can you indicate when you expect a government response to your recommendation?

Max Hill QC: Plainly, that is a matter for the Government and it is not for me to tell them when they must respond. We know that the previous annual report, David Anderson’s final report, was published in December 2016, in relation to the operation of the legislation in 2015, and the government response, which I have cited in my document, was dated July 2017. There was the intervention of a general election, there were other things

happening, which I need hardly mention—a busy time in government—but there was a delay of some six months. If I could express any hope at all, it would be that it will be less than six months before the Government find time to look at what I would respectfully submit are modest but sensible proposals and recommendations, and to indicate which ones they accept and which, if any, they do not. So sooner rather than later but beyond that it is not for me to say.

Joanna Cherry: Moving on to proposals to treat internet providers as publishers, you have expressed some scepticism about the overuse of legislation directed at terrorist offences, and you have also flagged up the dangers posed by online material and the difficulties of getting the balance right between protection and fundamental freedoms such as the right to freedom of speech and the right to privacy. What do you think about proposals to treat internet providers as publishers responsible for the material on their sites?

Max Hill QC: It is a line that we have always drawn back from. The construction of the Section 2 “Dissemination of terrorist publications” offence in the 2006 Act is very careful. Unusually, there are many sub-clauses within Section 2—it is a complex piece of legislation—which tells us that extremely careful thought was given to this area and to meeting this area of criminality. It was not the view of this place that tech companies, to use the shorthand, should be regarded as publishers, and that remains the case.

My answer to your question is, of course, that in light of what has happened over the past 12 months, it is perfectly natural that that is revisited. We will also look with interest at the German experiment, which is now on the statute book there, in terms of fining those who fail to take down, and we will look at any other incipient statutory answers—I think Australia may be considering one at the moment, although I am not very conversant with the detail. It is not for me to say that Germany and Australia are perhaps getting it wrong, but I have said that, for a variety of reasons, we would benefit from the help that these tech companies can and really should give.

Potentially, we would benefit more from their help than from criminalising them, which is what we would be doing if we defined a tech company or an online platform as a publisher. The consequences of that redesignation would be fairly far-reaching. It is not for me, using a crystal ball, to say that we will never reach that position, but as it stands I support everything that has been said by people far more senior than me to the effect that tech companies must do more. In my few speeches and writings, I have tried to re-emphasise that message, but I am dubious at the moment as to whether it would be effective to designate platforms as publishers.

Why am I dubious about it? There are a variety of reasons. The material that the tech companies already provide to police and law enforcement on arrest of persons of interest is of the greatest utility. What I mean by that is that, in almost any prosecution that I have conducted over the past 10 years, it is the communications chronology—of course, that now means the online communications—that forms the backbone of the case. The evidence that comes from the tech company on application, which is after the fact, by law enforcement is a large part of what proves the case. When such material is visible and is provided, it can be of great use to the Crown Prosecution Service counterterrorism division and to prosecutors, as I used to be, in proving these cases. That is what we want to do in these cases. Driving that material underground, into spaces where it is far harder to detect, would make it much more difficult to prove these cases by reference to online communications if we cannot find them, and that would be counterproductive.

Equally, there is an argument that having this material available and in plain sight permits a powerful counternarrative to be placed, as it were, alongside it online, so that in future individuals who may be at risk of radicalisation online may think again when they realise that there is a strong counterargument to what they may be contemplating.

So my answer is that strength in legislation in the online space is just as important as strength in legislation elsewhere, but, given that this is the greatest communication platform there has ever been and that billions of us exist with the benefit of the internet, interfering with it in legislative ways may in the fullness of time be necessary but it would be at great cost, both in terms of the rights infringed and in terms of practical consequences of unearthing information.

I would just add this, because it is important. Regarding the online dissemination of information, when I say the tech companies need to do more, that is obviously right. We have reached a position where the percentage of material taken down when an alert is sent or a take-down request comes from the Counter Terrorism Internet Referrals Unit—CTIRU—is extremely high, so that is evidence already of communication between law enforcement and tech companies and co-operation from the tech companies. It needs to be 100%, and my understanding is that it is pretty close to 100%, certainly for the major tech companies—there may be subsidiary issues with much smaller platforms and much smaller back offices, if I can use that phrase. That is going well.

What is more difficult is to identify the material so that it is never uploaded in the first place. In that regard, we have to have a measure of understanding of the tech companies. I do not speak for them, but whereas—I was talking about learning lessons from

general crime—we all know that over the past couple of decades there has been great success in identifying pornographic images of children and ridding the internet of that sort of imagery, that is because, first, there has been good will but, secondly, because we can all identify a pornographic image of a child. That is not difficult. What is much more difficult is to identify terrorist propaganda, as opposed to material that expresses a view that many would disagree with but actually does not fit the Section 1 terrorism definition. It is difficult to deal with this in terms of avoiding the material being put up in the first place. More needs to be done.

It is law enforcement that should be leading the field in this. I am not entirely comfortable with the notion that private corporations, even though they have very deep pockets, should be the sole arbiters of what is online. There is a role for law enforcement applying the statutes that Parliament passes, which must not be undermined, but we have to move forward together.

Coming back to the start—forgive me for perhaps taking too long—I can understand why Parliament did not legislate against the tech companies by describing them as publishers, and I can still see good reasons why they should not be described as publishers, but this debate is not closed, it is very much a living debate, and in part it will be assisted by the foreign experiments that we see over the next months and perhaps year.

Joanna Cherry: Thank you. That is a very full and extremely useful answer, if I may say so. I wonder if I can lead you into some territory covered by your predecessor David Anderson QC, but I want to caveat this by saying that, if you do not feel happy about answering these questions—I am going into the territory of surveillance and investigatory powers—given the remit that you have described, then please do say so.

I think we would all be very interested to hear your views on the Court of Appeal's ruling yesterday in Tom Watson's case about DRIPA, particularly as you have already spoken in your Tom Sargant memorial lecture about the tensions between balancing rights such as the freedom of speech and privacy with necessary precautions against terrorism and serious crime. As I understand the Court of Appeal judgment—and I am afraid I have only skim-read it, so I am relying on commentaries rather than a full appreciation of the judgment—there are two big issues here. One is the lawfulness of DRIPA, because it does not restrict access to confidential personal phone and web-browsing records to investigations of serious crime, so there is an issue about the definition of serious crime. Now, some of us were involved in extensive debates in the previous Parliament about the definition of serious crime in the Investigatory Powers Bill, or Act as it is now. As you will be aware, the definition of serious crime given there is conduct involving violence or resulting in substantial financial gain or a large conspiracy or conduct which is punishable by more than three years' imprisonment.

I was interested to contrast that with the guidance put out by the

Government in relation to the European Court of Justice's comments on DRIPA towards the end of last year. When the current Home Secretary, in fairness to her, proposed some reforms to the Investigatory Powers Act in relation to that decision, she talked about serious crime being defined as including just about everything other than summary offences such as traffic offences. It seems to me that we have a difficulty here, in that we have two different definitions of serious crime. Do you have any views, drawing on your experience to date, on what the appropriate definition of serious crime should be, having regard to what the court said yesterday?

Max Hill QC: Clearly, I am going to mention "remit" in the first part of my answer because although, as I dare say everybody knows, my predecessor was of invaluable assistance in the pre-legislative scrutiny of the Investigatory Powers Bill, as it then was, that was a special request to him beyond his remit as independent reviewer, and it is not part of my remit. Watson, which came out of the European Court three months before I came into post, was part of the territory, and it is strictly not part of my territory. I am very anxious that the Investigatory Powers Commissioner, Sir Adrian Fulford, is the man in the best position to deal with these sorts of issues and I have had conversations with him to that effect.

Can I say anything about Watson? I would suggest that it did not come as a surprise to anyone at the Home Office or in government when the Court of Appeal gave the judgment it did on Monday. It was quite evident from December 2016 that, whether or not you agreed with it, what the European court was saying was going to require some revision of the Investigatory Powers Act, even accepting that that legislation is actually about DRIPA, the precursor Act, as you already mentioned, but the principle still carried through. So it was no surprise that the Court of Appeal had a view to express. The need for robust and independent authorisation is, if I may say so, plainly sensible and necessary. I think it is going to be called the Office of Communications Data Authorisation—OCDA—so that is a new vehicle. We will have to see how that comes into force, but that answers the point about independent scrutiny at the authorisation stage that the European court was addressing. So that is to be welcomed.

In terms of the definition of serious crime, if I dare say so, as one lawyer to another, I entirely recognise that there is a difficulty in placing the bar so low that, as I think the proposal is, serious crime means anything which is punishable with six months' or more imprisonment. It is undoubtedly crime. That would equate in England and Wales to the distinction between summary offences dealt with in the magistrates' court and those which have to be referred to the Crown Court. So it is perhaps understandable that that is a dividing line which has been recognised: essentially, we are not dealing with magistrates' court material, we are dealing with Crown Court material. I can see that there needs to be an

anxious debate about whether or not that is high enough but it is not one for me to lead.

The other aspect of the European court decision is that although what it said has been enshrined in this Court of Appeal judgment in its various ways, the European court itself did not indicate the application of the principles it identified in national security cases. That is absent from the December 2016 judgment. In my area, when I am within remit, it is the national security imperative that is uppermost. Looking at it through that prism, of course I recognise, as a lot of other people do, that the acquisition through proper means, with independent scrutiny at the point of authorisation, of bulk data in certain types of activity is undoubtedly of great assistance to the authorities, and as much as possible we should ensure that that gets through and remains within the capability of the security services, subject, as David put it, to the question of trust that we all hold in those who are vested with the material.

Of course, the practical ramifications of bulk data, even drilling it down in the ways that the European court and now the Court of Appeal have applied, are that the authorities are going to be in possession of vastly more information about a small number of us. They will be the custodians of that information and no doubt there will be resource implications of having to look at that material and work out what they really have. It is not for me to express any view on resource but what I am saying is that, for good reason, the Government several years ago set about trying to ensure that the investigating authorities had access to bulk data where it was of real utility in cases of need. I leave open the question of whether it would always be a case of need where we are talking about an offence that lawyers would recognise as being actually pretty low down the calendar, whereas the case of need in the higher orders, certainly in national security investigations, is abundant.

Joanna Cherry: You mentioned this new vehicle the Government are thinking of setting up to deal with the second part of the Watson case—the OCDA. My understanding is that the Government’s proposal was to create an entity within the existing Investigatory Powers Commissioner’s Office to carry out authorisations. As you know, the Investigatory Powers Commissioner’s Office is already charged with independent oversight of the use of surveillance powers. Would you recognise any tension between having the authorisation and the oversight carried out within the same body?

Max Hill QC: The temptation to comment on that is one I am going to resist, for the very good reason that that is Sir Adrian’s territory. It is particularly notable that such a senior and independent judicial figure has constructed and is running the office. It is a matter for him to grapple with and I would not trespass on his territory.

Chair: Thanks very much, Max. You have given an absolute masterclass in openness and clarity. We look forward to engaging with you and your

helping us by giving us evidence in future inquiries. Thank you very much indeed. We are now ending the public session.