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Ref: 4.8.1.2

21 August 2023

Dear Tobias and Alicia,

We share a view that the Official Secrets Act (OSA) is not sufficient to protect against the national security threat posed by the Chinese recruitment of retired UK Armed Forces personnel. Although the MOD continues to remind staff of their ongoing OSA obligations, including upon exit, we are looking to use contractual levers to limit what information can be shared outside of Defence. The MOD has set up an expert working group to review the use of Non-Disclosure Agreements (NDAs) within Defence and wider Government. The review is due to complete and present its findings by the end of August.

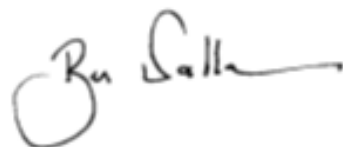
You will appreciate that there are associated risks with NDAs, including the law on restraint of trade under which a contractual term purporting to restrict an individual's freedom to work for others may be held to be unenforceable in some circumstances. To date, MOD has limited its use of NDAs to a very limited number of roles where the consequence of unauthorised disclosure carries the highest risk. Membership of UKSF is one example where NDAs or confidentiality agreements are currently used.

The MOD has also considered statutory remedies such as amendment of section 2 of the Official Secrets Act 1989 to put Defence personnel on a par with the UK Intelligence Community. The proposed amendment would make unauthorised disclosure of information relating to Defence a strict liability offence by removing the requirement to prove such a disclosure is damaging, which currently presents a significant barrier to prosecution of those sharing Defence-related information. Unfortunately, it was not possible to include this amendment in the National Security Bill, but MOD officials have worked with the Home Office to ensure measures in that Bill address the threat posed by foreign powers recruiting ex-Service personnel.

Tobias Ellwood MP
Chair
Defence Select Committee
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Alicia Kearns MP
Chair
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We will provide a further update on this work and the review's findings in the Autumn.

A handwritten signature in black ink, appearing to read "Ben Wallace". The signature is written in a cursive style with a large initial 'B'.

THE RT HON BEN WALLACE MP



Defence and Foreign Affairs Committees

Chairs, Rt Hon Tobias Ellwood and Alicia Kearns

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Rt Hon Ben Wallace MP
Secretary Of State
Ministry Of Defence
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15 December 2022

Dear Secretary of State,

Thank you for your letter. We are concerned that the Department appears to be overly focused on breaches of the Official Secrets Act where, by definition, the level of security risk and burden of proof are high. With regards to the recruitment of retired UK Armed Forces personnel by the Chinese, we believe that the danger does not relate only to highly classified information.

This underestimates the increasing focus of the Chinese Security apparatus on open source intelligence compared with traditional espionage or signals intelligence. An individual may well believe that they are protecting intelligence secrets but could yet be providing valuable information that can be collated with information collected from other participants. Accordingly, a tougher restriction on work for a hostile power, directly or indirectly, may be more appropriate. Please could you update the Committees as to the outcome of your work on examining contractual obligations, including the options examined and why these were rejected or accepted? Please could you also let us know whether you are pursuing additional statutory remedies, and if not, why not?

Rt Hon Tobias Ellwood MP
Chair of the Defence Committee

Alicia Kearns MP
Chair of the Foreign Affairs Committee

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