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Chair of the Joint Committee on the National Security Strategy

Rt Hon Dame Karen Bradley MP

Chair of the Home Affairs Committee

Andy Slaughter MP

Chair of the Justice Committee

Emily Thornberry MP

Chair of the Foreign Affairs Committee

24 October 2025

Dear Chairs,

Thank you again for the opportunity to discuss the case of R v Berry and Cash with you last week and to provide a fuller explanation about the factors which led to the prosecution being stopped.

I recognise the strength of public and parliamentary concern surrounding this case and I want to provide assurances again that everything possible was done to bring it to court. I am therefore taking the unusual step of setting out the background to our decision in some detail.

The CPS's duty is to apply the law fairly, independently and in accordance with the evidence. The decisions, endorsed by me, to charge this case and, ultimately, to offer no evidence were made by a team of highly specialised criminal lawyers with deep experience in successfully prosecuting national security and espionage cases. In addition, one of the most experienced criminal barristers in the country, Tom Little KC, First Senior Treasury Counsel, was instructed to advise on and prosecute the case from the outset. He was assisted by a highly experienced Junior Treasury Counsel.

The case was charged under the Official Secrets Act (OSA) 1911 which required us to prove that between 31 December 2021 and 3 February 2023 the defendants were acting with a '*purpose prejudicial to the safety or interests of the State*' and that China was an "*enemy*". The prosecution case was that the "*enemy*" requirement was met by proving that at the material time China was an active or current threat to the UK's national security.

Evidence as to the Government's view concerning China during the period of the offences was provided by the Deputy National Security Adviser (DNSA). Efforts were made over an extensive period to establish whether the DNSA could provide evidence to satisfy the "*enemy*" requirement, but by late

August 2025 it was realised that this evidence would not be forthcoming. In particular, following conferences with prosecuting counsel in August and September 2025, it was clear that the DNSA would not be able to say that, at the time of the offence, China was an active or current threat to national security. Alternative routes to satisfying the “enemy” requirement were also closed since he was not able to say that, at the material time, China was an enemy, or a potential enemy, or that China was opposed or hostile to the interests of the United Kingdom.

The defence had asserted as part of their case that China was not an “enemy” and so it was certain that the witness would be cross-examined on this issue at trial. It was therefore clear by late August 2025 that the absence of evidence to prove that China was an enemy was fatal to the case, and the decision was made to stop the prosecution.

I am confident that our combined prosecution team, with full view of all the evidence and other material, made the right decisions at the right time and I welcome this opportunity to provide further detail in response to your follow up questions.

First, you asked why the Roussev judgment was thought to impose a strict requirement to evidence a current threat from China.

I recognise of course why you have written in your letter that the judgment in Roussev appears to be permissive rather than restrictive, but in the context of the present case Roussev did in fact set out requirements for which the evidence could not be obtained. To explain this fully, it is necessary for me to set out the background, including the way that the CPS put its case against Berry and Cash, in some detail.

When we made the decision to prosecute the case in April 2024, the law required us to show that, for a purpose prejudicial to the safety or interests of the state, information was provided which was calculated to be, or might be, or was intended to be, directly or indirectly useful to an enemy.

The offence can only be prosecuted in the context of the facts. In our case, the facts established that China was requesting information, the information was intended to go to China, and, in respect of a very significant number of individual reports provided to China, this information would only have been useful to China. Our case therefore had to be that China was an “enemy” within the meaning of the OSA 1911.

At the time that we made the decision to prosecute Berry and Cash, the 1913 case of Parrott established that “enemy” does not mean necessarily someone with whom this country is at war, but includes a potential enemy with whom someday we might be at war. However, we did not consider that this case set out a comprehensive definition of the meaning of “enemy”. At this time, we were prosecuting the case of Roussev, a case which was also based on the OSA 1911. We argued that “enemy” should be given its ordinary meaning of a country which is opposed or hostile to the interests of the UK, and that by demonstrating that Russia was a threat to national security we would satisfy the “enemy” requirement in the OSA 1911. The DNSA gave a statement in evidence on behalf of the prosecution in that case and described Russia as “the most acute threat to our national security.” Ultimately, that case resulted in convictions.

As you will have seen from the DNSA’s first witness statement, his evidence in R v Berry and Cash was that “the Chinese Intelligence Services are highly capable and conduct large scale espionage operations against the UK and other international partners to advance the Chinese state’s interests and harm the interests and security of the UK”. Our case therefore was based on the threat posed to

the UK's national security by China – the same basis that we had used in the case of Roussev. We considered that this would be sufficient to satisfy the “enemy” requirement.

Some weeks after we made the decision in Berry and Cash, Mr Justice Hilliard gave a ruling in Roussev, since the defence challenged our expansive interpretation of the meaning of “enemy”. The defence argued that to constitute an enemy the prosecution must prove that the UK was likely to be at war with another State in the foreseeable future. They asked the judge to give a ruling on the issue.

In his ruling, Mr Justice Hilliard said:

“To confine “enemy” in that way more generally would be to deprive section 1(1)) OSA of much of its utility. I do not think that the court in Parrott was intending to lay down any comprehensive definition.”

“As the evidence from the deputy National Security Adviser explains, State threats to the UK have grown and diversified in recent years, even though actions often fall short of open conflict. I am confident that in 1911 when the OSA was passed, it would have been obvious that enemies could appear in different guises at different times and would do so in the future”.

“Without myself trying to be comprehensive, but within the ambit of the present case, it seems to me that any State which presently poses an active threat to the UK's national security can properly be described as “an enemy” in ordinary language. It will be for the jury to determine whether the test is met on such evidence as is called. There may be difficulties and sensitivities about adducing relevant evidence on the part of the prosecution. If so, that will be an issue for them to confront.”

Mr Justice Hilliard's ruling went on appeal to the Court of Appeal. On the issue of what constitutes an enemy, Dame Victoria Sharp, the President of the Kings' Bench Division, in her ruling on 16 July 2024, said:

“We agree with the judge that Russia would be “an enemy” if the jury concluded on the evidence that it was a country with whom the UK might some day be at war. However, neither Phillimore J nor the judge was laying down a comprehensive test. There is no reason in our view why the term “an enemy” should not include a country which represents a current threat to the national security of the UK. That formulation may well involve issues of fact and degree which the jury would be well-placed to assess, on evidence. As the judge correctly observed, friendly powers would fall outside this definition.”

In summary, the position that trial counsel were faced with in the Berry and Cash case following these rulings was as follows:

- 1) Our case was based on the threat to national security posed by China.
- 2) A case based on a current or active threat to national security could satisfy the “enemy” requirement.
- 3) That much is clear from the ruling of Mr Justice Hilliard when he stated that “within the ambit of this case” (which concerned the threat posed by Russia), the enemy requirement could be satisfied.
- 4) Though neither of the judgments laid down a comprehensive test for “enemy”, they did specify what the prosecution must prove in a case based on threat to national security. It must be shown that the State “presently poses an active threat to the UK's national security” (Hilliard J) or “represents a current threat to the national security of the UK” (Dame Victoria Sharp).
- 5) It followed that a case based on threat which did not satisfy those requirements would fail.

Trial counsel, First Senior Treasury Counsel, Tom Little KC and Peter Ratliff, Junior Treasury Counsel, together with our expert team of specialist CPS prosecutors, did not anticipate that there would or

should be any difficulty in obtaining evidence from the DNSA that at the material time (31 December 2021 to 3 February 2023) China was an active or current threat to national security, but as it turned out this was a sticking point that could not be overcome.

Turning to your further questions, those, and my answers are as follows:

Requests to DNSA.

Can you confirm that the requests to the DNSA for further statements related to Government policy in the 2021-23 period?

The requests made by counsel asked about the actual threat posed by China during the relevant period. The test was therefore positively not what the then Government was prepared to, or did, say in public about China (whether framed as its policy or otherwise, and whether as a matter of fact true or not), but rather whether China was - as a matter of fact - an active threat to national security.

Can you provide further detail on the nature of the three requests for statements?

On 11 June 2024, less than two weeks after the judgment by Mr Justice Hilliard (at first instance), on the advice of counsel investigators were asked to pose the following question, among others, to the DNSA:

Comment on whether China is a State which, during the period 31 December 2021 to 3 February 2023, posed an active threat to the UK's national security.

The additional words "and to confirm whether that remains the position at the time of writing" were added the following day but, as appears below, this extra element was not pursued.

There was some delay in providing a response to the question posed to the DNSA, and eventually a meeting took place on 10 December 2024 between our counsel and a lawyer acting for the DNSA.

The DNSA's lawyer was asked if it was possible to say that China was an active threat to national security between 31 December 2021 and 3 February 2023, it being pointed out that in the earlier case of *Roussev*, in which the DNSA had given evidence, he had used far more direct language concerning whether Russia could be regarded as an enemy. Alternative formulations were discussed, as was the critical importance of this evidence.

On 26 February 2025, following receipt of the DNSA's second statement dated 21 February 2025, which fell short of answering the question whether at the relevant period China was an active threat to national security, investigators were asked to establish whether the DNSA would discuss risks beyond economic risks. The same day, the answer came back that the DNSA did not feel that he could elaborate any further in this format, but if asked about it in evidence he would be "prepared for it".

In May 2025, the Cabinet Office was approached by investigators on the CPS's behalf to ask whether the DNSA would be willing to put into a "closed" statement (that is, a statement with a security classification which would not be given in open court) matters that he considered to be too sensitive for inclusion in his open statements.

On 3 July 2025, a meeting took place between our specialist CPS prosecution team and a civil servant from the Cabinet Office. The question posed by counsel: "comment on whether China is a State which, during the period 31 December 2021 to 3 February 2023, posed an active threat to the UK's national

security” was repeated. A discussion took place as to what the DNSA would and would not be able to say.

On 10 July 2025, in a follow up to that meeting and following a conversation with counsel, the Cabinet Office were told by email that: “After reflecting on the suggested wording “active espionage threat”, we do not consider that this alone goes far enough for the purposes of s.1. OSA 1911. To prove the offence the jury would need to be satisfied so that they were sure that, at the material time, China was an enemy. That China was an active espionage threat would not be sufficient without examples which adequately demonstrate the nature and extent of the threat, such as to ground a finding that China was an enemy.”

A further witness statement was provided by the DNSA on 4 August 2025.

On 14 August 2025 a meeting took place between our counsel team, a CPS lawyer and the DNSA. In that conference, the DNSA told counsel that he would not state in evidence, if asked, that China posed a risk to our national security at the material time, either in open Court or in a private session. He would also not accept that China was opposed or hostile to the interests of the United Kingdom at the material time. He would accept, if asked, that China was not an enemy in the ordinary meaning of the word, and would not answer the question, if asked, whether China is an enemy within the meaning of the OSA. He would say that is a matter for the jury.

On 9 September 2025, a second conference took place with counsel and the CPS. In the conference, the DNSA confirmed to counsel that, in relation to the 2021-2023 situation, he would not say that China was an active threat. Successive governments had declined to categorise it as such. He would be unable to say it was an explicit threat, but it would not be a ‘no’. If counsel were to ask anything outside the four corners of the statements, the DNSA would not go there.

Was there a request for information on the position of the current Government relating to China; to what extent was this considered relevant to the case?

The information that we required related to the period between 31 December 2021 and 3 February 2023. The position of the current Government was not relevant to the case.

Other Sources.

Can you set out what consideration was given to seeking evidence from other sources, either in addition to that of the DNSA or instead of, such as ministers in post at the time, or using intelligence material, so as to enable a jury to assess the extent and nature of the threat posed by China at the relevant time?

Consideration was given to this, but, counsel and the CPS, as well as the police, were confident that the DNSA was the most appropriate and competent government official (representing the position of the State) to provide evidence on the actual status of China at the relevant time. The DNSA was, by definition, someone who could speak to the *actual* risk to national security posed by a state or other actor, and to do so from a uniquely informed perspective. The witness would be giving evidence of fact, and arguably expert opinion, and, in his role as a DNSA, it was considered that evidence would be both authoritative and compelling.

It has been suggested that the Crown should have abandoned its witness, that is, not called him to give evidence. But, first, the DNSA also provided crucial evidence of the prejudice to the interests of the UK, and its use to China; and secondly, in practical reality we could not have dispensed with his

evidence. Having served his witness statements, the prosecution was bound (as a matter of law) to call him, in which case it was certain that he would be asked if at the material time China was an active or current threat to national security. He would have to have been called before any attempt was made to call any Minister or other witness. The defence would have insisted on it and were entitled to it. His unwillingness to say that at the material time China was an active threat to national security was fatal to the case.

This factor is compounded by the fact that drafts of the first witness statement, reviewed by us in July 2025, showed that references to China being an “enemy” or “possible enemy” had been deleted. Those drafts would probably have been disclosable to the defence.

In terms of other sources, the Crown is indivisible. It would have been impossible, in real terms, for the prosecution to call some other witness to contradict the DNSA on this topic and for that evidence to somehow correct the position sufficiently to withstand a submission of no case to answer. In circumstances where we were seeking to call a witness to give inconsistent evidence from a witness who had been served from the outset, and who (in legal terms) was entirely competent to give the evidence he gave, it is not considered that we would have been successful in seeking leave to do so (even assuming the proposed new witness had the relevant expertise to give the evidence).

HMG Awareness.

What steps did you take to make ministers aware, in advance of your decision to drop charges, that without further evidence relating to the 2021-23 period the case would collapse? When did you take any such steps?

Periodic updates on the progress of the case were provided to the Law Officers in written form, but never in fact discussed with them. However, at the point a decision to offer no evidence was made, the Attorney General was informed, together with the reasons for it. This took place on 3 September 2025. Later that day, I met with the Cabinet Secretary and likewise informed him of the decision and the reasons for it. It was agreed that he might inform a limited group, including some ministers. An outcome of that meeting was that I decided that a further meeting between the DNSA and counsel should take place, to make absolutely certain that the DNSA had been given a full opportunity to state his position. That further meeting took place on 9 September (as noted above) following which the prosecution position was confirmed. The CPS formally offered no evidence to the court, the procedural step necessary to end the case, on 15 September 2025.

What efforts did you make to ensure that the DNSA was absolutely clear that the evidential threshold his evidence was being measured against was that China was a “current threat to National Security” (i.e. current at the time that the offences were alleged to have been committed) and that the case would be dropped if such evidence was not available?

I have set out the history of this case in some detail, from which it will be seen that the evidence that we sought was made clear as long ago as 11 June 2024 and reiterated in emails and meetings between the CPS, police and Cabinet Office over the succeeding months. Its importance should have been clear. The DNSA had his own legal advice throughout the period, and the importance of the evidence that was needed should have been evident to him from the meeting between his lawyer and counsel on 10 December 2024. In any event, the DNSA was aware, coming into the meeting on 9 September 2025, that in the absence of the evidence that was sought, the case would be dropped.

Can you confirm that the reason for the dropping of the charges was that this evidential threshold was not met?

Yes. The proceedings were halted because the evidential threshold was not met; there was no longer a realistic prospect of conviction.

What was the role of former and current Government legal officers in decisions relating to the case?

This prosecution required the consent of the Law Officers at the point of charge, and that consent was given by the then Solicitor General (Robert Courts KC) on 3 April 2024. As noted above, at the point a decision to offer no evidence was made, the current Attorney General was informed.

Is it correct that you informed the Attorney General that the case was being dropped after the decision to do so had been made?

Yes.

Was this after the accused had been informed?

No.

I hope that this comprehensive reply to your questions will be helpful to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Parkinson', with a long horizontal flourish extending to the right.

STEPHEN PARKINSON
DIRECTOR OF PUBLIC PROSECUTIONS