



House of Lords  
House of Commons

Joint Committee on the National Security Strategy

# Espionage cases and the Official Secrets Acts: Government and Crown Prosecution Service Responses

Second Special Report of Session 2024–26

HC 1700  
HL Paper 262

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# Joint Committee on the National Security Strategy

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## Publication

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# Second Special Report

The Committee published its Second Report of Session 2024–26, [Espionage cases and the Official Secrets Acts](#) (HC 1414, HL Paper 223), on 3 December 2025. The Government response was received on 4 February 2026 and is appended below. The Crown Prosecution Service’s response was received on 2 February 2026 and is appended below.

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## Appendix 1: Government Response

HM Government is grateful to the Joint Committee on the National Security Strategy (JCNSS) for its comprehensive and insightful report on the circumstances surrounding the collapsed prosecution of two individuals accused of espionage offences, published on 3 December 2025.

Both the JCNSS and the Intelligence and Security Committee have had the Government’s full support and cooperation in their investigations to ensure that they are able to provide effective scrutiny. This included the unprecedented step taken to disclose the Deputy National Security Adviser’s (DNSA) witness statements in full to support Parliamentary oversight.

In particular, the Government welcomes the JCNSS report finding that allegations of Government interference in the prosecution process were baseless and untrue.

The Government remains deeply disappointed by the collapse of the prosecution case under the Official Secrets Act 1911. Protecting national security is our first duty and we will never waver from our efforts to keep the British people safe. State threats are increasing and diversifying so it is crucial that the United Kingdom’s tools and legislation are able to mitigate and respond to these threats, regardless of origin.

In 2023, Parliament passed the National Security Act, which overhauled legislation related to espionage, sabotage and persons acting for foreign powers against the safety and interest of the United Kingdom. This legislation significantly enhanced our ability to deter, detect and disrupt state threats, making the United Kingdom a harder target for those seeking to overtly or covertly interfere in our democracy and society.

Nevertheless, the Government will not be complacent in ensuring effective implementation of these enhanced tools and powers. The JCNSS report helpfully identifies opportunities for strengthening communications processes between the CPS, policing, and Government, to support future prosecutions, including to align expectations on the capacity in which any future Government witnesses are giving evidence. We have reviewed the Committee's recommendations and conclusions in full with this in mind to assess where further action can be taken.

Having thoroughly considered all conclusions and recommendations of the JCNSS report, and given their interrelated nature, the Government's response groups them thematically to avoid repetition. The Committee's recommendations and conclusions are in text boxes below, followed immediately by the government's reply.

## **1. Communications related to Witness Capacity and Provision of Evidence**

### **Relevant Conclusions and Recommendations:**

Conclusion: "The Deputy National Security Adviser (DNSA) would not describe China as posing an "active threat" to national security at the relevant time. We acknowledge the position from the Crown Prosecution Service that it would undermine their case that China represented such a threat if the DNSA, their central expert witness, refused to characterise China in such terms." [paragraph 39]

Conclusion: "The witness statements provided by DNSA were however clear that China posed a range of threats to the United Kingdom's national security. In our view it is plain that, taken together, these amounted to a more general active threat to the United Kingdom's national security. We appreciate the legal argument that these positions are not identical. We regret that common sense interpretations of the wording provided in the DNSA's witness statements were apparently not a sufficiently strong basis for meeting the evidential requirements the Crown Prosecution Service considered necessary under the Official Secrets Act 1911." [paragraph 40]

Conclusion: “We are surprised that the Crown Prosecution Service considered the evidence available insufficient to survive a submission of ‘no case to answer’ and to be put before the jury.” [paragraph 45]

Conclusion: “It is regrettable that the prosecution hinged on the testimony of a Government witness who would not state directly that China posed an active threat to national security at the material time. We acknowledge however the arguments from the Crown Prosecution Service that, once the decision had been taken to rely on the Deputy National Security Adviser (DNSA), it would not have been feasible to seek another witness who would effectively contradict the DNSA’s position.” [paragraph 51]

Conclusion: “We found evidence of misaligned expectations which contributed to the decision to discontinue the case. In particular, the Deputy National Security Adviser (DNSA) said he was clear from the outset that he would only provide evidence in line with Government policy, whereas the Crown Prosecution Service told us it required evidence on matters of fact. This discrepancy was evidently a key factor in the collapse of the case. The significance was apparently not appreciated until the process was far Advanced.” [paragraph 72]

Conclusion: “We do not seek to unpick any of these professional judgements. In future, however, it is essential that improved communications, common sense, clarity on strategic objectives and appropriate flexibility can be applied to ensure finely balanced judgements ultimately favour the public small interest.” [paragraph 74]

Conclusion: “Some processes were excessively protracted, with extensive to and fro. From the outside some aspects look shambolic. The process for securing the DNSA’s second witness statement took nearly eight months, for example. The reason for this delay remains obscure to us.” [paragraph 76]

Conclusion: “We remain uncertain about the capacity in which the DNSA was giving evidence, and the extent to which civil servants can act as witnesses of fact on matters that are not made explicit by government policy.” [paragraph 78]

**Recommendation: “We recommend the Government clarifies this issue in response to this report.” [paragraph 79]**

**Recommendation: “Many of the problems in this case stemmed from a lack of clarity over the evidence. Given the complexity of national security cases we recommend establishing a requirement for a formal case conference within 30 days of such charges being brought, in order to identify potential evidential issues from the outset. Depending on the nature of the case, this should include the Crown Prosecution Service and its investigators; the Government witness and their legal**

**representation; Counsel (if appointed) and if appropriate the relevant Law Officer in their superintendence role. Subsequent regular case conferences should be added as required.” [paragraph 75]**

**Recommendation: “We recommend that timely acquisition and delivery of evidence should be made a priority in future. In response to this report the Government should confirm what steps it will take, and commit to implementation within six months.” [paragraph 77]**

**Recommendation: “The Cabinet Office and Security Services must conduct an internal exercise to consider scenarios in which the Government might be asked to provide diplomatically sensitive evidence under the National Security Act 2023. They must then work with legal partners, including the Crown Prosecution Service, to formalise principles for handling sensitive cases and communications protocols to help mitigate the risk of future misaligned expectations. This should be completed within six months.” [paragraph 126]**

## **Government Response:**

The Government welcomes the Committee’s conclusion that the witness statements provided by the Deputy National Security Adviser (DNSA) were clear that China posed a range of threats to the United Kingdom’s national security.

The Committee requested further clarity regarding the capacity in which the DNSA was giving evidence. Based on the request made for evidence by Counter Terrorism Policing, it was the DNSA’s understanding that he was providing evidence as a witness of fact specifically based on his experience and position in advising the Prime Minister on matters of intelligence, defence and national security, as described in his witness statements. The DNSA was asked to comment on the Government’s position on China.

The DNSA has stated that he was explicit from the outset in providing his witness statements that he could only provide evidence “in line with government policy at the time”. This was communicated to law enforcement officers responsible for gathering evidence for the case to inform the CPS’ decision on whether to pursue a prosecution.

The Committee requested clarity on the extent to which civil servants can act as witnesses of fact on matters that are not made explicit by government policy. While civil servants regularly provide evidence as witnesses of fact in support of prosecutions, it is unusual for a government official, such as the DNSA or NSA, to be involved in providing evidence in a criminal espionage case as a witness of fact. The nature of the facts in issue

in any given case is determinable by reference to the legal ingredients of the offence charged and any defence raised. The general rule is that witnesses may only give evidence of facts they personally perceived.

However, drawing on the in-depth report led by the JCNSS, the Government acknowledges there were misaligned expectations between the Crown Prosecution Service (CPS) and the Government and accepts that there is room for improvement in communications to clarify the capacity in which Government witnesses are providing evidence.

The Government agrees with the Committee's recommendation to undertake an internal exercise aimed at developing guiding principles that ensure expectations are aligned in future criminal cases and to strengthen coordination between policing, CPS and government departments on evidential and disclosure requirements.

The Attorney General's Office, the Crown Prosecution Service and Cabinet Office will conduct an internal exercise to produce a forward-looking, constructive guidance product to be used by government departments when required to provide evidence for national security prosecutions. Once finalised this guidance will be shared with the Committee and it will specifically provide clarity on:

- The capacity of Government witnesses giving evidence in criminal proceedings, who they can share their evidence with (including other Government departments) and the principles of evidence and procedure in criminal proceedings;
- How to optimise coordination between policing, CPS (or other prosecutorial bodies) and government departments to ensure collaboration and a shared understanding on evidential and disclosure requirements in criminal prosecutions;
- The extent to which legal advice and draft statements subject to legal advice from government lawyers are properly subject to disclosure in criminal proceedings;
- Whether a single witness statement is the right approach in future prosecutions, or whether the government instead prepares a position statement or relies on other materials.

The Government agrees that timely acquisition and delivery of evidence should always be a priority in support of criminal prosecution processes. However, we do not recognise the Committee's conclusion that there was a delay as work to provide these witness statements was ongoing. However, we do not recognise the Committee's specific conclusion that there was an eight-month delay in the DNSA providing the second witness statement.



This DNSA was approached for the statement by Counter Terrorism Policing (CTP) in late November 2024, with initial meetings taking place in December and the witness statement was produced in February 2025. This timeline involved complex reviews by external counsel; National Security Secretariat (NSS) officials; and the DNSA himself. These reviews were undertaken to ensure that the DNSA's witness statement met the evidential ask he received from CT Policing and fully reflected the DNSA's understanding of:

- The senior CCP leader mentioned in his first witness statement
- The threat that China posed based on his understanding of the Government's position at the material time
- The evidence provided to him for assessment by CT Policing.

The initial evidential pack provided to the DNSA by CT Policing for comment in his first witness statement was also vast.

A similar process took place for the third statement. CT Policing approached the DNSA's team for a statement in May and it was submitted at the beginning of August.

## **2. Constitutional Propriety and Support for Government Officials**

### **Relevant Conclusions and Recommendations:**

Conclusion: "We are satisfied that the current Attorney General acted with constitutional propriety. We are also satisfied that there was nothing inappropriate about the processes for obtaining Law Officer consent to prosecute, or the subsequent process for informing the Attorney that the case was being discontinued." [paragraph 115]

Conclusion: "We regret that opportunities were not taken to inform the Attorney General of the situation in greater detail earlier on and request his assistance insofar as would be constitutionally appropriate." [paragraph 116]

Conclusion: "We did not find evidence of deliberate efforts to obstruct the prosecution. The sequence of events nevertheless raises some substantial questions of whether the Government officials and counsel working on the DNSA's witness statements could have found an alternative formulation which remained in line with the government's overarching position at the time. This would have made clear that China posed an active national security threat. We note that the Crown Prosecution Service made extensive

and repeated efforts to obtain evidence to this effect. It also raises the question of whether the Crown Prosecution Service was right to conclude that the legal tests remained unmet.” [paragraph 73]

Conclusion: “We have considered the circumstances of the meeting held on 1 September and note the proximity of the Crown Prosecution Service decision to discontinue the case two days later. We did not find evidence of improper influence or deliberate efforts to obstruct the prosecution. We note in particular that First Senior Treasury Counsel had already concluded more than a week earlier that the Deputy National Security Adviser’s evidence was insufficient to proceed to trial.”[paragraph 93]

Conclusion: “The Cash/Berry case suggests there may be value in providing a degree of top-level support to the Deputy National Security Advisers (DNSAs), particularly if they face significant public exposure. We suggest the Government uses the case conference recommended in paragraph 75 as a waypoint to sense check who—aside from the Government’s bound witness—should provide top-level grip.” [paragraph 134]

**Recommendation: “We acknowledge and commend the important work led by the National Security Adviser and his Deputies. We appreciate that there is deep experience and co-operation across the Cabinet Office leadership. We nevertheless recommend that the Government reviews the nature of responsibilities, line management and support structures for the DNSAs. This would help provide assurance that the DNSAs are not left unduly exposed in any future high-profile incidents.” [paragraph 135]**

**Recommendation: “The Government should also review the adequacy of high-level support and advice which is made available to bound witnesses in sensitive national security cases. The Government should outline the findings of that review to the Committee within six months.” [paragraph 136]**

## Government Response:

The Government welcomes the Committee’s finding that there was no evidence of improper influence or coordinated high-level effort to collapse the prosecution. We thank the committee for clarifying that there was no deliberate effort to obstruct the prosecution, despite characterisations of a 1 September meeting of senior officials. The Government is also pleased the Committee is satisfied that the Attorney General and Law Officers acted with constitutional propriety.

The Government welcomes the Committee's recommendation to consider the support mechanisms and ensure line management structures are clear for senior officials, such as the DNSA, to ensure they are not left unduly exposed or isolated when acting as bound witnesses in high-profile cases.

Before finalising his first witness statement, the DNSA sighted the then National Security Adviser and the then Cabinet Office Permanent Secretary noting that then CO Permanent Secretary and National Security Adviser had already agreed to him being a witness. Alex Chisholm was consulted because at this time the then Cabinet Secretary (Simon Case) was on medical leave. After the charging decision in April 2024, DNSA was a witness in criminal proceedings, whose evidence was not yet heard or tested in Court, and therefore his following two witness statements could not be shared with officials outside of the members of staff within NSS and Cabinet Office Legal Team who supported the DNSA to draft the statements. This was confirmed as such by the CPS.

However, the Cabinet Secretary was aware that the case was going on and, in his capacity as the DNSA's line manager, was available throughout the case to provide support or for the DNSA to raise any personal concerns, without touching on the specific evidence of the case.

For any instances whereby the government, or in this case a government official, is asked to provide evidence to support a CPS criminal case it would be completely typical for the government to consult the relevant government legal team on how to approach a CPS request. In some cases, specialist external counsel may be engaged. In this case external counsel was instructed by departmental legal advisers to provide criminal law expertise.

However, the Government welcomes the Committee's recommendation to review the advice available to bound witnesses in sensitive national security cases to ensure they fully understand what is expected of them and to ensure that the wrap-around support provided to witnesses is sufficient. This will be specifically covered as part of the guidance product that the AGO, CPS, and Cabinet Office seek to produce.

### **3. Application of the Legislative and Legal Framework**

#### **Relevant Conclusions and Recommendations:**

Conclusion: "We accept that the root cause of the problems with this case lies in the difficulties raised by the outdated Official Secrets Act 1911. We caution strongly, however, against concluding that the risk of future

problems has been negated entirely by the new National Security Act 2023. The proximate cause of outdated legislation has been removed, but this episode has surfaced some deeper problems which remain.” [paragraph 8 of Executive Summary]

Conclusion: “The Crown Prosecution Service determined that it required specific evidence that China posed an “active threat” to UK national security at the relevant time, following a Court of Appeal ruling known as “Roussev”. It is not within the Committee’s remit to second guess the decision-making and professional judgement of the independent Crown Prosecution Service and First Senior Treasury Counsel. However, we remain unclear as to why the Court of Appeal ruling altered the legal landscape so significantly.” [paragraph 38]

**Recommendation: “As the international security environment worsens, we expect the number of national security prosecution cases to rise. We urge the Government to avoid characterising the failure of the Cash/Berry case as a one-off peculiarity created solely by outdated legislation: there are structural parallels in the National Security Act 2023 which will require careful handling to avoid comparable issues recurring. For example, it is plausible that there will be diplomatic sensitivities around labelling individuals as members of a foreign intelligence service—and hence the precise wording of evidence statements will remain of utmost importance.” [paragraph 125]**

## Government Response:

The Government concurs with the Committee’s assessment that the “root cause” of the prosecution’s failure was the use of the Official Secrets Act 1911, which was archaic and fundamentally unfit for purpose. The Attorney General has stated he has “no doubt” that had the National Security Act 2023 been in force at the material time, the prosecution would have proceeded to trial.

However, we heed the Committee’s caution that the National Security Act does not negate all risks; we remain committed to carefully handling “structural parallels” under the National Security Act, such as the diplomatic sensitivities surrounding the labelling of individuals as members of foreign intelligence services. The Government will continue to work tirelessly to ensure that we have the most effective structures and processes in place to support law enforcement partners in mitigating and prosecuting foreign espionage wherever we find it and regardless of the nature of our diplomatic relationship with any foreign powers involved. We will also ensure that new guidance on the production of evidence from Government witnesses is future-focused and could be applied to criminal cases brought under a range of national security legislation.

We consider that the difficulty posed by the ‘enemy’ test under the Official Secrets Act 1911 has been mostly resolved in the National Security Act. The new guidance will help police, CPS, and government departments work together to clarify evidential and disclosure needs in future prosecutions focusing on the facts in issue and the legal ingredients of the offence charged.

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## Appendix 2: Letter from Stephen Parkinson, Director of Public Prosecutions, Crown Prosecution Service

I would like to thank the Joint Committee on the National Security Strategy for its report following its inquiry into Espionage Cases and the Official Secrets Acts. I understand that the Cabinet Office will be submitting the Government's formal response. Given our independence from Government, I am writing separately to offer the Crown Prosecution Service (CPS) response to the report.

We are grateful for the Committee's careful consideration of the points raised during the inquiry and the conclusions drawn in the report, which cover several thematic strands. We do not seek to repeat wholesale some of the previous points made. In summary however, based on all the evidence which would have been heard as to whether China was an "active threat" to national security at the relevant time, we reached the conclusion that there was no longer a realistic prospect of conviction and if the case were to proceed to court, there was a significant risk that it would not survive a submission of 'no case to answer'. While some conclusions within the report question the decision we reached, we would reiterate that these were independent professional judgements made by CPS lawyers experienced in prosecuting national security and espionage cases, applying the Code for Crown Prosecutors. The outcome was of course extremely disappointing, but every effort was made to bring this case to court.

The recommendations within the report provide an opportunity to prevent a recurrence of some of the issues that arose in the case and our response to the recommendations that engage the CPS is below.

### Recommendation

**Many of the problems in this case stemmed from a lack of clarity over the evidence. Given the complexity of national security cases we recommend establishing a requirement for a formal case conference**

**within 30 days of such charges being brought, in order to identify potential evidential issues from the outset. Depending on the nature of the case, this should include the Crown Prosecution Service and its investigators; the Government witness and their legal representation; Counsel (if appointed) and if appropriate the relevant Law Officer in their superintendence role. Subsequent regular case conferences should be added as required.**

## **CPS Response**

The CPS agrees with the need for early case conferences in relation to national security cases. Case discussions with relevant parties are already a key feature of our casework at the early stage of the prosecution cycle, wherever possible. We would also emphasise that a key pillar of our case strategy principles is building strong relationships and ‘one prosecution team’. This recognises that collaboration is the most effective way of ensuring a just outcome. The timing of case conferences and the list of attendees will need to be decided on a case by case basis.

## **Recommendation**

**We recommend that timely acquisition and delivery of evidence should be made a priority in future. In response to this report the Government should confirm what steps it will take, and commit to implementation within six months.**

## **CPS Response**

The CPS agrees with this recommendation. While it is for investigatory partners to obtain evidence, the CPS will support any necessary steps to ensure the timely acquisition and delivery of evidence.

## **Recommendation**

**The Cabinet Office and Security Services must conduct an internal exercise to consider scenarios in which the Government might be asked to provide diplomatically sensitive evidence under the National Security Act 2023. They must then work with legal partners, including the Crown Prosecution Service, to formalise principles for handling sensitive cases and communications protocols to help mitigate the risk of future misaligned expectations. This should be completed within six months.**

## CPS Response

In relation to the second part of the recommendation, the CPS agrees and would welcome the opportunity to reiterate understanding of the prosecution process and the role of witnesses and other departments in respect of evidence and disclosure. We acknowledge that there could still be diplomatic sensitivities/international relations issues in future casework that require careful and early consideration, and we will work with other Government Departments as appropriate at an early stage where such issues are apparent.

## Recommendation

**The Government should also review the adequacy of high-level support and advice which is made available to bound witnesses in sensitive national security cases. The Government should outline the findings of that review to the Committee within six months.**

## CPS Response

The CPS agrees and stands ready to support increased understanding of the prosecution process and the role of witnesses and other departments in respect of evidence and disclosure.

I hope this response is of assistance. The CPS will support all efforts to strengthen the operational framework for national security, and to learn lessons from this case. Thank you once again for your detailed consideration and work on this report.