



House of Commons  
Home Affairs Committee

---

# The Home Office's Response to Terrorist Attacks

---

**Sixth Report of Session 2009–10**

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 26 January 2010*

**HC 117-I**  
**[Incorporating HC 1007-i & ii, Session 2008–09]**  
Published on 2 February 2010  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## The Home Affairs Committee

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

### Current membership

Rt Hon Keith Vaz MP (*Labour, Leicester East*) (Chairman)  
Tom Brake MP (*Liberal Democrat, Carshalton and Wallington*)  
Mr James Clappison MP (*Conservative, Hertsmere*)  
Mrs Ann Cryer MP (*Labour, Keighley*)  
David TC Davies MP (*Conservative, Monmouth*)  
Mrs Janet Dean MP (*Labour, Burton*)  
Mr Khalid Mahmood MP (*Labour, Birmingham Perry Barr*)  
Patrick Mercer MP (*Conservative, Newark*)  
Margaret Moran MP (*Labour, Luton South*)  
Gwyn Prosser MP (*Labour, Dover*)  
Bob Russell MP (*Liberal Democrat, Colchester*)  
Martin Salter MP (*Labour, Reading West*)  
Mr Gary Streeter MP (*Conservative, South West Devon*)  
Mr David Winnick MP (*Labour, Walsall North*)

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

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

### Powers

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

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom). A list of Reports of the Committee since Session 2005–06 is at the back of this volume.

### Committee staff

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

### Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3276; the Committee's email address is [homeaffcom@parliament.uk](mailto:homeaffcom@parliament.uk).

# Contents

---

<b>Report</b>	<i>Page</i>
<b>Key Facts</b>	<b>3</b>
<b>1 Introduction</b>	<b>4</b>
Previous Work	4
<b>2 Coordinating an immediate response</b>	<b>5</b>
The policing structure	9
<b>3 Legal Tools</b>	<b>14</b>
The admission of intercept evidence	14
Control Orders	18
<b>4 Funding and Counter-Terrorism Focus</b>	<b>21</b>
<b>5 Parliamentary Scrutiny</b>	<b>24</b>
<b>6 Conclusion</b>	<b>25</b>
<b>Conclusions and recommendations</b>	<b>26</b>
<b>Formal Minutes</b>	<b>30</b>
<b>Witnesses</b>	<b>31</b>
<b>List of written evidence</b>	<b>31</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>32</b>



## Key Facts

---

- Ministers need to place greater emphasis on participation in emergency simulations.
- A formalised National Security Committee chaired by the Home Secretary or Prime Minister and assisted by prominent, publicly accountable National Security Advisers must be appointed.
- A lack of political will hindered the creation of regional counter-terrorism units; the Government was not proactive enough in instigating valuable reforms to the policing structure.
- The primacy of the Metropolitan Police in counter-terrorism operations should be enshrined in statute to increase accountability and simplify the command structures.
- The creation of a separate National Terrorism Agency modelled on the American Department of Homeland Security has the potential to cause major problems and will not represent a major simplification of policing structures.
- The Government should immediately introduce legislation allowing the admission of intercept evidence in court.
- Control Orders no longer provide an effective response to the continuing threat and the control order regime is no longer viable.
- Budgets for counter-terrorism work have increased greatly but there is a lack of Parliamentary oversight of this spending and a possibility of problems caused by “ring fencing” this money.
- The structures that are now in place may be suitable for combating the terrorist threat as currently constituted, but we are not confident that government institutions have the desire to constantly adapt to meet ever-changing threats.

# 1 Introduction

---

## Previous Work

1. The Government's strategy for countering international terrorism—Project CONTEST—“sets out a detailed account of the history of threat, the impact that this has had on the UK, our understanding of the causes and our view of its likely direction”.<sup>1</sup> CONTEST is split into four ‘work streams’:

- i. ‘Pursue’—to stop terrorist attacks;
- ii. ‘Prevent’—to stop people becoming terrorists or supporting violent extremism;
- iii. ‘Protect’—to strengthen our protection against terrorist attacks; and
- iv. ‘Prepare’—where an attack cannot be stopped, to mitigate its impact.

2. In June 2009 we produced a Report on CONTEST<sup>2</sup> which, among other conclusions, noted the “impressive” work of the Office of Security and Counter-Terrorism (OSCT) which is based in the Home Office. We subsequently decided to investigate more closely areas of the Home Office's counter-terrorism strategy. In particular we considered what steps the Home Office has, and can, take to prevent a terrorist attack, the “Pursue” stream; and what structures are in place to coordinate an immediate response to an attack, as part of “Prepare”. This involved us looking closely at the Home Office's institutional structure for strengthening counter-terrorism measures and coordinating an immediate response to a terrorist incident. We also investigated whether enforcement agencies and prosecutors possess the necessary tools to prevent an attack happening, and prosecute suspects after an event; in particular, given recent high-profile court cases in this area, we looked at the continuing value of control orders and the benefits of allowing the admission of intercept material in court.

3. During this inquiry we have taken oral evidence on four occasions and visited the Cabinet Office for an informal briefing. We also received an informal briefing from Jonathan Evans, Director-General, MI5 on the current threat level. A full list of witnesses can be found annexed to this Report. The evidence session with Mr Charles Farr, Director-General, OSCT on 15 December was held in private and a redacted transcript subsequently agreed with the Home Office and published. We thank everyone who has been involved with the inquiry.

---

1 Home Office written evidence, 29 October 2009

2 “Project CONTEST: The Government's Counter-Terrorism Strategy”, Ninth Report of Session 2008–09, HC 212

## 2 Coordinating an immediate response

---

4. The Government's counter-terrorism structure can be crudely split into four "strands":

- The immediate operational response is the responsibility of the Police Services and is run by the designated Gold Commander. This is the normal response to a major crime or police action and we did not consider this in the context of the current inquiry.
- The Ministerial Committee on National Security, International Relations and Development (NSID) which is chaired by the Prime Minister is responsible for counter-terrorism policy;<sup>3</sup>
- A Weekly Security Meeting which is chaired by the Home Secretary and is attended by "senior representatives of the intelligence agencies, the police, [and] key government departments", allows the "tactical coordination of counter-terrorism strategy, policy and communications" and the sharing of counter-terrorism intelligence prior to an attack;<sup>4</sup> and
- COBRA<sup>5</sup> which is usually chaired by the Home Secretary or Prime Minister and brings together "all of the various elements from the various departments and intelligence agencies" to "supply support, [and] make sure that in real time everybody is working on the same information picture". COBRA is reactive, temporary and ad hoc and formed in the immediate aftermath of an attack for a "specific purpose [and] for a specific period".<sup>6</sup> COBRA is chiefly responsible for the production of the Commonly Recognised Information Pattern, or CRIP. The CRIP helps ensure that after an attack everybody involved in counter-terrorist activity is sharing information and working from the same information.<sup>7</sup>

5. COBRA's role is the coordination of information after an emergency and all of the witnesses we have spoken to have confirmed that it fulfils this function very well. Lord West of Spithead, the Parliamentary Under Secretary of State responsible for Counter-Terrorism, told us that "the COBRA system is fit for purpose";<sup>8</sup> the Rt. Hon. Dr John Reid MP called it "a hugely valuable tool";<sup>9</sup> DCC Margaret Wood told that she was "satisfied that COBRA is a very useful means for the Government coordinating [a] response";<sup>10</sup> and Mr Andy Hayman—who has publicly criticised the work of COBRA<sup>11</sup>—conceded that,

---

3 For the membership of NSID, see: <http://www.cabinetoffice.gov.uk/secretariats/committees/nsid.aspx>

4 Home Office Written Evidence: Letter to the Committee dated 29 October.

5 COBRA is an acronym of "Cabinet Office Briefing Room A" where the strategy group supposedly meets. COBRA is not an officially recognised term and will therefore not be found in official documents and evidence. The official name for the strategy group is the Civil Contingencies Committee which is supported by a small secretariat and may meet in Cabinet Office Briefing Rooms (COBR). However, given the popular usage of "COBRA", unless otherwise stated, COBRA will be used as a synonym for all of the Government's immediate strategic response structure, particularly the Civil Contingencies Committee.

6 Q 53

7 *Ibid.*

8 Q 2

9 Q 54

10 Q 67

11 See: 'Cobra, the UK emergency committee that makes a chaos out of a crisis' *The Times*, 22 June 2009

“[information sharing] is a function it [COBRA] performs as well as it can do”.<sup>12</sup> Despite this we wanted to establish whether certain problems exist in the way that COBRA operates in practice.

6. Sir Ian Blair suggested to us that the frequency of COBRA meetings, especially after a major emergency, was unpredictable and that COBRA could be recalled at “the whim of the Chair”.<sup>13</sup> He suggested that if the Chairman recalled COBRA at the “wrong”, or at least at an unexpected time, this would interfere with the work of “operational staff [who] need to go back and do things”<sup>14</sup> and could prevent decisions taken in COBRA being filtered through organisations. He recommended a more standardised arrangement with the first meeting held immediately (less than half-an-hour)<sup>15</sup> after the event, and then a “battle rhythm” of further meetings every two hours.<sup>16</sup> Mr Andy Hayman also raised problems with the timings of COBRA meetings, he suggested that if meetings were too frequent or not on a prescribed schedule, the need to share the decisions taken in the main COBRA made it possible that “all you are doing is running around servicing meetings but you are not actually achieving anything”.<sup>17</sup>

**7. While it is difficult to hold regular meetings during an emergency situation as events will inevitably render any fixed schedule redundant, we are surprised that two former senior policemen raised concerns over the frequency of COBRA meetings and suggested that the timing of meetings was unpredictable. We recommend that as far as possible a fixed schedule of regular meetings be maintained. Participants in COBRA meetings need to feed back the results of the main meeting and implement emergency plans—there is a danger, without a relatively fixed schedule, that COBRA gets in the way of this and actively hinders the operational response.**

8. We have also heard that a degree of demarcation exists between “operational” and “political” actors within COBRA; the result is that the actual formal decision-making process is less important than informal discussions, in pre-meetings held beforehand. Mr Hayman told us that in practice:

You have a forum where the operational colleagues sit together and thrash out what, from their professional experience, they believe to be the options, and then they come into the main COBRA and present that to ministers. I think that is a really good way of working ... What I thought was strange was that this was going on underneath everyone's noses but it was as if it was the unspoken word.<sup>18</sup>

Mr Hayman further suggested that there might be merit in formalising this structure and clarifying the mandates and roles of everybody involved:

---

12 Q 209

13 Q 253

14 *Ibid.*

15 Q 259

16 Q 254

17 Q 222

18 Q 201



What would be helpful is if there was a two-tier system where ministers, who have got a very clear mandate, are allowed to be away from that ... and then when it comes into the main forum which is clearly their role they have all the information and there is better informed decision-making.<sup>19</sup>

**9. Mr Hayman may be right to suggest that in practice a “two-tier” system already exists, but it is hard to see how changes to the institutional structure would prevent this happening. Formalising this existing working practice may produce better informed decision-making, but we cannot see how further demarcation and “sub-groups” would be avoided, negating the advantages which he claims would be accrued. As long as everyone involved in a COBRA meeting is aware of their roles (and we have no evidence that they are not) then we do not see any major problems caused by the current informal demarcation between “political” and “operational” actors.**

10. One of the roles of the Office for Security and Counter-Terrorism is to organise exercises and simulations of terrorist attacks; Lord West told us that the programme of exercises has been improved and strengthened since he came into office and that these are extremely useful in refining contingency plans and allowing key actors experience of coordinating a government response to a terrorist attack in a “COBRA-like” setting.<sup>20</sup> These exercises involve between 200 and 1000 police officers, intelligence officers and military personnel. They are a large undertaking; three take place each year and they each take between three and nine months to organise.<sup>21</sup> All of our witnesses confirmed that they are an extremely valuable tool in focusing minds.

11. Given the benefits of regular “as live” exercises, and the time and effort needed to arrange them, we were surprised to hear it suggested by both Mr Hayman and Sir Ian Blair that the attendance of Ministers and Departmental Permanent Secretaries was somewhat sporadic.<sup>22</sup> Mr Farr disagreed with this assessment telling us that, “they [Home Secretary and Permanent Secretary] would both be present, not always together but often one or other of them, at the COBRA end of the exercise”.<sup>23</sup> We cannot say for certain whether the Home Secretary attends every counter-terrorism exercise. However, it remains troubling that both Sir Ian Blair and Mr Andy Hayman, who would have played an important role in organising and participating in such exercises, were of the opinion that Ministers, and other key players, were missing at crucial times; this cannot have inspired confidence in the value of these exercises among operational actors.

**12. We agree with Lord West that exercises are vital in testing systems and structures before an emergency, and we are therefore pleased that his tenure in office has seen greater impetus given to this element of the counter-terrorism response. It is imperative that key actors, especially Ministers who will be taking major decisions, experience a full “COBRA simulation” before facing a real-life incident. We are disappointed that the perception exists among some operational actors that the Home**

---

19 Q 202

20 Q 5 and Q 37

21 Qq 314–315

22 Q 60; see also Q 41

23 Q 120

Secretary and other relevant Ministers have not participated as fully as could be expected in the exercise programme. We strongly recommend that in future, participation in such exercises becomes a key part of Ministerial life.

13. As a forum for coordinating information after a terrorist attack, COBRA is as good a system as possible, and aside from the minor technical issues we have noted concerning the timing of meetings and participation in exercises we have no complaints with how it operates. While we are convinced that it performs its function well, we are also of the belief that there is a danger of overstating the importance of COBRA which does not play a particularly active role in counter-terrorism and does nothing to prevent an attack occurring. Dr John Reid MP told us that during his tenure as Home Secretary he “wanted to streamline the whole of our counter-terrorist operations and ... [create] ... a chain of command that went clearly up to one Cabinet committee, which in my view should be entitled and formed as a National Security Committee”.<sup>24</sup> During this inquiry it has become apparent that it is the Weekly Security Meeting chaired by the Home Secretary which in practice is the key body in coordinating counter-terrorism activity, building relationships between different actors and sharing intelligence; it is this meeting which plays the major role in preventing an attack, not just coordinating the response. Since 2005, Home Secretaries have mandated attendance at these regular meetings and “institutionalised coordination, [the] exchange of information, [the] grouping together of ... all of the counter-terrorist elements pan-government ... because the threat against us is seamless”.<sup>25</sup>

14. The Weekly Security Meeting—a meeting of which we were previously unaware—therefore performs many of the functions that a National Security Committee would perform; in effect a *de facto* National Security Committee already exists and functions, however discreetly.

15. While we are not placed to comment on the effectiveness of the Weekly Security Meeting, the lack of public awareness of its existence is troubling. The public have a right to know who is protecting them from terrorist threats and in turn, those protecting the public should expect to be accountable and have their performance reviewed. To achieve these aims we propose the transformation of the Weekly Security Meeting into a more formalised, standing body to be known as the National Security Committee, chaired by the Home Secretary or Prime Minister who would invite outside, non-governmental experts to attend as the situation arises. The work of this committee should also be assisted by prominent appointed National Security Advisers who could also be fully accountable to Parliament. Mr Charles Farr said that “There are a number of proactive regular meetings ... [and] ... quite a lot of steady state activity”.<sup>26</sup> It is time to bring this activity further into the public domain.

---

24 Q 46

25 Q 45

26 Q 310

## The policing structure

16. As well as reforming the institutional side of the government response, through the formation of the NSID and the Office of Security and Counter-Terrorism, the events of 7 July 2005 also triggered a reform of the operational arm of counter-terrorism measures. DCC Margaret Wood told us that since 2006, counter-terrorism policing has been concentrated in four “large counter-terrorism unit[s] and also four counter-terrorism intelligence units”,<sup>27</sup> replacing the old structure whereby all 52 forces of the United Kingdom possessed Special Branches of varying sizes.<sup>28</sup> This new structure undoubtedly has many merits, not least in the concentration of talent and increased focus it brings. DCC Wood confirmed that: “we now have a very significant increase in the numbers [of officers] who are able to tackle counter-terrorism; not just in numbers but in expertise and experience”.<sup>29</sup> Assistant Commissioner John Yates concurred in this assessment of the value of counter-terrorism units, calling them an “excellent system” and the “envy of the world”.<sup>30</sup>

17. We do not doubt the value of counter-terrorism units; the old system of 52 separate special branches—some of which would be under-funded and lacking counter-terrorism experience<sup>31</sup>—is far too unwieldy to deal with the “seamless” threat that we now face. However, we do worry that this structure is predicated on a somewhat artificial separation of counter-terrorism policing. **The police must remember that while regional Counter Terrorism Units (CTUs) may allow for an increase in the skills and expertise available to disrupt and prevent attacks happening, this expertise will be rendered useless without adequate information gathered from within communities.** We asked AC Yates whether he would favour the further concentration of counter-terrorism policing through the creation of a National Terrorist Agency; he said that he would not because: “the real power of the current network is that it is embedded at the local level, where it picks up local intelligence ... I would be loath to remove that distinction ... that a national agency could foresee”.<sup>32</sup> **We suggest that the creation of “supra-regional” bodies also carries the risk of breaking the vital link with local communities. Despite creating regional bodies, the police must take every care to maintain the links with local communities which will be at the core of any intelligence gathering.**

18. We are confused as to why, if regional counter-terrorism units are an “excellent system” they were not created before 2006. Assistant Commissioner Yates told us that the “events of 2005 provided the impetus to make this [the creation of CTUs] happen”<sup>33</sup> which was slightly contradicted by Sir Ian Blair. We asked him why it took five years after September 2001 to establish regional units. He gave many reasons why this process had taken this long:

---

27 Q 69

28 *Ibid.*

29 *Ibid.*

30 Q 126

31 Q 69

32 Q 129

33 Q 128

Partly because it was quite a big thing to do; secondly there was an awful lot of money to be found to do it; thirdly there were long and difficult arguments inside ACPO and in my view insufficient political will to drive the solution ...<sup>34</sup>

**19. We are not convinced that the practical obstacles cited by Sir Ian Blair justify the delay in implementing the regional counter-terrorism units. We would like to know exactly when the development of regional counter-terrorism units was first considered by the Home Office and police service. We remain unclear as to how much impetus the events of 2005 provided for this change. We must place on record our concern that the Government and the police appear to have been lethargic in driving through necessary reforms to the policing system, and that there was insufficient political will to provide solutions. The Government and enforcement institutions must be proactive and identify problems themselves before a fatal attack acts as a catalyst for reform.**

20. It has been suggested to us that Regional Counter-Terrorism Units represent a “continuous compromise” and a “middle ground as to what needs to be done”.<sup>35</sup> Despite the praise that has—rightly—been given to the performance of CTUs, Mr Andy Hayman told us that it remains the case that inter-force cooperation remains dependent on personal relationships and gentlemen’s agreements between police chief constables.<sup>36</sup> Ordinarily this would not be a problem as chief constables would do everything in their power to prevent, and minimise the damage caused by, terrorist attacks; however, problems may arise if operations go wrong. Sir Ian Blair told us that the operational primacy of the Metropolitan Police in counter-terrorism operations is tacitly acknowledged by all forces, but the chain of accountability and responsibility is confused: “although there is a gentleman’s agreement ... [between the Met and other forces] ... there would be a considerable chance of a lot of infighting afterwards as to who was responsible for something going wrong ... you will have an awful lot of confusion on the ground if it has gone wrong”.<sup>37</sup>

21. Gentlemen’s agreements are no basis for a counter-terrorism policing structure, particularly when the lack of a formal structure creates the possibility of confusion and a lack of clear accountability. We have heard of two possible solutions to this problem and ways to further reform the current policing structure to adapt to the national, “seamless” threat posed by terrorism.

22. The first solution, as suggested by Sir Ian Blair, would merely require the formalisation of current practice—rather than tacitly acknowledging the primacy of the Metropolitan Police in counter-terrorism operations, this status should be enshrined in statute.<sup>38</sup> While this would not affect the immediate operational response, which would remain the responsibility of the local force until support was provided by specialist units of the Metropolitan Police—the formalised primacy of the Metropolitan Police, enshrined in statute, would make the lines of responsibility and chain of command clear; “at the moment that the national co-ordinator declares for executive action then there is no doubt

---

34 Q 275

35 Q 270

36 Q 212 and Q 272

37 Q 272 and Q 274

38 Q 270

that he, and through the chain of command, the Metropolitan Police are responsible".<sup>39</sup> Sir Ian further suggested that rather than operational concerns preventing this change there was "insufficient political will to drive [this] solution".<sup>40</sup>

23. Our evidence session with the Home Secretary on 15 December gave credence to this remark. We asked the Home Secretary whether he was in favour of this relatively simple move:

If someone said to me: "Here's the positive: here's what we could do and here are the problems that we can solve by enshrining this in law", fine, but it seems to me to work very well at the moment without another Crime and Policing Bill.<sup>41</sup>

**24. While we do not advocate change for change's sake, the fact that the current structure appears to "work very well at the moment" should not preclude improvements being made and we fear that is only when things go wrong that weaknesses will be identified in the structure. We are of the opinion that Sir Ian Blair has made a perfectly reasonable suggestion. A relatively minor change in the law would greatly clarify lines of accountability and responsibility without affecting the immediate operational response, as in practice many forces already rely on the Metropolitan Police for operational support. The primacy of the Metropolitan Police Service in counter-terrorism operations should be enshrined in statute.**

25. A more radical solution would be to bypass the problems caused by policing operations crossing regional or national boundaries by creating a single, National Terrorism Agency. In both newspaper articles and in oral evidence to us, Mr Andy Hayman has called for a single agency which would bypass the reliance on "good will and personalities"<sup>42</sup> that could hinder the response at present. He compared the current policing structure with other enforcement agencies such as the UK Border Agency and Serious and Organised Crime Agency which have "a national remit where they can travel across the country and not worry about force boundaries";<sup>43</sup> he suggested that the current structure, relying on cooperation with local forces was a sub-optimum response; "provided you have got good will and the personalities are right, it will work, but you cannot have a structure based on that".<sup>44</sup> Mr Hayman also suggested that in practice a quasi-national agency, effectively marshalled by the Metropolitan Police, already exists; "those resources located around the country can be marshalled anywhere within the country, you are actually operating a pseudo-national outfit anyway".<sup>45</sup> Mr Hayman could not understand why, since his proposed reform already existed in practice, the existing quasi-national structure was not formalised to avoid all the problems that may be caused by force boundaries and different jurisdictions.<sup>46</sup>

---

39 Q 271

40 Q 275

41 Oral evidence to the Committee: *"The Work of the Home Office"*, Tuesday 15 December, HC 165, Q 52

42 Q 213

43 Q 212

44 *Ibid.*

45 Q 218

46 *Ibid.*

26. We asked our witnesses about the value of a separate “National Terrorism Agency”. It was suggested that while a single, unified agency may have some benefit in clarifying chains of command and would replace a structure based on competing jurisdictions and gentlemen’s agreements, this solution may merely create further, different problems.

27. Mr Charles Farr raised the issue that many of the organisations which would be merged to form a national agency, particularly existing intelligence agencies, “do a lot more than counter-terrorism so you cannot brigade them together for counter-terrorism without that having an impact on everything else they do”.<sup>47</sup> A national agency would merely shift the potential problems caused by a lack of coordination to other areas of policy and operations. He also could not see a “significant additional benefit from the integration of the organisations to justify the very significant disruption”<sup>48</sup> and he did not think that that “the advantages of very big organisations are proven”.<sup>49</sup> Instead, he endorsed the current structure based on close cooperation between many different organisations without formal mergers; “the key point is, although organisationally separate, those [agencies] work seamlessly together. They have joint sections and communicate regularly every day”.<sup>50</sup> DCC Margaret Wood concurred that the current system based on mutual cooperation worked very well: “I would say that the relationship between the security services and the Police Service has probably never been better than it currently is both in terms of the personal relationships and the way we are able to operate together”.<sup>51</sup>

28. Both Mr Farr and, in a separate session the Home Secretary and Sir David Normington, Permanent Secretary, Home Office contrasted the current structure in the United Kingdom, which is based on separate organisations working closely together, with the system in the USA which has merged many organisations into the Department for Homeland Security. The Home Secretary suggested that the merger of agencies in the USA has led to a loss of expertise in other, non-counter terrorism areas, and that the creation of the OSCT has allowed the consolidation of different separate agencies towards a common goal without the loss of expertise elsewhere.<sup>52</sup> Sir David Normington also highlighted that while the American system may look simple, in reality it is not, “there [remains] a very large number [of counter-terrorism agencies], the White House is involved, the National Counterterrorism centre is involved, the Department of Justice and a myriad of police forces”.<sup>53</sup> Both Mr Farr and the Home Secretary were of the view that it would not be beneficial to copy the American experience.<sup>54</sup>

**29. Successful counter-terrorism measures will rely on organisations working closely together and we are therefore pleased to hear that the many different bodies working on counter-terrorist activity are to a very great extent integrated. Whilst the creation of**

---

47 Q 313

48 Q 303

49 Q 313

50 Q 302

51 Q 70

52 Oral Evidence to the Committee, “*The Work of the Home Office*”, Tuesday 15 December, HC 165, Q 2

53 Q 3

54 Q 303, Q 296 and oral evidence to the Committee, “*The Work of the Home Office*”, Tuesday 15 December, HC 165, Q 2



**a National Terrorism Agency would remove the problem of coordinating the work of 52 separate police forces, we see no great operational benefits through the formation of a single, national agency and the experience of the USA suggests that such an action is not a panacea. The problems which a National Terrorism Agency would claim to solve are, to our eyes, overstated, while the problems that it could cause are potentially very great. We remain convinced that police skills and knowledge, rather than policing structures, are the key to preventing terrorism.**

## 3 Legal Tools

---

### The admission of intercept evidence

30. In September 2009, the second trial in the aftermath of the “liquid bomb plots” and Operation Overt was concluded.<sup>55</sup> The first trial closed without a conviction despite evidence that Lord West believed to be “overwhelming, including their martyrdom videos and everything else”;<sup>56</sup> for the second trial the prosecution introduced evidence obtained from the defendants’ e-mail addresses, despite the legal ban on the admission of intercept material as “evidence” in British courts.

31. The admission of intercept material in court is currently under consideration; on 30 January 2008 a *Privy Council Review of Intercept as Evidence*<sup>57</sup> was presented to the Prime Minister and Home Secretary. This Review, headed by Sir John Chilcot, accepted “the principle that intercept as evidence should be introduced” provided that the use of intercept material met certain operational requirements and did not sacrifice “essential security requirements”. In February 2008, the Prime Minister accepted the findings of this Report and established a pilot project and an Advisory Group to report on the success of the implementation programme.<sup>58</sup>

32. In December 2009, the Advisory Group (which was also headed by Sir John Chilcot) reported on the progress of the implementation programme.<sup>59</sup> The report concluded that; “The unanimous legal advice, including from independent Counsel, is that testing has shown that the model developed in this work programme would not be legally viable” and therefore:

Because the testing phase confirms that the model does not meet the necessary fair trial (Article 6 ECHR and domestic law) requirements, trial judges would be likely to exclude intercept evidence or halt the proceedings in the majority of cases—particularly in the sorts of complex trials regarding terrorism or other serious criminal offences.

In effect, because the operational requirements proposed in January 2008 demand that “sensitive intercept material, techniques and capabilities must be protected to avoid terrorists and other serious criminals evading detection and frustrating the investigation of their activities”, the model piloted was in violation of Article 6 of the European Convention of Human Rights, which demands the full disclosure of evidence. In the light of the Advisory Group’s Report the Home Secretary concluded that “the model does not represent a viable basis for implementation” and further study was needed to see if the problems identified by the Advisory Group were insurmountable.<sup>60</sup>

---

55 See: “Liquid Bomb Plot: What Happened” *BBC News Online*, 7 September 2009: <http://news.bbc.co.uk/1/hi/uk/8242479.stm>

56 Q 30

57 *Privy Council Review of Intercept as Evidence*, January 2008, Cm 7324: thereafter Chilcot Review

58 Ministerial Statement: “*The use of communications intercepts as evidence*”, 6 February 2008

59 *Intercept as Evidence: A Report*, December 2009, Cm 7760, thereafter Chilcot Final Report

60 HC Deb, 10 December 2009, col 31WS



33. Britain is almost alone in completely prohibiting the admission of intercept material in court.<sup>61</sup> According to Sir Ken Macdonald QC, Australia, Canada and the USA regard intercept material as “an absolutely critical forensic tool in criminal trials ... quite invaluable”,<sup>62</sup> while European countries such as France and the Netherlands also allow the admission of intercept in controlled circumstances; the Dutch in particular “find it hard to conceive of fighting serious organized crime without using intercept material as evidence”.<sup>63</sup> It has been suggested to us that the experience of enforcement agencies and the police in using intercept material to combat terrorism in Northern Ireland could explain the reticence of the United Kingdom in adopting the use of intercept material in court.<sup>64</sup> It is therefore revealing to examine how Eire regulates and allows the use of intercept. According to the Chilcot Review:

The Commissioner of An Garda Síochána, the national police force [and security services] may apply to undertake lawful interception under the relevant Act either in connection with an investigation of a serious criminal offence or in the interests of the security of the State ... Section 12 of the 1993 Interception of Postal Packets and Telecommunications Messages (Regulation) Act states that the Minister shall ensure that such arrangements as he considers necessary exist to limit to the minimum necessary the disclosure of the fact that an authorisation has been given and the contents of any communication which has been intercepted. This restriction on disclosure coincides with the practice of An Garda Síochána not to use intercept product as evidence in prosecutions. So, although not prohibited by statute, in practice intercept as evidence is not used in Ireland.<sup>65</sup>

While the threshold before intercept material could be introduced in court is set quite high, its use is permitted by statute; in extreme circumstances Irish security services could admit intercept material as evidence, regardless of their current practice.

34. During this inquiry we have taken evidence from the current Director of Public Prosecutions (DPP), Mr Keir Starmer QC, and the former DPP, Sir Ken Macdonald QC. Both told us that allowing the admission of intercept evidence in court would be of benefit to the prosecution.<sup>66</sup> Sir Ken Macdonald went further and suggested that the admission of intercept evidence should be a key part of a new legal “toolbox” which would also include plea bargaining in serious criminal trials and questioning after charge. These measures would reduce the rate of contested trials and help tackle global networks by encouraging minor players in the conspiracy to cooperate with enforcement agencies.<sup>67</sup>

35. While conceding that intercept evidence would not, on its own, be a panacea, Sir Ken Macdonald was convinced that:

---

61 Legal foundations may play a role in Britain's unique status; Britain is the only Common Law country which is also bound by the European Convention on Human Rights.

62 Q 141

63 Chilcot Preliminary Review, para 141

64 Q 143

65 Chilcot Preliminary Review, paras 134–135

66 Q 168 and Q 144

67 Q 150

If we had intercept available as an evidential tool and if we were directing intercept capability towards the gathering of evidence, I am absolutely confident that our experience would mirror the experience of other jurisdictions where it is used frequently to great effect and results in the saving of considerable expense ...<sup>68</sup>

The main benefit that would accrue from the admission of intercept material would be that: "It increases the guilty plea rate. It has the potential to make trials swifter because the evidence is so compelling".<sup>69</sup> Sir Ken also disputed the argument put forward by the Chilcot Review that the evidence available suggests that there would only be a modest increase in successful prosecutions, as a result of the use of intercept as evidence;<sup>70</sup> he told us that this conclusion was based merely upon studying cases currently prosecuted without intercept evidence and ignored the potential benefits that intercept material could yield:

If you have intercept as an evidentiary tool, you start to use it, and you start to target people with that tool. Inevitably, it seems to me, the use of intercept evidence increases ... I am quite confident [that] if we had it as a tool in our jurisdiction it would be used more and more frequently.<sup>71</sup>

36. Given the obvious benefits that intercept material would bring to state prosecutors we were puzzled as to why legal reforms allowing the admission of intercept material had not been introduced. We have heard of two potential barriers to the introduction of intercept material, the first is cost and the second can be characterised as a "cultural response" or institutional inertia.

37. As well as ruling out the admission of intercept evidence because specified operational requirements could not be met, the Advisory Group raised concerns about the increased costs to be borne by enforcement agencies through the admission of intercept evidence. These costs include initial set-up costs (e.g. enhancing interception systems to the appropriate evidential standard), increased ongoing running costs (e.g. additional staff required to monitor, review and transcribe intercept); and the costs of operating the systems certification and judicial oversight regimes and gathering of supporting evidence to facilitate the use of intercept in court.<sup>72</sup>

38. However, Sir Ken Macdonald told us that: "One of the primary effects of intercept evidence in prior jurisdictions is to drive an increase in the guilty plea rate so that we have less contested trials. Contested trials in serious cases consume an enormous amount of public resource. The costs ... would more or less balance themselves out".<sup>73</sup> This would be especially true if the wider use of intercept evidence made it unnecessary to use more expensive counter-terrorism tactics such as control orders and long-term surveillance. We also do not see where many of the additional costs cited by Chilcot would come from, given that large amounts of intercept material are already gathered under the Regulation of

---

68 Q 141

69 Q 144

70 Chilcot Preliminary Review, para 59

71 Q 152

72 Chilcot Final Report, para 18

73 Q 142

Investigatory Powers Act.<sup>74</sup> We do not consider that the admission of intercept material would necessitate a fundamental shift in agency activity as “information which is currently collected as intelligence could ... be used for evidential purposes”.<sup>75</sup> **We dispute the claim that the admission of intercept material would lead to vastly increased costs for enforcement agencies and fear that this argument is being put forward to divert attention from the main issues. We would like to see an estimate of what the additional costs have been calculated to be.**

39. During Sir Ken Macdonald's tenure as DPP, there were at least three separate reviews on the use of intercept material, and “they always started with a firm indication from the Prime Minister or the Government that they wanted to do this”.<sup>76</sup> However, despite the evident political desire to allow the admission of intercept material, “problems were always thrown up” and it was not clear that “all parties [came] to the discussions and the negotiations willing them to succeed”.<sup>77</sup> Sir Ken went further in suggesting which parties had not approached the discussions constructively:

There is serious concern within the [security] agencies in particular that the use of intercept as an evidential tool would result in significant bureaucratic burdens upon them ... There is a feeling that this is a reform that would be burdensome and might impact on the relationship between the agencies and law enforcement in a way which is unattractive.<sup>78</sup>

40. **These concerns may be plausible and deeply-felt, but we fear that this is a case of the tail wagging the dog. Other states have adopted the use of intercept evidence without compromising the work of their security agencies so it is clear that a way can be found without impacting on security services too adversely. We suspect that that the apparent unwillingness of security agencies to approach this matter in a constructive manner is attributable as much to institutional inertia and a deeply felt cultural reflex as to insurmountable technical barriers. The clear desire of Prime Ministers and the Government to allow the admission of intercept material should not be frustrated by such responses.**

41. Regardless of the success, or otherwise, of pilot schemes, we have been told by both the former and current DPPs that intercept material would be of great benefit in their work.<sup>79</sup> It seems bizarre therefore that a method cannot be found which would allow the admission of intercept evidence, if only *in extremis*, along the lines of the Irish system. According to Keir Starmer, there are no insurmountable legal barriers preventing such an action:

---

74 See for example, “Annual Report of the Chief Surveillance Commissioner for 2008–09”, July 2009, HC 704 <http://www.official-documents.gov.uk/document/hc0809/hc07/0704/0704.pdf>

75 Q 172

76 Q 145

77 *Ibid.*

78 Q 142 and Q 148

79 Q 168

As a matter of principle I think that a legal regime could be devised in which evidence obtained by intercept could be admissible in evidence ... you can devise a legal model that would permit evidenced obtained by an intercept to be used.<sup>80</sup>

**42. While we accept that in many cases the need to maintain national security outweighs the benefit of admitting intercepted material in court, this will not be the case in every situation and there are no good reasons for completely disallowing even the possibility of admitting intercept evidence in court. We are extremely worried that this prohibition is not purely driven by a rational analysis of the costs and benefits.<sup>81</sup> When we last looked at this issue in December 2007 we commented that:**

**We consider it ridiculous that our prosecutors are denied the use of a type of evidence that has been proved helpful in many other jurisdictions ... We can learn from other similar countries, such as the USA and Australia, how to protect our intelligence sources ... It would not be compulsory to use intercept evidence if it were felt that the damage from doing so outweighed the benefit ...<sup>82</sup>**

**We see no reason to revise our earlier conclusions and strongly recommend that the Government immediately introduce legislation allowing the admission of intercept evidence in court.**

## Control Orders

43. Control Orders are made pursuant to Section 2(1) of the Prevention of Terrorism Act 2005. We first commented on the efficacy of Control Orders in our Fourth Report of Session 2005–06.<sup>83</sup> In March 2009, the Law Lords heard the case of *Secretary of State for the Home Department (Respondent) v AF (Appellant) (FC) and another (Appellant) and one other action*. The unnamed men, known only as AF, AN and AE were challenging the legality of the control order regime under Article 6 of the European Convention on Human Rights. AF, AN and AE argued that their right to a fair hearing was compromised by “reason of the reliance by the judge making the order upon material received in closed hearing the nature of which was not disclosed to the appellant”.<sup>84</sup> In effect it was argued that imposing a control order on an individual without disclosing the reason why was unlawful under Article 6 ECHR. On 10 June 2009, the Law Lords agreed with this argument.

44. We asked Lord West what effect this ruling would have on the Control Order regime. He told us that while the “control order regime remains viable and that the national security reasons for maintaining it have not changed”,<sup>85</sup> since the judgement the Government has reviewed each of the fifteen control order cases and decided exactly how much evidence can be disclosed to the courts in order to maintain Control Orders on the

---

80 Q 174

81 Q 142 and Q 145

82 Home Affairs Committee, First Report of Session 2007–08, *The Government's Counter-Terrorism Proposals*, HC 43-i, para 86

83 Fourth Report of Session 2005–06, *Terrorism Detention Powers*, HC 910-I, para 119

84 <http://image.guardian.co.uk/sys-files/Guardian/documents/2009/06/10/controlorder.pdf>, para 1.

85 Home Office Written Evidence: Letter to the Committee dated 29 October

defendants. The Control Order against AF was revoked rather than allowing further information to be disclosed to the courts.<sup>86</sup> Those individuals who will no longer be subject to a control order will be placed under surveillance in the same manner as the 2,000 or so people who are currently viewed by the Home Office as a risk.<sup>87</sup>

45. Lord West told us the reason behind control orders: “there are some categories of people where we cannot [take a suspect through the courts and if necessary deport them], for reasons of intelligence ... who are a very real threat to the nation; and somehow one has to manage that at a sensible cost”<sup>88</sup> and “Control Orders are the best available disruptive tool for addressing the threat posed by suspected terrorists whom we can neither prosecute nor deport”.<sup>89</sup> He did not believe that there was a better alternative for managing the risk posed by those whom the Government cannot prosecute for reasons of national security; and certainly the imposition of control orders was cheaper to the police and security services than full-time surveillance.<sup>90</sup> While conceding that they were a flawed tool and certainly not an instant panacea, he did not think there was currently a better option.<sup>91</sup>

46. Sir Ken Macdonald doubted the value of control orders. He pointed out to us that no other common law country possesses control orders and he called them a “mistake” and a system which has “brought our system of government into disrepute”. He was clear that “the reality of the control order regime as it exists at the moment is that it does not work”.<sup>92</sup> While conceding that this may be “a counsel of perfection”, he suggested that it would be better to “develop investigative tools [including the admission of intercept evidence] to try to acquire evidence that can be deployed in a due process environment—a court of law in a trial”.<sup>93</sup> Mr Keir Starmer concurred that “prosecution would be far better than preventative measures and that includes control orders,” and that there should be “a presumption in favour of prosecution”<sup>94</sup> in these cases. He also expressed concern about “how many times a control order can be renewed”.<sup>95</sup> However, he conceded that the Government was in a difficult position and he personally could not come up with a better solution.<sup>96</sup>

47. The legal validity of control orders is not a matter on which we will pass judgement; however, it is apparent that flaws in the legal underpinnings of control orders have developed. It is also clear that control orders are a sub-optimal solution; none of the witnesses we spoke to were actively in favour of control orders—Lord West very explicitly told us that he “would much rather not have to have them”.<sup>97</sup> It appears to us that the

---

86 Home Office Written Evidence: Letter to the Committee dated 29 October.

87 Qq 23–24

88 Q 7

89 Home Office Written Evidence: Letter to the Committee dated 29 October.

90 Q 12

91 *Ibid.*

92 Q 153

93 Q 153

94 Q 184

95 Q 187

96 Q 184

97 Q 12

arguments in favour of control orders are essentially practical; control orders remain viable only as long as they work and are the best method for preventing terrorist attacks.

**48. In 2006 we supported the introduction of control orders. We believed at the time that they could be used to disrupt terrorist conspiracies and that there would be circumstances in which it would not be possible to charge individuals but where close monitoring of a suspect would be necessary.<sup>98</sup> However, control orders no longer provide an effective response to the continuing threat and it appears from recent legal cases that the legality of the control order regime is in serious doubt. It is our considered view that it is fundamentally wrong to deprive individuals of their liberty without revealing why. The security services should take recent court rulings as an opportunity to rely on other forms of monitoring and surveillance.**

---

98 Fourth Report of Session 2005–06, *Terrorism Detention Powers*, HC 910-i, para 119

## 4 Funding and Counter-Terrorism Focus

---

49. There is no doubt that there has been a large increase in spending on counter-terrorism efforts since 2001, and especially since 2005. Lord West told us that over the last ten years, annual funding on the security services has increased by 250%, from £1 billion to approximately £3.5 billion;<sup>99</sup> Assistant Commissioner Yates spoke of a 30% increase in counter-terrorism police budgets in the last three years (i.e. since the July 2005 bombings).<sup>100</sup> This increase in police counter-terrorism funding has led to there now being 7,700 police officers engaged in “counter-terrorism and protective security” across the country; with 3,000 of these engaged “directly with what people think would be counter-terrorism”.<sup>101</sup> As well as staff, this increase in police funding has also gone towards establishing the regional counter-terrorism units and counter-terrorism intelligence units.<sup>102</sup>

50. Assistant Commissioner Yates told us that police funding for counter-terrorism activities “is ring fenced in terms of what we can use it for. We have to be very clear that the funding that is provided for us is used for that purpose”.<sup>103</sup> He also told us that until the financial year 2010–11 this funding would be immune from budgetary pressures; he was less certain that this would remain the situation after the present Comprehensive Spending Review period.<sup>104</sup> **That the United Kingdom faces a grave threat from terrorism cannot be disputed; we are therefore pleased that budgets for both counter-terrorism policing and the security services have increased substantially.** However, we must raise some concerns with the hypothecation of counter-terrorism funding and the auditing mechanisms.

51. Assistant Commissioner Yates told us that funding for counter-terrorism must be used for counter-terrorism activities. We question whether counter-terrorism policing can be so neatly pigeon-holed. For example, John Yates told us that Police Community Support Officers “are an integral part of the counter-terrorism response, particularly in terms of the visible presence they provide”.<sup>105</sup> This suggests that the police, rightly, view counter-terrorism as an issue which must be part of policing activity from the most local level of beat officers upwards. **By ring-fencing counter-terrorism budgets, we are concerned that the Government is suggesting that counter-terrorism policing can be “segregated” from other areas of police work. There is an implicit danger that by marking out counter-terrorism policing as somehow “different” from other activities, specialist counter-terrorism units lose the local link which Assistant Commissioner Yates, and others, rightly prize.**

---

99 Q 34 and Q 35

100 Q 93

101 Q 92

102 Q 282

103 Q 294

104 *Ibid.*

105 Q 95



52. Given the relatively rapid increases in funding allocated for counter-terrorism work by the security services and the police it would be surprising if all of this money was spent efficiently. We are therefore concerned that oversight of the police's counter-terrorism budget is provided by "a committee of the Association of Police Authorities [chaired by] the chair of the Metropolitan Police Authority".<sup>106</sup> The size and importance of counter-terrorism budgets and the secretive nature of counter-terrorism activity leads us to question the lack of direct Parliamentary oversight of this funding, and we do not think that a Committee of the Association of Police Authorities or the police themselves possess the appropriate skills or capacity to scrutinise this funding—for example, according to Sir Ian Blair when this funding was first allocated to the police, "there was a problem as to how the funding was allocated in that it was actually allocated to ACPO itself and ACPO itself is not a body that can deal with that kind of funding in terms of auditing".<sup>107</sup> **We suggest that the Intelligence and Security Committee or the newly-formed Joint Committee on the National Security Strategy would be better suited than a committee of the Association of Police Authorities to take responsibility for providing Parliamentary oversight of all counter-terrorism spending and that this Committee should Report to the House on a regular basis.**

53. An article in *The Economist* of 10 December 2009 stated that "security sources say that they are now following more suspected threat-to-life plots by republicans in Northern Ireland than by Islamists in mainland Britain".<sup>108</sup> It was further reported that; "MI5 reduced the resources it allocated to Northern Ireland from 17% of its total budget in 2007 to 15% in 2008".<sup>109</sup> Given the general rise in funding for the security services this may still represent an increase in funding in nominal terms, but it highlights the "de-prioritisation" of the threat from Northern Ireland. We note that MI5 will shift resources back towards dealing with the threat from Northern Ireland and that the Home Secretary<sup>110</sup> and Mr Charles Farr<sup>111</sup> acknowledge the growing threat from this source. **This is a welcome step. We are pleased that this growing threat has been acknowledged and steps taken to minimise the danger posed by dissident groups in Northern Ireland. However this process does illustrate the risks inherent on prioritising threats from different sources.**

54. This Report has dealt with issues relating to how the Home Office reacts to the terrorist threat in this country, with a particular focus on the "Pursue" and "Prepare" strands of Project CONTEST. However, CONTEST also makes reference to the need to stop people resorting to violent extremism, the "Prevent" strand. Though the work of the Home Office in this area has not been investigated in this inquiry, we have in the past scrutinised the Home Office's performance in relation to Prevent. **We remain firmly of the belief that the Prevent strand of CONTEST, and engaging local communities in the fight against terrorism, is of the utmost importance. We are encouraged by the way members of all**

---

106 Q 283

107 Q 86

108 "Resurgent: A political impasse means violence can flourish", *The Economist*, 10 December 2009

109 "Policing Northern Ireland: A new cop in town", *The Economist*, 5 November 2009

110 Oral evidence to the Committee: "*The Work of the Home Office*", Tuesday 15 December, HC 165, Q 16

111 Q 330



**communities have cooperated with the authorities in exposing those individuals who plan to resort to violent extremist methods.**

## 5 Parliamentary Scrutiny

---

55. During this inquiry we have discovered many examples of a lack of dynamism when it comes to the implementation of useful counter-terrorism reforms. An example of this is the Parliamentary Committee on the National Security Strategy which was first proposed by the Prime Minister in October 2008. It was not until 13 January 2010 that this Committee was actually established. **While we welcome the establishment of this body and we are glad to see our Chairman nominated to serve on it, we feel that this does not inhibit us from further scrutiny of Project CONTEST as the need arises. We also question why this process has taken over a year to complete and suggest that it shows a lack of urgency on the Government's part.**

56. On 22 January the Joint Terrorism Analysis Centre (JTAC) raised the United Kingdom's threat level from "substantial" (attack is a strong possibility) to "severe" (attack is highly likely), reversing an earlier change in July. The Home Secretary said that this change was not related to a specific threat but was based on a wide range of factors. The statement announcing the decision did not contain specific information about the effect this change would have on the work of the security services and how this decision will affect the public. As of Monday 25 January it had also yet to be announced to the House. **Changes in the threat level should be explained to Parliament at the earliest practicable opportunity and Ministers should seek to explain their decision in front of a Parliamentary Committee. As well as announcing the change in the threat level, as far as possible Ministerial statements should include how this change will impact on the public. We therefore welcome the attendance of Lord West in front of this Committee on Tuesday 26 January to discuss the change in threat level.**

## 6 Conclusion

---

57. During this inquiry we have often heard suggestions for reforms to the counter-terrorism structure rebuffed because “it works well at the moment”, or “the benefits are not yet proven”. There may well be salience to these remarks but it also gives us the impression that a degree of institutional inertia has set in and those involved in counter-terrorism may be willing to settle for existing sub-optimal solutions, rather than proactively reforming to meet ever-changing threats. Time and time again we have been struck by how long it has taken to establish apparently much-needed measures such as the regional counter-terrorism units and the Office of Security and Counter-Terrorism. While the structures that we now have in place may be suitable for combating the terrorist threat as currently constituted we are not confident that government institutions have the desire to constantly adapt to meet ever-changing threats.

## Conclusions and recommendations

---

### COBRA

1. While it is difficult to hold regular meetings during an emergency situation, we are surprised that two former senior policemen raised concerns over the frequency of COBRA meetings and suggested that the timing of meetings was unpredictable. We recommend that as far as possible a fixed schedule of regular meetings be maintained. Participants in COBRA meetings need to feed back the results of the main meeting and implement emergency plans—there is a danger, without a relatively fixed schedule, that COBRA gets in the way of this and actively hinders the operational response. (Paragraph 7)
2. A degree of demarcation exists between ‘operational’ and ‘political’ actors within COBRA. Formalising this may produce better informed decision-making, but we cannot see how further demarcation and “sub-groups” would be avoided, negating any advantages. As long as everyone involved in a COBRA meeting is aware of their roles (and we have no evidence that they are not) then we do not see any major problems caused by the current informal demarcation between “political” and “operational” actors. (Paragraph 9)
3. It is imperative that key actors, especially Ministers who will be taking major decisions, experience a full “COBRA simulation” before facing a real-life incident. We are disappointed that the perception exists among some operational actors that the Home Secretary and other relevant Ministers have not participated as fully as could be expected in the exercise programme. We strongly recommend that in future, participation in such exercises becomes a key part of Ministerial life. (Paragraph 12)
4. As a forum for coordinating information after a terrorist attack, COBRA is as good a system as possible, and aside from the minor technical issues we have noted concerning the timing of meetings and participation in exercises we have no complaints with how it operates. (Paragraph 13)

### Co-ordinating an immediate response to attacks

5. The Weekly Security Meeting—a meeting of which we were previously unaware—performs many of the functions that a National Security Committee would perform; in effect a de facto National Security Committee already exists and functions, however discreetly. (Paragraph 14)
6. While we are not placed to comment on the effectiveness of the Weekly Security Meeting, the lack of public awareness of its existence is troubling. The public have a right to know who is protecting them from terrorist threats and in turn, those protecting the public should expect to be accountable and have their performance reviewed. To achieve these aims we propose the transformation of the “Weekly Security Meeting” into a more formalised, standing body known as the “National Security Committee”, chaired by the Home Secretary or Prime Minister who would

invite outside, non-governmental experts to attend as the situation arises. The work of this Committee should also be assisted by prominent appointed National Security Advisers who could also be fully accountable to Parliament. (Paragraph 15)

## Policing Structure

7. The police must remember that while regional Counter Terrorism Units (CTUs) may allow for an increase in the skills and expertise available to disrupt and prevent attacks happening, this expertise will be rendered useless without adequate information gathered from within communities. The creation of “supra-regional” bodies also carries the risk of breaking the vital link with local communities. Despite creating regional bodies, the police must take every care to maintain the links with local communities which will be at the core of any intelligence gathering. (Paragraph 17)
8. We would like to know exactly when the development of regional counter-terrorism units was first considered by the Home Office and police service. We remain unclear as to how much impetus the events of 2005 provided for this change. We must place on record our concern that the Government and the police appear to have been lethargic in driving through necessary reforms to the policing system, and that there was insufficient political will to provide solutions. The Government and enforcement institutions must be proactive and identify problems themselves before a fatal attack acts as a catalyst for reform. (Paragraph 19)
9. Many forces already rely on the Metropolitan Police for operational support. The primacy of the Metropolitan Police Service in counter-terrorism operations should be enshrined in statute. (Paragraph 24)
10. Successful counter-terrorism measures will rely on organisations working closely together and we are therefore pleased to hear that the many different bodies working on counter-terrorist activity are to a very great extent integrated. Whilst the creation of a National Terrorism Agency would remove the problem of coordinating the work of 52 separate police forces, we see no great operational benefits through the formation of a single, national agency and the experience of the USA suggests that such an action is not a panacea. The problems which a National Terrorism Agency would claim to solve are, to our eyes, overstated, while the problems that it could cause are potentially very great. We remain convinced that police skills and knowledge, rather than policing structures, are the key to preventing terrorism. (Paragraph 30)

## Use of intercept

11. We dispute the claim that the admission of intercept material would lead to vastly increased costs for enforcement agencies and fear that this argument is being put forward to divert attention from the main issues. We would like to see an estimate of what the additional costs have been calculated to be. (Paragraph 39)
12. Other states have adopted the use of intercept evidence without compromising the work of their security agencies so it is clear that a way can be found without

impacting on security services too adversely. We suspect that that the apparent unwillingness of security agencies to approach this matter in a constructive manner is attributable as much to institutional inertia and a deeply felt cultural reflex as to insurmountable technical barriers. The clear desire of Prime Ministers and the Government to allow the admission of intercept material should not be frustrated by such responses. (Paragraph 41)

13. While we accept that in many cases the need to maintain national security outweighs the benefit of admitting intercepted material in court, this will not be the case in every situation and there are no good reasons for completely disallowing even the possibility of admitting intercept evidence in court. We are extremely worried that this prohibition is not purely driven by a rational analysis of the costs and benefits. When we last looked at this issue in December 2007 we commented that:

We consider it ridiculous that our prosecutors are denied the use of a type of evidence that has been proved helpful in many other jurisdictions ... We can learn from other similar countries, such as the USA and Australia, how to protect our intelligence sources ... It would not be compulsory to use intercept evidence if it were felt that the damage from doing so outweighed the benefit ...

We see no reason to revise our earlier conclusions and strongly recommend that the Government immediately introduce legislation allowing the admission of intercept evidence in court. (Paragraph 43)

## Control Orders

14. In 2006 we supported the introduction of control orders. We believed at the time that they could be used to disrupt terrorist conspiracies and that there would be circumstances in which it would not be possible to charge individuals but where close monitoring of a suspect would be necessary. However, control orders no longer provide an effective response to the continuing threat and it appears from recent legal cases that the legality of the control order regime is in serious doubt. It is our considered view that it is fundamentally wrong to deprive individuals of their liberty without revealing why. The security services should take recent court rulings as an opportunity to rely on other forms of monitoring and surveillance. (Paragraph 49)

## Funding

15. That the United Kingdom faces a grave threat from terrorism cannot be disputed; we are therefore pleased that budgets for both counter-terrorism policing and the security services have increased substantially. (Paragraph 51)
16. By ring-fencing counter-terrorism budgets, we are concerned that the government is suggesting that counter-terrorism policing can be "segregated" from other areas of police work. There is an implicit danger that by marking out counter-terrorism policing as somehow "different" from other activities, specialist counter-terrorism units lose the local link which is rightly prized. (Paragraph 52)

17. We suggest that the Intelligence and Security Committee or the newly-formed Joint Committee on the National Security Strategy would be better suited than a committee of the Association of Police Authorities to take responsibility for providing Parliamentary oversight of all counter-terrorism spending and that this Committee should Report to the House on a regular basis. (Paragraph 53)
18. We were told that MI5 has reconsidered the shift in its budget from Northern Ireland terrorism to deal with the threat from Islamic extremists. We welcome this reappraisal but note it illustrates the risks inherent on prioritising threats from different sources. (Paragraph 54)
19. We remain firmly of the belief that the Prevent strand of CONTEST, and engaging local communities in the fight against terrorism, is of the utmost importance. We are encouraged by the way members of all communities have cooperated with the authorities in exposing those individuals who plan to resort to violent extremist methods. (Paragraph 55)

### Parliamentary Scrutiny

20. The Parliamentary Committee on the National Security Strategy was first proposed by the Prime Minister in October 2008. It was not until 13 January 2010 that this Committee was actually established. While we welcome the establishment of this body and we are glad to see our Chairman nominated to serve on it, we feel that this does not inhibit us from further scrutiny of Project CONTEST as the need arises. We also question why this process has taken over a year to complete and suggest that it shows a lack of urgency on the Government's part. (Paragraph 56)
21. Changes in the threat level should be explained to Parliament at the earliest practicable opportunity and Ministers should seek to explain their decision in front of a Parliamentary Committee. As well as announcing the change in the threat level, as far as possible Ministerial statements should include how this change will impact on the public. We therefore welcome the attendance of Lord West in front of this Committee on Tuesday 26 January to discuss the change in threat level. (Paragraph 57)
22. During this inquiry we have often heard suggestions for reforms to the counter-terrorism structure rebuffed because "it works well at the moment", or "the benefits are not yet proven". There may well be salience to these remarks but it also gives us the impression that a degree of institutional inertia has set in and those involved in counter-terrorism may be willing to settle for existing sub-optimal solutions, rather than proactively reforming to meet ever-changing threats. Time and time again we have been struck by how long it has taken to establish apparently much-needed measures such as the regional counter-terrorism units and the Office of Security and Counter-Terrorism. While the structures that we now have in place may be suitable for combating the terrorist threat as currently constituted we are not confident that government institutions have the desire to constantly adapt to meet ever-changing threats. (Paragraph 58)

# Formal Minutes

---

**Tuesday 26 January 2010**

Members present:

Rt Hon Keith Vaz, in the Chair

David T. C. Davies  
Mrs Janet Dean  
Patrick Mercer

Martin Salter  
Mr Gary Streeter  
Mr David Winnick

Draft Report (The Home Office's Response to Terrorist Attacks), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 54 read and agreed to.

A paragraph—(*Mr David Winnick*)—brought up, read the first and second time, and inserted (now paragraph 55).

Paragraphs 56 to 57 read and agreed to.

*Resolved*, That the Report, as amended, be the Sixth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 2 February at 10.15 am



## Witnesses

---

### Tuesday 13 October 2009

Page

**Lord West of Spithead**, a Member of the House of Lords, Parliamentary Under-Secretary of State, Home Office Ev 1

**Rt Hon Dr John Reid MP**, Home Secretary May 2006–June 2007 Ev 7

**Deputy Chief Constable Margaret Wood**, ACPO Lead on Terrorism and Allied Matters Ev 11

### Tuesday 10 November 2009

**Assistant Commissioner John Yates**, Head of Specialist Operations, Metropolitan Police Ev 15

**Sir Ken Macdonald QC** Ev 21

**Mr Keir Starmer QC**, Director of Public Prosecutions Ev 25

### Tuesday 8 December 2009

**Mr Andy Hayman**, Former Assistant Commissioner for Specialist Operations, Metropolitan Police Ev 29

**Sir Ian Blair**, Former Commissioner, Metropolitan Police Ev 34

### Tuesday 15 December 2009

**Mr Charles Farr**, Director-General, Office of Security and Counter-Terrorism, Home Office Ev 41

## List of written evidence

---

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

## List of Reports from the Committee during the current Parliament

---

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2009–10

First Report	The Detention of Children in the Immigration System	HC 73 (Cm 7795)
Second Report	The work of the UK Border Agency	HC 105
Third Report	The E-Borders Programme	HC 170
Fourth Report	Work of the Committee in 2008–09	HC 265
Fifth Report	Police Service Strength	HC 50

### Session 2008–09

First Report	Monitoring of the UK Border Agency	HC 77 (HC 381)
Second Report	The Police and the Media	HC 75
Third Report	The Work of the Committee 2007–08	HC 76
Fourth Report	Policing Process of Home Office Leaks Inquiry	HC 157 (HC 1026)
Fifth Report	Borders, Immigration and Citizenship Bill [HL]	HC 425
Sixth Report	Human Trafficking	HC 23–I
Seventh Report	Knife Crime	HC 217
Eighth Report	Policing of the G20 Protests	HC 418
Ninth Report	Project CONTEST: The Government's Counter-Terrorism Strategy	HC 212
Tenth Report	The cost of policing football matches	HC 676
Eleventh Report	Bogus Colleges	HC 595 (Cm 7766)
Twelfth Report	Macpherson Report—Ten Years On	HC 427
Thirteenth Report	Managing Migration: Points-Based System	HC 217 (Cm 7767)
Fourteenth Report	The work of the Serious Organised Crime Agency	HC 730

**Session 2007–08**

First Report	The Government's Counter-Terrorism Proposals	HC 43
Second Report	Bulgarian and Romanian Accession to the EU: Twelve months on	HC 59
Third Report	Security Industry Authority	HC 144
Fourth Report	Work of the Committee in 2007	HC 226
Fifth Report	A Surveillance Society?	HC 58 (HC 1124)
Sixth Report	Domestic Violence, Forced Marriage and "Honour"-Based Violence	HC 263 (HC 1165)
Seventh Report	Policing in the 21 <sup>st</sup> Century	HC 364
Special Report	Unauthorised Disclosure of Draft Report	HC 196

**Session 2006–07**

First Report	Work of the Committee in 2005–06	HC 296
Second Report	Young Black People and the Criminal Justice System	HC 181 (Cm 7217)
Third Report	Justice and Home Affairs Issues at European Union Level	HC 76 (HC 1021)
Fourth Report	Police Funding	HC 553 (HC 1092)

**Session 2005–06**

First Report	Draft Corporate Manslaughter Bill (First Joint Report with Work and Pensions Committee)	HC 540 (Cm 6755)
Second Report	Draft Sentencing Guideline: Robbery	HC 947
Third Report	Draft Sentencing Guidelines— <i>Overarching Principles: Domestic Violence and Breach of a Protective Order</i>	HC 1231
Fourth Report	Terrorism Detention Powers	HC 910 (Cm 6906)
Fifth Report	Immigration Control	HC 947 (Cm 6910)
Sixth Report	Draft Sentencing Guideline: Sexual Offences Act 2003	HC 1582