

Interception of Communications Commissioner's response to *Justice and Security* Green Paper

1. Introduction

Chapter 1 sets the scene and makes the case for change. Chapter 2 makes proposals for dealing with sensitive material in civil proceedings. The proposals involve the conduct of civil proceedings, and touch upon the role of the Investigatory Powers Tribunal. As to the conduct of civil proceedings it seems to me that the responses would be most helpful if they come from serving Judges (possibly via the Office of the LCJ), and so far as the IPT is concerned I understand that it will respond in relation to Chapter 2.

Chapter 3

This chapter begins by dealing with Ministerial responsibility and Parliamentary oversight (the Intelligence and Security Committee: ISC). This is not an area that calls for comments from a serving Commissioner, so I concentrate on the paragraphs beginning with 3.39. They begin with a proposal to expand the statutory role of the Intelligence Services Commissioner (para 3.43) and I leave that to him.

The Paper then outlines the possible role of an Inspector-General before posing two questions.

Q1: What changes to the Commissioners' existing remit can best enhance the valuable role they play in intelligence oversight and ensure their role will continue to be effective for the future? How can their role be made more public facing? Are more far-reaching proposals preferable, for instance through the creation of an Inspector-General?

The auditing role of the Interceptions Commissioner is clearly set out in the statute. It has clear boundaries, and seems to work well in practice. I see no compelling reason to change the nature of the role or the boundaries. I accept that the work could be undertaken as part of the role of an Inspector-General, but that might not be so patently independent, nor would it be any cheaper. Furthermore the role would not be, nor could not be, any more public facing than it is already because of the nature of the material being examined. The procedures used by the Commissioner and his Inspectors are clearly set out in the Annual Reports, and from time to time in lectures. Information is provided so far as it can be provided but, for good and compelling reasons, the whole picture cannot be disclosed.

Q2: Are more far-reaching intelligence oversight reform proposals preferable, for instance through the creation of an Inspector-General?

The IG model clearly works well in other jurisdictions, but it does have its drawbacks- it creates a fresh quango. The incumbent can easily be accused of being too close to Government, or too keen to find fault with the security services. Our arrangements are, to some extent, an accident of history, but

they do achieve a neat balance between political accountability and independent judicial scrutiny. In response to the question is it appropriate ask what benefits could be conferred from the creation of an IG, with an office and supporting staff, which we do not already enjoy, or cannot obtain by some relatively minor adjustments to our present arrangements. The only benefit which comes to mind is that an IG could choose to review the operational decisions of the services. But such a review can only really be justified if something seems to have gone badly wrong, and our existing arrangements allow for that. Otherwise operational decisions must be in the unfettered control of the Director of the relevant service, who is answerable to the Minister, and I do not see what is to be gained by subjecting the Director to the oversight of an IG.

The Green Paper then deals with the need to ensure that there is a balanced system, pointing out that, for instance, some powers which might be given to the ISC could not be given if there was an IG.

Two subsequent questions are then posed:

Q3: What combination of existing or reformed arrangements can best ensure credible, effective and flexible independent oversight of the activities of the intelligence community in order to meet the security challenges of today and the future?

So far as interception is concerned I am content with the combination of arrangements which at present exists. I have complete access to warrantry materials, and to records in relation to data which has been obtained, and my Inspectors and I are completely independent. So we have the full powers and professional integrity of any auditor, but we are not the only safeguard against abuse. An important additional safeguard is that every application for a warrant or for data is scrutinised at a number of levels before it is approved, so the possibility of successful deliberate abuse is very small indeed, if statutory channels are being used. But it is also important to emphasize the roles of the Secretary of State and the ISC. Without impinging on my role they have separate roles and provide political accountability, which is particularly important in an area that cannot be opened to public scrutiny.

Q4. With the aim of achieving the right balance in the intelligence oversight system overall, should greater emphasis be placed on reforming parliamentary oversight or independent oversight?

For the reasons I have given I see no reason to press for any reform to the role of the Interception Commissioner in providing oversight his particular territory, the boundaries of which are clearly defined. It is also obvious that the Commissioner cannot be accountable to the SoS, whose actions he reviews, or to the ISC. I do not, however, consider it appropriate for a serving Commissioner to offer any comments in relation to reform of parliamentary oversight.