

Response of Lord Carlile of Berriew CBE QC to Justice and Security Green Paper

1. This is a summary of my views of the Justice and Security Green Paper. I would willingly provide detailed views on any specific issues on request.
2. My background for this purpose is that I was Independent Reviewer of Terrorism Legislation from September 2001 until February 2011. I have a reasonably detailed understanding of the work of the security services and the police.
3. I have been a practising barrister since 1971, and a QC since 1984. I sit as a deputy judge in the High Court, particularly in the Administrative Court. I have a good understanding of civil and criminal litigation.
4. I was an MP from 1983-1997, and have been a member of the House of Lords since 1999.
5. I absolutely agree with the green paper that the first duty of government is to safeguard national security, which involves the receipt, use and deployment of sensitive information, some of which is extremely secret.
6. In my view the term 'national security' is abstract and poorly understood. I have often attempted to illustrate its import in a way more meaningful to the public. Usually I define 'national security' as the term used to describe the aggregate of 60 million individual liberties to be safe. It is as simple and as important as that – to government and to individuals.
7. Compromising individual freedoms in the interests of national security is to be approached with great caution. It must never be done if the result is to deprive a man or woman of their liberty without just cause or due process. Due process can in some limited instances may include hearings at which the individual concerned is not present subject to full protection of his/her interests.

8. Nor must it involve any other injustice: mechanisms must and can be found to protect the individual against injustice, even if such mechanisms involve departure from current procedures.
9. Recent civil court procedures were inadequate to protect national security. For pragmatic reasons, not connected with the merits of the issues, the State paid out large sums of money in confidential settlement of claims. This is not an acceptable way of determining civil claims. The State should not be put in the position of sometimes having to choose to pay compensation where the claimant may be the wrongdoer.
10. My conclusion is that a system can be devised in which there is justice and accountability, without there necessarily being total transparency: by its nature secret material is opaque not transparent, and that opacity necessarily has to be protected.
11. I support the introduction of legislation to make Closed Material Procedures more widely available in civil proceedings, where it is necessary for the fair and balanced disposal of the case including national security issues.
12. In this context I support the establishment of procedures similar to those used in SIAC, including the appointment of special advocates on a case by case basis.
13. I can see no distinction between the protection of national security in civil courts and inquests respectively. I suggest that the Chief Coroner should be required to appoint the Coroner (who may be the Chief Coroner) for all cases in which the Attorney General certifies that there are or may be national security issues requiring special measures.
14. I favour more communication between special advocates and those whose interests they are representing. This could certainly be achieved under existing but under-

used procedures. I consider that the Judge/Coroner hearing the case should control this process. I am sure that more detailed training in dealing with national security would be useful to the special advocates, most especially in understanding how unwittingly they may be used as a way of obtaining information in a way that might be useful to terrorism.

15. Special advocates would be required to document carefully all such contacts with the individuals.
16. The limits of 'gisting' need to be clarified, if possible by legislation.
17. I am not in favour of establishing a separate court or tribunal for cases involving national security. However, I favour strongly 'ticketing' a cadre of say 6 senior judges at any given time, with special training provided by the Judicial College.
18. I agree with the Government's proposed approach to the so-called Norwich Pharmacal situation.
19. In relation to oversight, I favour the revision of the ISC so that it becomes a statutory Parliamentary Committee. However, this will never provide total oversight because the security services will rightly be cautious about the disclosure of secret material to a group of Parliamentarians who employ some unvetted staff.
20. In my view all members of the ISC should be DV vetted, irrespective of Privy Council status. The process of being vetted provides security assurance, and brings home to those who are vetted the importance of maintaining appropriate confidentiality.
21. In addition, founded on my own experience I would suggest and support the appointment of a National Security Commissioner. This person should not be a career civil servant, and could be a senior judge seconded for a period for the purpose, or some other independent person of very high standing. This would be a

separate and different role from that of the Independent Reviewer of Terrorism Legislation. It would be essential for the new Commissioner to work full-time, at a level comparable in salary and conditions with a senior judge. He/she would require a small office and a staff of perhaps 5 or 6 competent individuals, at least one of whom should have direct experience of working in theatre for one of the security services. If not an experienced lawyer, the Commissioner would require employed legal counsel.

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