

*our oldest and most important security partnerships in the world – in particular, that with America. Honourable Members should not underestimate the vast two-way benefit this US–UK relationship has brought in disrupting terrorist plots and saving lives. So we need to deal with these problems... And next year, we will publish a Green Paper which will set out our proposals for how intelligence is treated in the full range of judicial proceedings, including addressing the concerns of our allies.*²³⁵

228. The Committee has discussed the ramifications of the Court’s decision with the Heads of the UK intelligence and security Agencies. The Chief of SIS told us:

*There is no doubt that the Binyam Mohamed judgment of last February has affected the way in which ***.*²³⁶

229. Similarly, the Director General of the Security Service told us:

***.²³⁷

230. In March 2011, the Committee visited the United States to discuss these concerns first-hand. We were struck by the force with which certain interlocutors within the US intelligence community voiced their worries about the actions of the UK courts, and we heard from a number of US agencies and departments that they viewed their material as ***.

231. ***. We have seen in the past how relatively insignificant pieces of background intelligence have, when connected together, provided important clues on individuals involved in extremism or terrorism. This is the fragmentary nature of intelligence: even the smallest piece of background intelligence can provide the critical piece of the jigsaw puzzle.

AA. We agree with the Government that the Court of Appeal’s decision in the Binyam Mohamed case, which resulted in a breach of the ‘control principle’, has raised serious concerns which need to be resolved urgently. We therefore welcome the Prime Minister’s announcement of a Green Paper setting out how intelligence material might be protected in judicial proceedings. The Committee will respond to those proposals in due course.

7/7 Inquests

232. On 26 November 2009, the Rt. Hon. Lady Justice Hallett (a senior Court of Appeal judge) was appointed Assistant Deputy Coroner with jurisdiction over the Inquests of those who lost their lives in the London terrorist attacks on 7 July 2005.

²³⁵ HC Deb 6 July 2010 vol 513 c175.

²³⁶ Oral Evidence – SIS, 19 January 2011.

²³⁷ Oral Evidence – Security Service, 9 February 2011.

233. In May 2010, Lady Justice Hallett indicated the scope of the Inquests in a *Provisional Index of Factual Issues* which covered the following subjects:

- the deceased (backgrounds, personal evidence and movements on the day of the attacks);
- the explosions and the immediate aftermath;
- forensic issues regarding the bombs and the bodies of Mohammed Siddique Khan, Shehzad Tanweer, Hasib Hussain and Jermaine Lindsay (the four bombers);
- pathology issues;
- the backgrounds of Khan, Tanweer, Hussain and Lindsay; and
- preventability (including what was known about the four bombers prior to 7/7 and the alleged failings in the investigations conducted by the Security Service and the police).²³⁸

234. Given that the remit of the Inquests included the issue of ‘preventability’, the Coroner’s team requested access to the classified versions of the ISC’s reports on these matters.²³⁹ In addition, the Coroner’s team requested access to relevant extracts from transcripts of the Committee’s evidence sessions with the Security Service, Metropolitan Police and West Yorkshire Police.²⁴⁰

Verdicts and Coroner’s recommendations

235. On 6 May 2011, the Coroner delivered her verdicts and related findings. She ruled that all 52 victims had been unlawfully killed, and concluded that “[no] failings on the part of any organisation or individual caused or contributed to any of the deaths”.²⁴¹ She therefore cleared the Security Service and the police of any shortcomings that could have prevented the attacks. Her conclusions were the same as those reached by the ISC in its 2009 report.²⁴²

236. The Coroner also acknowledged the pressure that the Security Service was under in the period prior to the 7/7 attacks – a point that the ISC had noted – and that resources had necessarily been deployed against higher-priority targets who were known to be involved in plans to attack the UK.

²³⁸ Letter from Coroner to Treasury Solicitors, 27 May 2010.

²³⁹ ‘Report into the London Terrorist Attacks on 7 July 2005’ (Cm 6785, published in May 2006) and ‘Could 7/7 have been prevented? Review of the Intelligence on the London Terrorist Attacks on 7 July 2005’ (Cm 7617, published in May 2009).

²⁴⁰ Extracts from ISC transcripts of evidence were judged not to be relevant for disclosure in the Inquest proceedings themselves, although extracts from the Committee’s reports were used.

²⁴¹ Coroner’s concluding remarks, 6 May 2011, www.independent.gov.uk/7julyinquests

²⁴² Cm 7617.

237. The Coroner made nine formal recommendations, of which two related to the Security Service:

- *I recommend that consideration be given to whether the procedures can be improved to ensure that ‘human sources’ who are asked to view photographs are shown copies of the photographs of the best possible quality, consistent with operational sensitivities.*
- *I recommend that procedures be examined by the Security Service to establish if there is room for further improvement in the recording of decisions relating to the assessment of targets.*²⁴³

BB. The Committee notes the Coroner’s verdicts in the 7/7 Inquests, in particular that – as the ISC itself concluded in its 2009 Report – the Security Service and the police could not reasonably have prevented the attacks. The Committee supports the Coroner’s recommendations that the Security Service should improve procedures for showing photographs to sources and that consideration be given to improving the recording of decision-making in relation to the assessment of targets. We have asked the Security Service to report to the Committee on plans to address these matters and will report the progress made in our next Annual Report.

Discrepancies in evidence

238. In addition to the Coroner’s formal recommendations, she also noted that the ISC may have been “*inadvertently misled*” in relation to a small number of discrepancies between evidence prepared by the Security Service for the Inquests and evidence provided to the Committee. The Director General of the Security Service had already notified the Committee of these discrepancies, and offered the following explanation:

We cannot be sure that every individual point of detail included in the [Security Service’s] Statement [to the Inquests] was passed to the Committee and it seems likely that in at least a few cases it was not. This is a result of the complexity and unsatisfactory state of our records during the period under review... I am certain that there was no deliberate intent to withhold information from the Committee, particularly in light of the unprecedented amount of operational detail that was shared.

In constructing the Statement [to the Inquests] some instances have come to light where specific details included in the Committee’s published report appear to be inaccurate. Some of these instances relate to marginal discrepancies over dates which may be down to human error. Others are more substantive and appear to be the result of either misunderstanding between the Service and the Committee (arising probably from the complexity and scale of information that was shared) or inaccurate, and incomplete, analysis of our records. For the Service’s part, I regret these discrepancies and recognise the serious impact of such mistakes. Although human error is difficult to account for, I am confident that in terms of our information

²⁴³ Coroner’s Inquests, ‘Report under Rule 43 of The Coroner’s Rules 1984’, 6 May 2011, www.independent.gov.uk/7julyinquests

*management and record keeping more generally we are in a stronger position today to avoid such issues arising in future investigations by the Committee.*²⁴⁴

239. The discrepancies fall into two categories. The first relates to a number of minor inaccuracies arising from incorrect evidence being provided to the ISC, or insufficiently rigorous checks being undertaken when the Security Service was asked to check drafts for factual accuracy. As the Director General described in his letter, these particular discrepancies are likely to have arisen from oversights or human errors which, while disappointing, are to some extent understandable given the scale, scope and complexity of the Committee's investigation and some of the historical problems with Security Service records. Examples of this type of discrepancy include:

- i. the fact that data relating to Mohammed Siddique Khan's mobile phone was obtained in March 2003, rather than in July 2003 as the Committee had been told; and
- ii. the fact that Mohammed Siddique Khan, Shehzad Tanweer and an associate did not meet the terrorist facilitator, Mohammed Qayam Khan, at Toddington service station on 28 February 2004, as we were informed by the Security Service on various occasions that they had.

240. The second category of discrepancy is more serious, however. There are three instances where the Service did not provide the ISC with the relevant information at the time, or did not explain the information correctly.

- i. Evidence given to the Committee at the outset of its investigation into the attacks said that "*the Service designates international terrorist targets for investigation as 'essential', 'desirable' or 'other'*". Subsequent evidence throughout both investigations continued to use these terms, and targets were routinely described as falling into one of these categories. The Committee specifically referred to the categories when asking whether particular information might have resulted in any of the bombers being placed under surveillance. However, in evidence to the Inquests the Security Service has explained that these categories were in fact used to explain their methodology to the Treasury and not by investigative officers. This is not the explanation provided to the ISC. We made this clear to the Security Service and asked for urgent clarification. The Director General conceded that "*on reflection, I accept that the lack of application of the categorisation system in a day-to-day context... was not made sufficiently clear in the Committee's final report*" and "*There was no attempt to mislead the Committee on this point but, on review of the relevant evidence, I believe that we should more clearly have emphasised to the Committee how the prioritisation system operated in practice.*"²⁴⁵

²⁴⁴ Letter from the Security Service, 27 January 2011.

²⁴⁵ Letter from the Security Service, 6 April 2011.

- ii. Evidence given to the Inquests described how, in May 2005, a Security Service desk officer had speculated that some of the individuals from northern England, seen during Operation CREVICE, might be the targets of Operation DOWNTempo, who were thought to have attended training camps in Pakistan in 2003. Witness G said “*that was an intuition by the desk officer at the time...*”.²⁴⁶ Witness G accepted that, had this intuition been followed up, it would have made Mohammed Siddique Khan “*much more significant*”.²⁴⁷ However, he said that “*it would have been unusual to work further on that intuition because of the strong contra-indicators*”.²⁴⁸ The ISC was not provided with this information during its investigations into the 7 July bombings.
- iii. During the course of the ISC’s investigations into the 7 July bombings, all relevant exchanges between West Yorkshire Police and the Security Service were requested, and copies were provided to the Committee. The ISC noted that the Security Service had, on 16 February 2004, asked West Yorkshire Police whether they had any details of ‘Hasina Patel’, but that there was no response. The Committee questioned the Service about this and, when told that there was “*no record of a written response*”, criticised the fact that the Security Service had not pursued the matter. However, evidence to the Inquests showed that there was a reply the following day, contrary to evidence given to the Committee.

241. The Coroner noted in her Rule 43 Report that these might be “*the result of the Service’s poor record-keeping... at least one inaccuracy according to [Witness G, the Security Service’s witness at the inquests] was because ‘we didn’t brief [the ISC] correctly’*”.²⁴⁹ She concluded:

*It is essential that the ISC receives accurate information from the Security Service so that it can properly hold the Service to account, and report to the Prime Minister, Parliament and the public. It is, therefore, essential that great care is taken to check the draft reports for mistakes. Witness G accepted that the draft of the 2009 report was very important and had been sent to the Security Service to be checked for accuracy. He said it was checked to a very great depth, but ‘not at a very high level’.*²⁵⁰

The Coroner expressed her expectation that “*consideration would be given to whether procedures can be improved to ensure the accuracy and completeness of information provided by the Security Service to the ISC*”.²⁵¹

²⁴⁶ Witness G’s evidence to the 7 July Inquests, 23 February 2011, www.independent.gov.uk/7julyinquests

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.* These included the fact that detainees involved in these training camps had failed to identify the men from photographs taken during Operation CREVICE and therefore there was no intelligence to suggest that the men might be the targets of Operation DOWNTempo.

²⁴⁹ Coroner’s Inquests, ‘Report under Rule 43 of The Coroner’s Rules 1984’, 6 May 2011, www.independent.gov.uk/7julyinquests

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

242. The ISC has both publicly and in private highlighted the serious problems with the Agencies' record keeping and the accuracy of information provided to us. In its 2008–2009 Annual Report, the ISC said:

One of the issues arising from the Mr Mohamed case is the fact that relevant documentation was overlooked. The Security Service failed to discover all the relevant information when searching its records for this Committee's Rendition inquiry (in 2007). Further relevant documents were discovered during searches of its records for Mr Mohamed's case in the High Court (in 2008). During 2009, a further 20 documents relevant to Mr Mohamed's case were discovered, two of which were identified as a result of this Committee's questioning of the Agencies (which, in turn, prompted a further review which led to the disclosure of an additional seven documents).

... the Director General of the Security Service has told us:

The information in question should have been found when we... carried out wide-ranging searches of records at the time of the Committee's inquiry into rendition... I cannot fully explain why it was not discovered in... our... records... Service systems in place at the time should have located this information.

... There is no convincing explanation as to why this information was not made available... While we do not believe that this was a deliberate attempt to deceive us, it highlights fundamental problems with the record-keeping systems and processes of both Agencies.

... While we understand that the balance of the Agencies' effort must be focused on operational work, at the same time good record keeping is crucial. The Agencies' operational work is about knowledge and information, and the ability to retrieve such information is central to the work with which they are charged. We welcome the assurances we have received from the Security Service and Secret Intelligence Service that they are taking action to rectify the problems with their records, although we note that it will take several years before new systems are fully established. This has serious ramifications – both in terms of the Agencies' own work and for the reliability of the evidence they submit to this Committee.²⁵²

243. In March 2009, when the ISC wrote to the then Prime Minister regarding allegations of UK complicity in the mistreatment of Mr Binyam Mohamed, we again highlighted the problems we had encountered with the proper provision of information. The Committee said:

We have been told, repeatedly, that steps are being taken to improve the Agencies' record-keeping. However, in the meantime we are being told that information provided to the Committee may not be complete. This is demonstrated by a recent letter from SIS to the Committee, regarding allegations that UK Agencies had been

²⁵² Cm 7807.

involved in the rendition, from Somalia to Ethiopia, of a number of individuals. The information provided by SIS was accompanied by a caveat:

However, as demonstrated in the recent Mr Mohamed case, it cannot be ruled out that searches carried out using different search parameters, for example, in connection with any future court proceedings in the UK, might unearth additional information.

This Committee believes that the use of such a caveat is completely unacceptable. It undermines the ability of the Committee to do the job it was established by statute to perform.

The Agencies must conduct thorough research in support of any information provided to the Committee. When information emerges after the Committee has reported on a matter, it damages trust in this Committee, undermines our credibility and harms democratic accountability. It gives fuel to those who argue that the ISC does not have sufficient authority to conduct its inquiries and supports their calls for full public or judicial inquiries. Indeed a letter from Andrew Tyrie MP to the Committee of August last year said in relation to this case:

... if it were to transpire that you are unable to rely on information provided to you by the Agencies then the value of the Committee would be called into question.

If all branches of Government cannot keep this Committee properly informed, oversight of the Agencies will inevitably be played out through the courts, as we have seen in this case.²⁵³

244. The Agencies have acknowledged problems in this area and have taken steps to improve their record keeping and information management.²⁵⁴ However, this is forward-looking and therefore we assess that there may be continuing problems in relation to searching historical records.

CC. We have identified eight examples where there were very minor inaccuracies or inconsistencies in evidence given to the ISC, compared with evidence subsequently provided to the Coroner. We have also identified three discrepancies which are more significant. These are extremely frustrating for the Committee, and for those who rely on our reports. We have satisfied ourselves, however, that they do not alter the conclusions and recommendations that were made in the Committee's *Review of the Intelligence on the London Terrorist Attacks on 7 July 2005*.

DD. The Coroner in the 7/7 Inquests acknowledged that the ISC's second report on the 7 July 2005 terrorist attacks was "*detailed and thorough*". However, she also noted the discrepancies between evidence to the ISC and that given to the Inquests, and criticised the Security Service for their poor record keeping. We share her concerns, having previously made the same point ourselves to the Agencies and to

²⁵³ Letter to the Prime Minister, 17 March 2009.

²⁵⁴ Further details on the Agencies' investment programmes can be found at paragraphs 79 to 81 (Security Service) and 106 to 108 (SIS).

the two previous Prime Ministers. It is essential that the intelligence community make greater efforts to ensure that information provided to this Committee is full and accurate, that searches in response to Committee requests receive the same attention as requests from the courts, and that draft reports are reviewed properly, to ensure that such problems do not arise again.

BBC Monitoring

Background

245. BBC Monitoring (BBCM) was established in 1939 and provides global reporting and analysis of open source media to customers including the FCO, the MoD, the intelligence and security Agencies, the Cabinet Office and BBC World Service. It monitors around 15,000 media sources across 150 countries in 100 languages and delivers approximately 1,000 products per day. BBCM has a close partnership with the US Open Source Center (OSC), which is hosted by the Director of National Intelligence. Given the far greater size and capability of the OSC, this provides a large source of unfunded benefit to the UK through the free reciprocal interchange of product.

246. The ISC has previously taken an interest in BBC Monitoring given the use that the intelligence community make of its open source product. In 2003 – when BBCM’s funding came under threat – the Committee reported that “*BBC Monitoring provides a valuable service both to government departments and to the Agencies*” and recommended that BBCM’s “*overall level of funding should reflect the value of BBC Monitoring to Government, the Agencies, and US relationships as a whole*”.²⁵⁵

247. As a result of these concerns, the Cabinet Office commissioned a strategic review of BBCM. The review – conducted by Sir Quentin Thomas – reported in 2005, concluding that BBCM’s open source material was valuable to the UK Government and the intelligence Agencies, and emphasised the importance of its relationship with the US Open Source Center. The Review concluded that:

*If this monitoring service were brought to an end the product would not be available from alternative sources. Moreover it would prove a false economy because steps taken by present stakeholders to remedy its loss, or to manage without it, are likely to be more costly.*²⁵⁶

248. The Review advocated stable and adequate funding for BBCM of £24.6m per year until 2011 and recommended that HMG’s contribution to BBCM’s funding should be ring-fenced and administered centrally by the Cabinet Office, which should act as BBCM’s sponsoring department. The Government broadly accepted these recommendations and a new governance regime was put in place, with a Stakeholder Board²⁵⁷ established to determine strategic direction and priorities and a Memorandum of Understanding (MoU) signed by BBCM’s stakeholders.

²⁵⁵ Cm 6240.

²⁵⁶ Sir Quentin Thomas, ‘Review of BBC Monitoring’, 2005.

²⁵⁷ BBC Monitoring’s Stakeholder Board includes representatives from BBCM, BBC World Service, the Cabinet Office, Foreign Office, MoD and the intelligence Agencies.