Report of the
Intelligence Services
Commissioner for 2016

CONFIDENTIAL ANNEX

The Rt Hon Sir Mark Waller

July 2017

Excluded from publication under Section 60(5) of the Regulation of Investigatory Powers Act 2000
Pages 2 and 3 withheld on relevancy grounds
ADDITIONAL FUNCTIONS

Under paragraph 59A of RIPA, inserted by the Justice and Security Act, the Prime Minister may direct me to keep under review the carrying out of any aspect of the functions of the intelligence services.

The Prime Minister has to date issued three such directions, placing all of my oversight on a statutory footing:

- the acquisition, use, retention, disclosure, storage and deletion of bulk personal datasets including the misuse of data and how this is prevented;
- compliance with the Consolidated Guidance;
- the application of the Security Services guidelines on the use of agents who participate in criminality and the authorisations issued under them.

In a letter to me dated 27 November 2014 the Prime Minister said the direction to oversee CHIS participation in criminality would not be avowed given the potential damage to national security were its existence to be made public. However, the existence of a “third direction” was revealed by GCHQ to the Investigatory Powers Tribunal, and therefore made public, during this year. I have had requests to make public the subject matter of this direction, with which I have not complied. However, the Government will need to consider how it communicates any additional oversight it asks the Investigatory Powers Commissioner to undertake.
Pages 5 to 19 withheld on relevancy grounds
CHIS Participation in Criminality (PIC) – MI5

In his letter of 27 November 2014, the Prime Minister directed me to keep under review: the application of MI5's guidelines on the use of agents who participate in criminality and the authorisations issued under them. In the letter the Prime Minister said this direction would not be avowed given the potential damage to national security were its existence to be made public.

For my review, I am concerned to assess whether in my opinion what can be called “the public interest test” is being properly applied. MI5 identify all cases in which participation in criminality has been authorised and I make a selection, which is close to 100 per cent. I am satisfied that great care is taken only to authorise participation in criminality when the public interest test is fulfilled. My only further comments are as follows:

In the case of agent [REDACTED] I was concerned that MI5 had failed to accurately reflect the CHIS’s participation in criminal activity within the [REDACTED] authorisation. [REDACTED] PIC form rather vaguely referred to [REDACTED] I recommended that the PIC form should be more explicit to avoid any confusion.

I recommended that MI5 should take a [REDACTED] view of provisions made in relation to participation in criminality by CHIS. This would have the benefit of allowing MI5 to take a clearer view of participation in criminality across the board.
Pages 22 to 38 withheld on relevancy grounds
RECOMMENDATIONS

Please note that these recommendations have been redacted from the open report due to the sensitivities of the cases involved. A full list of public recommendations is available in the Commissioner's Annual Report.
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<th>MI5</th>
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<td>I suggested that MI5 should take a view of provisions made in relation to participation in criminality by CHIS in addition to case-by-case considerations.</td>
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<td>Agent Participation forms should be explicit about the criminality involved to avoid any confusion.</td>
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Pages 41 to 53 withheld on relevancy grounds