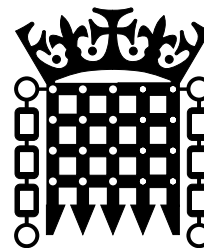


Intelligence and Security Committee of Parliament

Detainee Mistreatment and Rendition: 2001–2010

Chair:
The Rt Hon. Dominic Grieve QC MP



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THE INTELLIGENCE AND SECURITY COMMITTEE OF PARLIAMENT

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The Intelligence and Security Committee of Parliament (ISC) is a statutory committee of Parliament that has responsibility for oversight of the UK intelligence community. The Committee was originally established by the Intelligence Services Act 1994, and has recently been reformed, and its powers reinforced, by the Justice and Security Act 2013.

The Committee oversees the intelligence and security activities of the UK, including the policies, expenditure, administration and operations of the Security Service (MI5), the Secret Intelligence Service (SIS) and the Government Communications Headquarters (GCHQ).[†] The Committee also scrutinises the work of other parts of the UK intelligence community, including the Joint Intelligence Organisation and the National Security Secretariat in the Cabinet Office; Defence Intelligence in the Ministry of Defence; and the Office for Security and Counter-Terrorism in the Home Office.

The Committee consists of nine Members drawn from both Houses of Parliament. The Chair is elected by its Members. The Members of the Committee are subject to section 1(1)(b) of the Official Secrets Act 1989 and are routinely given access to highly classified material in carrying out their duties.

The Committee sets its own agenda and work programme. It takes evidence from Government Ministers, the Heads of the Security and Intelligence Agencies, officials from the intelligence community and other witnesses as required. The Committee is supported in its work by a Secretariat. It also has access to legal, technical and financial expertise where necessary.

The Committee makes an annual report to Parliament on the discharge of its functions. The Committee may also produce reports on specific investigations. Prior to the Committee publishing its reports, sensitive material that would damage national security is blanked out ('redacted'). This is indicated by *** in the text. The Security and Intelligence Agencies may request the redaction of material in a report if its publication would damage their work, for example by revealing their targets, methods, sources or operational capabilities. The Committee considers these requests for redaction carefully. The Agencies have to demonstrate clearly how publication of the material in question would be damaging before the Committee agrees to redact it. The Committee aims to ensure that only the minimum of text is redacted from a report. The Committee believes that it is important that Parliament and the public should

* This Report reflects work largely undertaken by the previous Committee, which sat from September 2015 to May 2017, though it was initiated by the Committee chaired by the Right Hon. Sir Malcolm Rifkind, which sat from October 2010 to March 2015. Membership of the 2015–17 Committee included the Right Hon. Angus Robertson, the Right Hon. Gisela Stuart and (until July 2016) the Right Hon. Sir Alan Duncan KCMG MP. Membership of the 2010–15 Committee at the time it initiated the Inquiry included the Right Hon. Hazel Blears, the Right Hon. the Lord Butler of Brockwell KG GCB CVO, the Right Hon. the Lord Campbell of Pittenweem CH CBE QC, the Right Hon. Mark Field MP, and the Right Hon. Dr Julian Lewis MP. The Right Hon. Fiona Mactaggart (from May 2014) and the Right Hon. George Howarth MP (until October 2016) were members of both predecessor Committees.

† The Committee oversees operations subject to the criteria set out in section 2 of the Justice and Security Act 2013.

be able to see where information had to be redacted. This means that the published report is the same as the classified version sent to the Prime Minister (albeit with redactions). The Committee also prepares from time to time wholly confidential reports which it submits to the Prime Minister.

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Most commonly used abbreviations

CIA	Central Intelligence Agency
CIDT	Cruel, inhuman or degrading treatment
FCO	Foreign and Commonwealth Office
GCHQ	Government Communications Headquarters
HMG	Her Majesty's Government
HUMINT	Human-sourced intelligence
MI5	The Security Service
MOD	Ministry of Defence
NSA	(US) National Security Agency
SIGINT	Signals intelligence
SIS	Secret Intelligence Service (MI6)
UKUSA	United Kingdom–United States Communication Intelligence Agreement
UN	United Nations

Use of code words

Throughout this Report, the names of detainees, geographic identifiers (such as nationality) and a small number of staff and operational names have been substituted for our own code words in order to protect classified information. Code words replacing geographic indicators have not been used consistently throughout the Report for the same reason. Lists are provided in Annex E.

EXECUTIVE SUMMARY

Immediately following 9/11, there were real concerns that Al Qaida may have been planning a terrorist attack on the UK of similar magnitude. Disrupting such an attack was the UK Security and Intelligence Agencies' absolute operational imperative, and assisting the US in interviews of US-held detainees might give the UK Agencies access to critical intelligence.

Throughout 2002, 2003 and into 2004, UK personnel from SIS, MI5 and MOD – including the Armed Forces – participated in interviews of detainees held (primarily) by US detaining authorities at locations in Afghanistan and Iraq, and at Guantanamo Bay. Neither the Agencies nor Defence Intelligence were the detaining authorities at any point. Sometimes the deployed personnel conducted their own interviews, sometimes they interviewed jointly with US interrogators and sometimes they simply observed interviews conducted by others (or passed questions to those interviewing). It is not possible to determine the exact number of detainee interviews in which UK personnel were involved, but we estimate it to be somewhere between 2,000 and 3,000.

This Report details the findings of the Intelligence and Security Committee's Inquiry into the actions of the UK Agencies and Defence Intelligence in respect of detainees and also rendition. We have taken 50 hours of oral evidence, reviewed 30,000 original documents and a further 10,000 documents which we requested, and 30,000 staff hours have been devoted to this Inquiry. We are very grateful to some of the former detainees for talking to us, and to three former members of staff who came forward of their own volition to act as witnesses.

We reached the point in our Inquiry where we had covered the breadth of the issues but needed to examine certain matters in detail, which could only be done by taking evidence from those who had been on the ground at the time. We have been denied that access. Restrictions were imposed by the Prime Minister on grounds of seniority and involvement in proceedings which reduced our list of potential witnesses to just four. Furthermore, even those individuals would not be allowed to give evidence on specific cases.

The Committee was adamant that if the Inquiry was to be thorough and be in a position to reach properly considered and fair views about the facts, then we must hear from those officers who were involved at the time. The terms and conditions imposed were such that we would be unable to conduct an authoritative Inquiry and produce a credible Report. The Committee has therefore concluded – reluctantly – that it must draw a line under the Inquiry. This is regrettable.

Nevertheless, we believe that the Inquiry had – up to the point we were able to take it – progressed matters significantly. Crucially, we had uncovered new material which had not been presented to any previous inquiry or review – including that begun by Sir Peter Gibson. The Committee has therefore decided that what we have found to date must be put into the public domain, as the next step towards transparency and an understanding of what took place.

This Report seeks to do just that. It is not, and must not be taken to be, a definitive account. Where possible, we give a figure for the total number of cases that we are aware of for each of the areas of concern. These numbers rely on the documentary evidence we have seen, and our interpretation of that evidence. However, formal records are lacking for at least some of the period of concern; this lack of a comprehensive and reliable evidence base makes definitive figures impossible. Any conclusions drawn are necessarily provisional; had the further witness

evidence we sought been made available to us, and had we therefore continued the Inquiry beyond this point, we may have differently categorised some of the cases of concern, and taken a different standpoint. This Report is therefore our account of what we have been able to find to date, and in some cases an indication of what we believe necessitates further exploration.

Key findings

In relation to direct involvement in mistreatment by UK personnel:

- From our examination of the primary material and our questioning of witnesses, at the point at which we concluded our Inquiry we had not found any evidence indicating that UK Agency officers or Defence Intelligence personnel directly carried out physical mistreatment of detainees.
- We have, however, to date, found evidence of UK officers making verbal threats in nine cases. Whilst it is clear that such threats are unacceptable, the making of threats is not properly identified as prohibited in guidance available today. This should be rectified.
- We have also found what we consider to constitute evidence of two cases in which UK personnel were directly involved in detainee mistreatment administered by others. This is completely unacceptable. While one case has been investigated by the Metropolitan Police, the other has not been fully investigated. Had our Inquiry continued, we would have sought to interview all those concerned. There must be a question as to whether the Service Police investigation should be reopened.¹

In relation to awareness of mistreatment:

- Immediately after 9/11, senior Agency staff were briefed by the US Agencies; in our opinion these briefings clearly showed US intent and should have been taken seriously. It was mistaken to dismiss them. The Agencies (and broader HMG) had a clear warning and, while they may have considered it rhetoric at the time, it should have been sufficient to alert them to any subsequent indication that words were being matched by actions.
- We have found 13 incidents recorded where it appears that UK personnel witnessed at first hand a detainee being mistreated by others – such that it must have caused alarm and should have led to action.
- From the primary material, we have found 25 incidents recorded where UK personnel were told by detainees that they had been mistreated by others. The Agencies had a responsibility to investigate such claims before continuing to engage with the detainee concerned. We have seen in a number of cases that they did so; however, this was not consistent.
- We have also found 128 incidents recorded where Agency officers were told by foreign liaison services (whether formally or informally) about instances of what appears to be detainee mistreatment.

¹ The ‘Service Police’ is the term used for the police forces of the Army, Royal Navy and Royal Air Force.

In relation to sharing of intelligence:

- Post 9/11, the Agencies shared an unprecedented amount of intelligence with foreign liaison services to facilitate the capture of detainees. The Agencies failed to consider whether it was appropriate to pass intelligence where mistreatment of detainees was known or reasonably suspected. From the primary material, we have found 232 cases recorded where it appears that UK personnel continued to supply questions or intelligence to liaison services after they knew or suspected (or, in our view, should have suspected) that a detainee had been or was being mistreated.
- We have also found 198 cases recorded where UK personnel received intelligence from liaison services obtained from detainees whom they knew had been mistreated, or with no indication as to how the detainee had been treated but where, in our view, they should have suspected mistreatment.²
- Our Report also outlines our concerns in relation to the lack of guidance to officers (we consider those staff deployed to have been left worryingly under-supported by their Head Offices) and the failure of the Agencies to brief their Ministers.

In relation to rendition:

- There were early indications of the US's more aggressive approach to rendition; however, the Agencies persisted in viewing cases as 'isolated incidents'. There was therefore no co-ordinated attempt to identify the risks involved and formulate the UK's response: legal advice across Departments and the Agencies regarding rendition was confused and poorly disseminated from the outset. There was no understanding in HMG as to what was meant by the term 'rendition', and no clear policy (or even recognition of the need for one).
- The one aspect of UK policy which was clear was that the UK does not conduct rendition operations itself. However, in three individual cases SIS or MI5 made, or offered to make, a financial contribution to others to conduct a rendition operation. Given that the operations were to countries such as LEEDS and DORNOCH, these can be described as 'extraordinary renditions' due to the real risk of torture or cruel, inhuman or degrading treatment of the detainees. The Agencies' financing of these operations was completely unacceptable. In our view this amounts to simple outsourcing of action they knew they were not allowed to undertake themselves.
- The Agencies also suggested, planned or agreed to rendition operations proposed by others in 28 cases. We have seen a further 22 cases where SIS or MI5 provided intelligence to enable a rendition operation to take place; and 23 cases where they failed to take action to prevent a rendition – this latter category includes instances where there were opportunities to intervene and prevent the rendition of a British national or resident, but the UK Government conspicuously failed to act.

² Numbers of cases include only those where a named individual is identified in the records. An individual case may fall into more than one of the categories of concern considered in this Report. We have reviewed 863 named cases that appear in the documents disclosed to us.

- There is, however, no evidence in the primary material that any US rendition flight transited the UK with a detainee on board, although two detainees are now known to have transited through the British Overseas Territory of Diego Garcia. The Committee has seen nothing to indicate that detainees have ever been held on Diego Garcia. We note, however, that the policy on recording flights was woefully inadequate, and the records available are patchy and cannot be relied on.

Did the Agencies turn a blind eye?

From the evidence we have seen and heard, it is undeniable that the UK Agencies at Head Office level were aware of reports that some detainees held by the US had been mistreated. There are 38 cases in 2002 alone of officers witnessing or hearing about mistreatment (that we have found up until this point in our Inquiry). The Agencies argue that these were ‘isolated incidents’. They may have been isolated incidents to an individual officer. However, the 38 cases reported to Head Office cannot be considered ‘isolated’ when taken together.

The Committee understands that the pace of work in the months following 11 September 2001, both in Afghanistan and London, was frenetic, placing both Field Officers and Head Offices under significant pressure, and that the priority was to prevent another attack on the scale of 9/11. Nevertheless, the combination of high-level briefing from the CIA in September 2001, the individual cases of mistreatment and rendition being reported by deployed officers to senior managers in January 2002, and the media reporting of torture, mistreatment and rendition in January/February 2002, make it difficult to comprehend how those at the top of the office did not recognise in this period the pattern of mistreatment by the US.

While 2004 onwards finally saw the Agencies joining the dots, and this led to an increase in policy discussions and guidance and training, a genuine understanding of the situation – and therefore the seriousness of the position in which the UK had found itself – was still slow to dawn. There continued to be examples of failures to follow the evolving guidance over subsequent years.

This could indicate that the Agencies were deliberately turning a blind eye so as not to damage the relationship and risk the flow of intelligence; if the Agencies started raising concerns, the US could have refused UK officers access to the detainees and stopped passing on any intelligence they obtained. Given that detainees were a significant source of information regarding any possible attacks against the UK, this would have represented a significant loss of potentially vital intelligence.

The Agencies say that they were not reluctant in principle to raise mistreatment with the US authorities. In our view, the evidence instead suggests a difficult balancing act: the Agencies were the junior partner with limited access or influence, and distinctly uncomfortable at the prospect of complaining to their host.

That being said, we have found no ‘smoking gun’ in the primary material to indicate that the Agencies deliberately overlooked reports of mistreatment and rendition by the US as a matter of institutional policy.

Did the Agencies act reasonably?

We do not underestimate the pressure that the Agencies experienced whilst dealing with the operational imperative to protect the UK. However, they lacked the experience and training necessary in the complex situations that deployed staff faced in dealing with detainees in Afghanistan, Iraq, Guantanamo and elsewhere. They also lacked a proper understanding of what constituted mistreatment and what to do when they encountered it. As a result, they were far too slow to recognise what was clearly happening and tolerated actions, and took others, that we regard as inexcusable.

We do not deny that it is easy to criticise with the benefit of hindsight, and do not seek to blame individual officers acting under immense pressure. Our Inquiry has, however, revealed serious concerns, outlined in the 27 conclusions contained in the body of this Report.

1. THE INQUIRY

1. On 12 September 2001, the Prime Minister telephoned the US President to offer the UK's assistance in the aftermath of the 9/11 attacks.³ In December 2001, this offer was taken up: the US requested specific assistance from SIS and MI5 with the screening of Al Qaida detainees, because their shortage of Arabic speakers was hampering progress.⁴

2. The 'special relationship' between the US and UK meant that this sort of co-operation was not unusual, and the UK Security and Intelligence Agencies had the global reach and the requisite language capabilities. SIS explained that:

*there was a real imperative to support the United States, a reflex I would go so far as to say, an unconditional reflex to support the United States, which was clear and came from the political centre. ... What we had and we're widely known for is our cultural and linguistic expertise. So particularly Arabic speakers, high quality staff, people also who are linked back to UK databases. So we had a big contribution to make and it's inevitable that we quickly got drawn into the middle of this.*⁵

3. This request for help was also seen by HMG as an opportunity: there were real concerns that Al Qaida may have been planning a terrorist attack on the UK of similar magnitude to 9/11, and assisting in interviewing US detainees would give the UK Agencies access to intelligence which might counter that threat. SIS told us that:

*there was a real expectation that there was another attack coming down the track, and in particular an expectation that the United Kingdom would be in the next wave of targets. So the overriding imperative was of course to try to disrupt whatever it was that was coming next, and that was the dominant theme at the time. ... Now, intelligence on the threat was difficult to obtain. We didn't have many sources. Counter-terrorism had not been a priority for us prior to 9/11 and we didn't have many sources. So detainees were an obvious potential source of information against this urgent requirement. The US held most of the detainees.*⁶

4. Throughout 2002, 2003 and into 2004, UK personnel from SIS, MI5 and MOD – including the Armed Forces – participated in interviews of detainees held (primarily) by US detaining authorities at locations in Afghanistan and Iraq, and at Guantanamo Bay.⁷ UK personnel conducted their own interviews of detainees, they conducted interviews jointly with US interrogators, and they observed interviews conducted by others. It is not possible to determine the exact number of detainee interviews in which UK personnel were involved, but it is in the low thousands.

5. Concerns over the treatment of detainees in US detention facilities surfaced shortly after the initial deployment of Agency personnel to Afghanistan. *The Washington Post* first criticised the

³ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, 'The Report of the Detainee Inquiry' (closed version) (2013).

⁴ SIS message from CARLISLE Station to SIS Head Office, KIRKWALL Station, an overseas posted unit, and MI5 headquarters, 30 December 2001.

⁵ Oral evidence – SIS, 3 December 2015.

⁶ Ibid.

⁷ Defence Intelligence did not participate in interviews of detainees at Guantanamo Bay.

conditions at Guantanamo Bay on 11 January 2002.⁸ Allegations of mistreatment, principally by the US, continued to emerge on a regular basis in the media and through the United Nations and human rights non-governmental organisations (NGOs) such as Amnesty International, Liberty and Reprieve. Ministers were asked questions in Parliament and by the beginning of 2004 matters escalated quickly: in January, the Intelligence and Security Committee (ISC) wrote to the Prime Minister asking for an explanation of the Agencies' participation in detainee interviews; in March, a report by the International Committee of the Red Cross was leaked which contained details about US mistreatment of prisoners; and then in April, the story of abuse at Abu Ghraib by US military personnel became public.

6. A number of inquiries were held from 2004 onwards, but allegations of mistreatment continued and by 2009 cases were being brought against the Government alleging complicity by the UK in the mistreatment of detainees. As a result, on 6 July 2010, the Prime Minister made a statement to Parliament setting out how the Government intended to “*clear up this matter once and for all ... how we will deal with the problems of the past, how we will sort out the future and ... how we can make sure that the security services are able to get on and do their job to keep us safe.*”⁹ One of the measures intended to achieve this was an independent Inquiry to “*examine whether, and if so to what extent, the UK Government and its intelligence agencies were involved in improper treatment of detainees held by other countries in counter-terrorism operations overseas, or were aware of improper treatment of detainees in operations in which the UK was involved.*”¹⁰

7. Sir Peter Gibson, who was appointed to chair the Inquiry, began work with his panel in July 2011.¹¹ However, Sir Peter was unable to begin taking evidence while Metropolitan Police investigations into individual detainee cases were under way.¹² Those investigations were concluded in January 2012. However, at the same time, the police announced two new investigations into detainee cases.¹³ At this point, the Government determined that Sir Peter's Inquiry could not continue and should be brought to a close. Sir Peter Gibson produced an interim report on his preparatory work in June 2012 and the unclassified version of that report was published in December 2013.¹⁴

8. Upon publication of Sir Peter's report, the ISC was asked to take those initial findings and continue the investigation into the historic issues identified by Sir Peter. The Committee agreed, subject to the provision of all the material provided to Sir Peter and to the Government supplying staff for the Inquiry.¹⁵ By July 2014, these arrangements had been put in place, the

⁸ Steve Vogle, ‘US Takes Hooded, Shackled Detainees to Cuba’, *The Washington Post* (11 January 2002).

⁹ Hansard, HC Deb, 6 July 2010, vol. 513, cols. 175–6 (‘Treatment of Detainees’).

¹⁰ Letter from the Prime Minister to Sir Peter Gibson, 6 July 2010.

¹¹ The panel included Dame Janet Paraskeva and Peter Riddell.

¹² These investigations were codenamed Operation Hinton and Operation Iden. Operation Hinton concluded in January 2012 that, whilst there was sufficient evidence that MI5 supplied information about Binyam MOHAMED and questions for US authorities to put to him whilst he was detained between 2002 and 2004, and that he was held in Morocco for at least some of that time, there was insufficient evidence to bring criminal charges against an identifiable individual. Operation Iden concerned the actions of an SIS officer in relation to a detainee at Bagram air base in Afghanistan in January 2002; the Metropolitan Police concluded that there was not sufficient evidence to provide a realistic prospect of conviction.

¹³ Operation Lydd, which focused on the alleged rendition and mistreatment of Abdel Hakim BELHAJ and Sami AL-SAAD.

¹⁴ Sir Peter Gibson, *The Report of the Detainee Inquiry* (2013) (online at www.gov.uk/government/publications/report-of-the-detainee-inquiry). Prior to this, the ISC had investigated mistreatment of detainees (reporting in 2005) and rendition (reporting in 2007). Fresh information has come to light since. A timeline of the Inquiries into detainee mistreatment is given at Annex B.

¹⁵ The Committee considered that as part of its detainee Inquiry it would also consider the current policy and practices of the Agencies which have been operating under the *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees* published in July 2010. The current issues are considered in our separate Report: ISC, *Detainee Mistreatment and Rendition: Current Issues*, 28 June 2018, HC 1114 (2017–19).

preliminary work on the Inquiry began and, in September 2014, the ISC issued a public call for evidence.

9. Analysis of the primary material and preparations for evidence sessions took place throughout 2015 and, once the new Committee was in place after the 2015 General Election, evidence sessions with the Heads of the Agencies and the Chief of Defence Intelligence, Ministers, NGOs, former members of staff (who came forward of their own volition to provide independent evidence to the Committee) and other witnesses took place in late 2015, throughout 2016 and into 2017.¹⁶ By July 2016, the Committee considered that it had covered the breadth of the Inquiry but now needed to examine certain matters in detail. This, the Committee agreed, could only be done by taking evidence from those who had been on the ground at the time. The Agency Heads had committed a great deal of time and effort to answering our questions. However, inevitably, they could answer only to the extent of their knowledge as they were not involved at the relevant time. (We make no criticism of them whatsoever in this regard.) The Committee therefore considered that it was essential to talk to witnesses who had personal knowledge of events at the time. A list of required witnesses (from SIS, in the first instance) was provided to HMG in July 2016, and the intention was to begin to take evidence from them later that year.

10. However, the Government response, in September 2016, was that the Committee could not take evidence from officers who were “*junior at the time*”. HMG insisted that “*the Inquiry should be conducted in accordance with the Memorandum of Understanding*”.¹⁷ The Memorandum of Understanding, which governs the working relationship between the ISC and the Government, refers to the Committee taking evidence from “*senior officials*” – this encompasses Senior Civil Servants, and many of those the Committee was seeking to interview had reached that level during their Agency careers.¹⁸ Furthermore, when the Cabinet Secretary wrote to the Chair of the Committee at the very outset of the Inquiry, in December 2013, he specifically said that it was: “*open to the Committee as it wishes to take evidence from current and some former Agency Heads; other officials from the Agencies or relevant departments; potentially one or two former UK detainees; and relevant former Ministers and officials*” (emphasis added).¹⁹

11. The Committee escalated the matter to the Prime Minister, making these points. Her response set out a number of concerns, the first being that there was “*legal uncertainty over the protection that would be afforded to officers appearing as witnesses before the Committee*”.²⁰ She therefore ruled out the Committee taking evidence from officers who are, or have been, subject to civil or criminal proceedings. This is surprising since the Justice and Security Act 2013 states that evidence given by a witness before the ISC may not be used in any civil or disciplinary proceedings, and may not be used against the person in any criminal proceedings. The Committee considers this to be sufficient protection for such witnesses – as indeed did the Government and the Agencies at the time of the passage of the Justice and Security Bill. If they

¹⁶ A list of witnesses to the Inquiry is given at Annex G.

¹⁷ ISC record of a meeting held between the ISC Chair and the National Security Adviser on 14 September 2016; letter from the ISC Chair to the Prime Minister, 19 October 2016. ‘Junior’ in this sense means below Senior Civil Service Pay Band 1, or equivalent. The ‘Memorandum of Understanding agreed between the Prime Minister and the Intelligence and Security Committee of Parliament’ was published in the ISC 2013–14 Annual Report.

¹⁸ Most of those whom the Committee was seeking to interview, who had reached Senior Civil Service level during their Agency careers, are now former staff.

¹⁹ Letter from the Cabinet Secretary to the ISC Chair, 18 December 2013.

²⁰ Letter from the Prime Minister to the ISC Chair, 10 January 2017.

now consider this protection to be inadequate, this would indicate a failure in the legislation which should be rectified as a matter of urgency.

12. The Prime Minister also said: “*it is not appropriate for a Parliamentary committee to request formal evidence from staff who were junior at the time of the events in question, regardless of the position that they [now] hold.*” This may be the case for Select Committees, but the ISC is not a Select Committee; it quite deliberately has greater powers and protection, in recognition of the fact that it has sole responsibility for oversight of intelligence matters. Furthermore, in respect of this Inquiry, the ISC sought, and thought it had been granted, access to officials, beyond the Agency Heads.

13. The restrictions on grounds of seniority and involvement in proceedings, when taken together, would reduce the list of witnesses to four. (The Committee had requested initial access to 23 SIS witnesses,²¹ and intended to request access to a similar number of MI5 witnesses.) There was, however, a further restriction: the Prime Minister stipulated that even those witnesses the Committee was to be allowed access to would not be allowed “*to talk about the specifics of the operations in which they were involved, nor fill in any gaps in the timeline of events*” and the Committee could not quote their evidence in its Report.²²

14. The Committee considered this denial of access to witnesses to be incompatible with the terms under which the ISC had agreed to conduct the Inquiry. We were adamant that we must hear from officers who were involved at the time, as this was essential if the Inquiry was to be thorough and comprehensive and be in a position to reach properly considered, balanced and fair views about the facts. The Committee considered that the terms and conditions imposed by the Prime Minister were such that it would be unable to conduct an authoritative Inquiry and produce a credible Report.²³ We therefore asked the Prime Minister to reconsider on 23 March 2017.²⁴ No response has been received.²⁵ The Committee has therefore concluded – reluctantly – that it must draw a line under the Inquiry. This is regrettable.

The Report

15. Nevertheless, we believe that the Inquiry had – up to the point we were able to take it – progressed matters significantly and uncovered new material not presented to any previous inquiry or review. In the course of our Inquiry, we have examined the contemporaneous documents and questioned witnesses. We have taken 50 hours of oral evidence, reviewed 30,000 original documents and a further 10,000 documents which we requested, and 30,000 staff hours have been devoted to this Inquiry (leaving aside the time devoted by the Agencies and Departments themselves).²⁶

16. We have heard from some of the detainees themselves – we invited them to give evidence to our Inquiry and met with Shaker Aamer, Moazzam Begg and Bisher Al-Rawi and their legal representatives. We are very grateful for their engagement with us and the frank discussion that took place. Ultimately they (and, through them, we understand other detainees also) preferred that we rely on the statements that they had given to the Metropolitan Police and in relation to

²¹ This had already been reduced to the absolute minimum required.

²² Letter from the Prime Minister to the ISC Chair, 10 January 2017.

²³ Letter from the ISC Chair to the Prime Minister, 12 January 2017.

²⁴ Letter from the ISC Chair to the Prime Minister, 23 March 2017.

²⁵ The relevant correspondence and meetings on this issue are set out at Annex B.

²⁶ These figures are for the Inquiry to date, covering both historic and current issues.

civil litigation, since these were given closer to the times concerned, rather than to give new oral evidence to the Committee. We are also very grateful to three former members of staff who came forward of their own volition to act as witnesses – their evidence must not be lost. The Committee has therefore decided that what we have found to date must be put into the public domain, as the next step towards transparency.

17. This Report seeks to do just that. It is not, and must not be taken to be, a comprehensive account. Any conclusions drawn are necessarily provisional; had the further witness evidence we sought been made available to us, and had we therefore continued the Inquiry beyond this point, we may have differently categorised some of the cases of concern, and taken a different standpoint.²⁷ This Report is therefore simply a fair account of what we have been able to find to date, and in some cases an indication of what we believe necessitates further exploration.²⁸

²⁷ Throughout this Report, where we have given figures for numbers of cases, this is based on our analysis of the primary material before us.

²⁸ Any further such work would have to be taken forward by some other means more suited to handling the historical nature of these issues.

2. THE LEGAL FRAMEWORK

18. It is necessary to consider the actions of the UK Government and the Security and Intelligence Agencies within the context of the legal framework. Set out below are the provisions that are relevant to torture and to cruel, inhuman or degrading treatment (CIDT).

Legal obligations

19. The UK has signed and ratified the following relevant international instruments:

- the International Covenant on Civil and Political Rights (ICCPR), which states that no person shall be subjected to torture or to CIDT or punishment; and requires that “*persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person*”;²⁹
- the European Convention on Human Rights (ECHR), which states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment;³⁰
- the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which requires that States shall “*prevent acts of torture*” and provides that “*no exceptional circumstances whatsoever ... may be invoked as a justification of torture*”.³¹ It also prohibits ‘complicity’ in torture and requires that States prevent “*other acts of CIDT and punishment*”.³² Additionally, the UNCAT prohibition on torture and CIDT extends to acts committed “*at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”;³³
- the 1949 Geneva Conventions, which require humane treatment of detainees and specifically prohibit torture, and cruel and degrading treatment in the context of an armed conflict;³⁴
- the Statute of the International Criminal Court, which includes as ‘war crimes’ torture, and inhuman and degrading treatment prohibited under the 1949 Geneva Conventions in the context of an armed conflict;³⁵ and
- additionally, under Article 16 of the International Law Commission’s Articles on State Responsibility for Internationally Wrongful Acts (said to codify customary international law), a State has international responsibility where that State materially

²⁹ International Covenant on Civil and Political Rights (New York, 19 December 1966; Treaty Series No. 6 (1977); Cmnd 6702).

³⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) (Rome, 4 November 1950; Treaty Series No. 71 (1953); Cmd 8969). The ECHR was implemented domestically by the Human Rights Act 1998.

³¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention Against Torture) (New York, 4 February 1985; Treaty Series No. 107 (1991); Cm 1775).

³² CIDT, as well as being a breach of the human rights conventions if committed by public officials, may in some cases also constitute criminal offences under domestic law, for example, assault occasioning actual bodily harm under the Offences Against the Person Act 1861.

³³ ‘Acquiescence by a public official’ is limited (for the US) by a US reservation to UNCAT such as to require a public official to have prior awareness of the activity constituting torture and then to fail to intervene to prevent such activity.

³⁴ Conventions for the Protection of War Victims (Geneva, 12 August 1949; Treaty Series No. 39 (1958); Cmnd 550).

³⁵ Rome Statute of the International Criminal Court (Rome, 17 July 1998; Treaty Series No. 35 (2002); Cm 5590). The International Criminal Court Act 2001 gives effect to the ICC Statute in domestic law, including creating a ‘war crime’ offence.

aids or assists another State in the commission of an internationally wrongful act, if it does so with intent and knowledge of the circumstances of that wrongful act and the act would be internationally wrongful if committed by that State.

20. Under domestic law, ‘complicity’ in torture or CIDT means any involvement in torture or CIDT. (Under domestic law relating to secondary liability and joint enterprise, an individual may be prosecuted – as if they were the principal offender – for an offence that is carried out by another if they aid, encourage, counsel or procure the commission of an offence.)³⁶ This is particularly relevant, as most allegations of UK involvement in mistreatment of detainees relate to facilitating, supporting or assisting others in that mistreatment. Complicity in torture or CIDT might result from, for example, sharing intelligence in the knowledge or belief that action might be taken on that intelligence with a real risk that torture or CIDT would result.

21. Conspiracy to commit offences outside the UK (an agreement by two or more people to carry out such a criminal act) is also an offence under domestic law.³⁷ This might include, for example, prosecutions of pilots, aircrew or aircraft owners with knowledge of the fact that a flight carried a person likely to be subject to an offence in another jurisdiction (such as kidnapping, false imprisonment, assault or torture).

Definitions

22. The definition of ‘torture’ given in UNCAT is:

*Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*³⁸

23. The Criminal Justice Act 1988 defines a crime of ‘torture’ in domestic law. The Act defines it as an act by a public official in the performance or purported performance of their duties (or a person acting at the instigation or with the consent or acquiescence of such a public official) which intentionally inflicts severe mental or physical pain or suffering. The domestic definition is wider than UNCAT requires, as no purposive element is required (i.e. purposes such as obtaining a confession, given in the definition of torture under UNCAT); but a defence of lawful authority, justification or excuse is available (contrary to UNCAT Article 2(3) which states “*An order from a superior officer or a public authority may not be invoked as a justification for torture*”). However, it should be noted that the US has taken a different approach to the definition of torture – in 2002, the US Office of Legal Counsel

³⁶ Section 8 of the Accessories and Abettors Act 1861, under which someone who aids, abets, counsels or procures the commission of an indictable offence shall be liable to be tried as the principal offender; section 44 of the Magistrates’ Courts Act, which provides the same in relation to summary and either-way offences; and the Serious Crime Act 2007, under which liability for encouraging and assisting may arise whether or not any anticipated primary offence is ever committed.

³⁷ Section 1A of the Criminal Law Act 1977, in England and Wales; and section 11A of the Criminal Procedure (Scotland) Act 1995, in Scotland.

³⁸ Article 1, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 4 February 1985; Treaty Series No. 107 (1991); Cm 1775).

developed a narrower definition of torture in that it said that the degree of pain inflicted needed to be “*equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death*”.³⁹

24. By contrast, CIDT is not defined in any of the international instruments. The closest the UK has come to defining what constitutes CIDT was in 1972, when the then Prime Minister, Sir Edward Heath, stated in Parliament that certain interrogation techniques that had previously been authorised would not be used in future. These techniques (wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink) were those subsequently found, in 1978, to be in breach of the prohibition of CIDT in the ECHR by the European Court of Human Rights, thereby confirming that they constituted CIDT.⁴⁰ These techniques are now included in the list of examples of prohibited CIDT in the Consolidated Guidance published by HMG in July 2010.⁴¹

³⁹ Memorandum from Jay S. Bybee, Assistant Attorney General, US Department of Justice, to Alberto R. Gonzales, Counsel to the President, 1 August 2002, page 1 (published by *The Washington Post* in June 2004). When President Obama took office in 2009, he limited interrogation techniques to those authorised by the Army Field Manual and acknowledged that many of the measures authorised under the previous administration amounted to torture.

⁴⁰ *Ireland v. UK* (5310/71) [1978] ECHR 1. The techniques, at the time, were not found by the Court to amount to torture. However, following the definition of torture in UNCAT, which post-dates the Court decision, these techniques would be likely to amount to torture.

⁴¹ The Consolidated Guidance also includes “*physical abuse or punishment of any sort*”, and “*degrading treatment (sexual embarrassment, religious taunting etc.)*” in the list of prohibited CIDT.

3. THE SCALE OF INVOLVEMENT WITH DETAINEES

Deployment of SIS and MI5 officers

25. After 9/11, SIS reinforced its staffing in Afghanistan and, as part of their wider operations to undermine the Taliban and Al Qaida and support the Northern Alliance, SIS personnel occasionally interviewed detainees held by the Afghans.⁴² The first formal deployment of an SIS officer to interview US-held detainees took place in early January 2002. This was followed immediately by the deployment of two MI5 officers on 9 January. The first interviews of US-held detainees by UK officers were carried out on 10 January.⁴³

26. We have been told by the Agencies that the officers were deployed in order to seek access to detainees who were British citizens, as well as those who had strong links to the UK, who were being held locally in theatre (whether by US Armed Forces or by others), and to pursue UK investigative leads arising out of the capture of Al Qaida and Taliban positions.⁴⁴ However, we have found no evidence which formally sets out the terms or scope of SIS or MI5's involvement in detainee interviews and no specific Ministerial authorisation for such action. To a certain extent, this indicates that the Agencies saw their detainee interviews as standard intelligence-gathering exercises, approaching them as they would any of their potential agents. The interviews do not appear to have been seen as 'interrogations'.⁴⁵

27. Following this initial deployment in January 2002, a number of other SIS and MI5 officers were deployed to Afghanistan, ***, Guantanamo Bay and Iraq.

- Over the 24 months from January 2002 to December 2003, 38 SIS officers conducted interviews with detainees.⁴⁶
- Those SIS officers, who varied in their level of seniority, were used to operating relatively autonomously.
- We estimate that they conducted about 400 interviews of more than 230 detainees by the end of 2003.⁴⁷
- It has not been possible to obtain a reliable figure for the number of MI5 officers who conducted interviews with detainees during the same 24-month period. We do have a figure of 27 officers who conducted interviews between 2001 and 2010 and we believe that the majority of those conducted interviews during the key 2002–2004 deployments.⁴⁸

⁴² Classified consolidated report of SIS and MI5's 2012–14 internal reviews of detainee-related records (2014).

⁴³ Memorandum from a senior SIS officer to officials within the FCO, 12 March 2009.

⁴⁴ Formal MI5 internal correspondence (from a senior legal adviser to a senior operations manager), 22 November 2001 ('Questioning of detained persons: Operation Enduring Freedom').

⁴⁵ We return to the issue of guidance and training in Chapter 7, 'HMG response'.

⁴⁶ Based on ISC analysis of the documentary evidence provided by HMG. Exact dates on which interviews began in each location are difficult to determine, since SIS officers were already present on the ground as opposed to being specifically deployed on a certain date.

⁴⁷ Written evidence – SIS, 29 August 2017. SIS records show SIS interviews, or the witnessing of interviews, of over 540 detainees on more than 1,000 occasions between 2001 and 2010; but prior to April 2005, SIS did not always write up detainee interviews. SIS therefore believes that these figures could be considerably higher.

⁴⁸ Formal MI5 internal correspondence (from an operations officer to a senior operations manager), 4 August 2004 ('Treatment of detainees: questionnaire to interviewers').

- We estimate that over the same 24 months MI5 officers may have conducted around 300 interviews. Again it has not been possible to obtain an exact number, and this estimate has been calculated based on the number of interviews carried out by MI5 officers over the entire 2001–2010 period, which is around 400.⁴⁹
- MI5 has said that its officers interviewed around 100 detainees.⁵⁰

28. The scale of the deployment changed markedly in 2004 – not least due to concerns about the detention conditions at Guantanamo Bay (which caused MI5 to suspend interviews with detainees there in February); the allegations in the media of US abuse of detainees at Abu Ghraib in May; and the transfer of sovereignty to the interim Iraq authorities in June 2004.

- From 2004 to 2010, around 88 SIS officers conducted interviews with detainees.
- Those SIS officers conducted at least 636 interviews of 300 detainees during this period.⁵¹
- As noted previously, MI5 has been unable to extrapolate figures from the overall 2001 to 2010 period, but based on our earlier estimate for 2002–2004, a small number of officers conducted around 100 interviews from 2004 to 2010.

Deployment of GCHQ officers

29. GCHQ deployments, unlike those of SIS and MI5, were not related to detainees directly, as they were technical or analytical in nature. The first deployment took place in September 2002 when one officer was sent to Bagram to liaise between GCHQ and the senior British military representative.⁵² The deployments increased during 2003.

- Two GCHQ officers were deployed to Afghanistan during 2003. These officers were working as liaison officers, linguists and analysts.⁵³
- Initially, two GCHQ staff were deployed to Iraq, rising to seven. The majority of these officers provided analytical support to coalition forces and SIS. Some of these staff were embedded within US teams of analysts.⁵⁴

30. During the 2004–2010 period, GCHQ deployments increased slightly, in contrast to SIS and MI5.

- At its peak, GCHQ had 20 officers in Afghanistan in this period working as liaison officers, linguists and analysts.

⁴⁹ The estimate of MI5 interviews is based on the 2009 review of records, which identified 219 cases (the various records reviews are addressed later in the section entitled ‘Briefing Ministers, 2004–2010’ in Chapter 7, ‘HMG response’). It found 110 cases where MI5 officers interviewed individuals (94 individuals prior to July 2006 and 16 individuals after July 2006), 44 cases where there was MI5 involvement but no interview, and 65 where there was no MI5 involvement. However, the review did not include civil or criminal litigation cases (such as EL BANNA, AL-RAWI or MUBANGA), nor did it specify how many times individual detainees may have been interviewed. In evidence before the Committee, MI5 told us that it had conducted 400 interviews of 100 detainees (and had ‘involvement’ in 560 detainee cases).

⁵⁰ Classified consolidated report of SIS and MI5’s 2012–14 internal reviews of detainee-related records (2014).

⁵¹ Based on ISC analysis of the documentary evidence provided by HMG.

⁵² GCHQ written evidence to the (Gibson) Detainee Inquiry, 2012.

⁵³ Written evidence – GCHQ, 16 May 2016; GCHQ written evidence to the (Gibson) Detainee Inquiry (2012).

⁵⁴ Written evidence – GCHQ, 16 May 2016; GCHQ written evidence to the (Gibson) Detainee Inquiry (2012). Considerably more GCHQ technical staff were deployed, with no involvement in detainee matters. As the US established intelligence cells within Iraq and Afghanistan, GCHQ staff served alongside their NSA counterparts within them.

- At its peak (in 2007), GCHQ had ten officers deployed to Iraq.⁵⁵
- Additionally, in both locations, GCHQ also deployed technical and other specialist staff, although records are less clear as to the specific number deployed. However, during the period 2006–2009, which was the peak period of deployment in both Afghanistan and Iraq, GCHQ had approximately 40 personnel in Afghanistan at any one time and approximately 14 in Iraq.⁵⁶

Deployment of MOD personnel

31. The MOD deployed its first Armed Forces interrogation capability (to Afghanistan) in December 2001.⁵⁷ Defence Intelligence staff were subsequently deployed in significant numbers to Iraq in particular.⁵⁸

- In the period up to June 2004, around 75 MOD personnel, of whom 25 were civilian staff, were involved in interviewing or supporting interviews with US-held detainees.⁵⁹
- Defence Intelligence told the Committee that it does not have an overall figure for the number of interviews or detainees involved.⁶⁰
- The 25 civilian staff were involved in supporting or participating in 250–300 interviews through the Iraq Survey Group (ISG).⁶¹
- An unknown number of interviews were carried out, in tandem with SIS, in order to provide scientific expertise when interviewing detainees believed to be associated with Iraq's Weapons of Mass Destruction programme.⁶²

⁵⁵ GCHQ written evidence to the (Gibson) Detainee Inquiry (2012).

⁵⁶ Written evidence – GCHQ, 10 June 2016.

⁵⁷ ***

⁵⁸ Many were involved in the interrogation of detainees in UK custody, which is not considered by this Inquiry.

⁵⁹ While some were involved in work unrelated to detainees, including SIGINT collection, many were deployed specifically to attend or support detainee interviews. The number includes personnel drawn from Defence Intelligence and from units for which the Chief of Defence Intelligence now has responsibility. A Defence Intelligence military officer participated in at least one interview as part of the Battlefield Recovery Operation to which Defence Intelligence contributed 21 military members of staff across the period of deployment from February to August 2003; an Armed Forces interrogation capability, comprising approximately 28 staff, was deployed to Bagram air base from December 2001 until July 2002 – at least 11 of the staff were engaged in exploiting US detainees for intelligence; approximately three staff at any given time were at the US Tactical Screening Facility at Balad air base from March 2003 until late 2004 when they were withdrawn due to 'inadequate holding facilities for detainees'; approximately three staff were deployed to the US detention facility at Abu Ghraib from January until April 2004; Joint Field Interrogation Teams comprising approximately ten staff were deployed to the joint UK–US Theatre Internment Facility at Camp Bucca between March 2003 and December 2003; and three interrogators were deployed to Baghdad on 16 January 2004 to support the questioning of Saddam Hussein and other High Value Targets.

⁶⁰ Written evidence – MOD, 21 July 2017.

⁶¹ Ibid. The ISG was a multinational team engaged in the search for evidence of Weapons of Mass Destruction. It was set up under the auspices of the US Defense Intelligence Agency and at full strength expected to consist of some 1,500–2,000 personnel. [Source: email from a member of Defence Intelligence personnel to the Chief of Defence Intelligence's office and others, 12 May 2003 ('DIS Brief for HCDC').] Thirty (mostly civilian) Defence Intelligence analysts deployed in support of the ISG, including 23 Subject Matter Experts supporting interrogations who attended interviews, usually led by the US. Additionally, an unknown number of UK-trained interrogators were deployed to the ISG. Interrogations mostly took place at Camp Cropper, at Baghdad International Airport, from June 2003 until June 2004. On 28 June 2004, UK personnel were directed by the UK Deputy Commander of the ISG to cease involvement with detainees, following the handover of sovereignty to the Iraqi interim authorities, as the UK believed that it could thereafter only detain people who were an "imperative threat to security".

⁶² Written evidence – MOD, 21 July 2017. A total of *** Defence Intelligence Subject Matter Experts supported SIS operations (all of whom were present at peak deployment). At least *** of these staff were directly involved in interviews.

32. From 2004 to 2010, the number of MOD and Defence Intelligence staff supporting and attending detainee interviews at any one time was considerably smaller than at the peak period in Iraq.

- There were approximately three staff at any given time at the US Tactical Screening Facility at Balad air base from September 2006 until early 2009.⁶³
- There was a total of four staff (it is thought) across the period from September 2007 to May 2009 at the US detention facility at Camp Fernandez, Baghdad International Airport.
- There were approximately ten staff at the Divisional Internment Facility in Basra for periods from April 2007 until December 2008.⁶⁴
- Again, Defence Intelligence told the Committee that it does not have an overall figure for the number of interviews or detainees involved.

33. We do not know how many detainees the US authorities interviewed over this period, although we do know from the executive summary of the US Senate Select Committee on Intelligence report on the CIA detention and interrogation programme, released in 2014, that only 119 known individuals were held in CIA custody (39 of whom were subjected to ‘enhanced interrogation’ techniques).⁶⁵

Head Offices

34. Although it was those in the field who were in the ‘front line’ and directly engaged with detainees, they were not the only officers making decisions on detainee matters. Desk Officers in Head Offices played an important role in discussing cases with officers in the field, responding to their requests and liaising with the US and other partners. Desk Officers would have been responsible for briefing senior management, including the Heads of the Agencies and the Chief of Defence Intelligence.⁶⁶ The role of those in Head Offices is covered primarily in Chapter 7, ‘HMG response’.

⁶³ Written evidence – MOD, 21 July 2017. This was except for a 100-day suspension from the end of December 2008 due to changes in the Iraqi legal framework.

⁶⁴ Ibid.

⁶⁵ US Senate Select Committee on Intelligence, foreword and executive summary in *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* (Senate Report 113-288) (2014).

⁶⁶ We consider, for this purpose, all relevant Head Office staff to be ‘Desk Officers’ (and those at Senior Civil Service Pay Band 2, or equivalent, and above to be those at the ‘top of the office’).

4. DIRECT INVOLVEMENT IN MISTREATMENT

35. The SIS and MI5 Field Officers and MOD personnel deployed from 2002 onwards were interviewing detainees held by others (primarily the US at locations in Afghanistan, Iraq and Guantanamo Bay).⁶⁷ Neither the Agencies nor Defence Intelligence were the detaining authorities at any point. Sometimes the deployed personnel conducted their own interviews, sometimes they interviewed jointly with US personnel and sometimes simply observed (or passed questions to those interviewing).

36. Notes of interviews were generally written up afterwards and sent back to Desk Officers in Head Offices by secure email – however, this was a largely informal process prior to January 2002 for MI5, when it introduced a ‘Prisoner Interview Report’ (PIR) form (albeit these do not appear always to have been completed); and April 2005 for SIS, when it introduced a ‘Detainee Contact Report’ (DCR).⁶⁸

37. We consider that the lack of records raises questions as to how confident the Agencies can be in their account of their actions during this period and, crucially, how confident we can be in reaching any conclusions in the absence of a comprehensive and reliable evidence base.

38. There are two scenarios in which UK personnel might have been directly involved in mistreatment while interviewing detainees:

- (i) mistreating a detainee themselves; or
- (ii) being present and engaged in mistreatment administered by others.

39. In his evidence to the Committee, the Chief of SIS told us:

*We did thousands of detainee interviews. Set against this, ... the cases of concern are few. ... there is no evidence of direct agency involvement in the physical mistreatment of detainees, and I have found no evidence that SIS was in the room during the use of Enhanced Interrogation Techniques of the type that we now understand in such detail following the report by your counterparts in the United States.*⁶⁹

However, there are of course other, less direct, forms of mistreatment: UK personnel might have witnessed mistreatment, been told about mistreatment, or they might have contributed indirectly to it (for example, by passing or receiving intelligence which led to mistreatment). These scenarios are covered in the next chapter.

40. While we do refer to individual cases throughout this Report, the cases are illustrative.⁷⁰ We have not referred to all cases, or even all cases of concern. Furthermore, we note that if

⁶⁷ Not all organisations sent personnel to Guantanamo Bay. This Inquiry does not consider interviews of detainees held by UK Armed Forces.

⁶⁸ MI5 has since said that it has “*been unable to locate PIRs for many of the interviews which took place ... (although they were used in some cases). It is not known clear [sic] if they were completed and we have failed to locate them, or if they were never completed.*” [Source: classified reports of MI5’s 2009 internal detainee-related records review.] We would have wished to explore this issue (and in particular accountability for ensuring PIRs were completed) further, had our Inquiry continued.

⁶⁹ Oral evidence – SIS, 3 December 2015. The Chief of SIS was referring to the published version of the executive summary of the *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* (Senate Report 113-288), which the US Senate Select Committee on Intelligence released in 2014.

⁷⁰ As previously noted, categorisation of cases is based on the Committee’s analysis of the primary evidence we have seen.

any of the individual cases are to be taken forward formally, then this would be a matter for the Investigatory Powers Tribunal.

41. Where possible, we give a figure for the total number of cases that we are aware of for each of the areas of concern. These numbers rely on the documentary evidence we have seen, and our interpretation of that evidence. However, as we have already noted, formal records were lacking for at least some of the period of concern which makes definitive figures impossible.⁷¹

Allegations of torture by British officials

42. Where a public official, in the course of their duties, inflicts severe physical or mental pain or suffering, that mistreatment may amount to torture, and is prohibited under domestic law and international law.⁷²

- We have found 19 instances of allegations made of UK personnel committing acts of torture.
- These take the form of formal complaints made to the police or investigations commenced by them, or informal allegations (made in media reporting, talks, or on social media, but not substantiated and therefore not considered by the Committee).
- None of these allegations has resulted in a criminal prosecution or successful civil case.

CASE STUDY:

ALLEGATION OF TORTURE BY BRITISH OFFICIAL, NOT UPHELD

In this case study, and throughout this Report, the names of detainees, geographic identifiers (such as nationality) and a small number of staff and operational names have been substituted for our own code words in order to protect classified information. A list of these is provided in Annex E.

CHIFFCHAFF, a CHELMSFORD national, was detained in Afghanistan in December 2001 and held at Bagram.

In 2013, he told the Metropolitan Police that while he was detained he had been assaulted with a baseball bat and abused by a British officer named ***.

The police investigation was unable to identify a UK Agency officer who matched CHIFFCHAFF's physical description of '***'. They also could not find any independent evidence that substantiated the claim. The investigation was closed.⁷³

From our own examination of the material, we have found that the SIS corporate record indicates that CHIFFCHAFF ***; however, there is nothing in *** which raises concerns about the way in which ***, or his treatment in US custody.⁷⁴

⁷¹ Numbers of cases include only those where a named individual is identified in the records. An individual case may fall into more than one of the categories of concern considered in this and subsequent chapters. We have reviewed 863 named cases that appear in the documents disclosed to us.

⁷² As set out in Chapter 2, 'The legal framework'.

⁷³ Information supplied confidentially to the ISC by the Metropolitan Police Service, 2015.

⁷⁴ Written evidence – SIS, 14 January 2015.

Threatening behaviour

43. Whilst we have found no evidence that any Agency personnel directly carried out physical mistreatment of detainees, we have found contemporaneous reports in the primary material which indicate that SIS officers may have threatened detainees during interviews.

44. These take the form of the officer appearing to encourage a detainee to co-operate whilst implying that if he did not then others (such as the detaining authority) might mistreat him. In some detention settings it might be considered reasonable for interviewers to seek ways to encourage the co-operation of unwilling suspects. However, detention in somewhere like Kabul, ostensibly outside the regular legal system, is a rather different setting. If the detainee genuinely feared the treatment being threatened, then the threat might constitute torture if it induced severe mental suffering.⁷⁵

- We have found nine instances where we consider the UK personnel concerned to have issued what could be construed as threats.⁷⁶

CASE STUDY: SIS OFFICERS THREATENING DETAINEE

COOT, a CHESTER national, was detained in ALLOA by the Afghan authorities in March 2002.

He was interviewed by SIS officers several times in *** 2002. In one interview on ***, an SIS officer reported telling COOT that he would be sent to Guantanamo Bay unless he co-operated fully.

In notes of the interviews, the SIS officers wrote: “*We threatened Guantanamo Bay and explained that those detained in CHESTER were accusing him of belonging to the *** terrorist cell*” and “*We continued with a tough line concentrating on COOT’s family in CHESTER (How would he feel if his wife had to turn to prostitution to support the family?)*.”⁷⁷

⁷⁵ Although torture is most often associated with the infliction of severe physical pain, the definition explicitly includes mental pain and suffering. Many abuses, such as hooding, isolation, and threats of torture of the victim or their family, may constitute mental torture. It is commonly accepted that mental torture can be as debilitating and have as long-lasting psychological effects as physical abuse (see e.g. J. Quiroga and J. Jaranson, ‘Torture’, *The Encyclopaedia of Psychological Trauma* (2008), pages 654–7). Article 3 common to the 1949 Geneva Conventions, for example, prohibits threats of violence.

⁷⁶ Based on ISC analysis of the documentary evidence provided by HMG.

⁷⁷ SIS message from ALLOA Station to SIS Head Office, CHESTER Station and an overseas posted unit, *** 2002; SIS message from ALLOA Station to SIS Head Office and an overseas posted unit, *** 2002.

**CASE STUDY:
MI5 OFFICERS THREATENING DETAINEE**

CORMORANT, a British national, was arrested in CARMARTHEN in *** in a joint US–CARDIGAN liaison service and CARDIGAN police operation. In March 2002, two MI5 officers interviewed him three times.

The report sent back of the third interview noted that the US official, who sat in for “the first 5 minutes”, opened the interview:

by saying that this was CORMORANT’s last chance to convince us that he was co-operating and telling the complete truth. He showed CORMORANT a photograph of the others who had been detained with him (all were hooded and in a vehicle) and explained that if we concluded he was not co-operating he would be transferred, like the others, to Afghanistan and then onto Cuba. But if he co-operated completely he would be treated leniently. [The US official] made clear that we [MI5] were the people he had to convince. He then left the interview room. We reiterated this message.⁷⁸

45. When we put these cases to the Chief of SIS, he accepted that the use of such threats was unacceptable:

I’ve looked at this in as much detail as I can and I’ve tried to sort of isolate what I think the worst cases are, and I’ve done that because I wanted, ... to make sure that it was consistent with the outer boundary, if you see what I mean. I think where I get to the outer boundary is this suggestion that SIS officers made threats or sort of used coercive language in the interviews. To be clear, the guidance now is absolutely clear about that. ...

I don’t believe that SIS officers would have considered it acceptable to threaten detainees with mistreatment. A small number of cases have been brought in front of the Committee where SIS officers may be judged to have used threats or coercion.⁷⁹

46. The Director General of MI5 denied any such behaviour on the part of his officers: “we don’t indulge in threatening behaviour.”⁸⁰ When asked about the CORMORANT case specifically, and whether he regarded the behaviour of his officers as appropriate in that case, he told the Committee:

I have read the CORMORANT case – knowing what we know now, I don’t. But at the time – and I am sorry to keep sort of repeating this, you know, what we knew then and what we know now, but this is absolutely central to all this consideration – if we had known then that there was actually programmatic, systematic American activity which was not just talk but was actually removing people to other sites where we now know there was systematic mistreatment going on, we would have reacted differently at the time to be in the room with somebody being spoken to in those sorts of terms.⁸¹

⁷⁸ SIS message from CARMARTHEN Station to MI5 headquarters, *** March 2002.

⁷⁹ Oral evidence – SIS, 3 December 2015.

⁸⁰ Oral evidence – MI5, 25 February 2016.

⁸¹ Ibid.

47. We note that such training and guidance as was provided to deployed personnel does not appear to have covered acceptable conduct of an interview or the issuing of threats. Training and guidance is considered in more detail in Chapter 7, ‘HMG response’.

Direct involvement in mistreatment administered by others

48. We have concerns that in some cases UK personnel appear to have been directly engaged in the mistreatment of a detainee, even though they did not administer the treatment themselves (for example, they may have been consulted about whether to administer mistreatment).

- We have found two instances where we consider that UK personnel directly engaged in the mistreatment of a detainee by others.⁸²

CASE STUDY: INVOLVEMENT IN A DECISION ON MISTREATMENT

PINTAIL, a CHICHESTER national, was detained by the PERTH authorities and transferred to *** before being taken to Bagram air base in January 2002, where he was interviewed by an SIS officer with the designation ‘BAIRD’.⁸³ This was the first UK interview of a US-held detainee in Afghanistan.

The SIS officer reported to SIS Head Office on 10 January 2002 that PINTAIL “*had been denied sleep for three days and was held in a series of stress positions by US [Military Police] (with our consent). He shook violently from cold, fatigue and fear but in consultation with CENTCOM [US Central Command] we agreed to maintain pressure for the next 24 hours.*”⁸⁴ (In September 2004, the SIS officer subsequently clarified that the “*‘series of stress positions’ ... sounds more severe than it was ... At the most it was a matter of minutes.*”⁸⁵)

Head Office provided guidance to the SIS officer the next day, saying:

*It appears from your description that they may not be being treated in accordance with the appropriate standards. Given that they are not within our custody or control, the law does not require you to intervene to prevent this. That said, HMG’s stated commitment to human rights makes it important that the Americans understand that we cannot be party to such ill treatment nor can we be seen to condone it.*⁸⁶

This case was the subject of the Metropolitan Police investigation Operation Iden, which ultimately concluded that there was insufficient evidence to provide a realistic prospect of a conviction of the SIS officer in question. Nonetheless, in our opinion, the ‘consent’ given by the SIS officer indicates a degree of direct involvement in the detainee’s mistreatment.

⁸² We have not included in the assessment of ‘direct involvement in mistreatment administered by others’ cases where it might be said that UK involvement prolonged detention in conditions which may have amounted in themselves to mistreatment.

⁸³ A code word has been substituted for the then designation of this SIS officer. The actual designation was ***.

⁸⁴ SIS message from Head Office to an overseas posted unit, 10 January 2002. CENTCOM (United States Central Command) is the unified body commanding US Armed Forces in the Middle East and in parts of North Africa and central Asia, including Iraq and Afghanistan.

⁸⁵ SIS internal correspondence, 24 September 2004. The officer was commenting on the draft of a letter to the ISC on this matter.

⁸⁶ SIS message from Head Office to an overseas posted unit, 11 January 2002.

49. When asked about this case, the Chief of SIS told the Committee:

I think this is one of the most difficult cases of the range of stuff that you are looking at. It's a particular case where we have really specific and important lessons to learn. ... I think that the reply [from Head Office, in the box above], such as it was, and the emphasis that it placed on not being the detaining authority or being the detaining authority, I think that it missed the point as to what mistreatment really constituted. ... Was there a real understanding of whether the techniques that officer described constituted mistreatment and what obligations did that then engage us in? That was not clear; I think, to the officer or, I suspect, to the person who wrote that telegram.⁸⁷

The officer involved is one whom we had sought to interview – and this case was one that we wished to address – but we were denied access to the officer.

50. There is one further case in which we have uncovered new evidence which indicates that a UK officer may have approved mistreatment. This is of very considerable concern since, from what we have been able to uncover, the incident has not been fully investigated.

**CASE STUDY:
POSSIBLE APPROVAL OF MISTREATMENT**

CROSSBILL, an AYR national, was a senior former AYR Government official.⁸⁸ He was in US custody from *** to ***.⁸⁹

On ***, CROSSBILL was interviewed by two SIS officers at BEDFORD at BEAUMARIS. CROSSBILL was hooded and handcuffed throughout the one-hour interview.⁹⁰

This case was not reported by the SIS officers at the time; it only came to light in June 2004 during an SIS staff survey, where one of the SIS officers reported: “Given FARADAY’s assurance that the treatment afforded CROSSBILL fell within MOD/HMG guidelines (and was observably more caring and responsible than that afforded to PHEASANT), I saw no reason to complain.”⁹¹ FARADAY, an Armed Forces officer, was at that time the head of the MOD interrogation team at BEAUMARIS.⁹²

In that report, the SIS officer said that he “*had several long and detailed conversations*” with FARADAY around the time of the interview during which FARADAY had described to him the techniques used at the facility, including hooding, use of stress positions, “*manipulation of day length*” and “*manipulation of feeding regimen*” (the officer subsequently recorded that this referred to giving detainees meals at irregular intervals to facilitate manipulation of perceived day length). In a separate, later, report, the SIS officer stated: “*It was clear to me from the conversations that I and others had with FARADAY that ... [FARADAY was] explaining current practices within the US-controlled facility ... in which he was*

⁸⁷ Oral evidence – SIS, 3 December 2015.

⁸⁸ ***

⁸⁹ SIS’s 2009 internal detainee-related records review: classified background case report on CROSSBILL (2009).

⁹⁰ SIS internal correspondence, 1 April 2005; SIS internal correspondence, 8 June 2004.

⁹¹ SIS’s 2009 internal detainee-related records review: classified background case report on CROSSBILL (2009).

⁹² SIS internal correspondence, 8 June 2004. The code word FARADAY has been substituted for the Armed Forces officer mentioned in this case study: ***.

working.” However, according to that report, FARADAY assured him that these practices were legitimate within the terms of the Geneva Conventions.⁹³

A second SIS officer reported that FARADAY took him and the first SIS officer to visit BEDFORD, where he saw three or four prisoners, all hooded, and “*at least one was kneeling on his bed with his hands behind his back*”. It was explained (potentially by FARADAY) to the second SIS officer, that this was a stress position and that there were several variations of these positions.⁹⁴

In August 2004, SIS included this information in draft material being prepared to inform a submission to the ISC, which it shared with MOD.⁹⁵ However, a Defence Intelligence legal adviser told SIS legal advisers that the SIS officers’ accounts were based on a misunderstanding, and that FARADAY had been describing UK training practices, not interrogation practices in Iraq. A note in Defence Intelligence documents seen by the Committee records:

*In light of the apparent misunderstanding it was agreed that reference to the discussion between [FARADAY] and the SIS operative would be removed from the SIS submission [to the ISC]. A letter was subsequently sent to SIS reiterating the position and thanking SIS for the opportunity of resolving this matter before it was exposed to the ISC.*⁹⁶

In October 2009, following an internal review, SIS raised this issue with MOD again. The Chief of Defence Intelligence appointed an Intelligence Corps Colonel to investigate what, in the Colonel’s words, was the “*alleged evidence unearthed by the SIS that a UK interrogator [FARADAY] may have misunderstood the provisions of the Geneva Convention and was possibly complicit in abuses of the Conventions during his time as an interrogator serving in the US facility at BEAUMARIS in 2003.*”

The investigating officer sought the advice of a specialist officer who, although unable to provide a definitive judgement, noted that “*‘sleep deprivation’ ... would not be permitted within the [Geneva Conventions] ... Similarly, hooding ... for the purposes of interrogation would not be acceptable to UK ... the use of stress positions would not be permitted within a UK facility ... for the purpose of ‘maintaining shock of capture’ or any other reason.*”⁹⁷

After further inquiries within MOD, the matter was reported to the Service Police for formal investigation.⁹⁸ A letter from the Service Police to MOD dated 26 July 2010 records that they are “*conducting an investigation into an allegation of mistreatment of detainees by [FARADAY] in Iraq during 2003.*”⁹⁹

⁹³ SIS internal correspondence, 8 June 2004; SIS internal correspondence, 1 April 2005.

⁹⁴ Account by the second SIS officer, appended to a letter from a senior SIS officer to the MOD’s operational policy director, 16 October 2009.

⁹⁵ SIS internal correspondence, 5 and 10 August 2004; Defence Intelligence internal briefing note (14 August 2004) for a meeting between the Chief of Defence Intelligence and the Chief of SIS. There were in fact at least three similar accounts given by SIS officers that we are aware of. At least one of these officers was present at interviews conducted by FARADAY.

⁹⁶ Defence Intelligence internal briefing note, 14 August 2004, for a meeting between the Chief of Defence Intelligence and the Chief of SIS.

⁹⁷ Exchange of email between the Chief of Staff to the Assistant Chief of the Defence Staff (Intelligence Capabilities) and the Head of the Defence HUMINT Organisation, 26 October and 3 November 2009.

⁹⁸ The earliest documentary evidence disclosed to the Committee showing Service Police involvement is an email sent from the Officer Commanding the investigating branch of the Service Police, to a senior official within Defence Intelligence on 19 March 2010.

⁹⁹ Letter from the Officer Commanding the investigating branch of the Service Police to a senior official within Defence Intelligence, 26 July 2010 (‘Service Police SIB investigation into an allegation of detainee mistreatment in Iraq’).

However, in May 2011, SIS informed MOD that the threshold to allow it to disclose information (through the statutory disclosure gateway in the Intelligence Services Act 1994) had not been reached. As a result, the Service Police investigation into FARADAY closed in June 2011. In July, Defence Intelligence sought an update on the investigation from the Service Police Special Investigations Branch as part of work to compile an internal report on the outcome of the investigation for Defence Intelligence senior management. The response noted: “*Given the refusal of SIS to allow access to any witnesses, I hope you agree that we have covered those Lines Of Enquiry that would allow us to commence an investigation proper.*”¹⁰⁰

51. We consider this to be a case of direct involvement in detainee mistreatment (seemingly administered by others), not just in relation to assurances given about the treatment of CROSSBILL – which was contrary to the Geneva Conventions – but potentially more broadly by the Armed Forces officer concerned. We are concerned that MOD was unable to progress its investigations; given the seriousness of the matter, SIS and MOD should have made more effort to find a solution to the barriers around disclosure so that the matter could have been progressed. This is clearly a case which should have been investigated by the police.¹⁰¹

A. From our examination of the primary material and our questioning of witnesses, at the point at which we concluded our Inquiry we had not found any evidence indicating that UK Agency or Defence Intelligence personnel directly carried out physical mistreatment of detainees.

B. We have, to date, found evidence of officers making what could be construed as verbal threats in nine cases. It is clear that such threats are wholly unacceptable. However, the making of threats is not explicitly identified as prohibited in guidance available today: this should be rectified.

C. We have found what we consider to constitute evidence of two cases in which UK personnel were directly involved in detainee mistreatment administered by others. This is completely unacceptable. While one case has been investigated by the Metropolitan Police, the other has not been fully investigated. Had our Inquiry continued, we would have sought to interview all those concerned. There must be a question as to whether the Service Police investigation should be reopened.

¹⁰⁰ Written evidence – MOD, 21 July 2017; email from the Service Police investigating branch’s senior investigating officer in the case to the Defence Intelligence’s inquiries team, 8 July 2011.

¹⁰¹ SIS told us that it co-operated with the MOD’s Iraq Historic Allegations Team (IHAT), now Service Police Legacy Investigations, “on a number of their investigations into detainee related allegations, including those relevant to FARADAY’s activities ... SIS understands those investigations still to be continuing”.

5. AWARENESS OF MISTREATMENT

52. While the preceding chapter considers direct involvement in mistreatment by UK personnel – whether mistreating a detainee themselves or being directly involved in mistreatment administered by others – there are also a number of ways in which officers might have been aware of mistreatment. Depending on the circumstances, this could be considered to be complicity in mistreatment – a fact that seems to have been recognised by SIS at the outset:

*Our records suggest that there was recognition that SIS's human rights obligations extended to complicity. For example, in November 2001, an SIS officer who interviewed detainees held by *** assured Head Office that "we will not nudge and wink at mistreatment of prisoners".*¹⁰²

53. Awareness of mistreatment is relevant to both deployed personnel and the Desk Officers back in London. Deployed personnel were reporting back to Head Offices at all times, and Head Offices were liaising with their US counterparts. Staff in London were, we consider, in a far better position than those in the field to see the bigger picture and understand the pattern of events.

54. We consider here what was known in Agency Head Offices before deployments began in 2002: this information comes primarily from conversations they held with their US counterparts. We then consider what deployed personnel became aware of from 2002 onwards, before returning to Head Office knowledge – and in particular whether, based on the evidence they had, they should have been able to 'join the dots', realise the pattern of US behaviour and take action sooner.

Head Office knowledge at the outset: 2001

55. The day after the attacks, on 12 September 2001, the Heads of SIS and GCHQ, the Deputy Director General of MI5 and the Prime Minister's Foreign Policy Adviser met the then CIA Director, George Tenet, in Washington. The write-up of that meeting noted: "*The US response to these incidents will be typically American. The CIA and IC are in the business not just of producing lead intelligence on terrorism but commissioned to destroy it root and branch.*" It records an expectation that the CIA would be directed to "*take the war against the terrorists to their sanctuaries and those that provide them*".¹⁰³ It continued: "**** so that they do the CIA's bidding*". More generally it noted: "*While the emotional reaction to the attacks is still vivid the US has a window of public support for a major act of retaliation despite significant collateral damage. ... After the retaliation we should expect a further series of robust actions.*"¹⁰⁴

56. Senior SIS officers were subsequently briefed in more detail in late September 2001. Further, they were told by the US Agencies that (in SIS's words):

*SIS should throw away everything that they thought they knew about the [US Agencies]. The change was quick and profound. They were the ***. ...*

¹⁰² Written evidence – SIS, 21 January 2016, including a passage quoted from an SIS message from PRESTEIGNE Station to SIS Head Office, 29 November 2001.

¹⁰³ ***. 'IC' stands for 'Intelligence Community', which in the US comprises 15 separate bodies within the federal government and military, in addition to the CIA.

¹⁰⁴ SIS message from READING Station to SIS Head Office, 13 September 2001.

**** empowered the [US Agencies] to conduct CT [counter-terrorism] operations including renditing [and SIS believed killing] terrorists, their supporters, as well as to overthrow regimes that supported terrorists. The gloves were off. [The US Agencies] would not stop until the enemies were all dealt with.*¹⁰⁵

Shortly after these briefings, a senior US official told a senior SIS officer that the *** “authorised [the US Agencies] to detain any authorised target indefinitely at a location of [the US Agencies’] choosing. [They] could ... arrest targets anywhere, including in the UK and Europe”.¹⁰⁶

57. In our opinion, these briefings clearly showed US intent. However, the UK Agencies have argued that there was insufficient detail, and that they did not believe the *** would actually be given these powers. SIS said in evidence to the ISC that it was sceptical about the supposed new powers, since at the time there was a great deal of ‘tough talk’ being used at many levels of the US administration, and it was difficult to reach a definitive conclusion regarding the direction of US policy in this area.¹⁰⁷ SIS has also told the Committee that it was “sceptical at this stage that [the US] had thought through how it would use those powers”.¹⁰⁸

58. The then Director General of MI5 (Eliza Manningham-Buller) went so far as to say in her evidence to a previous ISC Inquiry in 2007 that she regarded one of the senior CIA officers involved in the briefings as *** and believed ***.¹⁰⁹ The current Director General, when he gave evidence to the Committee, maintained that MI5 did not believe the briefings:

*The things said in that meeting ... were quite general. They were not, you know, “We are now going to embark on a programme of detaining and torturing detainees to get what we want.” ... there were big arm waving statements made but not that. All three of the Brits there came away thinking, in the sense of the atmosphere of the time, this all felt like, you know, big talk from an injured America determined to do something about it.*¹¹⁰

59. The ‘disbelief’ argument is undermined, however, by a telegram in January 2002 from a senior SIS officer in which he states: “the [US] are at war and the President has backed [the US Agencies] with war powers.”¹¹¹ This indicates that there was, at least in some quarters, a clear understanding of the seriousness of the situation.

D. The early briefings from the US Agencies in September and October 2001 should have been taken seriously. It was naïve, or complacent, to dismiss them. The Agencies (and broader HMG) had a clear warning and – while they may have considered it rhetoric at the time – it should have been sufficient to alert them to any subsequent indication that words were being matched by action.

¹⁰⁵ SIS internal correspondence, 2 October 2001.

¹⁰⁶ SIS message from READING Station to SIS Head Office, 12 October 2001.

¹⁰⁷ ISC, conclusion F in *Rendition* (Cm 7171, 2007), page 29.

¹⁰⁸ Written evidence – SIS, 21 January 2016.

¹⁰⁹ Oral evidence (to the Committee’s 2006–2007 Rendition Inquiry) – MI5, 20 March 2007.

¹¹⁰ Oral evidence – MI5, 25 February 2016.

¹¹¹ SIS message from READING Station to SIS Head Office, 25 January 2002.

Deployed personnel awareness: 2002–2004

60. As the Heads of the Agencies had chosen not to take the CIA statements at face value, it appears that they did not see any need to tell deployed personnel to be alert to unusual behaviour. Officers deployed to interview detainees were not, therefore, given specific training or guidance at the outset (we return to this issue in Chapter 7, ‘HMG response’), nor any particular direction; they were largely operating autonomously.

61. There are two particular scenarios in which UK personnel might have become aware of the mistreatment of detainees:

- (i) witnessing the mistreatment themselves; or
- (ii) being told about mistreatment by others (for example, by the detainee or by foreign liaison services).

(i) Witnessing mistreatment

62. Since SIS and MI5 officers were present at interviews conducted by their US counterparts, it is conceivable that they saw mistreatment taking place. In such cases, the action subsequently taken by the officer is key: did they raise concerns or ignore them? If they did raise concerns, did they suspend engagement at that point or did they continue to engage as per normal?

63. In January 2002, SIS Head Office had instructed officers in Afghanistan to avoid anything that would make them party to, or risk their being seen as condoning, mistreatment; however, it was also made clear that they were not under any legal obligation to intervene to prevent it.¹¹² Moreover, there was no clear guidance as to what might constitute mistreatment. There was no further guidance given to officers during this period. (It was not until July 2004 that officers were told to report unacceptable treatment and to suspend engagement – we return to the question of guidance issued to officers more fully in Chapter 7, ‘HMG response’.)

- From the primary material, we have found 13 incidents recorded where it appears that UK personnel witnessed at first hand a detainee being mistreated by others.¹¹³
- Three of these cases date from after 2004.

¹¹² SIS message from Head Office to an overseas posted unit, 11 January 2002.

¹¹³ Based on ISC analysis of the documentary evidence provided by HMG.

**CASE STUDY:
WITNESSING MISTREATMENT**

CUCKOO, a COLERAINE national, was captured in RENFREW in *** and transferred to US military custody in January 2002, being detained at Bagram air base.

For a number of days, an SIS officer participated in interviews of CUCKOO alongside US personnel. On the eighth day, *** unilaterally announced that they were taking over custody and intended to render CUCKOO to CUPAR.

On *** January 2002, the SIS officer witnessed CUCKOO's departure, which was described in an SIS incident report:

About half an hour later BAIRD [the SIS officer] was sitting with one of the team outside the hangar when a pick up jeep with a six-foot, sealed box on the back drove past. It was CUCKOO on his way to the waiting plane ... [a US official], was driving.

The report continued:

*There may be a conversation we need to have about the broader issues this and other aspects of the detention process raises ... We were tempted to speak out against what we saw in line with the guidance [issued in January 2002 following the PINTAIL incident described in the previous chapter] but did not. The event reinforced the uneasy feeling of operating in a legal wilderness. ***.¹¹⁴*

Nevertheless, MI5 continued to pass questions for CUCKOO's interrogation after his rendition to CUPAR and both SIS and MI5 received reporting from subsequent interrogations.¹¹⁵

64. We asked the Chief of SIS about this case when he gave evidence to the Committee (and would, clearly, have wished to talk to the officer concerned had our Inquiry continued):

I think ... I get two things from this. One, it's reassuring that the instincts of the officer on the ground were as I would wish and I would hope and he does focus in on the key issues. Then this doesn't ring an alarm bell in London ...

Why didn't this resonate? Now it would set the alarm bells off across – why didn't that happen? ...

I think that the default assumption would have been that the US were acting within their own law. So to the extent that this would have rung an alarm bell, it would have been seen as an isolated incident rather than something that required new guidance or a new approach. ...

I have to come back to the stuff I'm talking about previously about the assumptions we were making about the US and the level of overstretch and the press of operational business.¹¹⁶

¹¹⁴ SIS message from an overseas posted unit to SIS Head Office and DERBY Station, *** January 2002 (the guidance referred to, issued in response to PINTAIL reporting, is the SIS message from Head Office to an overseas posted unit on 11 January 2002 (see footnote 112). A code word has been substituted for the mentioned SIS officer's designation at the pertinent time, which was actually ***.

¹¹⁵ Classified reports of MI5's 2009 internal detainee-related records review (2009).

¹¹⁶ Oral evidence – SIS, 3 December 2015.

65. This incident took place just a few days after the same officer had witnessed the mistreatment of PINTAIL (described in the preceding chapter). That incident had led SIS Head Office to issue immediate guidance which stated: *“If circumstances allow, you should consider drawing [mistreatment] to the attention of a suitably senior US official locally.”*¹¹⁷ While the SIS officer on the ground did not appear to feel able to raise the issue with the US personnel in question, Head Office did take action on his report. It issued a *démarche* to *** – although we note that this was couched in very gentle terms: *“it sounded as if his treatment might have fallen below the standard that we all agree to be appropriate.”*¹¹⁸ Astonishingly, an SIS senior officer complained to the Chief of SIS and other senior SIS staff about the *démarche*: he was irritated not to have been consulted before SIS accused *** of *“abuse of human and possible legal rights”*, when SIS *“have known from the very beginning that renditions to third countries were covered in the *** ... the [US] are at war and the President has backed [the US Agencies] with war powers”*.¹¹⁹ (We return to the question of Head Office responsibility and reaction in Chapter 7, ‘HMG response’.)

66. Complaints such as these, made by the Agencies to the US, appear to have made little or no difference in many cases. For example, the FCO has provided the Committee with an account of events at Bagram air base, and the actions taken in response:

*An email of 8 October 2004 ... from the then Head of Human Rights, Democracy and Governance Group contains a report from an un-named FCO member of staff with concerns about an incident. The report said that: “The colleague concerned was formally posted in Kabul and spent time at Bagram Air Base. He says that he and others at times heard audible screams coming from one of the hangars.” The report was investigated by the FCO Director for South Asia and UK Special Representative for Afghanistan, who recommended in an email to the [FCO Permanent Secretary] on 19 October 2004 ... seeking more information and raising the concerns with the US. On 21 October 2004 ... the concerns were raised with the US Coordinator for Afghanistan; ... and on 25 November 2004 ... it was agreed the British Embassy in Washington would press the US for a response. We have no further record of action taken on this specific allegation.*¹²⁰

67. However, MI5 told the Committee that it does not accept that the complaints were not taken seriously or pursued.¹²¹ The Director General told us:

*even though we don’t necessarily get answers back that fully satisfy, we do usually get them taking into account that this has been a problem for us and then altering their behaviour. So this doesn’t ... then become a pattern. It is clear across the cases, it didn’t. It is clear that at Guantanamo, when we raised early on the conditions that detainees were either telling us about or things we had heard about at second-hand, that they took more care. They gave specific assurance about British subjects in Guantanamo not being subject to a harsher regime. So most of the things they said to us in the context of us raising particular specific issues they did actually stick to and deliver on.*¹²²

¹¹⁷ SIS message from Head Office to an overseas posted unit, 11 January 2002.

¹¹⁸ SIS message from Head Office to *** and MI5 headquarters, 23 January 2002.

¹¹⁹ SIS message from READING Station to SIS Head Office, 25 January 2002.

¹²⁰ Written evidence – Foreign and Commonwealth Office, 1 September 2016.

¹²¹ Written evidence – MI5, 6 April 2016.

¹²² Oral evidence – MI5, 3 March 2016.

68. In addition to the cases which we have been able to substantiate with documentary evidence, we were also told of an incident by a former SIS officer who was conducting detainee interviews in Baghdad in 2005 (the officer came forward to give evidence to the Inquiry personally).¹²³ He recalled that during one interview he was conducting with another SIS officer, the US interrogator asked them to leave the room so that they would not be witness to the interrogator ‘roughing up’ the detainee.¹²⁴ The SIS officer told us that they left the room as requested. This witness gave evidence to the Gibson Inquiry that, when they returned, the detainee looked as though he had been physically hurt.¹²⁵ However, he subsequently told us that there was “*nothing visible but I cannot understand why we would have left the room and heard noises if there hadn’t been mistreatment*”. The officer did not record or report the incident at the time and, to date, we have been unable to corroborate it from the primary material. Detainee Contact Reports (DCRs) were introduced in mid-2005 and it may be that this incident predated their introduction. Asked whether he had written a DCR for the interview, the witness told us: “*I think we didn’t because we regarded it as having been a US interview that we had not conducted.*” However, he recognised that not doing so was:

abnormal and I think there was a little bit of ... a search for an outcome that was acceptable in terms of the record because there was quite a lot ... going on that night and I think there was a view that, “Well, this isn’t our interview; we just happened to be there.”

69. The former SIS officer also suggested that, whilst it may be SIS culture to record everything, there were situations like this where people would say something was “*not for the write-up*”. He told us that there:

was quite an emphasis then on not putting things in writing ... Because presumably they didn’t want the ISC to read the documents later.

*... it wasn’t as if the basic attitude to record-keeping had been abandoned; it was more that the more complicated stuff that was at the fringes of normal was not being recorded.*¹²⁶

He also told the Committee that, after DCRs were introduced, SIS officers would always write “*no*” against the list of potential mistreatment concerns at the end of the reports. In particular, he also suggested that they would never use the word ‘torture’ to describe what went on at ALNWICK, a US-run facility where individuals captured by UK Armed Forces team *** and US Armed Forces equivalents were detained.¹²⁷ These are issues which we would have sought to corroborate, had we been able to take evidence from other serving officers.

70. Whilst SIS dealt with many more detainees than MI5, and the evidence shows inconsistencies in the reporting of mistreatment, the Director General of MI5 suggested that his staff always reported mistreatment:

¹²³ The officer approached the Gibson Detainee Inquiry in 2011 and offered to give evidence related to his time as an SIS officer in Baghdad in 2005–2006. In 2016, the ISC contacted him to ascertain whether he wished to give evidence to this Inquiry, and he subsequently did so.

¹²⁴ Summary of proposed statement of evidence – the former SIS officer, 29 June 2016.

¹²⁵ Classified note filed by the (Gibson) Detainee Inquiry of a telephone conversation with a former SIS officer deployed to Iraq in 2005, with a link to one of the (Gibson) Detainee Inquiry lead cases, 15 December 2011.

¹²⁶ Oral evidence – the former SIS officer, 14 July 2016.

¹²⁷ Summary of proposed statement of evidence – the former SIS officer, 29 June 2016; oral evidence – the former SIS officer, 14 July 2016. ***.

*when [Field Officers] became aware of credible cases of mistreatment, ... I hope you can see through the cases, the instinct was to report it, do something about it, including in cases, you know, it is mostly in cases where nothing had been witnessed.*¹²⁸

This is consistent with the introduction of Prisoner Interview Forms (PIRs) in 2002, as discussed above, although perhaps undermined by both the admission that it is “*not known ... if [the PIRs] were completed and we have failed to locate them, or if they were never completed*” and the numbers of cases listed in this chapter where no action was taken by officers who witnessed or became aware of mistreatment of detainees.¹²⁹ Again, we would have wished to explore these issues further with MI5 officers who were on the ground at the time.

Conditions of detention

71. The Committee is also aware that concerns were raised almost immediately about the conditions in which detainees were being held. The detainees were being held in a wide variety of locations, in Iraq, Afghanistan and Guantanamo Bay, as well as in countries such as Morocco and various ‘black sites’ (secret CIA detention and interrogation sites). The conditions in which they were being held may have amounted to mistreatment in some cases: the human rights monitoring bodies have regularly found poor detention conditions to amount to degrading treatment and sometimes to be cruel or inhuman.¹³⁰ The Committee has seen in the primary evidence the report of a UK Army Brigadier, who visited Bagram in January 2002, saying that “*the US treatment of prisoners could be judged to be verging on, if not, inhuman*” and “*It is clear that the US is pushed logistically, but my understanding of the Geneva Convention is that this is no excuse*”.¹³¹

72. From the evidence we have taken it is clear that conditions had not improved by 2004. We heard from the former SIS officer about the conditions at ALNWICK. He told the Committee that towards the end of 2004 another SIS officer had reported his concerns about the conditions at ALNWICK to Head Office. The Committee has seen this documentary evidence, including that officer’s description of the living conditions for the detainees:

*Each cell was made entirely of chip-board. Dimensions are approximate but we guessed that each one was slightly less than 200 cm [6'6"] long, about 180 cm [5'11"] high and 120 cm [3'11"] wide. We saw inside one ... and saw no furniture but there was a neon strip light. We did not see if there was a switch on the inside but there was an external switch. The cells had no windows.*¹³²

73. The SIS officer we spoke to said that his colleague’s report did not appear to have been received well at Head Office; the general feeling was apparently that this was “*inconvenient*” and there was a “*sense that [the officer] had let the side down*” in raising such a concern:

¹²⁸ Oral evidence – MI5, 25 February 2016.

¹²⁹ Classified reports of MI5’s 2009 internal detainee-related records review (2009).

¹³⁰ For example, the UN Human Rights Committee found cruel or degrading treatment contrary to Article 7 ICCPR in *Diedrick v. Jamaica* (CCPR/C/62/D/619/1995, UNHRC, 4 June 1998), in relation to a detainee imprisoned for 23 hours per day, without mattress or bedding, integral sanitation, natural light, recreational facilities, decent food or adequate medical care. The European Court of Human Rights found degrading treatment contrary to Article 3 ECHR in *Peers v. Greece*, where for at least two months the applicant had spent a considerable part of each 24-hour period practically confined to his bed in a cell with no ventilation and no window, which would at times become unbearably hot (Application No. 48524/95, judgment of 19 April 2001).

¹³¹ MOD internal correspondence, 12 January 2002.

¹³² SIS message from BANFF Station to SIS Head Office, 17 September 2004.

[The officer reporting the concern] *told me that he had raised it and the way in which he described it to me was that, you know, that it had been quite difficult for him. A lot of people had basically been quite annoyed with him that he had done that.*¹³³

74. Despite this, it does appear to have triggered action, as SIS decided to minimise UK contact with ALNWICK. The officer we spoke to told us that an SIS lawyer visited ALNWICK and discussed the situation with the detaining authorities, who confirmed that both sleep deprivation and white noise were used. Following this visit, ***.¹³⁴

75. When the officer we spoke to arrived at ALNWICK in January 2005, he found what he described as a “Torture Centre”.¹³⁵

*ALNWICK itself was a place where the US took detainees and subjected them to various things which I regard as torture and I think in most people’s understanding of the term is torture. So, most notably, when people were brought there, they were put in wooden crates, which were designed so that you could neither lie down nor stand up and they were obviously dark.*¹³⁶

76. He told the Committee that ALNWICK used white noise, physical pain of some kind, sleep deprivation and traumatic images as part of what the US saw as a “scientific process”. He said that the detainees he interviewed seemed disorientated and exhausted although they had no obvious signs of physical damage. He found it difficult to understand how any SIS officer who had been to ALNWICK could have failed to recognise the unacceptable conditions. He himself considered that the conditions at ALNWICK brought into question whether SIS should be interviewing them, and that by interviewing them they might be perpetuating their detention in these unacceptable conditions.¹³⁷

77. He told the Committee that, as a result, in 2005 MOD and SIS lawyers formulated a new policy whereby if UK Armed Forces captured an individual they would not be sent to ALNWICK, and no interviews were to take place at ALNWICK. He said that, in practice, this appeared to be easier said than done since all individuals captured by the US were taken to ALNWICK. The officer told us that interacting with ALNWICK was an “endless source of complications”; while SIS officers had to question detainees outside ALNWICK, in practice this meant that detainees were transferred to an adjacent Portakabin at ALNWICK where conditions were “to UK standards” to be interviewed, but following the interview they were simply taken back to ALNWICK.¹³⁸

I think it must, there must have been enough ambiguity in the way the policy was communicated – I’m not questioning the policy – but there must have been enough ambiguity in the communication of it to allow that to have happened. ...

¹³³ Oral evidence – the former SIS officer, 14 July 2016.

¹³⁴ Memorandum from a senior SIS officer to an official within the FCO, 21 September 2004.

¹³⁵ Summary of proposed statement of evidence – the former SIS officer, 29 June 2016.

¹³⁶ Oral evidence – the former SIS officer, 14 July 2016.

¹³⁷ Summary of proposed statement of evidence – the former SIS officer, 29 June 2016; oral evidence – the former SIS officer, 14 July 2016.

¹³⁸ Summary of proposed statement of evidence – the former SIS officer, 29 June 2016; oral evidence – the former SIS officer, 14 July 2016. The documentary evidence seen by the Committee shows that it was agreed between SIS and the FCO that detainees could be interviewed after transfer out of ALNWICK to CAERNARFON, where the conditions were more acceptable, but only if they were relocated there, not simply temporarily taken out. The documentary evidence also supports the fact that SIS officers did interview detainees as described by the former SIS officer, in an off-site Portakabin in the clear knowledge that they would be transferred back to ALNWICK.

I'm pretty sure that, even in that environment, if you have a written legal advice saying, "Do not do this," we will not just go and do it anyway.¹³⁹

E. We have found evidence that UK personnel witnessed detainees being very seriously mistreated – such that it must have caused alarm and should have led to action.

F. We have seen that deployed personnel did report mistreatment that they witnessed to Head Offices, but we note that this did not happen in all cases. We have seen no evidence that they intervened themselves to prevent mistreatment or drew it to the attention of the detaining authority on a regular basis. Indeed, there seemed to be a concern not to upset the US.

G. The conditions of detention clearly amounted to mistreatment in some cases; however, the Agencies continued to engage with detainee interviews. The ‘work-around’ of interviewing in a Portakabin just outside a detention facility was not an acceptable alternative to ceasing to engage with detainees being kept in unacceptable conditions.

Allegations we have been unable to substantiate

78. There have also been a number of allegations made by detainees that UK personnel witnessed their mistreatment first hand. The examination of the documentary evidence and our questioning of witnesses to date has not enabled us to corroborate or refute these allegations and we cannot therefore confirm or deny these specific cases. As previously noted, the route for individuals to bring cases against the Agencies is through the Investigatory Powers Tribunal.

- A small number of allegations have been made about UK personnel witnessing mistreatment which, to date, we have not found to be supported by documentary evidence.

CASE STUDY:

ALLEGATION WE HAVE BEEN UNABLE TO SUBSTANTIATE

Shaker AAMER, a Saudi national and British resident, was detained in Afghanistan in 2001, held in Bagram, and then transferred to Guantanamo Bay.

In 2010, he alleged as part of a civil claim against HMG that a British officer had been present during an ‘interrogation’ at Bagram when he was shouted at and had his head repeatedly hit against a wall.¹⁴⁰

The documents seen by the ISC show that ***.¹⁴¹ *** , there was no reference to any mistreatment.¹⁴²

The police have conducted what we understand to be a thorough investigation but have not been able to identify an individual UK Agency officer from the description provided.

¹³⁹ Oral evidence – the former SIS officer, 14 July 2016.

¹⁴⁰ Shaker Aamer’s Particulars of Claim prepared for *Aamer v. The Security Service and ors.* (signed 13 September 2010).

¹⁴¹ Classified case summary prepared by the (Gibson) Detainee Inquiry.

¹⁴² ***

(ii) Being told about mistreatment

By the detainees themselves

79. We have seen evidence in the primary material that in some cases when SIS or MI5 officers interviewed detainees, the detainee informed them that they had been mistreated by the detaining authorities (in most cases, the US).

- In the primary material we have found 25 incidents recorded where UK personnel were told by detainees that they had been mistreated by others.
- Eight of these cases took place after 2004.

CASE STUDY:

DETAINEE REPORTING MISTREATMENT, ACTION TAKEN

CURLEW, a RUTHIN national, was captured on the SELKIRK border and transferred to US custody at the end of *** 2001 and then rendered to Guantanamo Bay.

He was interviewed by MI5 once and SIS twice during *** 2002. At the second interview, CURLEW complained that guards had taken away his bedding for 24 hours as a punishment for speaking to a fellow inmate in another cell at night – despite another detainee having admitted that he was the one who had been talking.

CURLEW also complained about:

the periodic refusal by the guards to allow the detainees to cover the lower half of their bodies with a sheet when using the toilet in their cells. He said with feeling that this privacy was required in Islam – based on the Sunna. The guard had intercepted [CURLEW] trying to lend his neighbour ... a piece of his bedding to wrap round himself, and had taken away [CURLEW's] bedding for another day.

The SIS primary material shows that the SIS officer raised the issue with the Military Police control team, ***, and thereafter reported the issue to Head Office.¹⁴³

80. When we questioned why SIS officers did not raise detainees' complaints with the detaining authority in other cases, SIS told the Committee:

The reasons why SIS raised detainee complaints with the detaining authority on some occasions but not others are likely to reflect the particular circumstances of a case. As noted in our response to Sir Peter Gibson's inquiry, our records seldom reflect the thought processes of individuals at the time; there are few instances where it can be established from our records exactly which factors were considered when SIS decided whether (or to what extent) to raise detainees issues with liaison partners. Nonetheless, as discussed in the recent evidence sessions, a number of overarching factors will have been in play including:

- *the pressure to deliver intelligence on threats to the UK and the consequent need to stay engaged with the US who were the detaining authority;*

¹⁴³ SIS's 2009 internal detainee-related records review: classified background case report on CURLEW (2009).

- *the realisation by officers that they had little scope to influence US actions; and*
- *inadequate guidance and training on the threshold of CIDT and when to raise concerns, and inexperience in dealing with situations of this type.*¹⁴⁴

81. The Director General of MI5 noted that allegations of mistreatment made by detainees, whether against the Agencies or more generally relating to mistreatment by others, may of course be untrue:

*there are a number of instances, ... where individual detainees have made allegations about mistreatment and MI5 being present, or MI5 having participated, have been found, you know, not to be so and maybe it is not a surprising thing, is it, that amongst the 561 individuals we are talking about, these are not all sort of well-adjusted law-abiding members of society concerned in honesty and justice, because our interest in them, in speaking to them, was based on the fact that we believed they were involved in terrorism. So, ... a whole bunch of false allegations have been made which, nonetheless, ... resulted in detailed police investigation but nothing found.*¹⁴⁵

H. When a detainee made a complaint to a UK officer about mistreatment, the Agencies had a responsibility to investigate the claims before continuing to engage with the detainee concerned. We have seen in a number of cases that they did so; however, this was not consistent. We would have wished to establish with individual witnesses why in some instances they did not raise these issues.

By foreign liaison services

82. UK personnel also became aware in some cases of the mistreatment of a detainee by hearing of it from foreign liaison services such as the US. Sometimes this was through formal channels – whether written or oral – and sometimes this was more informal (discussions over breakfast in a shared catering facility, for example).

- From the primary material we have found 128 incidents recorded where Agency officers were told by foreign liaison services about instances of what appears to be detainee mistreatment.

¹⁴⁴ Written evidence – SIS, 21 January 2016.

¹⁴⁵ Oral evidence – MI5, 25 February 2016.

**CASE STUDY:
INFORMATION PROVIDED ON MISTREATMENT**

Binyam MOHAMED, an Ethiopian national who had exceptional leave to remain in the UK until 2004, was detained in Pakistan in April 2002.

MI5 gained direct access to interview him the following month. Prior to the interview, the US had notified MI5 and SIS by telegram that MOHAMED had been subjected to sleep deprivation. This reference was not acted upon and MI5 interviewed him on 17 May.¹⁴⁶ No comment was made about his treatment either during or after the interview.

MOHAMED was later taken to an unknown location. MI5 attempted to find out where he was but was rebuffed by the US. MI5 nevertheless continued to feed questions to the US authorities to be put to him.¹⁴⁷

83. The telegram in which the US clearly stated that Binyam MOHAMED had been subject to sleep deprivation was addressed to the MI5 interviewing officer, 11 other individuals at MI5, and one member of SIS. Although sent on 13 May 2002, because of the nature of the process by which telegrams are handled, it may not have arrived on officers' desks until 15 May (and therefore may not have been seen by the MI5 officer before he flew to Pakistan to interview him). MI5 strongly contend that it was not aware of the mistreatment when supplying the questions to be fed into his interviews:

There is no record that any MI5 officer became aware of the references to sleep deprivation until 2008 when the document was reviewed following searches made following MOHAMED's Judicial Review proceedings: the extensive police investigations were not able to establish whether the messages were read, or by whom. Our systems struggled to cope with the enormous increase in the volume of incoming material in the wake of 9/11.

*As a previous DG (Eliza Manningham-Buller) told the ISC in evidence, "we passed the Americans questions and photographs to put to him [MOHAMED], although we did not know where he was ... [This] is a case where with hindsight, we would regret not seeking proper full assurances, but I can understand how it happened [given the Service's knowledge at the time]."*¹⁴⁸

84. The judicial review of this case in 2008 found that there was no clear evidence that the officer carrying out the interview in Pakistan was aware of the mistreatment beforehand. This Committee examined the issue in 2009, but at that time did not seek to explore fully whether the officer in question would have had time to see the telegrams before conducting the interview due to the case being before the Attorney General. The Committee did consider that in August and September 2002 MI5 knew that MOHAMED was being held by a foreign government other than the US, even if it did not know who:

¹⁴⁶ Operation Hinton concluded in January 2012 that, whilst there was sufficient evidence that MI5 supplied information about Binyam MOHAMED and questions for US authorities to put to him whilst he was detained between 2002 and 2004, and that he was held in Morocco for at least some of that time, there was insufficient evidence to bring criminal charges against an identifiable individual.

¹⁴⁷ Classified case summary prepared by the (Gibson) Detainee Inquiry.

¹⁴⁸ Written evidence – MI5, 6 April 2016.

*Despite the fact that the Service had no information on where Mr Mohamed was and therefore no information as to how he was being treated, on 25 October 2002 the Security Service nevertheless decided to provide the US with a significant amount of background information, detailed questions and photographs to be used in Mr Mohamed's interrogation.*¹⁴⁹

The case is discussed in full in our letter to the Prime Minister of 17 March 2009, previously unpublished, but included for the first time as Annex C to this Report.¹⁵⁰

CASE STUDY: DISCUSSION OF MISTREATMENT

BULLFINCH, a *** national, was captured at the start of February 2002 in SHREWSBURY in a joint ***–STAFFORD liaison service operation.

MI5 and SIS Head Offices were already aware of mistreatment of BULLFINCH from *** telegrams received during May 2002, which recorded his being ***.¹⁵¹ A senior officer in SIS discussed this telegram with a senior officer in MI5, who then complained directly to *** in June, noting that BULLFINCH's treatment would be viewed by the British courts as inhuman or degrading.¹⁵²

On *** June 2002, an MI5 Field Officer at APPLEBY discussed the treatment of BULLFINCH with another MI5 officer and ***. The officer noted that *** went briefly to look into the cage containing BULLFINCH and, returning, told the MI5 officers:

he was pleased because they must have started a new regime with BULLFINCH. He explained that when he saw him he was hooded and handcuffed to the outside cage, making it impossible for him to sit down. He also mentioned that he had gone through a period of sleep deprivation, and that previously he had had a bright light focused on his 'block' for an extended period.

The *** also commented “*that introducing such measures should ‘soften BULLFINCH up for the interview’*”.¹⁵³

In a separate account, the other MI5 officer present reported that, “*Having heard a description of the conditions in which BULLFINCH was being held ****, [he] said ‘*that’s torture, isn’t it?*’” to which *** “*replied: ****”.¹⁵⁴

Although MI5 Head Office had made an earlier complaint to *** about BULLFINCH's treatment, the officers did not report these subsequent conversations at the time – they only came to light in response to an MI5 attempt to collate allegations of mistreatment in July 2002.¹⁵⁵

¹⁴⁹ See Annex C of this Report, paragraphs 38, 49, 50. We note that the Metropolitan Police and the Crown Prosecution Service concluded in January 2012 that there was insufficient evidence to show that “*any identified individual member of the Security Service knew precisely where Mr Mohamed was being held*”. However, this is a rather narrower point than the conclusion reached by the Committee in its investigation.

¹⁵⁰ Letter from the ISC Chair to the Prime Minister, 17 March 2009: ‘Alleged complicity of the UK intelligence and security Agencies in torture or cruel, inhuman or degrading treatment’ (letter reporting the Committee's findings in respect of the allegations raised by Binyam MOHAMED).

¹⁵¹ SIS internal document.

¹⁵² Memorandum from a senior SIS officer to the MI5 director of international counter-terrorism, 30 May 2002; memorandum from the MI5 Director General to a senior SIS officer, 10 June 2002 (‘Treatment of BULLFINCH’).

¹⁵³ Formal MI5 internal correspondence, 3 July 2002 (‘Treatment of BULLFINCH in APPLEBY’).

¹⁵⁴ Formal MI5 internal correspondence (from a senior MI5 officer to an MI5 legal adviser), 6 November 2002 (‘Record of the treatment of detainees: ***’s LM of 2 September 2002’).

¹⁵⁵ Formal MI5 internal correspondence (from an MI5 investigative officer to a senior operations manager), 4 August 2004 (‘Treatment of detainees: questionnaire to interviewers’).

CASE STUDY: BRIEFING ON MISTREATMENT

In May 2002, a US official briefed SIS that Abu ZUBAYDAH (a Palestinian national) was being held in STIRLING. SIS became aware that he was being subjected to some harsh interrogation techniques, including sleep deprivation, and that it was considered that 98 per cent of US Special Forces would have broken if subject to the same conditions.¹⁵⁶

85. The case of Abu ZUBAYDAH shows direct awareness of extreme mistreatment – and, probable torture, given the view that 98 per cent of US Special Forces would have broken. However, the Agencies continued to send the CIA questions to be used in interrogations without seeking any assurances regarding ZUBAYDAH’s treatment in detention, until at least 2006.¹⁵⁷ According to the US Senate Select Committee on Intelligence report on the CIA detention and interrogation programme, released in 2014, during this period ZUBAYDAH was routinely subjected to treatment that, by UK standards, would be considered torture (including being ‘waterboarded’).¹⁵⁸

86. In addition to the case of ZUBAYDAH described above, Agency officers were on a number of other occasions informed in detail by a foreign liaison service about mistreatment. On *** January 2004, an SIS officer reported: “*Within the BIF the regime is arduous and detainees are conditioned through sleep deprivation and constant questioning by relays of interrogators.*” He reported information received from *** at the Battlefield Interrogation Facility (BIF) at Baghdad International Airport (BIAP) that “*detainees are threatened (although not attacked) with dogs; [as] the dogs terrify Iraqis*”. The report continues:

*The other regular sanction is the ‘dark room’. This is a blacked out room where detainees are exposed to strobe lighting and loud rock music to create a disorientating effect. They have a 30-pound weight tied around their neck and a guard makes them walk constantly around the room. Should they collapse, they are doused in water and revived; they then continue in the dark room. The temperature is varied between uncomfortable extremes.*¹⁵⁹

87. Indeed, the SIS officer proposed that individuals detained by UK Armed Forces should be put through this facility on the basis that it would generate intelligence that UK methods of interrogation would fail to elicit.¹⁶⁰ This (unacceptable) suggestion was countermanded by SIS Head Office on 12 January 2004, and involvement with the BIF was immediately suspended on the grounds that involvement in treatment such as that described above:

***¹⁶¹

88. Nevertheless, SIS did later re-engage with the BIF (on 23 January), following reassurance from the senior US Commander, General Sanchez, about the treatment of detainees.¹⁶²

¹⁵⁶ SIS message from STONEHAVEN Station to SIS Head Office, 2 May 2002; SIS message from STONEHAVEN Station to SIS Head Office, 16 May 2002; classified reports of MI5’s 2009 internal detainee-related records review (2009).

¹⁵⁷ Classified reports of MI5’s 2009 internal detainee-related records review (2009).

¹⁵⁸ US Senate Select Committee on Intelligence, executive summary in *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* (Senate Report 113-288) (2014).

¹⁵⁹ SIS internal correspondence, *** January 2004.

¹⁶⁰ SIS internal correspondence, *** January 2004. ***.

¹⁶¹ ***

¹⁶² SIS submission to the Foreign Secretary (unknown date). ***.

Discussions amongst the deployed UK officers

89. We questioned whether the mistreatment of detainees was discussed amongst deployed UK personnel. At any one time, around ten officers might have been co-located and such discussions might be thought to be inevitable. However, we have found only one documented instance.

CASE STUDY:

UK OFFICERS' DISCUSSION OF MISTREATMENT

In *** 2003, a GCHQ officer was based at an SIS Station in Iraq for approximately six weeks. He was responsible for installing technical infrastructure ***.

In 2009, the officer recalled the discussions he had with an SIS officer based at the Station.¹⁶³ He wrote:

Most conversations took place in the kitchen around the evening meal ... One evening I raised the issue of the US troops transporting detainees whilst hooded, which I had witnessed that day, as I thought this to be against the Geneva Convention. This led to a number of conversations in particular with an SIS Officer 'EDISON' ... During this conversation, and one or two shorter conversations over the next couple of days, EDISON commented on techniques used by the US authorities to obtain information from detainees at TAUNTON. Methods included:

- Stress Positions*
- Deprivation (of food/water/sleep)*
- Use of menstrual blood (although mentioned, I am unable to confirm if the SIS officers concerned was aware of it's [sic] use in TAUNTON or just in Iraq generically)*
- Prevention of conducting their religion (through not making the detainee aware of time/compass direction and the interruption of prayer)*

I commented that a 'Stick and no carrot' approach was unlikely to work, but EDISON intimated that there could be no carrot, which I took in context to mean this was a US administration policy.

EDISON confirmed that she was able to task the US interrogators with questions for the detainees and she was aware that the above mentioned interrogation techniques were being used on these same detainees. EDISON stated she was never a direct witness to any interrogation techniques being used apart from direct questioning.

In his account, the officer noted that, although he was “confident other Station staff were present at these conversations”, he was “unable to remember which staff and when although there appeared to be a general knowledge of the issues”.¹⁶⁴

¹⁶³ The code word EDISON has been substituted for the SIS officer mentioned in this case study. The name by which the SIS officer was known to the GCHQ officer was ***.

¹⁶⁴ GCHQ written evidence to the (Gibson) Detainee Inquiry (2012).

GCHQ passed this account to SIS and SIS was able to identify the officer who had been using the alias 'EDISON' in Baghdad at that time. SIS confirmed that she had been asked about her experiences as part of a 2004 internal SIS survey of staff who had had involvement in the interviewing of detainees.¹⁶⁵ SIS informed GCHQ that the recently completed 2009 internal file review had “*uncovered no documentary evidence that the interviews carried out by 'EDISON' at that time involved detainees whom she specifically knew to have been the subject of mistreatment (as it was then understood)*”.¹⁶⁶

Head Office realisation: 2002–2004

(i) Public domain

90. Throughout this period, allegations of mistreatment, principally by the US, continued to emerge on a regular basis in the media and through the UN and human rights NGOs (such as Amnesty International, Liberty and Reprieve).¹⁶⁷ As early as 2002, questions were being asked of Ministers. Taking just January and February 2002 as a representative sample, questions on detainee issues and Guantanamo Bay were asked in Parliament on 17, 24 and 28 January, and 4, 6, 7, 11, 21 and 26 February.

91. SIS and MI5 Head Offices should have been aware of the public reporting of detainee mistreatment and the questions being put to Ministers, but they apparently failed to make any connection to the US Agency briefings they had received in 2001. The Chief of SIS was asked in detail about this when he gave evidence to the Committee and the following quotes summarise his responses – none of which indicated that he drew any connection between the detainee mistreatment that had been witnessed and was reported publicly, and the original US Agency briefings:

what you have got is us seeing these what, in our mind, were anomalies, ... repeating themselves and then being compounded by some of the public stuff engendering a sort of proper realisation that the Americans were on a different page to us. ...

you would want to know why it takes external stuff to prompt us. I think that would be the spirit of your question ...

I think your implication is we have a reputational risk because now the public understands something we already understand. I see no evidence that that is the case. ...

*we issued guidance, that guidance will have been developed. It was clearly in response to what we were seeing both on our channels and publicly.*¹⁶⁸

92. That the Agencies should have made a connection to the US Agency briefings they received in 2001 is supported by a recent judgment of the European Court of Human Rights

¹⁶⁵ A letter sent from SIS to GCHQ in February 2010 about the GCHQ officer's account does not confirm whether or not EDISON actually responded to the survey. The various surveys are discussed further in Chapter 7, 'HMG response'.

¹⁶⁶ GCHQ written evidence to the (Gibson) Detainee Inquiry (2012).

¹⁶⁷ For example, in February 2003, the UN Commission on Human Rights received reports concerning mistreatment of US detainees which it reported to the General Assembly.

¹⁶⁸ Oral evidence – SIS, 28 January 2016.

which found that Poland “ought to have known” from early 2002 that detainees held at a CIA ‘black site’ operated on its territory were at serious risk of mistreatment, given public reporting circulating at the time. The judgment states:

*already between January 2002 and August 2003 numerous public sources were consistently reporting ill treatment and abuse to which captured terrorist subjects were subjected in US custody in different places. Moreover in the Parliamentary Assembly of the Council of Europe (PACE) Resolution adopted in June 2003 – of which Poland, as any other Contracting State was aware – PACE was ‘deeply concerned at the conditions of detention’ of captured ‘unlawful combatants’ held in the custody of the US authorities. ... Consequently there were good reasons to believe that a person in US custody under the [High Value Detainee] programme could be exposed to a serious risk of treatment contrary to the principles [of the European Convention on Human Rights].*¹⁶⁹

However, SIS has told the Committee:

there was no systematic coverage of the US media, through which some of the practices used by the US military and CIA came to light. We had better visibility of stories carried in the UK media, which during this period often focused on British nationals in Guantanamo. The record is unclear about the extent to which allegations of mistreatment carried in such reporting were viewed as credible.

It is true that we were working closely with the Americans, but it is important to remember that at this time: (a) our expectations were that the US would act on the same base of values as us; (b) the US Government’s stance, in private as well as public, was that detainees in US custody in Afghanistan and Guantanamo were being and would continue to be treated properly; and (c) FCO and MI5 officers who visited British detainees in Guantanamo in early 2002 reported that they had seen no signs of physical mistreatment and that the detainees had made no complaints of ill-treatment.

*In any event, it is our understanding that the European Court of Human Rights took into consideration a broader range of material than public reporting in reaching its conclusions in [this case].*¹⁷⁰

(ii) Reporting from deployed personnel

93. Reports of mistreatment were quick to start coming through from the field, at around the same time that reports of mistreatment of detainees in US custody began to emerge into the public domain. As early as 11 January 2002, SIS issued guidance to some of its Field Officers in reaction to an SIS officer witnessing the arrival in Bagram and initial processing of PINTAIL, as discussed above.

¹⁶⁹ Judgment of the European Court of Human Rights in *Al Nashiri v. Poland* (Application 28761/11), 24 July 2014, paragraph 441. The Court found that the Polish Government had breached detainees’ rights under Articles 3, 5, 8 and 13 of the ECHR by allowing the US to operate a ‘black’ detention facility, at which they were held, on its territory. The Court held that it was unreasonable to argue that the Poles had no reasonable cause for concern about the treatment regime at the CIA facility.

¹⁷⁰ Written evidence – SIS, 21 January 2016.

94. MI5 requested that this guidance was also copied to its officers at Bagram – which it was.¹⁷¹ The provision of guidance demonstrates that both organisations were aware of mistreatment and that they were sufficiently concerned to consider it necessary to take steps to avoid liability. This is reinforced by evidence given to us by a former MI5 member of staff about a briefing in early 2002 by two officers returning from Guantanamo Bay.¹⁷² This briefing is not mentioned in any of the evidence given by MI5 itself to the Committee. We were told that around 20 to 30 MI5 officers attended the presentation and the two officers:

*were talking specifically about witnessing American mistreatment of detainees and they were, ... sufficiently concerned to express that concern to the audience, that that is what they had witnessed, ... The only thing that sticks in my mind about it was use of manacles on arms and legs and hoods and general mistreatment.*¹⁷³

95. The former MI5 member of staff felt that the two officers were concerned by what they had seen and thought that they should have said something to the US detaining officers, but that they had very little leverage given that they were visiting a US detention facility:¹⁷⁴

*In relation to that briefing, they made it clear that they were in Guantanamo because of the invitation by the Americans, and they felt constrained by that. So, although it caused them concern, they didn't feel there was anything they could do about it, because if they said anything or intervened, they would be kicked off the base and sent home.*¹⁷⁵

Asked what the audience made of the presentation, the former MI5 member of staff told us:

*I got the impression, ... that it probably divided opinion. Some people thought it was a necessary means to an end and some people thought it was quite alarming.*¹⁷⁶

Had we interviewed other officers, we would have sought further recollections of this presentation.¹⁷⁷

(iii) 'Joining the dots'

96. From the evidence we have seen and heard, it is undeniable that the UK Agencies at Head Office level were aware of reports that some detainees held by the US had been mistreated. The fact that MI5 felt the need to carry out a review of officers' awareness of mistreatment in July 2002 indicates that it was acknowledged as a potential issue by that point. However, the overall outcome of the review – only two incidents reported: BEGG and CUCKOO – could explain MI5's subsequent lack of substantive action.

¹⁷¹ SIS message from Head Office to an overseas posted unit, 11 January 2002.

¹⁷² In January 2016, the ISC received a letter from MI5 notifying us that a former employee of MI5 had written to seek authorisation to give evidence to the Detainee Inquiry. He gave evidence to the Committee in 2016.

¹⁷³ Oral evidence – the former MI5 member of staff, 7 July 2016.

¹⁷⁴ Summary of proposed statement of evidence – the former MI5 member of staff, 29 June 2016; oral evidence – the former MI5 member of staff, 7 July 2016.

¹⁷⁵ Oral evidence – the former MI5 member of staff, 7 July 2016.

¹⁷⁶ Ibid.

¹⁷⁷ MI5 responded that these are the recollections, many years on, of a single former member of staff who was not central to the work in question.

97. There are 38 cases in 2002 alone of officers witnessing or hearing about mistreatment (that we have found up until this point in our Inquiry).¹⁷⁸ The Agencies argue that these were ‘isolated incidents’. They may have been isolated incidents to an individual officer. However, the 38 cases reported to Head Office cannot be considered ‘isolated’ when taken together.

98. The combination of high-level briefings from the US in September 2001, the individual cases of mistreatment and rendition being reported to senior managers in January 2002, and the media reporting of torture, mistreatment and rendition in January/February 2002, make it difficult to comprehend how those at the top of the office did not recognise the pattern of mistreatment by the US.

99. SIS gave a number of reasons to explain why it was unaware of the mistreatment of detainees (as opposed to ignoring it), including:

There was no central point in SIS pulling the pieces together to create a single appreciation of how the US was implementing the Presidential Finding and Presidential Military Order of late 2001.

Not all of the 45 instances cited by [Sir Peter Gibson’s] Inquiry would have been viewed as reports of mistreatment at the time. Some were, but were considered isolated incidents. ...

We knew that some of our essential liaison partners were unlikely to practise the same standards as us when handling detainees, but hard [information] was not easy to come by on their actual practice and we were neither tasked nor resourced (at a time of unprecedented pressure on our staff) to provide analyses of this.

*It was never our policy to collaborate with a liaison partner on a case where we believed the individual concerned would be mistreated as a result of our engagement.*¹⁷⁹

Nevertheless, in his evidence to the ISC, the Chief of SIS acknowledged the Agency’s slow recognition of the emerging pattern of mistreatment of detainees:

*with hindsight we should have seen this quicker, but I think the data points [cases of mistreatment] were seen in isolation and ... I don’t think we had the capacity structurally to step back or structurally to put this information together and intellectually to step back in this really febrile environment. ...*¹⁸⁰

[T]here was an assumption prevailing that the US would be behaving lawfully. Nothing in our previous experience before 2001 had led us to doubt that. You know, we’d worked for a long time with the CIA and we’d not seen them in this new mode and we didn’t understand what had changed in the US approach. There was a misunderstanding of what CIDT constituted, and I think that was at the core of the issue ...

¹⁷⁸ Based on ISC analysis of the documentary evidence provided by HMG.

¹⁷⁹ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

¹⁸⁰ Oral evidence – SIS, 10 December 2015.

*I think that all added up to an institutional inability to join the dots up. So where we saw stuff going on, it was essentially and for too long viewed as isolated and wasn't joined up in the service's mind in a way that of course we would want it to be now. ...*¹⁸¹

*[I]t is not that we are talking about there being a light bulb moment but there is stuff that happens in 2004 that certainly seriously challenges the assumption that had prevailed to then that the Americans were operating on our rules and our values, and that you can link to the improved guidance that issues in that time.*¹⁸²

100. GCHQ gave us a similar description of its gradual realisation, also citing 2004 as a key juncture – and noting in particular the lack of understanding as to how GCHQ's capabilities were involved:

I think that picture changed and became clearer in those early years. I think probably we did take that view [that the US did not mistreat detainees] to start with and it wasn't an unreasonable assumption earlier and it's one that we would still hold, actually, with our own partner, the NSA [National Security Agency]. We didn't know what the CIA was doing, I think, individually or collectively. So I think it did grow over time and there was realisation, I guess, that they weren't behaving as you described, as we would have expected our closest ally. ...

*I think there is a separate story that goes along with that which is how our understanding of the sorts of capabilities we were developing at the time could actually deliver *** and those capabilities grew at that timeframe. ***....*

*it's quite hard to understand at what point there was real evidence as opposed to worries about things and I don't think we were tripping over any evidence to actually force that earlier than 2004/2005.*¹⁸³

101. In contrast, MI5 does not accept 2004 as being the point of any sort of realisation, and suggests that recognition came later for it, with the public admissions from the US Administration:

There was no light bulb moment ... but there was a gradual evolution of our awareness as the picture from intelligence and public discourse developed and our policy and operational approach developed along with it. I have not done this, but you could almost sort of draw parallel timelines of things we were learning at what time, the dots as it were, and how we responded. ...

we responded from the beginning to what we thought at the time were isolated incidents of mistreatment. ... To try to get a bit more clarity about the time of when did we start to tip into knowing, by mid-2005 we had started to push for, ... and develop much more detailed joint guidance with SIS. ... It then was finalised in 2006 and adopted then. ...

¹⁸¹ Oral evidence – SIS, 3 December 2015.

¹⁸² Oral evidence – SIS, 28 January 2016.

¹⁸³ Oral evidence – GCHQ, 19 May 2016.

*It was not until September 2006 when the US publicly acknowledged the term that they used in their own guidance, 'Enhanced Interrogation Techniques'. Then it was not until 2008 that there was explicit acknowledgement of use of waterboarding, ... Then, finally, it was not until late 2014, when the Senate Inquiry's Report was produced, that the full scale of what had been going on was made clear. So there was a sort of progressive revelation that has gone on through that time.*¹⁸⁴

MI5 does nevertheless accept that “we could have done a better job of joining these dots earlier. I think that ... view ... is inescapable, looking at all of the material”.¹⁸⁵

102. The former MI5 member of staff we spoke to told us that he thought MI5 had a fixed view on these matters: that gathering intelligence and preventing further attacks were the main priorities and whilst concerns over legality were important, those would have to wait. In his opinion, while there were concerns about US treatment at the time, for MI5 the first priority was to get the job done, and then to think about the moral and ethical dilemmas in slower time.¹⁸⁶

103. Similarly, the former SIS officer we spoke to suggested that, at the time of his deployment to Baghdad in January 2005, it was well known amongst SIS officers that the US had taken an aggressive and controversial path in relation to detainees. He told the Committee that, as the US “embraced torture as a methodology”, SIS chose to “find a way to deal with it and work as best they could”¹⁸⁷ and that “there were certainly SIS officers who felt that we should sort of go all the way and basically, you know, ‘do whatever it takes’”.¹⁸⁸

104. In particular, he suggested that SIS senior staff were cautious about expressing a view that could be “pinned on them” and gave a clear steer that they should be close to the US: “all very difficult but worth it”.¹⁸⁹ He also told us:

*some people, perhaps to this day but certainly at that time, felt that the gloves were off and there was this sort of argument that ... the UK, needed to be much more sort of aggressive in our approach on these issues. ... I think that there was also this sense that we would lose our standing with the Americans if we weren't aligned with them on this. And obviously, for a lot of people – perhaps for more senior people notably – professionally that was unrewarding, so, therefore ... you wouldn't raise those concerns perhaps.*¹⁹⁰

105. We had envisaged taking evidence from those who were on the ground at the time on both the approach and the atmosphere. These, clearly, are key to understanding the actions and behaviours evidenced in the written material. While we have heard from the current Heads of the Agencies about the sense of threat and relentless pressure, this is – inevitably – hearsay and no substitute for hearing from those who were there. It is therefore very much to the detriment of this aspect of our Inquiry that we were denied access to those officers. While circumstances cannot excuse what happened, they may have helped to explain it to those of us now operating with the benefit of hindsight.

¹⁸⁴ Oral evidence – MI5, 9 March 2016.

¹⁸⁵ Oral evidence – MI5, 3 March 2016.

¹⁸⁶ Summary of proposed statement of evidence – the former MI5 member of staff, 29 June 2016.

¹⁸⁷ Summary of proposed statement of evidence – the former SIS officer, 29 June 2016.

¹⁸⁸ Oral evidence – the former SIS officer, 14 July 2016.

¹⁸⁹ Summary of proposed statement of evidence – the former SIS officer, 29 June 2016.

¹⁹⁰ Oral evidence – the former SIS officer, 14 July 2016.

I. The Committee understands that the pace of work in the months following 11 September 2001, both in Afghanistan and London, was frenetic. Both deployed personnel and Head Offices were under very significant pressure, and the priority was to prevent another attack on the scale of 9/11. Nevertheless, we are puzzled as to how those at the top of the office failed to ‘join the dots’ sooner in terms of the systematic abuse of detainees that was taking place. We question how many ‘anomalies repeating themselves’ it takes to realise that what you are seeing is not an anomaly.

J. That being said, we have found no ‘smoking gun’ in the primary material to indicate that the Agencies deliberately overlooked reports of mistreatment and rendition by the US as a matter of institutional policy.

6. ACTION WHICH MAY HAVE LED INDIRECTLY TO MISTREATMENT

Passing and receiving information and intelligence

106. Previous reports by the Committee have set out the need for the UK Agencies to work with other countries and share intelligence in order to counter the threat from international terrorism, and we do not revisit those rationales here.¹⁹¹ Post 9/11, the Agencies shared an unprecedented amount of intelligence with foreign liaison services to facilitate the capture of detainees. They also shared information to assist in interrogations (for example, when someone had lived in the UK previously and the Agencies had useful ‘background’). Specific questions were also passed to be put to detainees. Given the number of detainees, their location around the world, time pressures and often simply because they were denied access, the Agencies could not always interview detainees themselves. Therefore, they often passed any questions they wished to put to a detainee to the detaining authority (for example, the CIA) for them to put to the detainee on the UK’s behalf. The UK Agencies also received the product of interrogations by liaison services.

107. The passing of questions and intelligence between the Agencies (and Defence Intelligence) and foreign liaison services was primarily carried out by Desk Officers based at Head Offices in London (and in some cases SIS Stations). Some exchanges concerned detainees whom the Agencies had interviewed themselves (and so had first-hand knowledge of the detention conditions). However, in other cases, the Agencies had not seen the individual concerned, or in some cases even where they were being detained; therefore they were unable to assess whether detainees were being mistreated.¹⁹² That the UK fed in questions to interviews, despite not knowing where the individuals were or how they were being treated (and some were being held incommunicado, which is in itself a form of mistreatment), could be considered by some as implicitly condoning any mistreatment.

108. This could potentially have been mitigated through the use of assurances: when exchanging intelligence with a liaison service, the Agencies may seek an assurance that the liaison service will not then use the intelligence to commit an illegal act (in which the UK might then be implicated). In the case of detainees or potential detainees, the Agencies could, for example, ask the liaison service for assurances as to the treatment of that individual.

(i) Passing intelligence when mistreatment was known or suspected

109. We have seen from the primary material that, in some cases, when SIS and MI5 became aware that a detainee had been or was being mistreated, they disengaged and did not pass further intelligence. However, there are also cases where they continued to supply questions

¹⁹¹ These reports include, for example, this Committee’s *Rendition* Report published in July 2007 in which we note: “We have been told by all three Agency Heads that their intelligence-sharing relationships with foreign liaison services are vital to counter the threat from international terrorism. The U.S. link is the most important, not least because of the resources the U.S. agencies command.”

¹⁹² Not until 2006 did the US acknowledge that some individuals were designated ‘High Value Detainees’ and held at secret locations abroad, referred to by the CIA as ‘black sites’. For example, a report by the US Senate Select Committee on Intelligence in 2014 states that it was at these sites that the CIA employed the more extreme elements of their ‘Enhanced Interrogation Techniques’, such as ‘waterboarding’.

or intelligence to liaison services when mistreatment was known or suspected (or should have been suspected).

- From the primary material we have found 232 cases recorded where it appears that UK personnel continued to supply questions or intelligence to liaison services after they knew or suspected (or, in our view, should have suspected) that a detainee had been or was being mistreated.

CASE STUDY:

QUESTIONS PASSED DESPITE SUSPECTED MISTREATMENT

GREENFINCH and LINNET, *** nationals, had been rendered to DORNOCH from DORCHESTER in August 2002.

SIS did not seek assurances from DORNOCH in relation to the treatment of these detainees, despite having been informed that GREENFINCH had initially resisted the DORNOCH questioning, but “*when they got ‘tougher’ he began to respond*”.¹⁹³ SIS was also aware that the DORNOCH human rights record was so poor that the UK was prohibited from sending Islamic extremist suspects to DORNOCH for fear of mistreatment.¹⁹⁴ SIS nevertheless fed questions into the DORNOCH liaison service for the questioning of GREENFINCH and later LINNET.

110. SIS acknowledges that, in this period, there were “*a small number of cases ... which on the face of the documents would now give rise to concerns if today’s criteria and policy were applied*” although “*Each case has its own individual circumstances and the full facts cannot be established from documents alone*”.¹⁹⁵ However, SIS also told us:

*on the issue of countries ... like DORNOCH or, say, TRURO, where of course we knew that we have had historical relationships with countries ... that ... had standards that were lower than our own ... because these were essentially US-owned operations and US-mediated transfers or detentions, again, our assumption would have been that the US would have prevailed, asserted their own framework of value and law over these operations. So I think that was the assumption that was operating at the time.*¹⁹⁶

(ii) Passing intelligence when the location was not known

111. Amongst the 232 cases where it appears that questions or intelligence were supplied to liaison services when mistreatment was known or suspected, there are occasions where SIS and MI5 supplied questions or intelligence for use in the questioning of detainees despite not knowing where the detainee was being held, and whether the detention was lawful.

¹⁹³ SIS message from LANCASTER Station to SIS Head Office, *** August 2002.

¹⁹⁴ *** noted this prohibition: ***.

¹⁹⁵ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

¹⁹⁶ Oral evidence – SIS, 10 December 2015.

‘Black sites’ and High Value Detainees

The CIA’s ‘black sites’ were secret detention facilities around the world, outside the US legal system. The first person to be detained in such a facility, according to the US Senate Select Committee on Intelligence report released in 2014, was Abu ZUBAYDAH (considered in Chapter 5, ‘Awareness of mistreatment’).¹⁹⁷

The US denied the existence of these facilities at the time and, even since admitting the ‘black sites’ programme in 2006, has never confirmed the location of the sites.¹⁹⁸ However, the European Court of Human Rights determined in 2014 that there was a ‘black site’ in Poland.¹⁹⁹

The secrecy surrounding these sites meant that they were not visited by international welfare organisations, such as the International Committee of the Red Cross, and treatment standards were not monitored. It is clear from material emerging through, for example, the US Senate Select Committee on Intelligence report, that it was at these sites that the CIA employed the more extreme elements of their ‘Enhanced Interrogation Techniques’, such as waterboarding.

112. SIS clearly knew about the existence of ‘black sites’: an SIS email in November 2003 refers to a *** conversation with a senior SIS officer in which it is said that “[the *** officer’s] conversations with [the senior SIS officer] implied that *** do not regard FIELDFARE as a big enough fish to warrant rendition to *** ‘black’ facilities”.²⁰⁰ However, SIS said that it took it on trust that such detentions were lawful:

*There was a general assumption at the outset that responsibility for ensuring the legality of detentions lay with the detaining authorities and that liaison partners, notably the US, operated lawfully according to their own jurisdictions.*²⁰¹

SIS appears to have failed to give any consideration in this period as to whether secret detention – or any unlawful detention or lack of access to due process – could, in itself, be a form of mistreatment.

113. In relation to ‘black sites’, MI5 says that it was 2004 before it was “*aware that the US was transferring some detainees to detention facilities about which we knew only that they were in third countries*”.²⁰² However, MI5’s own internal review of mistreatment claims in late 2002 shows that it already knew that “*the Americans have taken big fish they have caught to other centres where the chances of complaint from allied representatives are slight*”.²⁰³

¹⁹⁷ US Senate Select Committee on Intelligence, executive summary in *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* (Senate Report 113-288) (2014), pages 14, 22 (see the Glossary at Annex F for a note on cited page locations).

¹⁹⁸ The locations of these ‘black sites’ were redacted from the US Senate Select Committee on Intelligence report.

¹⁹⁹ *Al Nashiri v. Poland* (Application 28761/11), 24 July 2014. Prior to this, for example, in November 2005, Human Rights Watch cited circumstantial evidence (flight logs and patterns) pointing to Poland and Romania hosting CIA ‘black’ facilities. The same claim was made in 2006 and 2007 by Senator Dick Marty, a Swiss member of the Parliamentary Assembly of the Council of Europe, that High Value Detainees were held in secret CIA prisons in Poland and Romania.

²⁰⁰ SIS message from Head Office to WELSHPOOL and WICK Stations, and MI5 headquarters, 4 November 2003.

²⁰¹ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

²⁰² Written evidence – MI5, 30 October 2014.

²⁰³ Formal MI5 internal correspondence (from a senior MI5 officer to an MI5 legal adviser), 6 November 2002 (‘Record of the treatment of detainees: ***’s LM of 2 September 2002’).

CASE STUDY: UNKNOWN DETENTION LOCATION

Khalid Sheikh MOHAMMED (KSM), a Kuwaiti national who was one of the CIA's highest value targets, was captured on 1 March 2003.

Despite being unaware for several years of his whereabouts and therefore the conditions of his detention, both SIS and MI5 continued to supply questions to be put to KSM from *** until at least ***.²⁰⁴ During this period, according to a US Senate Select Committee on Intelligence report on the CIA detention and interrogation programme, he was routinely subjected to treatment that, by UK standards, would be considered torture (including being 'waterboarded').²⁰⁵

SIS was aware that he was being treated harshly in detention at an unknown location: a Cabinet Office Joint Intelligence Committee (JIC) representative was told by *** that *** interrogation techniques applied to KSM included sleep deprivation, although *** suggested that *** (which was communicated by *** to Head Office in March 2003).²⁰⁶ However, SIS supplied questions to *** without seeking any assurances regarding KSM's treatment.

The then Director General of MI5 was also aware that KSM was being detained in an unknown location (as is evident from a letter she wrote to the Home Office Permanent Secretary setting out details of ***), yet MI5 both fed in questions for his interrogation and received intelligence from those interrogations.²⁰⁷

In April 2012, GCHQ evidence to the Gibson Detainee Inquiry noted that a request was received in March 2003 from the CIA for questions to be put to KSM based on GCHQ intelligence, which was approved.²⁰⁸

114. In relation to its involvement in this case, GCHQ told the Committee that:

*On 25 March 2003, GCHQ received ***. This Action On is in essence, an 'equity check' and as per the processes in place at that time it was approved on the basis that ***. At this time, GCHQ would have had no knowledge or belief of the possible unlawfulness of KSM's detention or treatment, and therefore did not consider any associated legal risks in approving this request.*²⁰⁹

K. The Agencies failed to consider whether it was appropriate to pass intelligence about a detainee to the detaining authority where mistreatment was known or reasonably suspected.

L. The Agencies failed to recognise that secret detention is, in and of itself, a form of mistreatment.

²⁰⁴ Letter from an MI5 junior officer to the (Gibson) Detainee Inquiry secretariat, 13 January 2012 ('Khalid Shaykh Mohammed @ KSM'); classified reports of MI5's 2009 internal detainee-related records review (2009).

²⁰⁵ US Senate Select Committee on Intelligence, executive summary in *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* (Senate Report 113-288) (2014), page 88.

²⁰⁶ SIS message from ARMAGH Station to SIS Head Office, *** March 2003.

²⁰⁷ Letter from the MI5 Director General to the Permanent Secretary at the Home Office, 13 March 2003 ('Khalid Sheikh Muhammed: ***'); MI5 outgoing telegram message, 'Operation BLUE: Questions for Khalid Sheikh Muhammed', 30 June 2003. 'BLUE' is a code word we have substituted for the actual code name of this operation, which was Operation ***.

²⁰⁸ GCHQ written evidence to the (Gibson) Detainee Inquiry (2012).

²⁰⁹ Written evidence – GCHQ, 16 May 2016.

(iii) Receiving intelligence

115. SIS and MI5 received information obtained by liaison services from interviews with detainees (and not only in the cases where they had supplied questions). There are cases in the documents seen by the Committee where the Agencies received intelligence obtained from detainees whom they knew had been subject to mistreatment.²¹⁰ In other instances, they received intelligence reporting which was known to have been obtained from a detainee, but with no indication as to how the detainee had been treated. By way of context, SIS told us that *“from July 2003 to the end of May 2004 we received approximately 16,500 [US] reports, about half of them [counter-terrorism]-related. Approximately 2,800 of them were based on detainee reporting.”*²¹¹

- From the primary material, we have found 198 cases recorded where UK personnel received intelligence from liaison services obtained from detainees whom they knew had been mistreated, or with no indication as to how the detainee had been treated but where, in our view, they should have suspected mistreatment.

CASE STUDY:**INFORMATION RECEIVED DESPITE KNOWLEDGE OF MISTREATMENT**

FULMAR, a DUMBARTON citizen, was an Al Qaida operative in GLOUCESTER who had been rendered (with the Agencies’ knowledge) to Afghanistan and detained between May 2002 and June 2003.

SIS continued to receive intelligence reports from *** from FULMAR’s debriefing, despite being told by an *** intelligence officer that *“FULMAR had been on sleep deprivation and red-light for almost two months”* and was being *“led to believe that he was due to face the death penalty”*.²¹²

GCHQ and Defence Intelligence

116. While the focus in relation to detainees has been on SIS and MI5, when considering complicity due to the passing and receipt of intelligence, GCHQ and Defence Intelligence were also potentially complicit in mistreatment, given their extensive sharing of intelligence with partners (in particular the US). Nevertheless, it appears to us that they failed to recognise that sharing intelligence with the US (and others) left them potentially complicit in mistreatment. GCHQ appears to have considered itself one step removed:

*I think the kind of intelligence sharing we were doing with the kind of partners we were working with, who were pretty much exclusively at that point SIGINT partners, ***; we are some way removed. So both in legal and in practical terms that means we would be unlikely to know what was actually happening at the end and there doesn’t seem to be any suggestion, indeed from all the material we’ve sent you, that the NSA themselves knew about mistreatment.*²¹³

²¹⁰ This includes cases where the Agencies knew that the individual had been physically mistreated and cases where the Agencies knew that the individual was being held incommunicado.

²¹¹ Written evidence – SIS, 21 January 2016.

²¹² Classified consolidated report of SIS and MI5’s 2012–14 internal reviews of detainee-related records (2014).

²¹³ Oral evidence – GCHQ, 19 May 2016.

117. In the context of policy discussions in November 2002 on support to *** (where the risks of sharing intelligence were recognised and management of them considered), there was also some discussion of the risks involved in sharing general background information. In this context, the risks were broadly dismissed on the grounds that it was not practical to try and predict what use might be made of the material. An internal note from the GCHQ Head of Operations Policy stated:

*the vast majority of intelligence we share with NSA falls into the category of general background information which could be used for any number of purposes. It is neither practical, desirable nor necessary from a policy point of view to attempt to second guess precise uses of this material – particularly in a fast moving *** environment where the information could be of critical value. So we do not envisage attempting to tailor or trim sharing of such general SIGINT with the US. ...*

The nature of the US – a democratic state with a broadly similar world-view to ours – gives us the general assurance that it is a nation with whom we can freely share information. Having said that, there are bound to be many areas of policy where UK and US approaches are not precisely aligned, where there is some difference of emphasis or even objective. That is a fact of life.

But it would not be possible to second-guess every area where a partner might use intelligence in a way not entirely consistent with UK policy.²¹⁴

118. GCHQ told us that it can, and does, refuse use of its material when requested by the CIA, and that the CIA, as far as it knows, has never abused this decision:

***²¹⁵

M. Even as recently as the beginning of this Inquiry, GCHQ still held that its part was peripheral. This despite the fact that it is by far the largest sharer of material with the US. It seems to us that GCHQ was in fact aware of the risks of large-scale sharing of information with the US but regarded it as neither practical, desirable nor necessary to second guess how that material might be used.

119. Defence Intelligence told the Committee that it shares intelligence with international partners on the basis of ‘mutual trust’. Unlike the Agencies, “*MOD would not normally expect the US to ask permission before acting on the intelligence provided to it*”. For example, during the lead-up to operations in Iraq in 2003, Defence Intelligence provided a list of some 5,000 personnel allegedly associated with the Iraqi Weapons of Mass Destruction programme to forces in the theatre of operation; this list was available to the US on a shared IT system. Defence Intelligence told the Committee that it “*cannot rule out that some of this information may have been used by the US for detention/rendition*”.²¹⁶

120. Defence Intelligence also informed lines of questioning of detainees by Defence Intelligence Subject Matter Experts. Defence Intelligence told the Committee:

²¹⁴ GCHQ internal correspondence, 6 December 2002.

²¹⁵ Oral evidence – GCHQ, 28 April 2016.

²¹⁶ Written evidence – MOD, 21 July 2017.

*As there was a common UK–US–Australian team in the ISG preparing lines of enquiry for the teams questioning Iraqi detainees we cannot rule out the possibility that the UK contributed to questions asked by US personnel. In addition, before hostilities began in Iraq DI gave information to the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) which may subsequently have been drawn upon by other parties for detention operations.*²¹⁷

121. Additionally, Defence Intelligence reported that it had found a small number of unsolicited US reports dating from May 2003 where:

*[we] judge that the information was obtained through methods involving the mistreatment of detainees. These reports were delivered within an extensive feed of multisource reporting from the US. The vast majority of the material in this feed ... did not originate from the interrogation of detainees.*²¹⁸

Defence Intelligence also told us that:

*some SIS reports from the period were caveated “we are unable to confirm the conditions under which the detainee is being held and interviewed, and therefore cannot discount the possibility that this information was obtained under duress”.*²¹⁹

122. When Defence Intelligence was asked whether it now appreciated that it may have indirectly contributed to, or implicitly condoned, the mistreatment of detainees by supplying intelligence (perhaps to locate a person subsequently detained) or questions that were put to a detainee who was subsequently mistreated, the response was far from clear:

The Department [MOD], including DI, is very clear that it does not condone the cruel, inhumane or degrading treatment of detainees.

*Where allegations of mistreatment have come to light MOD has investigated these thoroughly and promptly.*²²⁰

N. Defence Intelligence also appears to have failed to understand its potential involvement in mistreatment of detainees through the supply of intelligence.

Turning a blind eye in the interests of the broader relationship

123. Given that there is evidence that SIS and MI5 supplied and received intelligence relating to detainees whom they were aware were being mistreated, this could indicate that they were deliberately turning a blind eye so as not to damage the relationship (and risk the flow of intelligence); if the Agencies started raising concerns, the US could have refused UK officers access to the detainees and stopped passing on any intelligence they obtained. Given that detainees were a significant source of information regarding any possible attacks against the UK, this would have represented a significant loss of potentially vital intelligence.

²¹⁷ Written evidence – MOD, 21 July 2017.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

124. There are instances in the primary evidence where it is clear that the officer does not wish to raise treatment issues for fear of damaging the US–UK liaison relationship, and further instances where issues were raised but rather half-heartedly (the examples of PINTAIL and CUCKOO were discussed in Chapter 5, ‘Awareness of mistreatment’: the SIS officer who witnessed CUCKOO being driven to an aircraft in a six-foot sealed box was “*tempted to speak out against what [he] saw ... but did not*” and the SIS démarche to *** in relation to the treatment of CUCKOO was couched in overly gentle terms: “*it sounded as if his treatment might have fallen below the standard that we all agree to be appropriate*”).

125. SIS has identified that the organisation was “*too slow to develop ... policy of raising mistreatment issues with the detaining authority and of not pursuing interviews until satisfactory assurances had been given*” (a key factor in the CUCKOO case that SIS has acknowledged). SIS acknowledges that it should have realised sooner that the US was not behaving in a similar way to the UK in its approach to detainees, and asked the US more consistently to provide assurances. However, it also acknowledges that it “*continued to exchange intelligence and questions with liaisons without giving the consideration to the risks of mistreatment that current policy and guidance demands*”. SIS explained that this was because “*the risks around engaging in intelligence exchanges with liaisons who might mistreat detainees were ... not fully understood, and cross-Whitehall guidance on this was not formalised until 2006*”.²²¹

126. Nevertheless, SIS told the Committee that this did not mean that it was reluctant in principle to raise issues of concern with liaison partners. It rejected the suggestion that it was a balancing act and stated that, in some cases, raising issues would not have resulted in any improvement in treatment for the detainee anyway but might risk SIS’s continuing access to a vital source of intelligence for the protection of the UK.²²² This sounds very much like a balancing act, but SIS denies that this amounted to turning a blind eye – when the Chief of SIS gave evidence to the Committee we questioned him on this:

I have tried to put myself in the position of turning up in Bagram surrounded by thousands of [US personnel], and where they [the SIS Field Officers] need to, to some extent, use the quality of their relationship to remain engaged in a programme that we thought was absolutely vital for revealing threats, including to this country. So it is fair to say they would have been on their best behaviour. I think that they would also – and this is something I think that would have dominated me – they would also have been quite clear about the limits to their ability to change stuff. So, you know, actually, particularly in the environment which I have tried to bring to life, what would they actually have been able to do to alter the way the US were approaching things? So I suspect those two things will have been in people’s minds, yes. ...

*if that extended to ... an instruction that you must at all costs be nice to the Americans and tolerate everything, I have seen no evidence that that was a prevailing instruction or approach.*²²³

²²¹ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

²²² Written evidence – SIS, 30 October 2014. MI5 has not explicitly rejected this concept in the way that SIS has.

²²³ Oral evidence – SIS, 10 December 2015.

127. While MI5 acknowledges that it engaged with liaison services which might have been mistreating detainees without MI5's knowledge, it denies any engagement with foreign liaison services once treatment issues had been identified, saying that:

*where Security Service officers were aware of mistreatment there is good evidence throughout the example cases of the Security Service raising these issues (either with liaison partners directly or by encouraging SIS to do so).*²²⁴

*The Security Service has not identified any cases where it continued to engage inappropriately with liaison partners after the treatment issues of concern had been identified. ... Had we known at the time the full extent of liaison practices we would have considered the appropriateness of continuing engagement, both internally and with departments and Ministers.*²²⁵

128. MI5 does accept that, during this period, it identified some cases “in which MI5 did not seek specific assurances about treatment and lawfulness of detention for individuals who had been transferred to third countries (without our involvement) before engaging. We would now approach these cases differently”.²²⁶

129. However, it is clear from the documents the Committee has seen that MI5 held internal discussions from at least 2006 onwards about the criticism of US methods and allegations of extraordinary rendition, torture, cruel, inhuman or degrading treatment (CIDT), killings and ghost prisons, and therefore the legal and reputational risks to MI5 in continuing to co-operate with the US. MI5 assessed that the legal and reputational risks were low and the intelligence it was receiving was highly valuable and therefore worth the risk: “overall we judge that the positives we derive from intelligence co-operation with [the US authorities] clearly outweigh the negatives and that there is therefore a net benefit to national security in continuing the relationship.”²²⁷ When asked whether, with the benefit of hindsight, that conclusion was ill judged, the Director General of MI5 told the Committee that:

with what we know now, that that was not a full consideration that we could make at the time because we didn't have all the information that we have now. I think at the time that – that is quite a sort of nuclear question, isn't it? “Shall we have a relationship with the [US] or not?” But there are closer to home questions than that that we were considering during this time which led to the generation of guidance about, okay, so we have this relationship – it is true, and I would say, even with what with know now, we would still need a relationship with the [US]. We have one today, right, with all that we know but, back then, it was, well, how should this – what risks attach?

*I think what that shows in 2006 is that, ... we did at corporate level, at the executive board level, which is the Directors up to the DG, sit and have a reflection on what are the issues here, what are the risks, what are the things that we know, is it systematic, et cetera, but that took place before we had the first explicit mention by the Americans publicly about Enhanced Interrogation Techniques later that year.*²²⁸

²²⁴ Classified MI5 report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

²²⁵ Ibid.

²²⁶ Written evidence – MI5, 1 May 2015.

²²⁷ Classified MI5 internal document, ‘Review of benefits and risks associated with the Service's intelligence co-operation with ***’, 30 January 2006.

²²⁸ Oral evidence – MI5, 9 March 2016.

130. This was not unique to the Agencies. Their sponsoring Departments appear to have adopted the same approach. We heard evidence from a former FCO official, Craig Murray, who suggested that *“there was a deliberate policy of not committing the discussion on receipt of intelligence through torture to paper in the Foreign Office”*.²²⁹ In July 2004, when he was Ambassador to Tashkent, he raised concerns about the use of Uzbek intelligence derived from torture in a formal exchange of telegrams with the FCO. Mr Murray drew our attention to FCO documents from the same time, which we have seen, one of which referred to *“meetings to look at conditions of receipt of intelligence as a general issue”*. He told us that the meetings *“specifically discuss[ed] the receipt of intelligence under torture from Uzbekistan”*²³⁰ and *“were absolutely key to the formation of policy on extraordinary rendition and intelligence”*. Mr Murray told us that, when he had given evidence to the Foreign Affairs Select Committee about this, they sought the documents from the FCO which replied that the *“meetings were informal meetings and were not minuted”*. He went on to say:

the idea that you have regular meetings convened at director level, convened by the Director of Security and Intelligence, where you are discussing the receipt of intelligence from torture, and you do not minute those meetings is an impossibility, unless an actual decision or instruction not to minute the meetings has been given. ...

*Were it not for me and my bloody-mindedness, ... you would never know those meetings had happened. Nobody would ever know those meetings had happened.*²³¹

131. We note that we have not seen the minutes of these meetings either: this causes us great concern. Policy discussions on such an important issue should have been minuted. We support Mr Murray’s own conclusion that were it not for his actions these matters may never have come to light.

O. The evidence clearly suggests that the UK saw itself as the poor relation to the US, and was distinctly uncomfortable at the prospect of complaining to its host.

P. Whilst the Agencies say that they were not reluctant in principle to raise mistreatment with the US authorities, in practice this was inconsistent and might suggest that they were deliberately turning a blind eye. However, in our view, the evidence instead suggests a difficult balancing act, where the Agencies were a small player with limited access or influence.

²²⁹ Craig Murray was the British Ambassador to Uzbekistan from August 2002 to July 2004, during which time he raised concerns about the UK’s use of intelligence derived from torture. He had been in contact with the Gibson Detainee Inquiry, with a view to appearing as a witness. He contacted the ISC in August 2014 for the same purpose and gave evidence to the Committee in 2016.

²³⁰ Mr Murray gave the example of photos of a torture victim in Uzbekistan that he had sent to the FCO, which sent them to a Professor of Pathology at the University of Glasgow, who is said to have reported that the victim had been beaten about the face and neck, and eventually had died of immersion in boiling liquid.

²³¹ Oral evidence – the former FCO official, 20 October 2016; FCO telegram from the Director General, Defence and Intelligence, to the British Embassy in Tashkent, 22 July 2004 (‘Receipt of intelligence obtained under torture’).

7. HMG RESPONSE

132. We have discussed in the preceding chapters the factors which should have led to an awareness in the Agency Head Offices that detainees were being mistreated:

- Senior staff had been variously briefed by the US Agencies in September and October 2001 that the US Agencies had been directed to (in SIS's words) "*take the war against the terrorists to their sanctuaries*" and that the US Agencies had been "*empowered to conduct CT [counter-terrorism] operations including renditing*" – and, SIS believed, killing terrorists.²³²
- Deployed UK personnel began reporting back first-hand accounts of detainees being mistreated from at least the beginning of 2002. These personnel had, it appears, been involved in, witnessed or been told of mistreatment in at least 117 cases by 2004.
- From the beginning of 2004, the extent of public reporting made it impossible to ignore.

133. While it was not clear cut, 2004 certainly saw a demarcation of sorts: there was, finally, a dawning recognition of the problems. This chapter considers the extent to which the Agencies provided their staff with guidance and training on how to handle the new operating environment, the extent to which they briefed their Ministers as events unfolded during the critical 2004 period, and then how their actions changed after 2004, up until the publication of the *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees* in July 2010.²³³

Supporting staff: initial guidance and training

134. As previously set out, officers were deployed to Afghanistan, Guantanamo Bay and Iraq between 2001 and 2003. These deployments were not seen as unusual, in that the Agencies approached them as they would any intelligence-gathering exercise, and this may explain the lack of specific guidance and training given beforehand. With hindsight, SIS recognises that this was not standard intelligence-gathering, and that it had no significant experience of 'interrogating' detainees and was "*undertaking ... interviews of a completely different nature to anything they were trained for or that they were used to*".²³⁴ SIS accepts that it:

*had no training, no policy, and no guidance on conducting detainee interviews, and very little on operations leading to detention. Nor did we have much experience of dealing with liaison services on detainee matters. Our assumption was that responsibility for ensuring an individual was detained lawfully and treated in accordance with international standards rested solely with the detaining authority, generally the US. It proved to be more complex than that.*²³⁵

²³² SIS message from READING Station to SIS Head Office, 13 September 2001; SIS internal correspondence, 2 October 2001.

²³³ Events from 2010 until 2017 are considered further in our Report: ISC, *Detainee Mistreatment and Rendition: Current Issues*, 28 June 2018, HC 1114 (2017–19).

²³⁴ Oral evidence – SIS, 3 December 2015.

²³⁵ Letter from the Chief of SIS to the Prime Minister, 26 February 2014, regarding the SIS's response to the issues raised in: Sir Peter Gibson's 'Report of the Detainee Inquiry' (closed version), 2013.

135. Before deployment to Afghanistan in 2001, SIS says that its officers:

*were given no additional guidance or training on the treatment of detainees, interview techniques or obligations to intervene if mistreatment was observed. They were briefed on the importance of the Geneva Conventions, to which SIS assumed the US military and the US Agencies would be adhering.*²³⁶

MI5 told the Committee:

*What constitutes “guidance” is moot and the spectrum of information, advice (legal and policy) and policies capable of being described as “guidance” is broad. It ranges from a snippet of information imparted during an informal conversation to a rigorous and proscriptive set of procedures which have been promulgated formally throughout the Security Service. Such “guidance” relevant to the Detainee Inquiry was provided to Security Service officers in numerous ways: at oral briefings, both individually and at group meetings; in written communications by way of Loose Minutes (internally) and telegrams (externally); and through publication of formal policies on the Security Service intranet and the distribution of DG [Director General] Newsletters. Guidance was also provided at a variety of times: by officers responsible for the induction programme on joining the Service; by mentors and managers in the course of performing day to day duties; by specialist trainers on specific training courses; by senior management prior to deployment; and by legal advisers to senior management and officers on the ground.*²³⁷

136. MI5 cites (as pre-deployment guidance) a minute, dated 22 November 2001, of a meeting between MI5 and the Crown Prosecution Service regarding the questioning of detainees, in particular those held by UK Armed Forces, with reference to the legal implications for possible future prosecutions in the UK. The note says:

The situation in Afghanistan, which in legal terms is clearly an international armed conflict, with the Taliban having the obvious status of an enemy force, would militate towards treating prisoners as PW’s [Prisoners of War].

*Presuming that any prisoners taken by British Forces in Afghanistan are treated as PWs they will be afforded the protection of the third Geneva Convention. Article 17 of the Convention governs the “interrogation” of prisoners. PWs cannot be compelled to provide any information other than name, rank and number to the force that has captured them. They can be questioned for any other purpose, but they must not be coerced or forced in any way.*²³⁸

However, this minute was addressed to just one officer, and MI5 has been unable to ascertain how many officers who deployed to Afghanistan actually saw it. It cannot therefore be considered to be formally issued guidance. Nevertheless, MI5 told us that:

²³⁶ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

²³⁷ MI5 written evidence to the (Gibson) Detainee Inquiry on relevant guidance available to Security Service staff (2011).

²³⁸ Formal MI5 internal correspondence (from a senior legal adviser to a senior operations manager), 22 November 2001 (‘Questioning of detained persons: Operation Enduring Freedom’).

before any officers were deployed, they were briefed by their management on what the purpose was, what to do, how to set about it, as well as on Geneva Convention and other standards, the relevant standards.

When we asked in 2004 the person in charge, what was it you actually briefed, it was, as follows:

“Interviews must be free from pressure or coercion, not involve any inhumane or degrading treatment. [And that] Staff should withdraw if they consider the interview regime to be unacceptably harsh or unreasonable.”²³⁹

137. We do not find this lack of specific guidance and training particularly surprising; these were senior and experienced officers being deployed, who were trained in intelligence-gathering. However, by 2002, when officers were deployed to Guantanamo Bay, it appears that there had been at least 55 cases where UK personnel had been involved in, witnessed or been told of mistreatment. SIS and MI5 state that oral briefings – based on discussions between SIS and MI5 legal advisers – were given to staff being deployed to Guantanamo and that these were subsequently converted into written guidance which was issued on 23 April 2002.²⁴⁰ It stated:

*As discussed with [the SIS officer] prior to his departure to GITMO ***: it is useful to summarise briefly the legal issues concerning our participation in the detainee interview programme. These are as follows; and have been agreed with Security Service legal advisers, to whom we have copied this telegram ...*

In the [SIS and Security Service] joint submission to Ministers we stated that “There has been no evidence that the detainees have suffered any mistreatment while in custody. But as has been the practice in Afghanistan, SIS and Security Service officers [will] record each detainee’s physical and mental condition before beginning each interview”. ... If the detainee makes a complaint of mistreatment this should be noted and passed to the US authorities promptly.

In the submission we also state that “in the unlikely event of witnessing any apparent mistreatment [by US guards] or its consequences, the SIS and Security Service officers would ensure that they register their concern with the US authorities at the earliest opportunity”. Any such event should be recorded in as simple and factual a manner as possible, together with factual details of the action taken to report the incident. Head Office should be informed at once. No further interviewing of the detainee affected should proceed without first confirming with the detainee that he is willing to be questioned and understands that he is under no duress to agree (this differs from the usual approach described ... above, but becomes necessary following any incident of mistreatment).²⁴¹

138. SIS has subsequently acknowledged that this guidance was “insufficient”, as it gave no information as to what might constitute cruel, inhuman or degrading treatment.²⁴² The point that is particularly worth noting is the reference to witnessing mistreatment or its consequences

²³⁹ Oral evidence – MI5, 25 February 2016.

²⁴⁰ The Committee is not aware of any GCHQ or Defence Intelligence staff having been deployed to Guantanamo.

²⁴¹ SIS message from Head Office to an overseas posted unit and MI5 headquarters, 23 April 2002.

²⁴² Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

being “unlikely”. We consider this assessment to be surprising, by this point in time. MI5 believed that the guidance was sufficient at the time, but has subsequently accepted that it was insufficient:

during this period we heard of, at second or third hand, and it is mostly later on in this period, that there had been examples of sleep deprivation possibly being used, we had things said about BULLFINCH that caused us to raise [concerns] and protest. But our officers didn’t need written guidance to tell them that that was unacceptable and they should challenge it – that happened because it obviously is – and from the oral briefings they had had in their preparation for it, they would know, and they did and they challenged and responded.

In mid-2002 there wasn’t a set of experiences about this [mistreatment] ... so there wasn’t a reason in 2002 to go to that sort of detail and develop the guidance ... And if we had known that, we would have done something completely different with our case officers. Probably not sent them. But ... you would definitely, if there was any risk of that that you had reason to think was there, be giving much more careful training and written guidance.

... Clearly my predecessors at the time thought that they were providing the sort of support that those case officers needed. Little did they know what was actually going on and that therefore, when we look back on it, it was nothing like enough.²⁴³

139. By 2003, when the Agencies deployed to Iraq, it appears that there had been at least 83 cases where UK personnel had been involved in, witnessed or been told of mistreatment. There should therefore have been a clear understanding of the need for guidance and training. SIS stated that it had begun planning for the probability of conflict in Iraq from late 2002 and “One of the tasks foreseen as likely to fall to SIS was to assist in the interrogation of detainees in both US and UK military custody”.²⁴⁴ It was not therefore the same situation as with the rushed deployments of 2002, with little time to think or prepare. However, yet again, “There was no specific briefing on detainees given to officers ahead of this deployment”.²⁴⁵ MI5 was in a similar position: preparations had begun for deployment to Iraq by January 2003, but again there was no guidance or training put in place (although we were told by MI5 that its staff deploying to Iraq completed a military interrogators course).²⁴⁶

140. When asked why SIS did not provide guidance to those officers deploying to Iraq after the US-led invasion, SIS told the Committee:

Our guidance evolved in line with our understanding of the issues and risks surrounding our involvement with detainees. In 2002, we would still have judged

²⁴³ Written evidence – MI5, 6 April 2016, quoting oral evidence – MI5, 25 February 2016.

²⁴⁴ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

²⁴⁵ Ibid.; written evidence – SIS, 21 January 2016. SIS evidence does refer to some officers being “given training on military interrogations at the Joint Services Intelligence Organisation (JSIO) at Chicksands” in November 2002. SIS told the Committee that it was not to enable SIS staff to conduct military interrogations, but to enhance their ability to conduct interviews for SIS purposes in a military environment. The limited documentary evidence available suggests that SIS considered developing a complementary internal training course but that, for reasons which are unclear, the idea was not pursued. This seems to be consistent with the fact that Defence Intelligence told the Committee that: “We judge it was more likely to be a briefing about the interrogator course rather than a formal course.”

²⁴⁶ Deployment and training/guidance: formal MI5 internal correspondence (from a legal adviser to a senior operations manager regarding debriefs of Prisoners of War), 10 December 2002; formal MI5 internal correspondence (from a senior operations manager), 28 January 2003 (“*** contingency planning: Iraq”). Interrogators’ course: oral evidence – MI5, 25 February 2016.

that the basic case officer training, plus the guidance on mistreatment, would have been sufficient. At the time when we were preparing for involvement in Iraq and the likelihood of interviewing detainees in US military custody there, we had still not realised that there might be a serious risk of systemic mistreatment on the part of the US: the first substantive guidance sent to SIS Stations in Iraq, in April 2003, included the statement that “There is no reason, at the moment, to believe that the US authorities will treat detainees other than in accordance with their rights.”

*There was also a limit to the amount of contingency planning we could reasonably do, given our limited and fully deployed Arabic-speaking case officer resource, ahead of time.*²⁴⁷

141. There was also no generic training in place to support GCHQ officers prior to deployment; instead, they were given bespoke briefings and guidance “*focused on the reporting, handling and protection of SIGINT, the policy issues most pertinent to their role at the time*”.²⁴⁸ GCHQ considers that it has no interaction with human sources of intelligence or agents; consequently, it did not see a need for staff to undergo any form of agent-handling or interview training, unlike SIS and MI5 staff. Nor was there felt to be a need to train GCHQ officers in appropriate interviewing techniques of detainees or how to recognise what could be considered to be mistreatment, given that the nature of their work meant that they would not ordinarily come into contact with detainees. However, GCHQ told us that its staff were made aware of the Human Rights Act “*consistently from before Afghanistan*”.²⁴⁹

142. In terms of MOD/Defence Intelligence, some of the military personnel were qualified interrogators with a thorough understanding of the relevant law, but the same cannot be said for the civilian analysts who were deployed.²⁵⁰ Defence Intelligence told the Committee:

*In 2001 DI’s civilian personnel would not have been briefed on matters relating to the UK’s obligations in respect of detainees, since there was no obligation or expectation that they would deploy in circumstances which would bring them in to contact with detainees. Only in 2003 did this become an issue when analytical personnel ... were deployed at short notice to Iraq to support the ISG [Iraq Survey Group]. ... DI civilian analysts were not trained prior to deployment, but some were given local in-theatre training on the Geneva Conventions.*²⁵¹

The “*local in-theatre training*” was provided in June 2003 by a military member of Defence Intelligence deployed to the Iraq Survey Group (ISG) which “*very quickly took people through not only the Geneva Convention but also the principles of interrogation*”.²⁵² A contemporaneous briefing document for the Chief of Defence Intelligence notes: “*We have exposed our personnel to ‘risk’ in that they have not been trained to identify what is acceptable treatment of a detainee and what is not.*”²⁵³

²⁴⁷ Written evidence – SIS, 21 January 2016.

²⁴⁸ Classified GCHQ report (2014) responding to the issues raised in: Sir Peter Gibson, ‘The Report of the Detainee Inquiry’ (closed version) (2013).

²⁴⁹ Oral evidence – GCHQ, 28 April 2016.

²⁵⁰ The training of all UK Armed Forces personnel would have included familiarisation with their responsibilities under the Geneva Conventions.

²⁵¹ Written evidence – MOD, 21 July 2017.

²⁵² Ibid. The Committee was told that only after August 2004 was training provided on a weekly basis for anyone joining the ISG.

²⁵³ Oral evidence (to the Committee’s 2004–2005 Inquiry into the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq) – MOD, 9 September 2004; Defence Intelligence draft internal document (extract), 2004.

Q. Deployed personnel need clear guidance as to what they can and cannot do when deployed. That they were interviewing individuals held in detention gave the deployments to Afghanistan, Guantanamo and Iraq a new dimension. Personnel should therefore have been given specific guidance and training on their legal obligations relating to the treatment of detainees. We consider those deployed staff to have been left worryingly under-supported by their Head Offices.

R. By the time of the deployment to Iraq in 2003, there was no excuse for the lack of training and guidance available to deployed personnel – there was both time to prepare and an understanding of the operating environment gleaned from the earlier deployments.

Briefing Ministers, 2001–2003

143. The Agencies' Head Offices were not passing information to their staff, and it does not appear that the information flow upwards – to Ministers – was any better. The practice was (and remains) that SIS and GCHQ should consult the Foreign Secretary if they judge that their activity is politically, diplomatically or operationally sensitive.²⁵⁴ The domestic focus of MI5 demands somewhat greater operational independence from its Minister (the Home Secretary). The process is of course two-way: Ministers can request information or briefing from the Agencies.

144. It is notable that none of the Agencies undertook to brief their Ministers during the 2001–2004 period – due, they say, to their lack of understanding of the situation. The Heads of SIS and MI5 have acknowledged that they should have kept their Ministers better informed. For example, the Chief of SIS, when discussing the CUCKOO case, told us:

we concede that we didn't talk to Ministers enough about this stuff. ... There should have been a conversation with Ministers at this stage and there wasn't. ...

I think this [the treatment of detainees] was, as a category of issue, not [seen] by the senior leadership at that time to cross the Ministerial threshold. So there was not an extensive conversation with Ministers about this because, as I've said, we did not pull this together as a strategic issue until quite some time after the things that we're discussing now, and that's what triggered the Ministerial conversation.²⁵⁵

145. We also asked the Chief of SIS whether they were honest with Ministers at the time, and he told us:

The idea that we would be wilfully trying to – we would take a collective decision not to expose this to Ministers, I think that would be more difficult, and I see no evidence that that is the case.²⁵⁶

146. Similarly, the Director General of MI5 agreed with his predecessors, who had previously acknowledged to the Committee that “Ministers should have been informed in a timely manner”.²⁵⁷ He told us himself that:

²⁵⁴ They also consult the Foreign Secretary in cases where they are seeking a legal authorisation – SIS frequently seeks authorisation under section 7 of the Intelligence Services Act 1994, which authorises acts outside the British Isles and provides freedom from liability under UK law for authorised acts overseas.

²⁵⁵ Oral evidence – SIS, 3 December 2015.

²⁵⁶ Ibid.

²⁵⁷ Oral evidence – MI5, 3 March 2016.

all of the engagement at the time, as the record shows, is that with officials-level groups in Whitehall, ... and far less with Ministers, and it was just a different sort of ecosystem at the time. ...

*today, I am meeting with the Prime Minister at least once a week. Back then, it would have been a sort of unusual moment in the calendar if the DG was talking to the Prime Minister.*²⁵⁸

Information given to Ministers, 2001 to early 2004

October 2001: SIS submitted a request to the Foreign Secretary that planned emergency legislation should include provision to enable the rendition of fugitive terrorist suspects to the UK. This request was considered by Ministers but not granted.²⁵⁹

December 2001: SIS submitted a request to the Foreign Secretary for permission to task and pay ABERDEEN contacts to arrest and detain non-ABERDEEN members of Al Qaida in Afghanistan. The risk assessment covered the risks of targets being killed, or having their human rights abused in the process of capture, with the proposal that this risk be mitigated by providing clear conditions on treatment and insisting Al Qaida members be transferred, under humane conditions, to internment camps under the control of the Interim Administration.²⁶⁰

January 2002: An MI5 legal adviser recommended that the Home Office be informed about the rendition of CUCKOO to CUPAR, as the matter was “*particularly worrying*”. She was overruled by another MI5 officer who noted that he had been told SIS was not planning on informing the FCO and “*neither do I think any purpose would be served in telling the Home Office*”. An MI5 File Note recording continuing concerns within MI5 was annotated by the Director General as “*Unsatisfactory – but their business*”.²⁶¹

March 2002: SIS submitted a request to the Foreign Secretary for authority for SIS and MI5 officers to interview detainees in Guantanamo Bay. The treatment of detainees was considered in the submission, suggesting that there had been “*no evidence that the detainees have suffered any mistreatment while in US custody*”.²⁶²

Late 2002: MI5 informed Ministers in general terms about the mistreatment of BULLFINCH described in a US report previously discussed with FCO officials in June 2002, but no detail was provided and Ministers were not fully informed until June 2004.²⁶³

January 2003: SIS submitted a request to the Foreign Secretary for permission to collect intelligence within WORCESTER, which would be shared with the WORCESTER intelligence service, with the aim of capturing Al Qaida targets. No mention was made in the submission of the potential mistreatment of the targets.²⁶⁴

²⁵⁸ Oral evidence – MI5, 3 March 2016.

²⁵⁹ SIS internal correspondence, 1 October–28 December 2001.

²⁶⁰ SIS internal correspondence, 20 December 2001–11 September 2002.

²⁶¹ Formal MI5 internal correspondence (from a senior legal adviser to a senior operations manager, and back again), 24 January 2002 (‘Interviews of detainees’); MI5 ‘Note for File’ by a senior legal adviser, ‘CUCKOO’ (1 February 2002), with manuscript annotation by the Director General dated 8 February 2002.

²⁶² SIS submission to the Foreign Secretary, 26 March 2002, attached to a memorandum from the MI5 Deputy Director General to the Permanent Secretary at the Home Office, 26 March 2002 (‘Joint Security Service/SIS deployment to Guantanamo Bay’).

²⁶³ ISC, *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq* (Cm 6469, 2005), paragraph 54.

²⁶⁴ SIS submission to the Foreign Secretary, 24 January 2003.

October 2003: SIS submitted a request to the Foreign Secretary for permission to interview an individual codenamed FIELDFARE, a British national held in custody by the SALFORD intelligence service. There was no reference in the submission to the risk of mistreatment by the SALFORD authorities, only mention that he was unlikely to be rendered to the US. Permission was granted. When FIELDFARE was interviewed by SIS officers, he reported being mistreated by SALFORD.²⁶⁵

January 2004: SIS wrote to senior FCO officials to inform them of a developing SIS operation intended to lead to the detention in LIVERPOOL of an Al Qaida target. No mention was made in the letter of the risk of mistreatment involved in passing on such information to the LIVERPOOL authorities; a passing reference was made to the possibility of the target being rendered to the US.²⁶⁶

147. We find it particularly surprising that, in March 2002, SIS said that there was no evidence of mistreatment of detainees by the US, when its officers had already been involved in, witnessed or been told of mistreatment in a significant number of cases by then. It is difficult to see how SIS could have represented the situation to Ministers in such a way.

148. What is more striking perhaps is that Ministers were not asking questions of the Agencies. Ministers had discussed the handling of British nationals who had been detained, and certainly would have been aware of the allegations of mistreatment which began surfacing in 2002. In addition, as early as January 2002 they were being asked questions in Parliament about the situation.²⁶⁷ Yet there is no evidence in the primary material that they asked the Agencies what was happening.²⁶⁸

149. This may be a reflection on the records kept: there is very little in the documents seen by the Committee recording regular meetings between Ministers and the Heads of the Agencies and there is therefore no audit trail of how often, and in what detail, detainee issues were discussed orally with Ministers.²⁶⁹ We have found only a few examples in the primary material of submissions made to Ministers on detainee matters up to the start of 2004 (as set out above)²⁷⁰ and the Director General of MI5 told us that in February 2004 Ministers were then briefed on the conditions at Guantanamo Bay:

the clearest example I can remember of that is the way we dealt with ... the Guantanamo Bay conditions, in 2004 where, because we had seen something that was not just an isolated case but was several [a change in demeanour and behaviour and detainees seemed withdrawn] and therefore suggested it could be an issue about the regime, that was escalated up to Ministers and raised with the

²⁶⁵ SIS submission to the Foreign Secretary, 24 October 2003, annotated with a manuscript note from an FCO official, dated 27 October 2003.

²⁶⁶ SIS internal correspondence, 9 January–11 July 2004.

²⁶⁷ For example, after the *The Washington Post* first criticised the conditions at Guantanamo Bay, questions on detainee issues and Guantanamo Bay were regularly asked in Parliament from 17 January 2002.

²⁶⁸ This attitude of Ministers is in line with the conclusions of Sir John Chilcot's 2016 *Report of the Iraq Inquiry*, particularly in relation to the decision made by the Attorney General to declare that invading Iraq would be legal under international law. Chilcot said: "None of those Ministers who had read Lord Goldsmith's advice asked for an explanation as to why his legal view of resolution 1441 had changed. ... There was little appetite to question Lord Goldsmith about his advice, and no substantive discussion about the legal issues was recorded." [Source: Executive summary in *The Report of the Iraq Inquiry*, 6 July 2016, HC 264 (2015–16), paragraphs 489–90.]

²⁶⁹ For example, the decisions taken in January 2002 to deploy MI5 officers to interview detainees in Afghanistan and British nationals in Guantanamo Bay (in January and February, before this was subsequently put to Ministers in March) were taken at Director level; there is no record of whether these decisions were canvassed with Ministers orally.

²⁷⁰ We note that there may have been other occasions on which the Agencies notified Ministers of detainee issues during this period.

*Americans at Ministerial level, but I think ... it is a fair observation to say that, across all the cases that I have looked at, and the Committee has looked at, there is not a pattern of Ministerial engagement with it.*²⁷¹

150. Had our Inquiry continued we would have called the Right Hon. the Lord Blunkett, the Home Secretary during the 2001–2004 period, and the Right Hon. Jack Straw, the then Foreign Secretary, to examine what they understood to be the situation at the time, and explain why briefing was not requested.

A turning point?

151. As discussed above, SIS has argued that, prior to 2004, and MI5 for a much longer time thereafter, there was only “*isolated awareness*” of mistreatment and a failure to “*join the dots*”. Nevertheless, the Committee considers that there was something of a ‘turning point’ in 2004; certainly, external events had reached a critical point by then.

Events in 2004

February: Due to concerns about the detention conditions at Guantanamo Bay, MI5 suspended interviews with detainees there on 24 February (following the Director General of MI5 writing to the Prime Minister’s Foreign Policy Adviser detailing concerns about the conditions in which British detainees were being held – for example, sustained periods of solitary confinement).²⁷²

29 February: The Foreign Secretary complained to the US Secretary of State about the conditions in which British detainees were being held at Guantanamo Bay.²⁷³

1 March: Human Rights Watch published ‘*Enduring Freedom*’: *abuses by U.S. Forces in Afghanistan*. The report contains allegations of US mistreatment of detainees in custody; the inclusion of eye-witness testimony lent it credibility.²⁷⁴

March: The International Committee of the Red Cross sent a confidential report on detainees, which included concerns about US treatment of prisoners at Abu Ghraib and two other sites, to the US Government in February. This report was leaked in March 2004, leading to substantial media coverage.²⁷⁵

28 April: The US *60 Minutes II* television programme broadcast a story about abuse at a US-run facility at Abu Ghraib, which featured photographic evidence and led to significant media interest.

11 May: During testimony to the US Senate, US Under Secretary of Defense for Intelligence, Stephen Cambone, confirmed publicly for the first time the use of special interrogation techniques at Guantanamo.²⁷⁶

²⁷¹ Oral evidence – MI5, 3 March 2016.

²⁷² Letter from the MI5 Director General to the Foreign Policy Adviser to the PM, 25 February 2004.

²⁷³ Telegram from the FCO in London to the British Embassy in Washington, 4 March 2004, containing a message from the Foreign Secretary to be conveyed to the US Secretary of State.

²⁷⁴ Human Rights Watch, ‘*Enduring Freedom*’: *abuses by U.S. Forces in Afghanistan* (New York, 2004).

²⁷⁵ International Committee of the Red Cross, ‘Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during Arrest, Internment and Interrogation’ (February 2004).

²⁷⁶ Letter from the Foreign Secretary to the Attorney General, 19 May 2004.

12 May: In response to the Human Rights Watch report, an FCO submission entitled ‘Afghanistan: Conduct of British Forces’ was put to Ministers. It noted the allegations of mistreatment of detainees by US Armed Forces and Afghan militia forces and that some UK nationals in Guantanamo Bay had alleged mistreatment by the US in Afghanistan. It added that there may be “*issues surrounding the involvement of UK intelligence officers in the questioning of detainees held by the US in Afghanistan*”.²⁷⁷

14 May: The ISC Chair wrote to the Prime Minister asking whether Agency interviews of detainees were carried out in accordance with the Geneva Conventions.²⁷⁸

19 May: The Foreign Secretary wrote to the Attorney General – copied to the Prime Minister, Defence Secretary, Home Secretary, Lord Chancellor and Chief of SIS – in response to the US Senate testimony (see 11 May above). The Foreign Secretary stated that there was now a:

*need to consider the legal and policy implications, both for UK detainees and for others in whose detentions we have been associated in Iraq, Afghanistan and Guantanamo. ... Having established what the US [interrogation] practice is, and how it may vary in different theatres, we should consider its consistency with international law.*²⁷⁹

19 May: The Cabinet Office requested that the Agencies provide contributions for the Prime Minister’s response to the ISC Chair’s letter of 14 May.²⁸⁰

20 May: The Foreign Secretary, commenting on the ‘Afghanistan: Conduct of British Forces’ submission, asked SIS to provide an account of the experiences of its officers in Afghanistan.²⁸¹

24 May: The Prime Minister replied to the ISC Chair confirming that, with one exception, Agency interviews conformed to the requirements of the Geneva Conventions. The exception was an interview in Baghdad, where an Iraqi detainee was hooded and shackled during an interview with SIS officers.²⁸²

152. From these, it appears the impetus provided by the ISC Inquiries, the International Committee of the Red Cross report, increased non-governmental organisation activity and media revelations of abuse at Abu Ghraib – all within a short period – raised awareness within Government to the point at which it could no longer be ignored and action had to be taken.

Staff surveys

153. On 24 May 2004, the Prime Minister committed the Agencies to a survey of their staff in relation to awareness of detainee mistreatment in order to provide the ISC with evidence for its Inquiry.²⁸³ All three organisations which responded issued the same questions to selected staff.

²⁷⁷ Submission from an FCO official to the Foreign Secretary, 12 May 2004 (‘Afghanistan: Conduct of British Forces’).

²⁷⁸ Letter from the ISC Chair to the Prime Minister, 14 May 2004.

²⁷⁹ Letter from the Foreign Secretary to the Attorney General, 19 May 2004.

²⁸⁰ Email from a Cabinet Office official to numerous officials across the Agencies and intelligence policy departments, 19 May 2004 (‘GUANTANAMO BAY/AFGHANISTAN/IRAQ - ISC LETTER TO PM – ACTION REQUIRED’).

²⁸¹ Memorandum from one of the Foreign Secretary’s private secretaries to another FCO official, 20 May 2004 (‘Afghanistan: Conduct of British Forces’).

²⁸² Letter from the Prime Minister to the ISC Chair, 24 May 2004.

²⁸³ Ibid.

- SIS: the survey was sent to 35 staff who had carried out or witnessed interviews, all of whom replied. In addition to the one case already included in the 24 May letter to the ISC, a further four cases were found. One of these related to a further interview of a hooded detainee. The other three related to what SIS describe as “*austere conditions or inappropriate treatment*”, namely sleep deprivation, isolation and lack of contact with family. There were also seven ‘stories’ of the US mistreating detainees (i.e. that had been reported to UK officers rather than witnessed by those officers). These results were reported to the Foreign Secretary on 13 August.²⁸⁴
- MI5: the survey was sent to 27 interviewing officers and 25 responded. It revealed four incidents: a detainee arriving at an interview in manacles and a hood (which were then removed at the MI5 officer’s request); a detainee complaining about his conditions of detention; a detainee complaining about daily beatings by guards (although not necessarily of himself); and a detainee complaining of “*treatment contrary to the Geneva Conventions*”. The Home Secretary was informed of the results.²⁸⁵
- Defence Intelligence: the survey was sent to an unknown number of staff.²⁸⁶ Four personnel (who had been acting in support of SIS at the time) responded, and amongst their individual concerns were reports of witnessing unprofessional behaviour from US personnel, poor detention conditions, and lack of contact between detainees and their families. From the material we have seen, these results were not reported to Ministers.²⁸⁷

When we asked GCHQ why it did not also conduct a staff survey at this point, we were told: “*Whether a survey would have thrown anything up at that stage I doubt, because I don’t think there was any knowledge to throw up, really.*”²⁸⁸ However, that is not the point: GCHQ cannot have known whether there was any information without conducting the survey.

154. By the time of the staff surveys in May 2004, more than 83 incidents (according to the Committee’s analysis) had been witnessed or been heard of. However, the survey results record only 15 of these incidents, leaving at least a worrying 68 undeclared by staff.²⁸⁹

155. We asked the Agencies why their staff did not raise such incidents in responding to the survey. The Director General of MI5 told us that “*the reason is because we didn’t know what we knew*”, implying that the officers concerned did not understand the significance of what they had witnessed.²⁹⁰

156. The Chief of SIS told us that “*there were differing understandings of what mistreatment consisted of*”, and that in completing the survey, “*people tended to restrict themselves to things that they had seen directly, whereas in practice a lot of the later stuff was about things that*

²⁸⁴ SIS submission to the Foreign Secretary, 13 August 2004.

²⁸⁵ Formal MI5 internal correspondence (from a senior operations manager to an operations officer), 4 August 2004 (‘Treatment of detainees: questionnaire to interviewers’), subsequently annotated with further minutes in manuscript; oral evidence – MI5, 9 March 2016.

²⁸⁶ The survey did not include the deployed interrogation cadre which, as discussed previously, was not subordinate to Defence Intelligence at that time.

²⁸⁷ ISC, *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq* (Cm 6469, 2005), paragraphs 87, 88 and 90; written evidence – MOD, 21 July 2017.

²⁸⁸ Oral evidence – GCHQ, 19 May 2016.

²⁸⁹ Based on ISC analysis of the documentary evidence provided by HMG.

²⁹⁰ Oral evidence – MI5, 9 March 2016.

people had heard indirectly”. He noted that “we have discovered that [this sort of survey] is not a very good way of surfacing a comprehensive thing”.²⁹¹ The Director General of MI5 echoed this, saying:

*It is simply the practical thing that both we and SIS were responding to the question of what cases are there, who knows what. ... I think we at the time made a perfectly reasonable assumption that it is for SIS to report the things they have seen, we will report the things that we have seen and know, and then that will be the picture. I don't think either we or SIS thought what we ought to do is include the sort of second-hand reporting we had of things that each other had seen, and so it was not put in.*²⁹²

S. In relation to the 2004 staff surveys, we do not regard the Agencies' explanation as to why their staff only reported 15 out of 83 incidents as sufficient. (We note that it can only be supposition on the part of the current Agency Heads, who were not involved in the surveys themselves.) Had we been given access to the interviewing officers, we would have wished to explore this highly unsatisfactory situation further.

157. It is further worth noting that when the Prime Minister wrote to the ISC on 6 September 2004 with the results of the staff surveys, only the SIS survey was mentioned, and then only the one further hooded interview was cited: none of the other incidents referred to by SIS, MI5 or Defence Intelligence staff was reported.²⁹³

Guidance and training, 2004–2010

158. By February 2005, prompted no doubt by the spotlight that had been shone on the issue over the preceding nine months or so (including the Agency Heads having appeared before the ISC to give evidence), GCHQ, MI5 and SIS had begun a review of their policies on detainee issues. Cross-government discussions also took place on the receipt of intelligence possibly derived from torture after the Attorney General expressed concern that this could amount to incitement to torture. HMG concluded that it was not possible to know whether intelligence had been obtained using torture, but that where this was suspected, the Government would express its concerns to foreign liaison services and insist that detainees were treated humanely. Nevertheless the Home Secretary stated that the Government would still “*act on such information where [it] considered it was necessary to do so, in particular for preventing terrorist attack and protecting life*”.²⁹⁴

159. MI5 reached a similar conclusion in January 2006 when it reviewed the benefits and risks associated with intelligence co-operation with the US, concluding that, “*overall we judge that the positives we derive from intelligence co-operation with [US authorities] clearly outweigh the negatives*”, as discussed above in the section on turning a blind eye in Chapter 6, ‘Action which may have led indirectly to mistreatment’.²⁹⁵

²⁹¹ Oral evidence – SIS, 28 January 2016.

²⁹² Oral evidence – MI5, 9 March 2016.

²⁹³ Letter from the Prime Minister to the ISC Chair, 6 September 2004.

²⁹⁴ Letter from the Home Secretary to the Foreign Secretary, 2 September 2005 (‘House of Lords Appeal, *A & others*: Evidence from other countries that may have been obtained as a result of torture’).

²⁹⁵ Classified MI5 internal document, ‘Review of benefits and risks associated with the Service’s intelligence co-operation with ***’, 30 January 2006.

160. While these policy discussions were continuing, the Agencies did at least seek to provide their staff with further guidance. While this was piecemeal over the next few years, it nevertheless represented an improvement on the previous position.

Development of guidance from 2004 onwards

14 June 2004: SIS sent draft guidance on what constitutes unacceptable treatment to key SIS staff. The covering note said: “*If staff are concerned that interviewees are being subjected to unacceptable treatment they should, where possible, draw this to the attention of the detaining authority, withdraw from the interview if not satisfied with conditions and report the matter to HEAD OFFICE.*”²⁹⁶

1 July 2004: MI5 issued the same list of unacceptable forms of treatment to its interviewing officers.²⁹⁷

27 August 2004: Defence Intelligence issued *Standing Instructions on Detainee Interviews*. The instructions required staff deploying as Subject Matter Experts (military and civilian) observing or participating in the interviewing of detainees to undergo relevant briefings on the Geneva Conventions. It also instructed them on what actions they should take when involved in detainee interviews and what to do if they had concerns that the requirements of the Geneva Conventions were not being met.²⁹⁸

2 March 2005: SIS issued further guidance, *Detention Operations and Detainees: Guidance*, which contained more detail than the June 2004 document, in particular on the need to be aware of where the detainee would be held and the legal basis for detention.²⁹⁹

7 April 2005: SIS introduced a Detainee Contact Report (DCR), a template form for keeping records of detainee interviews. The DCR included details such as observations on a detainee’s physical and mental health and conditions of detention.³⁰⁰

8 April 2005: SIS updated its ‘Legal Foundations’ intranet pages with links to the March 2005 detainee guidance, references to Article 3 of the Geneva Conventions (requiring humane treatment of detainees) and to unacceptable interrogation techniques, and clarification on when an officer should report concerns (including where liaison reporting has been obtained from detainees known or believed to be subject to torture). All staff were notified of the new material.³⁰¹

8 May 2006: SIS issued guidance to staff on the rights of UK nationals abroad and the FCO’s consular responsibilities towards them.³⁰²

²⁹⁶ SIS internal correspondence, 14 June 2004. The draft guidance listed the following as unacceptable: hooding during questioning (also, post-September 2003, during arrest or transit); physical punishment of any sort (beatings etc.); use of stress positions; intentional sleep deprivation; withdrawal of food, water or medical help; degrading treatment; use of ‘white noise’; torture methods such as thumb screws. It noted that “*the blindfolding or obscuring of vision during arrest or transit on security grounds is regarded as acceptable*”.

²⁹⁷ Formal MI5 internal correspondence (from a senior operations manager to all international counter-terrorism case officers), 1 July 2004 (‘Interview and treatment of detainees’).

²⁹⁸ Written evidence – MOD, 21 July 2017 and 26 February 2018. Further guidance, *Guidance on Interrogation and Tactical Questioning in Support to Operations*, was issued in November 2005 and regularly updated thereafter, although the further guidance principally relates to military activities.

²⁹⁹ SIS message from Head Office to all Stations, 2 March 2005.

³⁰⁰ SIS message from Head Office to all Stations, 7 April 2005.

³⁰¹ SIS message from Head Office to all Stations, 8 April 2005.

³⁰² SIS written evidence to the (Gibson) Detainee Inquiry.

21 July 2006: MI5 issued separate guidance to MI5 officers interviewing detainees. This also contained MI5's version of the guidelines on consular responsibilities towards UK nationals.³⁰³

31 July 2006: MI5 issued guidance on liaison relationships (in particular, sharing intelligence). It explicitly covered the sharing of 'locational' intelligence which might result in an individual being detained and the broader issue of intelligence obtained from detainees.³⁰⁴

13 November 2006: SIS issued the MI5 guidance on liaison relationships to its own staff.³⁰⁵

November 2006: GCHQ issued 'Policy and Guidance on Potentially Internationally Unlawful Acts'.³⁰⁶

July 2007: GCHQ Head of Operations Policy issued 'GCHQ Support to Military Detention Operations'.³⁰⁷

7 November 2008: MOD issued a document to (military and civilian) staff stating that any member of staff who asked to be involved (observe or participate) in an interrogation must seek permission from Defence Intelligence, which would then identify what the training requirement was for staff taking part in interrogations. The document also states that if staff believe an interrogation has not been conducted to the appropriate legal/policy standard, they must report it locally and also in writing to Defence Intelligence.³⁰⁸

18 March 2009: The then Prime Minister (the Right Hon. Gordon Brown) announced in Parliament that the Government would produce formal consolidated guidance on the handling of detainees:

*We will publish our guidance to intelligence officers and service personnel about the standards that we apply during the detention and interviewing of detainees overseas once it has been consolidated and reviewed by the Intelligence and Security Committee. It is right that Parliament and the public should know what those involved in interviewing detainees can and cannot do. This will put beyond doubt the terms under which our agencies and service personnel operate.*³⁰⁹

July 2010: The *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees* was published.

³⁰³ Email about Service guidance for interviewing abroad from an MI5 senior operations manager to numerous MI5 officers, 24 July 2006.

³⁰⁴ Letter from an MI5 senior legal adviser to an official in the Attorney General's chambers, 31 July 2006 ('Finalised Agency policy'), covering an MI5 document entitled 'Agency policy on liaison with overseas security and intelligence agencies in relation to detainees who may be subject to mistreatment', 28 July 2006. MI5 (and SIS) already had guidance in place covering dealings with foreign liaison services. However, this guidance had traditionally focused on services with a poor human rights record. The CIA, as a long-standing ally and trusted partner, had not been counted amongst that group. Therefore, Agency staff had not thought, in their dealings with the CIA on detainees, to 'engage' the liaison guidance.

³⁰⁵ SIS message from Head Office to all Stations, 13 November 2006. SIS told us that the four-month delay in issuing the joint guidance was "to produce a more concise version that it was felt would be easier for staff to absorb. Our records indicate that there was internal debate about how best to present the guidance." [Source: written evidence – SIS, 29 October 2014.]

³⁰⁶ Written evidence – GCHQ, 17 May 2016.

³⁰⁷ Ibid.

³⁰⁸ 'MOD policy on tactical questioning and interrogation: Support to operations (Change 1)', 7 November 2008, circulated under cover of a Defence Intelligence memorandum entitled 'Reissue of MOD policy on interrogation and tactical questioning', 7 November 2008. MOD stated in July 2017 that, since this guidance was introduced, it has no records of any MOD civilians seeking permission to participate in an interrogation.

³⁰⁹ Hansard, HC Deb, 18 March 2009, vol. 489, col. 55WS ('Written Ministerial Statements – Prime Minister: Detainees').

161. In relation to the guidance SIS issued in 2004, and the subsequent development of further guidance, SIS told the Committee that:

At that stage [June 2004] there was a focus on whether we had observed any breaches of the Geneva Conventions in the course of interviewing detainees, as opposed to, for example, feeding in questions for liaison to use in interviews. The nature of the June 2004 guidance reflects this. The guidance built on that previously issued to staff in Afghanistan (2002), Guantanamo Bay (2002) and Iraq (2003). Like that earlier (and subsequent) guidance, it was supplemented by ongoing dialogue between Stations involved in detainee work, and policy, compliance and legal teams in Head Office. There is no evidence that the guidance was felt to be insufficient at the time.

With hindsight, it is apparent that more detailed guidance was required to cover our broader engagement with the US and others on detainee work. Even at the time the guidance was issued, it was not regarded as definitive: the covering message indicated an intention to follow up the guidance with “detailed guidance on staff responsibilities in the context of such interviews and the relevance of the Geneva Convention”; and a few weeks later we told FCO that we were expecting further detailed guidance from MOD and would then issue further, more detailed instructions to staff.³¹⁰

162. Nevertheless, we note that the guidance issued over this period at least had begun to be accompanied by training. In 2004, GCHQ established the GCO Academy to train Government Communications Officers (GCOs) deployed on overseas operations. In August and September 2006, MI5 began holding dedicated day-long courses on interviewing detainees which were mandatory for operational officers interviewing detainees.³¹¹ SIS introduced a similar detainee debriefing awareness course in 2009.³¹²

Briefing Ministers, 2004–2010

163. While 2004 onwards finally saw the Agencies joining the dots, and this led to an increase in policy discussions and guidance and training, a genuine understanding of the situation – and therefore the seriousness of the position in which the UK had found itself – was still slow to dawn. Crucially, it appears that Ministers were still not being kept fully informed. The process had improved and, in particular, SIS was informing the FCO and the Foreign Secretary more often of cases where there were concerns over possible mistreatment; however, there were still instances where Ministers were not provided with the complete picture.

³¹⁰ Written evidence – SIS, 4 March 2016.

³¹¹ Written evidence – MI5, 30 October 2014.

³¹² SIS written evidence to the (Gibson) Detainee Inquiry (a printout of a corporate intranet page, dated 9 May 2012).

CASE STUDY: MINISTERS NOT PROVIDED WITH THE FULL PICTURE

August 2006: SIS submitted a request to the Foreign Secretary to authorise co-operation with BEVERLEY to detain GADWALL, a LANARK national. This submission did not mention two reports of the BEVERLEY intelligence services mistreating detainees which SIS had received the previous month. It also failed to mention that SIS was already supplying BEVERLEY with usable intelligence on GADWALL. The Home Secretary approved the request (as the Foreign Secretary was absent at the time) and GADWALL was detained by BEVERLEY with SIS assistance.³¹³

164. The Chief of SIS told the Committee that, from 2004, SIS had an *“improved understanding of what we were dealing with leading to the guidance, leading to a significant reduction in cases of concern and, also, ... a much more informed and regular conversation with Ministers”*. There is also a suggestion from the Chief that Ministers were themselves asking questions of the Agencies: *“there is stuff in my briefing about Foreign Office Ministers asking us questions and, ... us responding. So this is a sort of active dialogue going on.”*³¹⁴

165. In some cases, the Agencies were asked to investigate concerns. For example, SIS records show that on 20 May 2004 the then Foreign Secretary asked for an account from SIS of the experiences of its officers in Afghanistan; this followed an internal FCO submission on 12 May 2004 that had flagged up potential issues surrounding the involvement of UK intelligence officers in questioning of US-held detainees in Afghanistan.³¹⁵ SIS sent its account to the Director General Defence and Intelligence in the FCO, on 20 July 2004, but there is no record of further action taken.

166. Up until 2006, MI5 does not appear to have been required to brief the Home Secretary on detainee matters. MI5 told the Committee that it had found no records of any specific briefings: the only example that MI5 could give to the Committee of the Home Secretary being briefed during that period was the briefing on the 2004 staff survey.³¹⁶

Reviews of records

167. Ministerial awareness was also informed by the reviews of Agency records conducted in this period. In early 2006, the first cross-government review was commissioned partly in response to the ISC having launched an inquiry into rendition. The Composite Rendition

³¹³ SIS submission to the Foreign Secretary, ***, August 2016; classified case summary prepared by the (Gibson) Detainee Inquiry; Section 7 Authorisation ***, signed by the Home Secretary on *** August 2006; SIS message from PRESTON Station to SIS Head Office, *** August 2006. The FCO has sought to argue in relation to this case that *“We do not agree that because ministers were not informed at the time of a specific report received one month earlier about the mistreatment of detainees in BEVERLEY ... there was not already an understanding that the mistreatment of detainees occurred in BEVERLEY. A submission from SIS dated 25 November 2005 seeking authority for SIS and the Security Service to continue to liaise with the [a BEVERLEY liaison service] and the other BEVERLEY intelligence and security agencies on counter-terrorist operations set out the risk that routine intelligence provided by the UK agencies for counter terrorist purposes might inadvertently lead to the detention of individuals by [a BEVERLEY liaison service] and to an abuse of their human rights. As a result, SIS agreed to submit for further authorisation before passing intelligence which they judged would directly lead to [a BEVERLEY liaison service] detention operations”* [Source: written evidence – Foreign and Commonwealth Office, 1 September 2016].

³¹⁴ Oral evidence – SIS, 28 January 2016.

³¹⁵ Memorandum from one of the Foreign Secretary’s private secretaries to another FCO official, 24 May 2004 (‘Afghanistan: Conduct of British Forces’); submission from an FCO official to the Foreign Secretary, 12 May 2004 (‘Afghanistan: Conduct of British Forces’).

³¹⁶ Oral evidence – MI5, 9 March 2016. We note that the Director General of MI5 regularly met the Home Secretary (nine occasions during 2005, for example): these meetings covered a range of topics.

Review (CRR) was intended to provide a full historical record of HMG's involvement in, or knowledge of, rendition operations. The Security and Intelligence Co-ordinator, Sir Richard Mottram, who oversaw the CRR process, assured Ministers that the work had been “*extensive*” and “*thorough*”, that “*none of the information ... contradicts or invalidates the cumulative picture provided by Ministers to Parliament*”, and “*It is extremely unlikely that these researches have missed any relevant cases*”.³¹⁷ However, subsequent analysis shows that the CRR was not sufficiently detailed or comprehensive and far from a definitive account. Some very serious cases were not brought to the attention of Ministers or subsequently the ISC in the course of its Inquiry. Where cases were included, in some instances they were described in such a way that they appeared innocuous.³¹⁸

168. The Agencies deny any attempt to withhold information deliberately from Ministers or the ISC. They argue that, despite events in 2004, the full picture only emerged slowly over a longer period, and that this was complicated by weaknesses in record-keeping. For example, SIS told us that:

*record-keeping was inadequate during this time. So the absolute imperative was to find and report information pertaining to threats, terrorist intelligence. And the thing that haunts an SIS officer more than anything else is failing to report something that subsequently proves important to stopping a bomb going off. So that will have been the absolute priority. In that environment we didn't do what we would do now as a matter of institutional reflex, which is also record all of the details of each detainee interaction. That's something that has completely changed.*³¹⁹

By contrast, MI5 claimed to have much better record-keeping at the time:

*I think the records, ... on the whole our records are, ... compared to anyone else's, pretty good. There is a lot of material there. The story is told pretty well, but they are not perfect, and I think in this time in particular ... I would acknowledge ... it was not fantastic in every place.*³²⁰

169. However, events in 2008 showed that while MI5 may have had the records, its search and disclosure process left much to be desired. In the case of *Binyam MOHAMED v Secretary of State for Foreign and Commonwealth Affairs*, MI5 disclosed documents to the court which it had failed to provide to the ISC during its Rendition Inquiry. This was one of the factors which led the Agencies to carry out further, comprehensive, reviews of their records:³²¹

³¹⁷ Submission from the Security and Intelligence Co-ordinator (Sir Richard Mottram) to the Home and Foreign Secretaries, 21 April 2006 ('Rendition'), attached to an email from one of the Home Secretary's private secretaries to Sir Richard dated 28 April 2006.

³¹⁸ For example, while the 2006 Composite Rendition Review referred to the BITTERN and BLACKBIRD cases, and they were included in evidence given to the ISC's Rendition investigation, no detail was given, including even nationality and countries involved. When the full details of the cases emerged in ***, it became clear that the ISC had not been given a sufficient explanation of these renditions, and ***. The Committee considered that had it been provided with fuller information this would have significantly altered its conclusions.

³¹⁹ Oral evidence – SIS, 3 December 2015.

³²⁰ Oral evidence – MI5, 25 February 2016.

³²¹ These 2009 reviews focused on providing assurance that the risks and scope of Agency engagement with detainees over the last eight years was properly understood; identifying all detainee interviews undertaken by officers since 9/11 and related allegations of mistreatment; identifying incidents where the Agencies were aware of mistreatment perpetrated by others, or had knowledge of extraordinary rendition; reviewing the accuracy and completeness of evidence relating to detainees previously submitted to the ISC and Ministers; and identifying any further incidents implying legal liabilities that might require referral to the Attorney General or the Director of Public Prosecutions.

- SIS's 2009 review encompassed 137,000 documents and took an estimated 10,000 person hours – although searches were predominantly focused on records covering Afghanistan, Iraq, Guantanamo Bay and ***.³²²
- MI5's 2009 review looked at 74,000 documents and took an estimated 6,000 person hours. The review identified 219 cases, of which 12 raised particular concerns.³²³

170. The Agencies referred those cases which they had identified as raising most concern to David Perry, QC, for advice on whether they met the threshold for passing to the Attorney General to consider criminal prosecution. ***.³²⁴

171. However, in 2011, public revelations during the Libyan revolution suggesting UK involvement in the rendition of Abdel Hakim BELHAJ and Sami AL-SAADi led Ministers to request a further review of MI5 and SIS's records. The purpose of these reviews was "*to assess legal and reputational risks arising from the Agencies' casework involving detainee issues which had not been fully captured by previous reviews*".³²⁵ These new reviews covered the period from September 2001 (the 9/11 attacks) to July 2010 (the publication of the Consolidated Guidance).³²⁶

- The SIS 2012–2014 review encompassed 301,300 documents and took an estimated 20,000 person hours. The review identified 240 cases (excluding cases already litigated or subject to criminal investigation at the time of the review) which carried potential reputational and litigation risk. Of these 240, 20 were categorised as being of 'significant' concern (of which MI5 had involvement in 11). Of these 20 cases, 10 had previously been identified in earlier reviews (in 2006 and 2009).³²⁷
- The MI5 2012–2014 review considered 561 cases and took an estimated 5,000 person hours. No new cases of concern were reported as being identified.³²⁸

The Agencies saw the result of these reviews as comprehensive, stating:

*The [2009 and 2014 reviews], together with the cases already litigated in one form or another or subject to criminal investigation, encompass the totality of detainee-related cases from this period believed by the Agencies to carry potential reputational and litigation risk.*³²⁹

³²² Classified consolidated report of SIS and MI5's 2012–14 internal reviews of detainee-related records (2014).

³²³ Ibid.

³²⁴ Letter from the MI5 Director General's office to various officials in the Home Office, 9 February 2010 ('Draft minutes of DG and Sir David Normington bilateral meeting').

³²⁵ Sir Alex Allan's classified report concerning SIS and MI5's 2012–14 internal reviews of detainee-related records (2014); classified consolidated report of SIS and MI5's 2012–14 internal reviews of detainee-related records (2014). The cases of Abdel Hakim BELHAJ and Sami AL-SAADi have not been considered by this Inquiry, as a challenge to the Crown Prosecution Service decision not to prosecute was still before the courts at the time our Inquiry was brought to a close.

³²⁶ The SIS review covered all countries and regions where it had a Station, including temporary Stations, from 9/11 to the introduction of the Consolidated Guidance in July 2010. MI5 emphasised that, unlike the SIS review, its review of detainee files was not a new review but a "*reassurance exercise*" about its 2009 review (its 2009 review had been broader in scope than SIS's 2009 review). When asked, Defence Intelligence was unable to say why it (or MOD) was not part of this or the earlier reviews.

³²⁷ Classified consolidated report of SIS and MI5's 2012–14 internal reviews of detainee-related records (2014).

³²⁸ Ibid.

³²⁹ Ibid.

172. Sir Alex Allan, who had been tasked by the Prime Minister with ensuring that the reviews were robust, concluded that both the SIS and MI5 reviews of their detainee records were thorough.³³⁰

*Coupled with the cases identified in the 2009 reviews, they provide a detailed account of the Agencies' engagement with, and awareness of, cases including rendition, detention and mistreatment issues since September 2001.*³³¹

173. While the product of the 2009 reviews had been provided to Sir Peter Gibson's Inquiry, these later (2012–2014) reviews had not been completed in time to be considered by that Inquiry. Sir Alex noted in his report that *"This new exercise has uncovered some additional cases not covered by the 2009 review"* (due to the geographic limitations of those reviews).³³² Our Inquiry is therefore the first time these cases have been considered.

174. We have examined the product of both of these reviews in detail and compared them with the primary material we have, and have not identified any additional cases beyond those identified at the time of completion of the 2012–2014 reviews.

Adequacy of HMG response, 2004–2010

175. The HMG response from 2004 onwards led in particular to improved guidance and training, but did the situation on the ground show this to have a beneficial impact? There was certainly less direct involvement with detainees from this point and therefore fewer cases generally. With that said, we have seen examples in the primary material of correct responses to issues that did arise.

CASE STUDY: FOLLOWING GUIDANCE TO RAISE MISTREATMENT WITH LIAISON SERVICES

GARGANEY, a MATLOCK national, initially detained in MATLOCK by the *** military in *** 2007, was interviewed by SIS officers in EDINBURGH in *** 2007 after he had been transferred into EDINBURGH custody.

The SIS officers reported that GARGANEY *"was hooded when we entered the room but the hood was removed as soon as the door was shut behind us"*.

The SIS officers immediately raised this with the liaison service representative present and were assured that the hooding was *"only done for transport in order to prevent him from seeing where he was"*. The SIS officer explained that whilst blindfolding for transport was permitted, *"use of a complete hood was not acceptable at any time"*. The officers were told this would not happen again and they continued with the interview.³³³

³³⁰ Sir Alex Allan's civil service career included Principal Private Secretary to the Prime Minister (Sir John Major, from 1992 to 1997) and Chair of the Joint Intelligence Committee (2007–2011). He is currently the Prime Minister's Independent Adviser on Members' Interests and a member of the QC appointments panel.

³³¹ Sir Alex Allan's classified report concerning SIS and MI5's 2012–14 internal reviews of detainee-related records (2014).

³³² Ibid.

³³³ SIS's 2009 internal detainee-related records review: classified background case report on GARGANEY (2009).

CASE STUDY:
RESPONDING APPROPRIATELY TO COMPLAINTS OF MISTREATMENT

GOLDENEYE, a BRISTOL national, detained in BRISTOL, alleged during an interview with SIS in November 2008 at BURY that he had been mistreated by one or more US prison officers in the period immediately after his capture, including being subjected to sleep deprivation, physical abuse and degradation.

The SIS officer terminated the interview after hearing the allegations and informed the US authorities, including making a written notification of the allegations as requested by US military orders. Later, the matter was discussed with a US officer locally who said ***.

The US investigation into the allegations concluded that ***.³³⁴

176. However, there are also examples of incidents occurring in which officers did not follow the correct procedure. This may be because the guidance was not followed or because the guidance had not reached all those officers who needed it. We note with concern that the former SIS officer who gave evidence to the Committee told us that, at the time of his deployment to Iraq in January 2005, he was not aware of the guidance that SIS had issued in June 2004:

*I can imagine that it might have been issued then but if you weren't there then you didn't see it, ... I have no recollection at all that anyone said to me, for example, "You need to read this thing that came out 12 months ago before you [interview detainees]".*³³⁵

CASE STUDY:
**SIS OFFICERS WITNESSING MISTREATMENT BUT FAILING TO
ADHERE TO THE GUIDANCE**

In *** 2007, SIS and MI5 officers were given the opportunity to interview GOLDFINCH, a NORTHALLERTON national, a few hours after his arrest in LEWES.

There are no contemporaneous records of this interview, but in 2009 the MI5 officer gave an account of what happened at the end of the interview when it had become “*apparent that GOLDFINCH was unwilling or unable to help*”. The officer recalled that:

*[two members of the US Armed Forces] approached GOLDFINCH and stood him up against the wall. ... At this point [one of them] slapped GOLDFINCH across the face. This was an open handed slap, delivered using very little obvious force, and whilst it clearly shocked GOLDFINCH it did not appear to hurt him. ... GOLDFINCH was re-hooded and led out.*³³⁶

The 2004 guidance had made clear that such action is mistreatment (and this had been reiterated in the 2005 guidance). The MI5 officer explained in his account what action he took:

³³⁴ SIS's 2009 internal detainee-related records review: classified background case report on GOLDENEYE (2009).

³³⁵ Oral evidence – the former SIS officer, 14 July 2016. He understood that ‘UK standards’ were based on the UK interpretation of the Geneva Conventions, but did not think these were codified at the time.

³³⁶ ***

*I reported this incident verbally to them *** ..., and we discussed the implications. However as I understood that SIS were responsible for producing a report following this interview, we concluded that this matter should be left to them.*³³⁷

There is, however, no equivalent report within SIS. The SIS officer appears to have failed to report this incident of mistreatment and to take the correct action.³³⁸

177. The Chief of SIS told the Committee that, after 2004:

*the pressures continue ... this is onerous stuff, and then we have got 7/7 coming in 2005. So it is still a pretty oppressive and difficult environment and still some British policy is evolving in some key areas in terms of the definition of mistreatment and we are getting the threshold right for consulting ministers. So there are still things happening in this period that we would not do today but there will be, I hope you see, strong evidence of improvement.*³³⁹

Similarly, the Director General of MI5 told the Committee:

We did those internal reviews, surveying staff who were doing the interviews of what were they seeing, and as we learnt a bit more and a bit more we updated and issued guidance in 2004, 2006 and then right through to the Consolidated Guidance in 2010.

*To try to get a bit more clarity about the time of when did we start to tip into knowing, by mid-2005 we had started to push for, and it is clear looking at all our records, and develop much more detailed joint guidance with SIS. It took a long time and, you know, my view, looking back on it, longer than it should have done, although we were extremely busy at the time with 7/7, and so on, to actually get that to finalised guidance. We issued it to our staff, because it was taking so long, as a draft ... It then was finalised in 2006 and adopted then.*³⁴⁰

178. Whilst we understand the continuing pressures that the Agencies were under, there continued to be examples of failure to follow the evolving guidance over subsequent years. According to the documentary evidence we have seen, in the period 2004–2010 SIS and MI5 have:

- been directly involved in mistreatment (threats) in two cases;
- witnessed mistreatment in seven cases;
- been told by a detainee that he has been mistreated in nine cases; and
- been told by liaison services about mistreatment in 54 cases.

³³⁷ The MI5 officer *** would have been a senior manager within MI5's counter-terrorism section. Responsibility, typically, at that level would have been to oversee *** apiece (covering amongst all of them an area equivalent to, for example, ***).

³³⁸ Classified reports of MI5's 2009 internal detainee-related records review (2009).

³³⁹ Oral evidence – SIS, 28 January 2016.

³⁴⁰ Oral evidence – MI5, 9 March 2016.

T. It is not clear how well the guidance issued in June 2004 (and subsequently) was disseminated. If it did reach all deployed personnel, clearly some failed to follow the guidance. With that said, there were fewer cases of concern after 2004 (and less engagement with detainees generally).

U. The Committee has previously expressed its concerns about Agency record-keeping. The inadequacy of the searches for documents made in 2006 and 2009 – which was only rectified in 2014 – is yet another example. Related to this are questions about what was not written down. The paucity of record-keeping gives rise to concerns as to how many similar cases of involvement in mistreatment over the 2001–2010 period may not have been accounted for. We cannot be confident in the evidence base.

8. INVOLVEMENT IN RENDITION

179. Allegations made against the UK do not just concern involvement in the physical mistreatment of detainees, as discussed in the preceding chapters. It has also been alleged that the UK was involved in rendition operations.

180. Whilst there is no universally recognised legal definition of rendition, the term is most commonly used to cover the extra-judicial transfer of an individual from one jurisdiction or State to another – this may itself be a form of mistreatment if it involves, for example, detention, transfer and/or interrogation in contravention of legal rules. ‘Extraordinary rendition’ is usually said to involve rendition when there is a real risk of torture or cruel, inhuman or degrading treatment.³⁴¹

181. The UK position on rendition is informed in particular by the case of *R v Mullen* in 1999.³⁴² In 1989, SIS facilitated the transfer of Nicholas Mullen from Zimbabwe to the UK to stand trial on terrorism charges, bypassing formal extradition processes. The Court of Appeal overturned his conviction in 1999, finding that his ‘rendition’ was “*a blatant and extremely serious failure to adhere to the rule of law*” and a clear abuse of process. HMG policy has been not to undertake such renditions to the UK since then – although crucially that policy did not extend to involvement in renditions carried out by others.

The US rendition programme

182. On 17 September 2001, President Bush signed a Presidential Finding permitting the CIA to detain any authorised target anywhere in the world and to hold them at any location.³⁴³ As a result, the US Government established an extensive programme of rendition which provided the US with a means of holding detainees for interrogation in circumstances which suited them.

³⁴¹ The transfer of prisoners under certain international frameworks, for example the Geneva Conventions, can be undertaken lawfully in some circumstances. However, UNCAT prohibits a State party from expelling, returning or extraditing a person where there are substantial grounds for believing he would be in danger of being subjected to torture (although the US entered a reservation upon ratifying the Torture Convention to the effect that a person must be “*more likely than not*” to be tortured for this prohibition to operate in relation to the US). Additionally, the European Court of Human Rights ruled that a State party could not extradite where it was aware that there was a real risk that the person would be subject to inhuman or degrading treatment in *Soering v. UK* (1989) 11 EHRR 439.

³⁴² *R v. Mullen* [1999] 2 Cr App R 143.

³⁴³ US Senate Select Committee on Intelligence, executive summary in *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* (Senate Report 113-288) (2014), page 11.

Scale

Several researchers and organisations have produced reports based on compilations of flight data from aircraft leased by the CIA. One academic research project has compiled a database tracking 11,000 flights of aircraft said to have been leased by the CIA.³⁴⁴

Estimates of the total number of detainees to have passed through Guantanamo range from 550 to 780. Most of these were renditions to detention, from Afghanistan or Iraq to Guantanamo.

Estimates of the number of detainees held at ‘black sites’ suggest at least 119.³⁴⁵

Early indications

183. As previously noted, the Heads of SIS and GCHQ, the Deputy Director General of MI5 and the Prime Minister’s Foreign Policy Adviser had already been briefed by the CIA (on 12 September 2001) that a *** was being prepared. At subsequent US Agency briefings to visiting SIS officers, specific reference was made to “*renditing*” – and, SIS believed, killing terrorists.³⁴⁶ However, the UK Agencies contend that they interpreted these references in the context of rendition to justice (i.e. for the purpose of standing trial within an established legal system), and that their awareness of a more aggressive rendition programme (of detention and interrogation outside the normal legal system) only evolved over a long period of time.³⁴⁷ The Chief of SIS told the Committee:

*I imagine we heard that *** as the [US Agencies] wanting to make sure they had a formal legal basis for renditions to justice, which is what we thought was going on, rather than [extraordinary rendition or rendition to detention] ...*

I was not there but I would be extremely surprised if [those at the meeting with the US Agencies in late September 2001] inferred from this that the [US Agencies] were going to go and torture people. Again, you know the reflex understanding of the [US Agencies], even three weeks after 9/11, would have put that out of the question.³⁴⁸

³⁴⁴ The Rendition Project – a research initiative run by Professor Ruth Blakeley (University of Sheffield) and Dr Sam Raphael (University of Westminster) examining the CIA’s rendition, detention and interrogation programme. It should be noted that the flight data alone demonstrates only the presence of an aircraft and, as John Bellinger, Chief Legal Advisor to the US Secretary of State, explained to the Council of Europe Parliamentary Assembly’s Committee on Legal Affairs and Human Rights, flights were used for more than just the transfer of detainees: “*Intelligence flights ... carry analysts to talk with one another; they carry evidence that has been collected ... I’m sure the Director of Intelligence himself was on some of those flights*” [Source: Dick Marty, Explanatory memorandum in Parliamentary Assembly of the Council of Europe: Committee on Legal Affairs and Human Rights, ‘Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states: first report’, Doc. 10957, 12 June 2006, paragraph 49].

³⁴⁵ Many of these individuals are likely to have then been transferred to Guantanamo at some stage (and may therefore also be included in the Guantanamo estimate above).

³⁴⁶ SIS internal correspondence, 2 October 2001.

³⁴⁷ Written evidence – Foreign and Commonwealth Office, 27 July 2016. From November 1997 onwards, FCO Ministers had been aware of the US Government’s rendition to justice programme, including US requests for assistance and updates on British detainees, which would provide an explanation as to why HMG saw the continuance of these after 9/11 in that same light. From 2001, US policy and practice changed rapidly, while the FCO’s understanding of the change evolved gradually and was initially focused on the issue of detainees from Afghanistan and the opening of Guantanamo. The first decisions on such renditions were requested from the Foreign Secretary in October 1998.

³⁴⁸ Oral evidence – SIS, 10 December 2015.

Early indications of rendition

October 2001: The SIS Station in *** sent a telegram to SIS Head Office with a wide copy list describing a meeting with the US Agencies on the *** during which the Agencies made clear that the *** “*authorised [the US Agencies] to detain any authorised target indefinitely at a location of [the US Agencies]’ choosing. [A senior US Agency officer] said he could ... arrest targets anywhere, including in the UK and Europe*”.³⁴⁹

November 2001: SIS issued a report to a wide copy list including MI5 senior management, the then Foreign Secretary (the Right Hon. Jack Straw) and senior departmental officials stating: “*The [US Agency] representative said the implications of the President’s order on military tribunals were still being worked on. The intention was to give [the US Agencies] some legal basis for any kidnappings or renditions they might perform.*”³⁵⁰

9 January 2002: The US State Department informed HMG of an “*intention to move an unspecified number of detainees held by the US to Guantanamo Bay within the next 24–48hrs*” and that British nationals might be amongst them.³⁵¹ On 10 January, Feroz Ali ABBASI became the first British national to be rendered to Guantanamo.³⁵²

January 2002: CUCKOO, a COLERAINE national, was rendered to CUPAR from Bagram; an SIS officer witnessed his transit to the aircraft in a six-foot, sealed box as described in Chapter 5, ‘Awareness of mistreatment’.³⁵³ In a related telegram, the Head of the SIS BIRMINGHAM Station refers to *** thanking the Head of the CUPAR Intelligence Service “*for his help in accepting 29 renditees*”.³⁵⁴

January 2002: The SIS Station in BIRMINGHAM sent a memo to Head Office and PLYMOUTH Station about a meeting with ***’s deputy director for operations saying that “*he said we should realise the help CUPAR were giving *** [referring to receipt by CUPAR of the 29 ‘renditees’]*”. BIRMINGHAM Station added that: “*We have known from the very beginning that renditions to third countries were covered in the *** ... the [US is] at war and the President has backed [the US Agencies] with war powers.*”³⁵⁵

January 2002: A memo from a deployed SIS officer to Head Office on the CUCKOO case stated: “*We suspect that *** have been using CUPAR to interview and hold a number of [Al Qaida] suspects from Afghanistan and other countries. This is what they are doing with PORTSMOUTH who are not just dealing with PORTSMOUTH AQ members.*”³⁵⁶

1 February 2002: Moazzam BEGG (a dual Pakistani–British national) was detained in Islamabad and rendered to Afghanistan. MI5 did not object, telling the US authorities it “*had no view on this matter*”.³⁵⁷

³⁴⁹ SIS message from READING Station to SIS Head Office, 12 October 2001. The term ‘rendition’ began to appear in the media about this time; for example, on 26 October 2001, an article in a Pakistani newspaper reported on a foreign national being handed to US Armed Forces and referred to this as ‘rendition’ [Source: M. Anwar, ‘Mystery Man handed over to US troops in Karachi’, *The News International* (26 October 2001)].

³⁵⁰ SIS intelligence report, *** November 2001. (A reproduction of the text of this report was also disclosed to the ISC in a letter from an SIS officer to the clerk to the ISC, 13 March 2007.)

³⁵¹ FCO telegram from the British Embassy in Washington to the FCO in London, 10 January 2002 (‘Afghanistan: Detainees’).

³⁵² MI5 message from an investigative officer in MI5 headquarters to a group of deployed officers, 16 January 2002 (‘British Al Qa’ida detainees: Feroz Ali ABBASI’).

³⁵³ SIS message from an overseas posted unit to SIS Head Office and DERBY Station, *** January 2002.

³⁵⁴ SIS message from BIRMINGHAM Station to SIS Head Office, *** January 2002.

³⁵⁵ Ibid. SIS told the Committee: “*SIS were sceptical at this stage that [the US] had thought through how it would use those powers. This scepticism was shared by *** [a senior SIS officer deployed overseas].*”

³⁵⁶ SIS message from Head Office to BIRMINGHAM and PENZANCE Stations, *** January 2002 (referring to a message from a deployed officer).

³⁵⁷ MI5 ‘Note for File’ by a senior operations manager, ‘BEGG – Detention in Pakistan’, 5 February 2002.

February 2002: A note from an MI5 legal adviser to the Director General and Director of *** recorded MI5's concern at the transfer of CUCKOO, stating: "*We of course do not know what the [US authorities] purpose was in deporting CUCKOO to CUPAR ... ***.*"³⁵⁸

March 2002: Martin MUBANGA, a dual Zambian–British national discussed further below, was rendered by US authorities from Zambia to Guantanamo. HMG was given the option to deport him to the UK but the then Foreign Policy Adviser to the Prime Minister "*made it clear that under no circumstances did HMG want MUBANGA to arrive back on British soil and that we should endeavour to avoid this happening.*"³⁵⁹

November 2002: MI5 passed the travel plans of two British residents – Bisher AL-RAWI and Jamil El BANNA – to the US authorities. The two men were then arrested in The Gambia – directly contravening the caveat MI5 placed on the intelligence that no action should be taken. The US then rendered the men to Bagram – again, against the express request of the FCO and MI5. Whilst SIS was not involved before the rendition took place, it was aware of the case and received intelligence from the Bagram interrogations.³⁶⁰ MI5 told the Committee that "*we complained vigorously to the [US authorities]. In this instance, it was clear that [the US authorities] were not going to change their position and that raising it further was not going to elicit a response.*"³⁶¹

184. Despite these early indications, the Agencies persisted in viewing cases as "*isolated incidents*" rather than evidence of a new US policy.³⁶² For example, the Chief of SIS, talking initially about the CUCKOO case in January 2002, told the Committee that:

*this was nonetheless seen as an isolated case and that probably relates to the value that CUCKOO was seen, the potential value as a detainee, in that I think he was understood to be a person who might understand where the next big attack was coming from. So I suppose what I am trying to say there is people would have – because the key issue for us here is to try and understand when we could have or should have understood this as a systematic problem and I suspect it was seen as an isolated problem because of that, but that is speculation and I don't know.*³⁶³

What is apparent is that there was no co-ordinated attempt to identify the risks involved and to formulate the UK's response.

Legal and policy advice

185. The primary material shows that legal advice across Departments and the Agencies regarding rendition was confused and poorly disseminated from the outset. There was a general lack of understanding in HMG as to what was meant by the term 'rendition'; official papers

³⁵⁸ MI5 'Note for File' by a senior legal adviser, 'CUCKOO', 1 February 2002, with manuscript annotation by the Director General dated 8 February 2002.

³⁵⁹ SIS message from Head Office to LINCOLN Station, 5 April 2002.

³⁶⁰ MI5 message from headquarters to ***, 4 November 2002 ('Travellers to Gambia'); MI5 message from headquarters to the FCO, 13 November 2002 ('Individuals detained in Gambia'); FCO telegram from the FCO in London to ***, 26 November 2002 ('Detention of Abu Qatada associates: Gambia'); MI5 message from the Director of International Counter-Terrorism to ***, 29 November 2002 ('Associates of Abu QATADA detained in Gambia'); SIS internal correspondence, 25 January 2006.

³⁶¹ Written evidence – MI5, 6 April 2016.

³⁶² Oral evidence (to the Committee's 2006–2007 Rendition Inquiry) – SIS, 19 March 2007; oral evidence – MI5, 9 March 2016; classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, 'The Report of the Detainee Inquiry' (closed version) (2013).

³⁶³ Oral evidence – SIS, 10 December 2015.

used the term interchangeably with ‘extradition’ and ‘deportation’ when it was clearly neither of these. Further, there was no clear policy, no cross-Whitehall co-ordination and apparently no recognition of the need for a policy within HMG or the Agencies.³⁶⁴ The UK approach towards rendition operations was therefore inconsistent and there was little consideration of a detainee’s possible treatment in the country they were being rendered to. The Chief of SIS admitted to the Committee:

*We were unaware of the link between the rendition programme and mistreatment, and we didn’t fully understand the difference between legal – the circumstances when renditions would be legal and when they wouldn’t be.*³⁶⁵

186. Even when SIS Field Officers made repeated requests for guidance on rendition, SIS Head Office failed to take action.³⁶⁶ For example, in November 2001, an SIS officer in SOUTHAMPTON asked SIS Head Office for guidance as they were involved in “*at least three* [rendition operations]”. There is no record in the primary material of a substantive response to this request (although we note that it may have been given verbally).³⁶⁷ Individual cases, such as ABBASI, BEGG and MUBANGA, appear to have been dealt with on a case-by-case basis.

V. In relation to the US rendition programme, there were early indications of the US’s more aggressive approach. However, the Agencies persisted in viewing cases as ‘isolated incidents’. There was therefore no co-ordinated attempt to identify the risks involved and formulate the UK’s response: the piecemeal approach led to conflicting advice and differing operational approaches.

UK involvement in renditions

187. While, as mentioned, UK policy was that it did not conduct rendition operations itself, there were nevertheless various ways in which the Agencies could have been involved in rendition operations undertaken by others (primarily the US), including:

- financing renditions;
- facilitating renditions;
- endorsing renditions;

³⁶⁴ Written evidence – SIS, 21 January 2016. The only policy decision taken was in October 2001 when the UK, as part of NATO, accepted a number of specific requests from the US – including blanket over-flight clearance and immunity from being boarded, searched or inspected by foreign authorities for US military flights engaged in counter-terrorism operations. In 2007, a report commissioned by the Parliamentary Assembly of the Council of Europe (Committee on Legal Affairs and Human Rights) concluded: “*all the members and partners of NATO signed up to the same ‘permissive’ – not to say illegal – terms that allowed CIA operations to permeate throughout the European continent and beyond; all knew that CIA practices for detention, transfer and treatment of terrorist suspects left open considerable scope for abuses and unlawful measures; yet all remained silent and kept secret the operations, the practices, their agreements and participation.*” [Source: Parliamentary Assembly of the Council of Europe: Committee on Legal Affairs and Human Rights, ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report’, Doc. 11302, 11 June 2007, paragraph 39.]

³⁶⁵ Oral evidence – SIS, 10 December 2015.

³⁶⁶ Whilst some requests for guidance received a holding response from Head Office, there are significant gaps in the primary material. SIS first issued guidance relating to rendition in 2003 (in the form of legal advice on a specific case, as explored later in the Report). General guidance on rendition was not issued by the Agencies until 2004, when MI5 supplied its officers with limited guidance specifically related to Guantanamo Bay, and 2005 when SIS shared specific rendition guidance with its officers, as discussed in Chapter 7, ‘HMG response’.

³⁶⁷ SIS message from SOUTHAMPTON Station to SIS Head Office, *** November 2001. SIS has not been able to establish categorically which cases were being referred to, but believes these would have been covered by an authorisation codenamed ‘RED’, and a follow-up which authorised SIS to arrange the capture and delivery to US authorities of 29 senior Al Qaida members. ‘RED’ is a code word we have substituted for the actual code name of this operation, which was ***.

- providing intelligence to enable renditions; and
- failing to take action to prevent renditions.

(i) Financing renditions

188. From the primary material, we have found that SIS – and in some cases MI5 – paid (or considered paying) for rendition operations which were to be carried out by others. For example, following an agreement that a NEWBURY liaison service would establish detention centres in NEWBURY, SIS officers in WARRINGTON were informed by Head Office in late 2001 to instruct contacts “*to bring Arabs to appropriate border crossings for delivery to NEWBURY authorities*”. Officers were advised not to pay bounties but that they could “*pay for prisoners (already held) to be brought to the detention centres [set up in NEWBURY] for interrogation*”.³⁶⁸ This appears to indicate a corporate policy of facilitating the rendition of those captured around the WINCHESTER–NEWBURY border.

- There are also three individual cases where SIS or MI5 made, or offered to make, a financial contribution to a rendition operation.

CASE STUDY: PAYING FOR A RENDITION

In August 2002, GREENFINCH, a *** national, was detained in DORCHESTER travelling on a false passport. He was rendered from DORCHESTER to DORNOCH in a joint ***–DORNOCH operation.

He was interrogated whilst in detention in DORCHESTER and DORNOCH, and the UK received reports on his interrogation. DORNOCH then wished to render him from DORNOCH to LEEDS. Given the UK Agencies’ intelligence interest in GREENFINCH, DORNOCH requested that SIS make a financial contribution of \$*** towards the plane to be used for GREENFINCH’s rendition to LEEDS. The remainder of the flight costs would be met by *** and a DORNOCH intelligence service.

Emails between MI5 and SIS indicate that MI5 was reluctant to provide funding to DORNOCH “*as they do not want to set a precedent in paying for threat reporting, especially if combined with difficult legal circumstances*”. SIS pushed for the payment to be made so as to maintain a relationship with DORNOCH and suggested to MI5 that as the payment would probably be made after the event then it could be argued it was not specifically for the flight. MI5 accepted that it was “*prepared to make a contribution as requested*” in order to maintain relationships with *** and asked that SIS “*confirm that Security Service and SIS will split the US \$****”. The payment and transfer took place in mid-June 2003.³⁶⁹

³⁶⁸ MI5 written evidence to the (Gibson) Detainee Inquiry on relevant guidance available to Security Service staff (2011); SIS message from Head Office to NEWBURY Station, 17 November 2001.

³⁶⁹ Classified reports of MI5’s 2009 internal detainee-related records review (2009); SIS message, 29 May 2003; MI5 message from the Director of International Counter-Terrorism to SIS Head Office and MALVERN Station, 9 June 2003 (‘Request for contribution to costs of GREENFINCH case’).

CASE STUDY: PAYING FOR A RENDITION

In 2004, GREENSHANK and GUILLEMOT, YORK extremists resident in EXETER, were targeted in Operation YELLOW – a joint operation between SIS, EXETER and YORK, with occasional liaison with FORFAR.³⁷⁰ SIS played an instrumental part in planning an operation to ‘deport’ the two men from EXETER to YORK.

SIS believed this was a lawful operation; however, the documents seen by the Committee show contrary and inconsistent views from SIS on the legality of the grounds for arrest in EXETER. The EXETER service *** (although SIS knew that EXETER had previously detained and deported others illegally and that *** if necessary).

Despite this, on *** September SIS sought and obtained authorisation from the Foreign Secretary to pay a large share (around £***) of the costs of funding a YORK plane to render GUILLEMOT and GREENSHANK from EXETER to YORK. This took place on *** October 2004.

During 2005, SIS fed in questions to the interrogations of both men by YORK but chose not to seek direct access, due to HMG concerns about publicly exposing British involvement in ‘forced deportations’ and detentions.³⁷¹

189. Given that the rendition operations SIS was financing were to countries such as LEEDS and DORNOCH, these can be described as ‘extraordinary renditions’ due to the real risk of torture or cruel, inhuman or degrading treatment of the detainees. MI5 has accepted that its actions in the GREENFINCH case were wholly unacceptable:

it was a mistake to have agreed to make that payment at the time because it is much too easily seen as, and perceived as, associated with GREENFINCH's rendition rather than with the intelligence that we were given. I think it was just a mistake and we shouldn't have done it. ...

I think, looked at from today, we would treat it as a rendition case. At the time it was described as a deportation.³⁷²

SIS similarly failed to recognise Operation YELLOW as an ‘extraordinary rendition’, relying on its belief in its lawfulness at the time:

On the two occasions that people were referred to [GUILLEMOT and GREENSHANK], it is clear that SIS, at the time, did not believe that these were [un]lawful deportations. So I think it is true to say that, if that case arose today, we would dig harder but I am also satisfied that, at the time, these were understood to be legal deportations. ...

They were subjected to long and intensive questioning but we had nothing to suggest that they had been mistreated. ...

³⁷⁰ ‘YELLOW’ is a code word we have substituted for the actual code name of this operation, which was Operation ***.

³⁷¹ Classified consolidated report of SIS and MI5's 2012–14 internal reviews of detainee-related records (2014).

³⁷² Oral evidence – MI5, 3 March 2016.

Of course they were important targets, both linked to Abu Mousa Al Zarqawi in Jordan, a person who was amongst the most brutal of the Al Qaida in Iraq fraternity, and I think it is right that we put considerable effort into ensuring that they were disrupted lawfully ...

*So it follows from that this was not a case of us funding rendition because they were believed to be lawful and we did obtain clearance from the Foreign Secretary to do them, as well.*³⁷³

190. This failure to understand what constituted a rendition can also be seen from the piecemeal and inconsistent approach. Despite the cases outlined above, we also found one case where SIS correctly refused to contribute financially to a rendition operation (see the case of POCHARD on page 101).

W. The Agencies' financing of individual rendition operations being co-ordinated by others was completely unacceptable. In our view this amounts to simple outsourcing of action which they knew they were not allowed to undertake themselves.

(ii) Facilitating renditions

191. Leaving aside the financing of rendition operations, the UK could also have facilitated rendition operations through the provision of other resources, such as the use of UK airspace and airports. From 2005 onwards, there was sustained public speculation as to whether CIA rendition flights had been using UK airports to refuel.³⁷⁴ In particular, *The Guardian* reported in September 2005:

*The 26-strong fleet run by the CIA has used 19 British airports and RAF bases, including Heathrow, Gatwick, Birmingham, Luton, Bournemouth and Belfast, RAF Northolt in north London, and RAF Brize Norton in Oxfordshire. The favourite destination is Prestwick, which CIA aircraft have flown into and out from more than 75 times. Glasgow has seen 74 flights, and RAF Northolt 33.*³⁷⁵

The article referred to the case of Mohammad Saad Iqbal MADNI, alleging that the CIA rendered him from Indonesia to Egypt, then flew on to Prestwick airport in Scotland to refuel before returning to Washington.

192. The FCO told the Committee that it:

held internal discussions in early 2005 regarding media allegations that the CIA was using UK airports to conduct extraordinary rendition operations. On 4 March 2005, a submission was sent to Ministers outlining a response to these allegations, which had been requested in a letter dated 25 February 2005 from the Clerk of the Foreign Affairs Committee. The submission recommended that the FCO should seek clarification from the US of the alleged use of UK airports and airspace by [US Government] aircraft and of US views on rendition. A briefing on rendition

³⁷³ Oral evidence – SIS, 4 February 2016.

³⁷⁴ The UK had given permission for the US to use its airspace to conduct renditions to justice prior to 2001. In 1998, the US had approached HMG with four requests: two were approved because the detainees were en route to stand trial in the US; the other two were refused.

³⁷⁵ I. Cobain, S. Grey and R. Norton-Taylor, 'Destination Cairo: human rights fears over CIA flights', *The Guardian* (12 September 2005, online).

*dated 28 March 2005 for the then Foreign Secretary, in preparation for a meeting with US Secretary of State Rice, highlighted that the FCO had made clear to the US authorities that it expected the US to seek permission to render detainees via UK territory and airspace (including Overseas Territories). It also noted that Secretary Rice's private assurances on the subject had been very helpful.*³⁷⁶

193. The allegations about the use of UK airports by US rendition flights led to further actions and investigations as set out below.

Actions and investigations following allegations of rendition

2005: Prompted by a request from Liberty, the Chief Constable of Greater Manchester, Mike Todd, led a scoping exercise on behalf of the Association of Chief Police Officers (ACPO) into allegations that US Government aircraft transited UK airports during extraordinary rendition operations and thereby broke UK law.³⁷⁷

23 February 2006: The Foreign Secretary (the Right Hon. Jack Straw) wrote to Amnesty International about its concerns on circuit flights, noting that: *"While we can insist, as we do, that no foreign aircraft should be used to commit criminal offences within our jurisdiction, we cannot impose restrictions on the use of aircraft outside our jurisdiction."*³⁷⁸

21 December 2006: Assistant Chief Constable Ian Learmouth of Strathclyde Police, having investigated the allegations that rendition flights had made use of Scottish airspace, specifically Glasgow Prestwick airport, told the ISC that there was no evidential basis to support the allegation that crimes or offences relating to rendition had taken place in Strathclyde.

5 June 2007: Chief Constable Mike Todd wrote to Liberty summarising the conclusions of his scoping exercise as follows: *"none of the information available contributes to the evidential base to support allegations that offences have been committed on UK territory. The material ... draws conclusions on a wholly different basis to that needed for the criminal process here in the UK. Much of the information is circumstantial and without any means of testing or corroborating the claims made. Original sources are either outside UK jurisdiction, anonymous or otherwise unavailable for interview to a standard that would support a case brought in this Country."*³⁷⁹

2008: The Association of Chief Police Officers Scotland (ACPOS) completed an internal report following a preliminary investigation into the allegations that US Government aircraft transited Scottish airports in extraordinary rendition operations and thereby broke Scottish law. It apparently concluded that the allegations were only speculations about staging flights – not about flights with detainees aboard. A public statement by ACPOS in 2008 said that the investigation had found *"there was insufficient credible and reliable information to enable them to commence a criminal investigation"* and no further work was undertaken.

³⁷⁶ Written evidence – Foreign and Commonwealth Office, 27 July 2016.

³⁷⁷ Email from the staff officer to the ACPO President, 6 June 2007, sent *"For the attention and information of all those Chief Constables with airports within their Force environs"* ('Extraordinary rendition – letter to Liberty').

³⁷⁸ Letter from the Foreign Secretary to the Director of Amnesty International UK, 23 February 2006.

³⁷⁹ ISC, *Rendition* (Cm 7171, 2007), paragraph 195; email from the staff officer to the ACPO President, 6 June 2007, sent *"For the attention and information of all those Chief Constables with airports within their Force environs"* ('Extraordinary rendition – letter to Liberty').

15 May 2008: FCO passed a list to the US of 391 flights that were potential CIA rendition or circuit flights through UK airports or airspace. The US refused to consider the list on the grounds that this would set a precedent for other countries to request the same.³⁸⁰

29 May 2008: The Foreign Secretary (the Right Hon. David Miliband) wrote to the Right Hon. the Lord Tyrie, then Chairman of the All-Party Parliamentary Group on Extraordinary Rendition, stating: “*We do not consider that a flight transiting our territory or airspace on its way to or from a possible rendition operation constitutes rendition. Nor do we consider that permitting transit or refuelling of an aircraft without detainees on board without knowledge of what activities that aircraft had been or would be involved in, or indeed whether or not those activities were unlawful, to be unlawful in itself.*”³⁸¹

2014: Following publication in *The Guardian* newspaper of details of circuit flights linked to specific detainees, the Lord Advocate instructed Police Scotland to investigate further. This investigation is still continuing.³⁸²

194. In addition to allegations about the use of UK airports by rendition flights, there was also speculation about the use of British Overseas Territories and in particular the island of Diego Garcia, part of the British Indian Ocean Territory (BIOT). Diego Garcia was leased to the US in 1976 for military use: the island has a large US Navy support base, and an airfield. The lease agreement between the UK and US Governments sets out agreed practices for the use of Diego Garcia, and clearly states that the US Government must consult the UK beforehand if it wishes to transit the island with a detainee on board. The UK remains fully responsible for ensuring that no activities contrary to international law take place on Diego Garcia. A full description of the FCO oversight of activity on Diego Garcia is at Annex D.

195. From 2002 onwards, speculation as to whether Diego Garcia had been used by the US in rendition operations appeared in the media and Parliamentary Questions: the controversy centred on transit through the territory (although there were also allegations of a ‘black site’ on the island and prisoners being kept on ships in the surrounding waters). An FCO letter sent to the British Embassy in Washington on 16 January 2003 noted:

*The WP [Washington Post] article has also re-ignited interest in the alleged US use of Diego Garcia for interrogating and detaining ‘terrorists’... We have been over this a few times. We have no evidence to support the claim but are double checking. We should like the US to confirm that they have not and are not using DG [Diego Garcia] for this purpose.*³⁸³

The Embassy responded on 17 January 2003 stating that the US Ambassador at Large for War Crimes said he had no knowledge of detainee-related activities on Diego Garcia.

196. From 2003 to 2007, the UK Government obtained regular assurances from the US Government that the island had not been used for holding detainees or been transited by aircraft carrying detainees. However, in February 2008, the US Government notified the UK

³⁸⁰ FCO eGram from the FCO in London to the British Embassy in Washington, 15 May 2008 (‘Rendition: Instructions to Post’); submission from an FCO official to the Foreign Secretary, 1 July 2008 (untitled).

³⁸¹ Letter from the Foreign Secretary to the Chair of the All-Party Parliamentary Group on Extraordinary Rendition, 5 June 2008.

³⁸² Letter from the Lord Advocate to the ISC Chair, 15 December 2014.

³⁸³ Written evidence – Foreign and Commonwealth Office, 1 September 2016.

Government that it had found new information which showed that on two occasions in 2002 a US rendition flight with a detainee aboard had transited Diego Garcia.

Diego Garcia rendition activity

November 2001: HMG was informally made aware of US consideration of the potential for Diego Garcia to be used for detainees (British officials on the island were unofficially given a copy of a US email chain, which they then shared with FCO London officials).³⁸⁴ However, this was not progressed as there was neither the infrastructure nor capacity on the island for the proposal.

***** January 2002:** Mohamed Saad Iqbal MADNI, a Pakistani national, was detained in Indonesia and allegedly rendered to Egypt by the CIA, via Diego Garcia. It is alleged that the plane refuelled in Scotland on 15 January 2002 returning from that rendition operation. MADNI alleges that he was further rendered from Egypt to Bagram before being transferred to Guantanamo Bay in March 2003 and that he was subjected to significant mistreatment at each stage of his detention and during the rendition flights.³⁸⁵

***** 2002:** An unknown DINGWALL detainee was rendered by the US from SWINDON, via Diego Garcia, to DINGWALL.³⁸⁶

***** 2004:** The US asked SIS informally for permission for a rendition flight to pass through Diego Garcia from HEREFORD to CROMARTY. SIS raised no objection. SIS did not alert the FCO or Ministers to the request at the time (SIS saw it as informal and anticipated a formal request would be made to the FCO) but subsequently alerted the FCO on ***. It was only on *** that the US informed SIS that the plane carrying the detainee had not, in fact, transited Diego Garcia ***.³⁸⁷

8 June 2007: Senator Dick Marty presented evidence to the Council of Europe that High Value Detainees were held in secret CIA prisons, including Diego Garcia, between 2002 and 2003.³⁸⁸ In his 2007 report, Senator Marty wrote: “*We have received concurring confirmations that US Agencies have used Diego Garcia ... in the processing of high-value detainees.*” In parallel, Manfred Novak, UN Special Rapporteur on Torture, told *The Observer* newspaper that “*he had received credible evidence ... that detainees were held on Diego Garcia between 2002 and 2003*”.³⁸⁹

³⁸⁴ Email from *** (US Navy) to *** (US Navy), *** November 2001 (‘Re: ***’).

³⁸⁵ Submission from an FCO official to the Minister of State and the Foreign Secretary, 26 January 2009 (‘Rendition/Diego Garcia – Update on implications’); Hansard, HC Deb, 21 February 2008, vol. 472, col. 547 (‘Terrorist Suspects (Renditions)’).

³⁸⁶ Submission from an FCO official to the Minister of State and the Foreign Secretary, 26 January 2009 (‘Rendition/Diego Garcia – Update on implications’); Hansard, HC Deb, 21 February 2008, vol. 472, col. 547 (‘Terrorist Suspects (Renditions)’).

³⁸⁷ Memorandum from a senior SIS officer to an official in the FCO, 26 January 2006 (***); memorandum from a senior SIS officer to an official in the FCO, *** 2004 (***); telegram from *** to SIS Head Office, *** 2004 (***).

³⁸⁸ In 2005, the Parliamentary Assembly of the Council of Europe had appointed Dick Marty, one of its Swiss parliamentary members and a former prosecutor, to conduct an inquiry into secret detention and rendition involving European countries. Senator Marty produced two reports (in June 2006 and June 2007): Parliamentary Assembly of the Council of Europe: Committee on Legal Affairs and Human Rights, ‘Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states: first report’, Doc. 10957, 12 June 2006; and ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report’, Doc. 11302, 11 June 2007.

³⁸⁹ Parliamentary Assembly of the Council of Europe: Committee on Legal Affairs and Human Rights, ‘Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report’, Doc. 11302, 11 June 2007, paragraphs 7, 70; J. Doward, ‘British island “used by US for rendition”’, *The Observer* (2 March 2008, online).

15 February 2008: The US notified HMG that it was now aware that, contrary to its earlier assurances, on two occasions in 2002 a US plane had refuelled in Diego Garcia whilst a detainee was on board.³⁹⁰

3 July 2008: The Foreign Secretary (the Right Hon. David Miliband) in a Written Statement to the House, confirmed:

*Our US allies are agreed on the need to seek our permission for any future renditions through UK territory. ... [There is] firm US understanding that there will be no rendition through the UK, our Overseas Territories and Crown Dependencies or airspace without first receiving our express permission.*³⁹¹

197. The Committee has seen nothing in the primary evidence to indicate that detainees have ever been held on Diego Garcia. ***,³⁹² The primary evidence does not suggest that HMG was aware of ***, or that it was aware of the use of Diego Garcia.³⁹³ The US has not publicly revealed any details of the two renditions via Diego Garcia in 2002 beyond those included in a public statement issued by the CIA in February 2008. ***,³⁹⁴

198. We are aware of only one further proposal to use Diego Garcia since February 2008. In October 2008, the British Embassy in Washington received a request from the US Drug Enforcement Agency (DEA) to transfer two individuals from Indonesia via Diego Garcia to the US to face counter-narcotics charges. In parallel, the British Naval Commander on Diego Garcia received the same request from his US counterpart on the island. HMG officials and legal advisers began work to establish whether the transfer would accord with UK law and international obligations. However, the US decided not to pursue the request and told the British Embassy in Washington that it had made alternative plans.³⁹⁵

199. The FCO has stated that, since 2008, HMG has received annual assurances that no other rendition flights have passed through Diego Garcia. In June 2015, a new ‘universal’ assurance was received from the US which covered ships and aircraft, and also addressed the allegation of a hidden ‘black site’ on the island. It stated:

With the exception of the two previously reported flights that transited through Diego Garcia in 2002, since the terrorist attacks of September 11, 2001, the United

³⁹⁰ Memorandum from a Cabinet Office official to an FCO official, 18 February 2008 (‘Simon McDonald and ‘C’ meeting with ***’); submission from an FCO official to the Minister of State and the Foreign Secretary, 26 January 2009 (‘Rendition/Diego Garcia – Update on implications’); Hansard, HC Deb, 21 February 2008, vol. 472, col. 547 (‘Terrorist Suspects (Renditions)’).

³⁹¹ Written evidence – Foreign and Commonwealth Office, 14 November 2014; Hansard, HC Deb, 3 July 2008, vol. 478, col. 58WS (‘Written Ministerial Statements – Foreign and Commonwealth Office: Terrorist Suspects (Rendition)’). The current FCO position on circuit flights states: “Should an ally seek our assistance in transferring detainees, our policy is to look at each request on a case by case basis. We would decide whether or not to assist taking into account all circumstances, including our obligations under domestic and international law. Given the volume and range of allied traffic that makes use of the UK for reasons that are directly and indirectly beneficial to the UK, attempts to block flights by aircraft that could potentially have been used for rendition at some point but which were also performing other duties would have almost certainly undermined key areas of co-operation without providing a more effective guarantee than currently existed that rendition would not occur” [Source: written evidence – Foreign and Commonwealth Office, 14 November 2014].

³⁹² ***

³⁹³ Submission from an FCO official to the Foreign Secretary, 2 June 2009 (‘Guardian article: Individuals rendered through Diego Garcia’).

³⁹⁴ Oral evidence – SIS, 4 February 2016.

³⁹⁵ Email from an official in the British Embassy in Washington to a member of the Serious Organised Crime Agency, 15 October 2008 (‘Plan to extradite Afghan national to US’).

*States has not held or transited any detainees through the territorial land, air or seas of the United Kingdom or its territories.*³⁹⁶

200. There have been numerous calls for further investigation of allegations of illegal activities at Diego Garcia, and in particular requests for the UK to publish its flight records for the period.³⁹⁷ Between 2012 and 2014, the FCO made a number of statements on the flight records available for Diego Garcia. Initially it stated that, following a search of Diego Garcia in summer 2014, flight records had been found but they were “*incomplete due to water damage*”. One week later they announced that the records had “*dried out*”, and that the 15,909 ‘movement records’ from the period September 2001 to January 2009 would be catalogued. The records are patchy, with a variety of different record types being used at different times: the majority were Daily Occurrence Logs, General Declarations and Passenger Manifests, although there are smaller numbers of daily Airport Customs Schedules, Monthly Flight Statistics and Immigration Cards.

Diego Garcia: available records from 2001 to 2009

The 15,909 flight records found on Diego Garcia comprise:

- **General Declarations:** These usually contain details of aircraft registration number, ownership, flight origin and destination, and sometimes the aircraft type. Most of the records held are General Declarations.
- **Passenger Manifests:** These usually contain details of aircraft type and/or registration number. Only completed “*when an aircraft is (or has been) carrying persons in excess of its normal complement of flight-crew*”.³⁹⁸
- **Daily Occurrence Logs:** A handwritten log completed by the UK BIOT team on the island (undertaking its customs function) which records all flight and sea arrivals. This is considered by the FCO as “*probably the most reliable form of record for dating purposes, [however] their content seems to have depended on the whim of the authors with the degree of detail varying from day to day. Aircraft types are often recorded, but they rarely include registration numbers and many only refer to point of origin and/or destination.*” There are no Daily Occurrence Logs for the period July 2006–April 2008 (however, the Airport Customs Schedules contain similar data on flight arrivals and departures).
- The FCO also digitised any Airport Customs Schedules, Monthly Flight Statistics (these only record boat and aircraft types, not tail numbers) and Immigration Cards (although these were not used in the review process as the FCO is “*confident that repeated media claims of a CIA detention centre in BIOT are untrue*”).³⁹⁹

³⁹⁶ Written evidence – Foreign and Commonwealth Office, 27 July 2016.

³⁹⁷ On 30 January 2015, Lawrence Wilkerson (aide to Colin Powell when he was at the State Department) said in an interview that three US intelligence sources had told him Diego Garcia was “*used as a transit site where people were temporarily housed, let us say, and interrogated from time to time*”, reigniting the debate [Source: Ian Cobain, ‘CIA interrogated suspects on Diego Garcia, says Colin Powell aide’, *The Guardian* (30 January 2015)].

³⁹⁸ Manifests show the number of passengers at the origin of the flight, irrespective of how many may have disembarked at points en route to Diego Garcia.

³⁹⁹ FCO memorandum, ‘Alleged CIA rendition flights through Diego Garcia’, 12 February 2015.

201. Once the records had been digitised, the FCO conducted a review of them with the aim of identifying any evidence which might call into question the reliability of the assurances it had received from the US Government that (apart from two instances in 2002) no rendition flights had passed through Diego Garcia. The FCO ran searches based on aircraft types, tail numbers and operating companies alleged to have been associated with the CIA extraordinary rendition programme. The records were checked against three sources: the list published by the FCO in July 2008 of “*flights where the UK Government has been alerted to concerns regarding rendition through the UK, its Overseas Territories or the Crown Dependencies*”; a list compiled by The Rendition Project; and an analysis submitted to the European Parliament’s Temporary Committee on the Alleged Use of European Countries by the CIA for the Transport and Illegal Detention of Prisoners.⁴⁰⁰

202. The FCO review was completed in spring 2015. It contains caveats as to the comprehensiveness of its conclusions due to gaps in the records, stating that the recovered records:

*are particularly thin in 2001 and the first ten months of 2002 – sometimes recording only one or two flights per month. There are no records at all from 17 September 2001 to 1 February 2002 and from 16 August 2002 to 20 September 2002. From 26 October 2002 until November 2007 the records become more substantial: while there are gaps in individual types of document (e.g. there are only 8 General Declarations for the 27 months from September 2001 until January 2004) ... taken in sum they show several – sometimes many – flight movements almost every day, suggesting ... we have a reasonably complete picture for this five year period. From 2 November 2007 there is again a significant drop, to only a few recorded movements each month, before the ‘normal’ frequency resumes in mid-March 2008: on investigation, this period coincides with a contractual dispute between the US Government and the airfield operating company which restricted air movements through the base. Even when the records do appear comprehensive, there are often inconsistencies of detail between the various documents.*⁴⁰¹

The review also identified a number of errors in the digitisation process itself – although the FCO believes “*it is extremely unlikely that any flight has been completely overlooked*”.⁴⁰²

Diego Garcia: FCO 2001–2009 record review

The majority of recorded flights through Diego Garcia involved US military aircraft or logistics movements by civilian aircraft operated by well-known contractors, who have not been associated with rendition (by, for example, The Rendition Project).

The most common aircraft types linked to alleged rendition flights were Boeing 737s and various models of Gulfstream:

⁴⁰⁰ FCO memorandum, ‘Alleged CIA rendition flights through Diego Garcia’, 12 February 2015; FCO, ‘List of flights where the UK Government has been alerted to concerns regarding rendition through the UK, its Overseas Territories or the Crown Dependencies’, House of Commons Deposited Paper, DEP2008-1793.

⁴⁰¹ FCO memorandum, ‘Alleged CIA rendition flights through Diego Garcia’, 12 February 2015. In relation to the “*often inconsistencies of detail between the various documents*”, the FCO told us that “*Such inconsistencies often arise in relation to entirely routine flights, such as USAF transport movements. They are most probably the result of human error – e.g. confusion between the date a document was drafted for customs clearance purposes and the date the flight actually took place. Flight plans can also often change at a late stage for operational reasons, such as bad weather.*”

⁴⁰² Ibid.

- There is no record of any civilian Gulfstream transiting Diego Garcia in this period.
- The records showed ten flights by Boeing 737s. Three of these flights involved aircraft operated by a company associated with alleged rendition flights:

(i) **On 26 January 2005** a Miami Air International Boeing 737, registration N739MA, arrived in Diego Garcia from Bahrain. The Daily Log shows it departed the same day for Bangkok, carrying 78 passengers and *** flight crew: the General Declaration lists only the crew. Miami Air International is alleged by NGOs to have provided services to the CIA, by providing Boeing 737 aircraft for rendition flights. N739MA has not been linked to any rendition flight.

(ii) **On 31 January 2005** another Miami Air International Boeing 737, registration N734MA, flew from Kuwait to Bangkok via Diego Garcia. The General Declaration records the aircraft as carrying only *** flight crew; however, the Daily Log refers to “60 pax [passengers]” and “1 medivac” (i.e. medical evacuation case). The absence of Immigration Cards indicates that nobody left the aircraft. N734MA has not been linked to any rendition flight.

(iii) **On 29 August 2006** a third Miami Air International Boeing 737, registration N740EH, arrived in Diego Garcia from Dubai. The flight originated in Bucharest (an alleged CIA ‘black site’). There is no record of its departure. The General Declaration and customs form record it as carrying *** flight crew. This aircraft has been associated by The Rendition Project with a possible detainee transfer flight from Cairo to Afghanistan in March 2006. However, there have been no claims that this particular flight in August 2006 was connected with rendition.

Four of the other seven Boeing 737 flights were identified as an Australian military flight, two US military passenger flights (one US Navy, one recorded as US Air Force) and one flight operated by Ryan International Airlines, a Department of Defense contractor which has never been associated with rendition.

The remaining three flights could not be identified: one occurred in 2003, one in January 2009 and a third arrived from Darwin on 7 September 2006 (the records hold no other details so its point of origin is unknown).

The FCO review concluded there was no evidence to contradict US assurances that there were no further rendition flights through Diego Garcia. However, in the interests of due diligence it recommended that:

- the US be asked to confirm that the three Miami Air International flights in 2005–2006 were not carrying detainees;
- further answers be sought about the Boeing 737 flight from Darwin on 7 September 2006; and
- a further attempt be made to discover why HMG flight records for the 2001–2002 period were so limited, if necessary by tracking down and asking the military personnel responsible at the time.⁴⁰³

⁴⁰³ FCO memorandum, ‘Alleged CIA rendition flights through Diego Garcia’, 12 February 2015.

The FCO has since confirmed it has received assurances from the US that the three Miami Air flights were not rendition flights. The US also confirmed that the unidentified flight from Darwin was not a US Government (contract or military) flight.⁴⁰⁴

At the ISC's prompting, the FCO contacted the Australian Government to determine whether the Boeing 737 flight was theirs. The Australian authorities confirmed that:

*an Airbus A330 ... was operating between Darwin and Diego Garcia ... Given the similarity in appearance, there is a possibility that this aircraft ... may have been mis-recorded as the Boeing 737 in question and on an incorrect date. Further investigation of the ... daily log for '7 September 2006' now reveals that it was in fact the log for 1 September 2006 ... Our best assessment therefore, is that the person recording the entry in the daily log for 1 September 2006 misrecorded the A330 ... as a B737.*⁴⁰⁵

The FCO asked the MOD to conduct enquiries of former commanding officers on Diego Garcia. The MOD identified nine former officers. Three could not be traced; however, the other six provided written statements indicating that either they were unable to recollect any relevant information or that they did not deliberately destroy or lose any relevant records.⁴⁰⁶ It is not clear if they were asked whether records were kept in the first place or if they were asked to keep any flights or ship movements 'off the books'.

203. The records review clearly shows that the policy on recording flights was woefully inadequate. It is worth noting that there are no records amongst the 15,909 'movement records' of the two rendition flights acknowledged by the US to have passed through Diego Garcia in 2002: this clearly indicates that the record review cannot be relied on to provide any assurances.

X. There is no evidence that any US rendition flight transited the UK with a detainee on board, although two detainees are now known to have transited through the British Overseas Territory of Diego Garcia. The Committee has seen nothing in the primary evidence to indicate that detainees have ever been held on Diego Garcia. We note, however, that the records available are patchy and cannot be relied on, and that the policy on recording flights was woefully inadequate.

(iii) Endorsing renditions

204. Whilst the cases above – where the UK supplied resources – carry the most cause for concern, there are also a number of cases we have seen in the primary materials where the Agencies either suggested or planned rendition operations with foreign liaison partners, despite knowing that they would not be allowed to undertake the operations themselves.

⁴⁰⁴ Written evidence – Foreign and Commonwealth Office, 4 December 2015.

⁴⁰⁵ Written evidence – Foreign and Commonwealth Office, 11 March 2016. The FCO has since told the Committee: "We believe the flight was in fact on 1 September 2006, and that the aircraft in question was an Airbus A330, registration CS-TMT, operated by a Portuguese charter airline, 'HiFly'. This airline had a logistics contract with the Australian Department of Defence, and CS-TMT was a regular visitor to Diego Garcia at this time, travelling between Australia and Kuwait. As well as the Daily Log, the flight also appears in General Declaration forms" [Source: written evidence – Foreign and Commonwealth Office, 27 July 2016].

⁴⁰⁶ Written evidence – Foreign and Commonwealth Office, 11 March 2016; written evidence – Foreign and Commonwealth Office, 26 July 2016.

- We have seen 28 cases where SIS or MI5 suggested, helped to plan, or agreed to, a rendition operation proposed by others.
- All of these took place before the end of 2004.

**CASE STUDY:
AGREEING TO A RENDITION PLAN PROPOSED BY OTHERS**

In August 2002, LINNET, a *** national, was rendered from DORCHESTER to DORNOCH and then on to CARDIFF.

On *** November, the US authorities sent a message to MI5 stating: “***.”⁴⁰⁷

MI5 responded: “*We agree wholeheartedly with your proposed way forward ... Once LINNET has been removed from DORCHESTER, we would be grateful for real-time access.*”⁴⁰⁸

A series of messages between *** and *** November 2002 show SIS support for the US approach, and SIS worked with MI5 to prevent IPSWICH intelligence services ‘complicating’ the rendition plan.⁴⁰⁹

205. MI5’s 2009 internal case review recognises that its approval of the rendition operation “*was illegal*”. There were existing objective grounds for concern about detainee treatment in DORNOCH.⁴¹⁰ However, giving evidence to this Inquiry, the Director General told the Committee:

*As you are aware the circumstances around LINNET’s transfer to [DORNOCH] are still the subject of Police investigation under Operation NITON. The word ‘illegal’ was used by a desk officer during the 2009 review – it does not come from any of the primary documents which refer to the [US authorities] discussing ***. However, MI5 did not materially support any transfer which we knew and believed to be illegal.*⁴¹¹

206. SIS commented more generally:

I think the root of the problem is that we were not sufficiently understanding of the distinction between what was legal and what wasn’t, and with hindsight that was not a good thing and we certainly would not want to be in that position now. So we are in a much more robust place now.

So I probably would not take it to the final stage of your argument that somehow we were consciously seeking to get round rules and things we knew to be illegal. I have not seen that, but certainly what there wasn’t [was] sufficient focus on whether something was unequivocally legal or not.

⁴⁰⁷ SIS’s 2009 internal detainee-related records review: classified background case report on LINNET (2009).

⁴⁰⁸ Classified reports of MI5’s 2009 internal detainee-related records review (2009).

⁴⁰⁹ SIS internal correspondence, *** November 2002; SIS’s 2009 internal detainee-related records review: classified background case report on LINNET (2009).

⁴¹⁰ Classified reports of MI5’s 2009 internal detainee-related records review (2009).

⁴¹¹ Written evidence – MI5, 6 April 2016.

*The thing that clouds us is, ... we are looking to disrupt terrorists, that is what we do, so there are circumstances in which we could conceivably try and apply extradition or deportation, or whatever it is.*⁴¹²

207. From further cases in the primary material, it is evident that the Agencies were involved in planning for operations that did not eventually go ahead.

**CASE STUDY:
AGREED RENDITION PLAN THAT DID NOT GO AHEAD**

KITTIWAKE, a JEDBURGH national with connections to British extremists, had been the subject of a joint SIS–MI5–JEDBURGH monitoring operation since ***.

In *** 2003, faced with JEDBURGH reluctance to arrest him, SIS and the US authorities worked out a plan to capture him in HAVERFORDWEST (the US authorities subsequently added KINROSS as an alternative) and render him to CIRENCESTER. SIS noted:

*Following our further consultation with [the US authorities], we both agreed that we could better refine our plan to allow for better SIS–[US authorities] access to [him] ... So [US authorities ***] has now proposed ... that, once lifted by HAVERFORDWEST, [he] should be transferred to CIRENCESTER. ... We fully support this change.*⁴¹³

However, the US authorities failed to locate KITTIWAKE before he returned to JEDBURGH and so the rendition operation did not go ahead. SIS and MI5 discussed ways to lure KITTIWAKE out of JEDBURGH so the operation could be reinstated. However, he was eventually arrested by JEDBURGH authorities in *** 2003.⁴¹⁴

208. In its written evidence, SIS accepts that in some cases it:

*engaged in discussions with partners about renditions at the planning stage, as individuals were legitimate targets of joint interest. In a few of these the documents show that advantage was taken of intelligence opportunities arising from transfers by and between other states, but that we did not make the checks which would now be expected around the legality of processes or consistently seek assurances.*⁴¹⁵

It is important to note, however, that there are cases in the primary material where SIS or MI5 withdrew from a planned rendition operation due to concerns over its legality.

⁴¹² Oral evidence – SIS, 10 December 2015.

⁴¹³ Classified consolidated report of SIS and MI5's 2012–14 internal reviews of detainee-related records (2014).

⁴¹⁴ Ibid.

⁴¹⁵ Classified SIS report (2014) responding to the issues raised in: Sir Peter Gibson, 'The Report of the Detainee Inquiry' (closed version) (2013).

**CASE STUDY:
WITHDRAWAL FROM A PROPOSED RENDITION OPERATION**

POCHARD, a SLOUGH national, was arrested in November 2001 by Afghan authorities in ALLOA. He was interviewed in detention by SIS on *** November. Shortly afterwards SIS discussed (and may have initially proposed) an operation with SLOUGH to render POCHARD to SLOUGH. SLOUGH suggested they were willing to receive him if SIS would pay for it.⁴¹⁶

However, DAVENTRY Station then received advice from Head Office that:

*Unfortunately, we are unable legally to take an active part in arranging the rendition of foreign prisoners. If SLOUGH want POCHARD back in SLOUGH, the most we could do is to put SLOUGH in touch with the Afghans. We are not allowed to transport prisoners back to their native countries or to make any of the arrangements. Nor can we pay expenses.*⁴¹⁷

SIS interviewed POCHARD again in DAVENTRY in February 2002 and concluded that there was nothing further to be gained in continuing to interview him.⁴¹⁸

209. This demonstrates that, from the outset, SIS and MI5 clearly knew that it was unlawful for them to undertake rendition operations themselves and they advised deployed personnel that it was unlawful to take an active part in arranging renditions. That they nonetheless engaged in other renditions shows the inconsistency in approach and the haphazard manner in which policy on rendition was handled.

(iv) Providing intelligence to enable renditions

210. In addition to engaging in planning a rendition, from the primary material we can see that the Agencies also enabled renditions to go ahead by providing intelligence (for example, on the location of the individual).

- We have seen 22 cases where SIS or MI5 provided intelligence to enable a rendition operation to take place.
- Of these, all but one took place before the end of 2004.

⁴¹⁶ SIS message from MANCHESTER Station to Head Office, *** February 2002.

⁴¹⁷ SIS message from Head Office to MANCHESTER and DAVENTRY Stations, 22 February 2002.

⁴¹⁸ SIS's 2012–14 internal review of detainee-related records: classified background case summary on POCHARD (2014).

**CASE STUDY:
PROVIDING INTELLIGENCE THAT ENABLED A RENDITION**

SIS and MI5 were involved in providing intelligence to enable the capture of FIELDFARE, a British *** national, in SALFORD. SIS Head Office told the deployed officers in HALIFAX on *** August 2003 that, if FIELDFARE were to be captured, he should be handed over to the SALFORD authorities (rather than transferred to Bagram or Guantanamo Bay).⁴¹⁹

On 3 October, FCO submitted to the Foreign Secretary (the Right Hon. Jack Straw) asking if he was content that, if captured by the US authorities or a SALFORD liaison service, the UK should continue to insist that FIELDFARE be dealt with through the SALFORD legal system.⁴²⁰

On *** October, FIELDFARE was captured, and on *** October SIS and MI5 Field Officers in SALFORD reported to Head Office that they supported plans for his rendition: “*We and [the US authorities] are combining forces to urge upon [a SALFORD liaison service] that [FIELDFARE] should be rendited as soon as possible.*”⁴²¹

On 8 October, the Foreign Secretary agreed the submission made on 3 October and SIS Head Office intervened to make clear to the US authorities that FIELDFARE’s rendition to Bagram or Guantanamo Bay was unacceptable. The US authorities then developed an alternative plan to render FIELDFARE to a safe house near Kabul. The evidence seen by the Committee does not show any objection from the Agencies to this alternative rendition plan, despite FIELDFARE being a British national. In the end, FIELDFARE’s rendition to Kabul did not go ahead – he remained in (a SALFORD liaison service) detention as he was “*providing useful information*”.⁴²²

211. The Director General of MI5 told the Committee that he would be “*wary of extrapolating a policy picture from limited cases*” and that:

*in the cases of KITTIWAKE and FIELDFARE officers in the field did discuss these issues, but ... they did not take place, and in the case of FIELDFARE the idea was quickly countermanded by both MI5 and SIS Head Office.*⁴²³

The Director General was keen to emphasise that these were examples of actions by individual officers, which were not endorsed by MI5 corporately.

GCHQ

212. We have discussed previously in this Report the question of GCHQ potential involvement in unlawful US operations, due to its sharing of intelligence with the National Security Agency (NSA), and also with its sister agencies, SIS and MI5. Given the volume of material it passed during this period, it is inconceivable that some of it did not lead to a rendition operation. GCHQ contends, however, that in sharing intelligence with its UK partners it is those partners’

⁴¹⁹ SIS internal correspondence, *** August 2003.

⁴²⁰ Submission from an FCO official to the Foreign Secretary, 3 October 2003 (****).

⁴²¹ SIS message from HALIFAX Station to SIS Head Office for MI5 headquarters, *** October 2003.

⁴²² Memorandum from one FCO official to another, 8 October 2003 (****); submission from an FCO official to the Foreign Secretary, 3 October 2003 (****); memorandum from a senior SIS officer to numerous officials within the FCO, 14 October 2003; SIS message from HALIFAX Station to SIS Head Office for MI5 headquarters, 20 October 2003.

⁴²³ Oral evidence – MI5, 3 March 2016; written evidence – MI5, 6 April 2016.

responsibility to ensure the legality of their operations; in sharing the bulk of intelligence or raw data with the NSA it has no knowledge or belief as to whether this will lead to a rendition operation. In 2006, in relation to this Committee's Inquiry into rendition, the Head of Operations in GCHQ stated:

*My belief is that GCHQ has not knowingly and directly assisted, or been knowingly and directly involved with, US Rendition or Extraordinary Rendition operations. Clearly, the wide sharing of SIGINT through UKUSA [UK–US Communication Intelligence Agreement] means that it is possible that intelligence from the central 'pool' (including SIGINT shared with the US) has indirectly supported such US operations. But I believe that GCHQ has not been actively and knowingly involved directly in rendition.*⁴²⁴

Similarly, Defence Intelligence told the Committee that it had found no information to suggest that intelligence from MOD/Defence Intelligence led to a US rendition.⁴²⁵

213. Overall, there is very limited information in the primary material to indicate that GCHQ gave rendition any consideration during this period. However, GCHQ would have been attending meetings with its sister Agencies on the debate around rendition at this time and was not therefore unaware of the controversy. Nevertheless, in written evidence GCHQ appears to distance itself from such knowledge. It states that its *"involvement in war zones did not give the department or its members of staff any particular insight into US mistreatment and rendition practices. Anecdotally, staff members recall they learned of such practices from press coverage"*.⁴²⁶ This was despite:

- GCHQ staff being deployed to work *"closely with deployed SIS officers, and alongside other Five Eyes intelligence representatives"*;
- GCHQ linguists and analysts working in the US ***,⁴²⁷ and
- GCHQ Desk Officers in the UK working closely with SIS and MI5, and attending meetings with them regularly.⁴²⁸

214. When GCHQ carried out a search of its databases in 2011,⁴²⁹ at least four cases appear to show that it had provided locational information (such as an individual's travel plans) which may have led to the rendition of the individual:

- In the case of MALLARD, GCHQ provided reporting on travel plans, email addresses and a phone number which may have belonged to him. There is no date, but it appears to be before his rendition in ***.
- In the case of BLACKCAP, GCHQ provided intelligence about his activities including travel with BULLFINCH. There is no date, but it appears to be before his rendition in ***.

⁴²⁴ GCHQ internal correspondence, 30 January 2006 ('Important: Rendition and Extraordinary rendition – sanity check please').

⁴²⁵ Written evidence – MOD, 21 July 2017.

⁴²⁶ Written evidence – GCHQ, 29 October 2014.

⁴²⁷ We note that we have seen no evidence to suggest that ***.

⁴²⁸ GCHQ written evidence to the (Gibson) Detainee Inquiry (2012).

⁴²⁹ GCHQ carried out a search on the 36 individuals from the Gibson Detainee Inquiry's list of key cases as it stood in early 2011 (it does not include BELHAJ or AL-SAAD as these were not known to be key cases by Sir Peter at the time).

- In the case of DIPPER, GCHQ provided reports of potential travel plans. There is no date as to when this was provided, but it appears to be before DIPPER's detention in ***.
- In the case of CORMORANT, GCHQ provided call analysis and telephone numbers. There is no date as to when this was provided, but it appears to be before CORMORANT's rendition in ***.

215. In addition to these four cases, which were reported to Sir Peter Gibson's Detainee Inquiry in 2011, we have found one specific example of GCHQ intelligence being used to enable an arrest and probably rendition thereafter.

**CASE STUDY:
GCHQ INTELLIGENCE USED TO ENABLE ARREST/RENDITION**

In 2005, SIS passed information to a WARWICK service regarding *** MANDARIN, a WIGTOWN national, and his associates. SIS asked for MANDARIN to be detained if he was found in WARWICK.

SIS continued to pass intelligence, but the primary material shows that there was disagreement internally within SIS as to what might happen to MANDARIN if he was detained (including that if the US became involved he might be sent to a 'black site').

In 2006, GCHQ shared intelligence with *** on MANDARIN's *** and agreed to a request from the US to *** to a WARWICK service (with the intention that WARWICK would arrest him). MANDARIN was subsequently detained by the WARWICK service.

In late 2006, the US authorities specifically informed SIS that if the WARWICK service handed MANDARIN over to them they would *** (the primary evidence is not clear about when MANDARIN was rendered, but SIS records indicate he was transferred to AYLESBURY in ***).⁴³⁰

216. In November 2006, in an internal briefing note for the GCHQ Director's appearance before the ISC Rendition Inquiry, GCHQ stated that it was improbable that it was its intelligence that led directly to MANDARIN's arrest and surmised that, while "*He is now in *** custody outside WARWICK ... No evidence currently exists to suggest that rendition occurred*".⁴³¹ Whilst SIS and GCHQ intelligence may have been intended to enable WARWICK to detain MANDARIN, they should have realised, given *** involvement, that it might also have been used to render him. SIS provided the Committee with the following explanation of the role it played in the MANDARIN case, which shows that it did recognise that rendition was a possibility:

*SIS was engaged with WARWICK liaison from *** 2005 seeking MANDARIN's lawful detention, subject to assurances about his humane treatment. Quite early on, we recognised that *** might involve themselves and that there was a risk this could lead to an extrajudicial transfer to *** facilities in STRATFORD or elsewhere. The advice from Head Office was that LEICESTER Station could remain in dialogue unless and until it became clear that WARWICK were intending to conduct such*

⁴³⁰ Classified consolidated report of SIS and MI5's 2012–14 internal reviews of detainee-related records (2014).

⁴³¹ GCHQ internal document regarding the Director's scheduled appearance before the ISC on 29 November 2006 as part of its Rendition Inquiry (unknown date).

an extrajudicial action, at which point Station should withdraw. Head Office was clear that we could not provide intelligence which made a material contribution to such an outcome without a submission to the Foreign Secretary.

*In *** 2006 SIS submitted to the Foreign Secretary to put questions to MANDARIN via ***, in the knowledge that there was a likelihood he was being held at a black site, having been detained in WARWICK in ***. The questions passed to *** were subject to a caveat that they should not cause an extension of detention and should only be used in interviews involving no physical or mental coercion.⁴³²*

Interestingly, the FCO's account appears to indicate that SIS had a more limited involvement in the detention of MANDARIN than its own account suggests:

*The FCO was first informed about the MANDARIN case when a letter was sent from [a senior SIS official] to the FCO's Director Defence and Strategic Threats and the Director-General Defence and Intelligence on *** 2006. The letter outlined the possible detention of MANDARIN in a US black facility and the likelihood that the Security Service and SIS would want to pass questions for MANDARIN to ***. The letter was clear that SIS and the Security Service had played no role in MANDARIN's detention, while GCHQ had provided *** with some intelligence of MANDARIN's ***, but the nature of this intelligence was not such as to have enabled his detention. These are the key points of this case, irrespective of whether the Agencies might have informed the FCO more quickly, or co-ordinated more closely between themselves.⁴³³*

217. More generally, we have found in the primary evidence material which appears to indicate that GCHQ may have been aware of the direct link between its intelligence and US rendition operations. In April 2006, when collating material for the Government's review of rendition,⁴³⁴ GCHQ's Legal Adviser asked for clarification on an item in the annual report from an operational team. The title of the item was 'Support to RENDITION operations in TROWBRIDGE'. The operational team explained that this was support to "**** operations such as RENDITION ****".⁴³⁵ The policy team considered that, as the operational team did not have any visibility of what would happen following an operation or arrest, they could not be seen to be complicit in any subsequent rendition. A handwritten note states: "[The operational team] is now a non issue".⁴³⁶

218. The operations in question were part of UKUSA support to coalition military operations and therefore any detention might have been lawful under the powers conferred by the UN Security Council resolution then in force for that theatre. Nevertheless, what concerns us is the argument that because GCHQ did not see the consequences of its actions it could turn a blind eye to them.

Y. We find GCHQ's lack of consideration of rendition and attempts to distance itself from such knowledge concerning, given the potential link between its intelligence and US rendition operations. That GCHQ regarded the treatment of any individual whose detention it had enabled as being beyond its knowledge and therefore not its business, is not – in our opinion – a valid excuse.

⁴³² Written evidence – SIS, 4 March 2016.

⁴³³ Written evidence – Foreign and Commonwealth Office, 1 September 2016.

⁴³⁴ Whitehall and the Agencies' 'Composite Rendition Review' (CRR), undertaken in preparation for the ISC's 2006–2007 Rendition Inquiry.

⁴³⁵ GCHQ internal correspondence, 15 February 2006.

⁴³⁶ Unsigned manuscript annotation dated 20 February on a printout of a GCHQ internal email, 17 February 2006.

(v) Failing to take action to prevent renditions

219. While the cases above appear to demonstrate active involvement, the Agencies can also be seen to have been involved in rendition operations through a failure to take action to prevent a rendition. We have found instances in the primary material where there were opportunities to intervene and prevent the rendition of a British national, but a failure to act:

- In the case of Moazzam BEGG in 2002, MI5 had an opportunity to object to the proposed transfer, but determined it had “*no view on this matter*”.⁴³⁷
- In the case of Martin MUBANGA, also in 2002, MI5 had been told to avoid him being sent to the UK, despite this meaning that he would be rendered to a third country instead.⁴³⁸
- We found a further 21 cases where we consider that SIS and MI5 failed to take action to prevent a rendition.

**CASE STUDY:
FAILING TO TAKE ACTION TO PREVENT RENDITIONS**

Martin MUBANGA, a dual Zambian–British national, was detained in Zambia in 2002.

While he was in detention, an MI5 officer interviewed him with the US authorities. The Zambian authorities wanted to transfer him into UK custody but the Agencies were told by the then Foreign Policy Adviser to the Prime Minister (Sir David Manning) that “*under no circumstances did HMG want MUBANGA to arrive back on British soil*”.⁴³⁹

Meanwhile the US authorities had requested that MUBANGA be transferred to Guantanamo Bay. MI5 Head Office wrote to the MI5 interviewing officer saying, “*we would hope that they would have legitimate reasons, and see real advantage, in taking this action*”.⁴⁴⁰

MI5 then became aware that MUBANGA was being held illegally in Zambia, and therefore a transfer would need to happen quickly. It was also aware that *** about what was “*a disguised extradition*” with no actual charges pending.⁴⁴¹

However, MI5 did not raise any concerns with the US authorities and MUBANGA was transferred to Guantanamo Bay in April 2002.⁴⁴²

220. Indeed, the UK failed to take action to prevent the ‘transfer’ of any British national or resident to Guantanamo Bay; no objections seem to have been raised, even when forewarned and given sufficient opportunity to do so.

⁴³⁷ MI5 ‘Note for File’ by a senior operations manager, ‘BEGG – Detention in Pakistan’, 5 February 2002.

⁴³⁸ The evidence suggests little consideration was given to how detainees might be treated in the country to which they were being rendered – even where these were countries with questionable human rights records.

⁴³⁹ SIS message from LINCOLN Station to SIS Head Office for MI5 headquarters, 25 March 2002 (‘MI5 interview’); SIS message from LINCOLN Station to SIS Head Office for MI5 headquarters, 26 March 2002 (‘Zambian intentions’); SIS message from Head Office to LINCOLN Station, 5 April 2002 (‘HMG attitude’).

⁴⁴⁰ SIS message from LINCOLN Station to SIS Head Office for MI5 headquarters, 25 March 2002; SIS message from MI5 headquarters to SIS LINCOLN Station, 19 March 2002.

⁴⁴¹ SIS message from LINCOLN Station to SIS Head Office and MI5 headquarters, 25 March 2002 (p.m.); SIS message from LINCOLN Station to SIS Head Office for MI5 headquarters, 25 March 2002 (a.m.).

⁴⁴² SIS message from LINCOLN Station to SIS Head Office and MI5 headquarters, 22 April 2002; classified case summary prepared by the (Gibson) Detainee Inquiry. During the ISC’s 2006–2007 Rendition Inquiry, the Agencies did not inform the ISC of the full facts of the MUBANGA case, which led the Committee to conclude, erroneously, that the UK Agencies were not involved in his rendition.

Transfer of British nationals and residents

A total of nine British nationals and six British residents were transferred to Guantanamo Bay. These were, respectively:

- Feroz Ali ABBASI, Ruhel AHMED, Jamal AL HARITH, Moazzam BEGG, Richard BELMAR, Tarek DERGOUL, Asif IQBAL, Martin MUBANGA and Shafiq RASUL; and
- Shaker AAMER, Bisher AL-RAWI, Omar DEGHAYES, Jamil EL BANNA, Binyam MOHAMED and Abdenour SAMEUR.

The primary material shows that, in some cases (AAMER, ABBASI, AHMED, DEGHAYES, DERGOUL, IQBAL, RASUL and SAMEUR), HMG was given limited advance notice of the possible transfer, but only in general terms.

In the case of Binyam MOHAMED, MI5 and SIS were made aware of the possibility he would be moved from Pakistan to Afghanistan in 2002, but without details.⁴⁴³ They were not made aware in advance of his rendition to Morocco, Afghanistan and, subsequently, Guantanamo Bay.

However, in six cases, the primary material indicates that HMG was made aware of the transfer of British nationals or British residents sufficiently in advance, and that HMG had an opportunity to object to the transfer. In the case of BELMAR and AL HARITH, the FCO was in the lead. In the cases of AL-RAWI and EL BANNA, MI5 was in the lead. SIS was involved in the case of Martin MUBANGA.

221. HMG should have objected to proposals to transfer British nationals (including dual nationals in the country of their second nationality) to Guantanamo Bay. Although the FCO claims that due concern was shown for its consular responsibilities, this did not, it seems, extend to objecting to transfers to Guantanamo:

*Ministers were concerned with and engaged on the fate of British Nationals from the earliest stages of the period under discussion. This included those who ultimately went to Guantanamo Bay and those detained elsewhere. How such individuals were treated and what support could be given to them was discussed within HMG and with key allies on an ongoing basis and at the highest levels. ... The clear UK policy was and is to meet its consular responsibilities towards its citizens even when this leads to tensions with allies. In some cases where security access proved possible before or instead of consular access, there was a clear pattern of seeking to ensure such visits [also] addressed the welfare of prisoners.*⁴⁴⁴

Z. The Agencies also supported the US rendition programme in other ways: endorsing rendition plans and providing intelligence to enable renditions. They were active in their support for the programme. They also condoned renditions through their conspicuous failure to take action to prevent renditions – in particular of British nationals and residents.

⁴⁴³ MI5 message from headquarters to ***, 31 July 2002 ('Binyam Ahmed MOHAMMED: Location and interview request').

⁴⁴⁴ Written evidence – Foreign and Commonwealth Office, 27 July 2016.

HMG response

222. As previously noted, there was no clear policy on rendition. The first recognition that there was a problem was in November 2002 when the US rendered AL-RAWI and EL BANNA to Bagram, against the express request of the FCO and MI5, having arrested them with the assistance of intelligence provided by MI5. This appeared to lead to a realisation that the Agencies were ‘in over their heads’.

223. Nevertheless, it was not until 1 August 2003 that the first clear SIS legal advice was given that SIS should not assist with a rendition, albeit the critical factor cited was whether it was from a country that is subject to the European Convention on Human Rights: “***.” This was followed by SIS issuing a short message to relevant Stations:

**** do not appear to have understood, for reasons with which we have sympathy, our position on rendition. We cannot knowingly assist them in a rendition from an ECHR country without political clearance. It remains open to us to seek political clearance. Unless or until we do so please do not have any further discussions with *** about rendition.*⁴⁴⁵

224. However, this was the extent of HMG’s action on rendition, despite media speculation on rendition escalating. Between 2004 and 2008, a number of books were written about the US rendition programme, and Hollywood films and documentaries were made depicting the stories of specific detainees.⁴⁴⁶ During this period, the US administration came under pressure to address allegations of extraordinary rendition to secret torture sites.

225. US Secretary of State Condoleezza Rice made a speech on 5 December 2005 addressing concerns raised by the EU and others on US conduct in the ‘War on Terror’ stating, “*rendition is a vital tool in combating transnational terrorism*”.⁴⁴⁷ She went on to say:

The United States does not transport, and has not transported, detainees from one country to another for the purpose of interrogation using torture.

The United States does not use the airspace or the airports of any country for the purpose of transporting a detainee to a country where he or she will be tortured.

*The United States has not transported anyone, and will not transport anyone, to a country where we believe he will be tortured. Where appropriate, the United States seeks assurances that transferred persons will not be tortured.*⁴⁴⁸

⁴⁴⁵ Classified consolidated report of SIS and MI5’s 2012–14 internal reviews of detainee-related records (2014).

⁴⁴⁶ Examples include: Mark Danner, *Torture and Truth: America, Abu Ghraib and the war on terror* (Granta, 2004); Stephen Grey, *Ghost Plane* (C. Hurst & Co, 2006); Alfred W. McCoy, *A Question of Torture* (St Martins Press, 2006); the documentaries *Taxi to the Dark Side* (2007) and *Ghosts of Abu Ghraib* (2007); the film *Rendition* (2007).

⁴⁴⁷ Condoleezza Rice (US Secretary of State), ‘Remarks upon Her Departure for Europe’ (5 December 2005) [Source: transcript online, <https://2001-2009.state.gov/secretary/rm/2005/57602.htm>, accessed 22 January 2018]. (See also Joint Committee on Human Rights, ‘The UN Convention Against Torture (UNCAT)’ (HL 185-II, HC 701-II, May 2006), paragraph 149.) Dr Rice’s remarks responded to a letter of 29 November 2005 from the Foreign Secretary (writing on behalf of the Presidency of the Council of the EU, then held by HMG).

⁴⁴⁸ Condoleezza Rice (US Secretary of State), ‘Remarks upon Her Departure for Europe’ (5 December 2005) [Source: transcript online, <https://2001-2009.state.gov/secretary/rm/2005/57602.htm>, accessed 22 January 2018].

226. However, in 2006, several cases were brought against the US Government in the US Supreme Court, which led to clear statements by the US Administration acknowledging the existence of the CIA's 'enhanced interrogation' programme.⁴⁴⁹

227. In 2006 and 2007, Senator Dick Marty published his finding that there was a "*global spider web*" of CIA detentions and transfers.⁴⁵⁰ He named seven Council of Europe Member States, including the UK, which he alleged had colluded in rendition operations which breached the rights of the individuals concerned. He also presented evidence to the Council of Europe that High Value Detainees were held in secret CIA prisons in Poland and Romania and named 20 countries which he alleged had co-operated with a programme of rendition flights between 'black sites'.⁴⁵¹

228. During this time, concerns were increasingly being raised in Parliament, highlighting potential UK involvement in rendition – as a result of which Ministers commissioned more briefing on rendition and several reviews were undertaken. The first of these, the Composite Rendition Review (CRR), was commissioned by the Foreign and Home Secretaries in February 2006. It took nearly three months to compile and submit to Ministers, with contributions from the FCO, Cabinet Office and the Agencies. Whilst it was intended to provide a full historical record of all HMG's involvement in rendition operations, as we have noted earlier in this Report, subsequent analysis of the primary material shows that the CRR was not sufficiently detailed or comprehensive to constitute a definitive account.

229. While the FCO appears to have taken a co-ordinating role across HMG and the Agencies, policy formulation and dissemination were taken forward in a piecemeal and reactive manner during this period.

Formulation of position and policy on rendition

April 2004: MI5 issued specific guidance to selected staff about passing intelligence to US liaison on any of the British nationals who had been returned from Guantanamo Bay. In its 2014 written evidence to the Committee, it describes this as staff being "*alerted to the possibility that if intelligence was shared that suggested reengagement then the US might rendite the individuals back to Guantanamo Bay and in such circumstances HMG could then be seen to be complicit in the rendition*".⁴⁵²

14 May 2004: FCO officials submitted advice to the Foreign Secretary concerning details that had recently emerged about US treatment of detainees in Afghanistan, Guantanamo and Iraq, including information on the respective US and UK positions on rendition. The FCO submission noted that, unless international humanitarian law applied, extra-judicial rendition would be "*almost certainly contrary to international law*". The submission stated

⁴⁴⁹ For example, the US Supreme Court ruled on 29 July 2006 in *Hamdan v. Rumsfeld* that the US policy not to apply the Geneva Conventions to detainees in Guantanamo Bay and CIA-run prisons was unlawful; following which, on 6 September 2006, President Bush publicly acknowledged the use of CIA secret prisons to hold "*14 key terror suspects*" who had since been moved to Guantanamo Bay; President George W. Bush, 'Remarks on Terrorism' (The White House, 6 September 2006) [Source: transcript online, http://www.washingtonpost.com/wp-dyn/content/article/2006/09/06/AR2006090601425_pf.html, accessed 22 January 2018].

⁴⁵⁰ Dick Marty, Explanatory memorandum in Parliamentary Assembly of the Council of Europe: Committee on Legal Affairs and Human Rights, 'Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states: first report', Doc. 10957, 12 June 2006, paragraph 25.

⁴⁵¹ Parliamentary Assembly of the Council of Europe: Committee on Legal Affairs and Human Rights, 'Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states: first report', Doc. 10957, 12 June 2006; and 'Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report', Doc. 11302, 11 June 2007.

⁴⁵² MI5 written evidence to the (Gibson) Detainee Inquiry on relevant guidance available to Security Service staff (2011).

that it would be “logical to consider the extent to which we should be associated with US rendition operations in the future”.⁴⁵³

The Foreign Secretary wrote to Ministerial colleagues about the implications of the emerging details. Invited to comment on the letter in draft, SIS wrote to the Foreign Secretary’s Principal Private Secretary stating that the use of SIS intelligence leading to the transfer of detainees to US control was kept under constant review and that decisions on support for handover operations were already taken on a case-by-case basis.⁴⁵⁴

***.

9 August 2004: In a letter to the FCO, the MI5 Deputy Director General stated:

*The *** advice [mentioned above] is reassuring. But there remains an outstanding policy question on which Ministers might need a view at some stage. The question is whether, if the opportunity again arose to use UK intelligence to facilitate a deportation from one foreign jurisdiction to another, it would be wise to do so given:*

- the possibility in such cases of individuals (and possibly their families) being summarily handled by the deporting as well as receiving countries;*
- the possibility that at some stage the UK’s decisions may be subject to application for [judicial review] or otherwise reviewed on behalf of those deported;*
- the potentially difficult consequences for the government of such an operation becoming public, in terms of:*
 - reputation;*
 - complicating the handling of other areas in which our observance of ECHR and the store we set by assurances from other countries are issues ...*

*I am not in any way suggesting that it would in all cases be unwise to proceed but I suggest it would be worth a further discussion between the FCO, SIS, Cabinet Office, Home Office and us to clear our minds, including on whether, against the day, some guidelines would help the consideration of such operations.*⁴⁵⁵

25 August 2004: An FCO submission suggested introducing what was described as “a new public line” that “it is UK policy not to expel, return or extradite any person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture”. The submission noted that the UK Government had “never expressed substantive concern to the US about the practice of rendition to third countries”. It recommended that the FCO should “submit advice in shorter time on how we should approach US policy on rendition”.⁴⁵⁶ However, by September 2004, the FCO had decided that it would not review the UK’s position on the US’s rendition policy.⁴⁵⁷

⁴⁵³ Submission from an FCO official to the Foreign Secretary, 14 May 2004 (‘US policy: Detention & interrogation of detainees in Iraq, Afghanistan & Guantanamo’) with manuscript annotation by the Permanent Secretary at the FCO dated 14 May 2004.

⁴⁵⁴ Written evidence – Foreign and Commonwealth Office, 27 July 2016.

⁴⁵⁵ Letter from the MI5 Deputy Director General to an FCO official, 9 August 2004 (***).

⁴⁵⁶ Submission from an FCO official to a senior FCO official, the Minister of State and the Foreign Secretary, 25 August 2004 (‘Public line on rendition’), with manuscript annotation by the senior FCO official dated 26 August 2004.

⁴⁵⁷ FCO written evidence to the (Gibson) Detainee Inquiry (2011).

19 November 2004: A GCHQ email summarising outcomes from an FCO meeting on intelligence which may have been obtained from torture noted: *“A key area needing more development is our take on specific US practices, particularly rendition: I pressed for this to be an integral part of the package that goes to ministers, and the communications strategy.”*⁴⁵⁸

2 March 2005: The SIS guidance issued on this date (see the guidance and training section of Chapter 7, ‘HMG response’) included reference to rendition. SIS told the Committee that:

the guidance introduced in March 2005 encompassed the key points of what a policy on rendition (in the sense of extrajudicial transfer) would contain, including on the geographical location and jurisdiction of any detention.

*Although there was a growing awareness of the risks of the US applying different standards of treatment to us, ***, and there was no presumption that transfers were unlawful or that mistreatment would ensue. Nevertheless there were clearly risks.*⁴⁵⁹

July 2005: The Director of GCHQ was briefed on the cross-HMG policy discussions on detainee matters including rendition but advised that the discussion had minimal, if any, impact on SIGINT operations as GCHQ *“tended not to deal directly with ‘problem’ liaison services”*.⁴⁶⁰

September 2005: Throughout September several emails were sent to senior staff in GCHQ covering HMG discussions on torture and rendition. Whilst GCHQ saw itself as ‘spectators’ in the process, it nevertheless attended meetings and was copied into significant amounts of written material. Towards the end of the month, for example, GCHQ was sent a draft FCO submission on extraordinary rendition, along with comments from an official that *“There are some [counter-terrorism] disadvantages to rendition. But it is not illegal in itself and does bring some CT ... benefits.”* The draft submission also noted that *“rendition, to US run facilities e.g. Guantanamo, or those operated by others, is seen as abusive. ... It also undermines our human rights work”*.⁴⁶¹

December 2005: In response to a Parliamentary Question, the Foreign Secretary stated that the HMG position on rendition would depend on the particular circumstances of the case.⁴⁶²

January 2006: MI5 circulated an internal review of the benefits and risks associated with MI5’s intelligence co-operation with the US authorities. It stated that MI5 had visibility of cases where the US authorities had conducted extraordinary renditions. However, it noted that:

*‘Extraordinary rendition’ has no meaning in law and different connotations have been attached to it by different commentators. But all we have learned from official US sources ... is that the US has practised ‘rendition’ for many years, and that in its interpretation [confirmed by the US Secretary of State in December 2005] it does so in conformity with international law and proper respect for sovereignty of other countries.*⁴⁶³

⁴⁵⁸ GCHQ internal correspondence, 19 November 2004 (‘Intelligence possibly obtained by torture: FCO meeting’).

⁴⁵⁹ Written evidence – SIS, 4 March 2016.

⁴⁶⁰ GCHQ briefing document (date redacted) for the Director ahead of a meeting with the Foreign Secretary on 20 July.

⁴⁶¹ GCHQ internal correspondence, 27 September 2005.

⁴⁶² Hansard, HC, 12 December 2005, vol. 440, col. 1652W (‘Written Answers to Questions – Foreign and Commonwealth Affairs: Terrorist Suspects (Renditions)’).

⁴⁶³ Classified MI5 internal document, ‘Review of benefits and risks associated with the Service’s intelligence co-operation with ***, 30 January 2006.

The review concludes, however, that the likelihood of legal action against MI5 was low and that MI5's "*association with [the US authorities] methods and activities does not currently pose a significant reputational risk to the Service*".⁴⁶⁴

January 2008: On 18 January 2008, an FCO submission demonstrated that several rendition policy areas had still not been resolved – despite the publication of the ISC's *Rendition Report* in July 2007 and the Government having provided a response to that Report. The submission highlighted that the HMG policy on rendition to cruel, inhuman or degrading treatment (CIDT) was still far from clear:

*We have discussed with Whitehall colleagues whether we should also condemn extraordinary rendition to cruel, inhuman or degrading treatment. But because of the far greater lack of clarity over definitions of CIDT, we are not yet in a position to recommend this. We will continue to explore the issue. There are policy and operational sensitivities that would need to be considered in any future decision on it.*⁴⁶⁵

March 2008: The UK policy on involvement in rendition by other States was outlined publicly in the FCO's *Annual Report on Human Rights*. It stated:

The terms 'rendition' and 'extraordinary rendition' have yet to attain a universally accepted meaning, other than the transfer of an individual between jurisdictions outside the normal processes such as extradition, deportation, removal or exclusion. The UK opposes any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law. If we were requested to assist another state in a rendition operation, and our assistance would be lawful, we would decide whether or not to assist taking into account all the circumstances. We would not assist in any case if to do so put us in breach of UK law or our international obligations.

*In recent years, however, public debate has focused on the term 'extraordinary rendition' ... UK policy on such extraordinary rendition is categorical: we unreservedly condemn any rendition to torture. We have not approved and will not approve a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture.*⁴⁶⁶

230. Whilst there was considerable discussion across Government Departments and the Agencies on the complexities of rendition policy from 2004 to 2008, and there are several references to a commitment to bottom out the complexities of rendition policy "*in slower time*", it seems to us that there was still no definitive policy and no specific operational guidance. Whilst there was certainly heightened HMG awareness of the US rendition programme by 2004, it seems that the lawfulness of involvement in such operations remained unclear, and the policy question of future participation unanswered. Even by January 2006, MI5 continued to see the reputational risk of involvement in US extraordinary renditions as low. A clearer view

⁴⁶⁴ Classified MI5 internal document, 'Review of benefits and risks associated with the Service's intelligence co-operation with ***', 30 January 2006.

⁴⁶⁵ Submission from an FCO official to the Foreign Secretary, 18 January 2008 ('Counter-Terrorism: FCO lines on rendition & secret detention').

⁴⁶⁶ FCO, *Annual Report on Human Rights 2008* (Cm 7557, 2009), pages 16–17.

on the unacceptability of rendition did not emerge until 2008, from the FCO.⁴⁶⁷ Nevertheless, we question whether, even now, there is a clear policy on rendition. MI5 stated in its written evidence to the Committee in 2014: “*There remains no requirement for the Security Service to issue more general guidance on ‘rendition’ because it is still part of our much wider policy and procedures to deal with unacceptable conduct more generally.*”⁴⁶⁸ We consider the effectiveness of the current guidance – *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees* – in our Report, *Detainee Mistreatment and Rendition: Current Issues*.

AA. HMG was unacceptably slow to grasp rendition policy. Discussions failed to lead to any action even after 2004: the lawfulness of involvement in such operations remained unclear and the policy question of future participation unanswered.

⁴⁶⁷ Written evidence – Foreign and Commonwealth Office, 1 September 2016. The FCO told the Committee that the Cabinet Office had the lead on ‘rendition policy’ until mid-2007, although it is the FCO which appeared to have had the co-ordinating role even before that time.

⁴⁶⁸ Written evidence – MI5, 30 October 2014.

9. KEY CONCERNS

231. The concerns of HMG and the Agencies that Al Qaida may have been planning a terrorist attack on the UK after that on the US on 9/11 were real. We do not underestimate the pressure that the Agencies experienced whilst dealing with the operational imperative to protect the UK.

232. However, they lacked the experience and training necessary to handle the complex situations that deployed staff faced in dealing with detainees in Afghanistan, Iraq, Guantanamo and elsewhere. And they lacked a proper understanding of what constituted mistreatment and what to do when they encountered it.

233. That the US, and others, were mistreating detainees is beyond doubt, as is the fact that the Agencies and Defence Intelligence became aware of this at an early point. We are not aware of any case where UK Agency or Defence Intelligence personnel personally physically mistreated a detainee. However, we have found a number of cases where the Agencies and Defence Intelligence acted inappropriately or failed to take action and at least two occasions when Ministers took decisions which were inappropriate.

234. The Agencies were concerned not to upset their US counterparts because this might have resulted in them losing access to intelligence from detainees that might be vital in preventing an attack on the UK. From the evidence we have seen to date, we do not consider that the Agencies deliberately turned a blind eye to the mistreatment of detainees by others. However, more could have been done at an inter-Agency and Ministerial level to seek to influence US behaviour. More could also have been done to distance HMG from the mistreatment of detainees. Not to do so put the UK in breach of its commitment to the international prohibition of torture, cruel, inhuman and degrading treatment.

235. The lack of guidance and training compounded the issues and led to inconsistent approaches by deployed personnel who became aware of mistreatment. Head Office action in relation to mistreatment was too slow in our opinion, as was the subsequent development of guidance and training for officers.

236. Our conclusions have to be read in light of the fact that we were denied access to personnel who were deployed at the relevant times and our Inquiry therefore had to be terminated prematurely – and without input from those staff, the senior staff in the Agencies at the time, or the Ministers in charge. There are questions and incidents which therefore remain unanswered and uninvestigated.

237. It is easy to criticise with the benefit of hindsight. However, we do not seek to blame individual personnel acting under immense pressure. Nevertheless our Inquiry has revealed serious concerns, outlined in the 27 conclusions contained in the body of this Report and listed at Annex A.

ANNEX A: FULL LIST OF CONCLUSIONS

A. From our examination of the primary material and our questioning of witnesses, at the point at which we concluded our Inquiry we had not found any evidence indicating that UK Agency or Defence Intelligence personnel directly carried out physical mistreatment of detainees.

B. We have, to date, found evidence of officers making what could be construed as verbal threats in nine cases. It is clear that such threats are wholly unacceptable. However, the making of threats is not explicitly identified as prohibited in guidance available today: this should be rectified.

C. We have found what we consider to constitute evidence of two cases in which UK personnel were directly involved in detainee mistreatment administered by others. This is completely unacceptable. While one case has been investigated by the Metropolitan Police, the other has not been fully investigated. Had our Inquiry continued, we would have sought to interview all those concerned. There must be a question as to whether the Service Police investigation should be reopened.

D. The early briefings from the US Agencies in September and October 2001 should have been taken seriously. It was naïve, or complacent, to dismiss them. The Agencies (and broader HMG) had a clear warning and – while they may have considered it rhetoric at the time – it should have been sufficient to alert them to any subsequent indication that words were being matched by action.

E. We have found evidence that UK personnel witnessed detainees being very seriously mistreated – such that it must have caused alarm and should have led to action.

F. We have seen that deployed personnel did report mistreatment that they witnessed to Head Offices, but we note that this did not happen in all cases. We have seen no evidence that they intervened themselves to prevent mistreatment or drew it to the attention of the detaining authority on a regular basis. Indeed, there seemed to be a concern not to upset the US.

G. The conditions of detention clearly amounted to mistreatment in some cases; however, the Agencies continued to engage with detainee interviews. The ‘work-around’ of interviewing in a Portakabin just outside a detention facility was not an acceptable alternative to ceasing to engage with detainees being kept in unacceptable conditions.

H. When a detainee made a complaint to a UK officer about mistreatment, the Agencies had a responsibility to investigate the claims before continuing to engage with the detainee concerned. We have seen in a number of cases that they did so; however, this was not consistent. We would have wished to establish with individual witnesses why in some instances they did not raise these issues.

I. The Committee understands that the pace of work in the months following 11 September 2001, both in Afghanistan and London, was frenetic. Both deployed personnel and Head Offices were under very significant pressure, and the priority was to prevent another attack on the scale of 9/11. Nevertheless, we are puzzled as to how those at the top of the office failed to ‘join the dots’ sooner in terms of the systematic abuse of detainees that was taking place. We question how many ‘anomalies repeating themselves’ it takes to realise that what you are seeing is not an anomaly.

J. That being said, we have found no ‘smoking gun’ in the primary material to indicate that the Agencies deliberately overlooked reports of mistreatment and rendition by the US as a matter of institutional policy.

K. The Agencies failed to consider whether it was appropriate to pass intelligence about a detainee to the detaining authority where mistreatment was known or reasonably suspected.

L. The Agencies failed to recognise that secret detention is, in and of itself, a form of mistreatment.

M. Even as recently as the beginning of this Inquiry, GCHQ still held that its part was peripheral. This despite the fact that it is by far the largest sharer of material with the US. It seems to us that GCHQ was in fact aware of the risks of large-scale sharing of information with the US but regarded it as neither practical, desirable nor necessary to second guess how that material might be used.

N. Defence Intelligence also appears to have failed to understand its potential involvement in mistreatment of detainees through the supply of intelligence.

O. The evidence clearly suggests that the UK saw itself as the poor relation to the US, and was distinctly uncomfortable at the prospect of complaining to its host.

P. Whilst the Agencies say that they were not reluctant in principle to raise mistreatment with the US authorities, in practice this was inconsistent and might suggest that they were deliberately turning a blind eye. However, in our view, the evidence instead suggests a difficult balancing act, where the Agencies were a small player with limited access or influence.

Q. Deployed personnel need clear guidance as to what they can and cannot do when deployed. That they were interviewing individuals held in detention gave the deployments to Afghanistan, Guantanamo and Iraq a new dimension. Personnel should therefore have been given specific guidance and training on their legal obligations relating to the treatment of detainees. We consider those deployed staff to have been left worryingly under-supported by their Head Offices.

R. By the time of the deployment to Iraq in 2003, there was no excuse for the lack of training and guidance available to deployed personnel – there was both time to prepare and an understanding of the operating environment gleaned from the earlier deployments.

S. In relation to the 2004 staff surveys, we do not regard the Agencies’ explanation as to why their staff only reported 15 out of 83 incidents as sufficient. (We note that it can only be supposition on the part of the current Agency Heads, who were not involved in the surveys themselves.) Had we been given access to the interviewing officers, we would have wished to explore this highly unsatisfactory situation further.

T. It is not clear how well the guidance issued in June 2004 (and subsequently) was disseminated. If it did reach all deployed personnel, clearly some failed to follow the guidance. With that said, there were fewer cases of concern after 2004 (and less engagement with detainees generally).

U. The Committee has previously expressed its concerns about Agency record-keeping. The inadequacy of the searches for documents made in 2006 and 2009 – which was only rectified

in 2014 – is yet another example. Related to this are questions about what was not written down. The paucity of record-keeping gives rise to concerns as to how many similar cases of involvement in mistreatment over the 2001–2010 period may not have been accounted for. We cannot be confident in the evidence base.

V. In relation to the US rendition programme, there were early indications of the US's more aggressive approach. However, the Agencies persisted in viewing cases as 'isolated incidents'. There was therefore no co-ordinated attempt to identify the risks involved and formulate the UK's response: the piecemeal approach led to conflicting advice and differing operational approaches.

W. The Agencies' financing of individual rendition operations being co-ordinated by others was completely unacceptable. In our view this amounts to simple outsourcing of action which they knew they were not allowed to undertake themselves.

X. There is no evidence that any US rendition flight transited the UK with a detainee on board, although two detainees are now known to have transited through the British Overseas Territory of Diego Garcia. The Committee has seen nothing in the primary evidence to indicate that detainees have ever been held on Diego Garcia. We note, however, that the records available are patchy and cannot be relied on, and that the policy on recording flights was woefully inadequate.

Y. We find GCHQ's lack of consideration of rendition and attempts to distance itself from such knowledge concerning, given the potential link between its intelligence and US rendition operations. That GCHQ regarded the treatment of any individual whose detention it had enabled as being beyond its knowledge and therefore not its business, is not – in our opinion – a valid excuse.

Z. The Agencies also supported the US rendition programme in other ways: endorsing rendition plans and providing intelligence to enable renditions. They were active in their support for the programme. They also condoned renditions through their conspicuous failure to take action to prevent renditions – in particular of British nationals and residents.

AA. HMG was unacceptably slow to grasp rendition policy. Discussions failed to lead to any action even after 2004: the lawfulness of involvement in such operations remained unclear and the policy question of future participation unanswered.

ANNEX B: INQUIRY TIMELINE

2002	Internal MI5 staff survey into treatment concerns.
2004	MI5, SIS and Defence Intelligence staff surveys (as part of HMG preparation for the ISC Detainee Inquiry).
March 2005	ISC Detainee Report.
April 2006	Whitehall and Agencies' Composite Rendition Review (CRR), undertaken partly in preparation for the ISC Rendition Report.
July 2007	ISC Rendition Report.
March 2009	ISC 'Binyam Mohamed' Report (unpublished).
2009–2010	SIS and MI5 internal reviews.
2010	ISC report on the draft Consolidated Guidance (unpublished).
2010–2013	Sir Peter Gibson's Detainee Inquiry.
2012–2014	Further internal case reviews by SIS and MI5 (overseen by Sir Alex Allan).
18 December 2013	The ISC agreed to the Prime Minister's request to undertake a further inquiry into detainee issues following the interim report of Sir Peter Gibson's Detainee Inquiry (which the Government published the same day). The agreement was announced to the House by the Minister without Portfolio, the Right Hon. Kenneth Clarke MP on 19 December 2013.
February 2014	The Agencies provided written responses to the Gibson Inquiry report to the Prime Minister (provided to the ISC in March 2014).
June 2014	HMG provided a team of six staff to work on the ISC Inquiry.
July 2014	HMG provided the documents collated by the Gibson Inquiry to the ISC (over 30,000 highly classified documents – including file notes, emails and intelligence reports; this has since been supplemented by material in response to requests from the ISC).
December 2014	The US Senate Select Committee on Intelligence published its report on the CIA's Detention and Interrogation Program.
30 March 2015	Parliament was dissolved (and with it the Committee) in advance of the 8 May General Election.
September 2015	A new Committee was appointed.
December 2015– March 2017	The Committee took oral evidence from those listed at Annex G.
July 2016	The ISC sought to invite further witnesses, including officers who were on the ground at the time – initially approaching SIS.

14 September 2016	The National Security Adviser, Sir Mark Lyall Grant, informed the ISC Chair, the Right Hon. Dominic Grieve MP, that HMG considered that the Committee already had sufficient evidence and would not be given access to the requested witnesses.
19 October 2016	The ISC Chair wrote to the Prime Minister, highlighting this challenge to access to contemporaneous witnesses and seeking reassurances following Agency concerns about the protection afforded to witnesses under the Justice and Security Act 2013. The letter noted the Committee's view that, if it could not take evidence from contemporaneous witnesses, the Inquiry could not be comprehensive, and therefore would be brought to an immediate close.
10 January 2017	The Prime Minister replied, offering evidence from four serving and retired staff who were senior at the time, who could provide views on the operating environment at the time but could not be quoted in a report. ⁴⁶⁹
12 January 2017	The ISC Chair responded, suggesting a meeting to resolve the matter.
2 March 2017	The ISC Chair met the Prime Minister (and Sir Mark Lyall Grant), who made clear that her offer was final.
9 March 2017	The Committee considered the Prime Minister's views and decided to write one further time in an attempt to avoid having to bring the Inquiry to a close.
23 March 2017	The ISC Chair wrote to the Prime Minister, reiterating the need for Government co-operation on the provision of further witnesses, without which the Committee would be unable to conclude the historic part of the Inquiry.
27 April 2017	In its final meeting before the last Parliament was dissolved ahead of the General Election, the Committee noted that no reply had been received to the Chair's last letter, and that no reply was likely. As such, the Committee agreed to produce a short summary report on its work on the historic part of the inquiry (up to the publication of the 2010 Consolidated Guidance) with a view to bringing the Inquiry to a close at this point.
23 November 2017	The new Committee held its first meeting and, noting that no further correspondence from the Government had been received on the matter of witnesses, agreed to finalise the Report as a record of the work of the previous Committee. ⁴⁷⁰

⁴⁶⁹ The Agencies were, separately, encouraging officers who had left the Agencies to attend and the Prime Minister told the Committee she was confident that at least two would agree to do so.

⁴⁷⁰ Further written evidence was received in the intervening period and considered in the writing of this report.

ANNEX C: ISC LETTER TO THE PRIME MINISTER ABOUT BINYAM MOHAMED

ISC 2008/09/103

17 March 2009

Rt. Hon. Gordon Brown, MP
Prime Minister
10 Downing Street
London
SW1A 2AA

Dear Prime Minister,

**Alleged complicity of the UK intelligence and security Agencies in
torture or cruel, inhuman or degrading treatment**

1. On 28 June 2007 the Intelligence and Security Committee sent you our report on *Rendition*. The Report – which you laid before the House in July 2007 – examined whether the UK intelligence and security Agencies had any knowledge of, and/or involvement in, rendition operations and their overall policy for intelligence sharing with foreign liaison services in this context.

2. As you are aware this Committee does not investigate individual cases – any complaints about alleged misconduct by, or on behalf of, the UK intelligence and security Agencies are properly a matter for the Investigatory Powers Tribunal, established under the Regulation of Investigatory Powers Act 2000. Our *Rendition* Report did however detail four rendition cases in order to illustrate key developments in our Agencies' awareness of the changing nature of the US rendition programme. One of these cases was that of Mr Binyam Mohamed al-Habashi, an Ethiopian national formerly a resident of the UK, who was arrested in Karachi in April 2002 and who was, at the time we wrote our Report, being held by the US in Guantánamo Bay.

Report on Rendition:

3. Mr Mohamed had alleged that between April and July 2002, whilst in detention in Pakistan, he was mistreated and that a British official who interviewed him during this period told him he was going to be tortured. He had alleged that on 21 July

2002 he was the subject of an ‘extraordinary rendition’ to Morocco, where he was tortured and interviewed using information that had been provided by the British Government, and also that subsequently, on 21 January 2004, he was the subject of a further ‘extraordinary rendition’ to the US-controlled detention centre at Bagram, Afghanistan, where he suffered further mistreatment. He had accused the Government of complicity in his torture.

4. During our 2006/7 inquiry we found that a Security Service officer had interviewed Mr Mohamed on one occasion for approximately three hours while he was detained in Karachi. The interviewing officer denied telling Mr Mohamed that he would be tortured, and reported at the time that no evidence of abuse was observed and no instances of abuse were mentioned by Mr Mohamed. The Service did not seek assurances as to Mr Mohamed’s treatment – the Committee concluded that this was understandable given the then lack of knowledge of US behaviour, but it was nevertheless regrettable.

Subsequent developments:

5. On 28 May 2008 Mr Mohamed was charged with terrorist offences under the US Military Commissions Act of 2006. Evidence against Mr Mohamed included confessions he made during detention in Bagram, Afghanistan between May and September 2004 and at Guantánamo Bay prior to November 2004. Mr Mohamed contended that this evidence was inadmissible because it was obtained as a result of a two year period of detention between April 2002 and May 2004 whilst he was being held incommunicado and subjected to torture and cruel, inhuman or degrading treatment (CIDT) at the hands of the Pakistani and Moroccan authorities, assisted by the US Government.

6. In support of his case at Guantánamo, his lawyers launched two cases, one in the US and one in the UK. In the US a *Habeas Corpus* case was lodged in the District Court to force the release, by the US authorities, of US-sourced intelligence material which Mr Mohamed’s defence team believed to be exculpatory. In the UK Mr Mohamed sought an order against the Foreign Secretary for the disclosure of information in confidence to his lawyers on the basis that it may support his argument that his confessions were obtained by torture or CIDT.

7. In May 2008, the Security Service wrote to the Intelligence and Security Committee informing it that, in the course of reviewing its records in preparation for the Judicial Review of the Foreign Secretary’s decision not to release papers to Mr Mohamed’s lawyers, they had discovered information that had not been shared with the Committee during our rendition inquiry. The Service first wrote on 22 May and then again, with further information on 30 June 2008, and SIS wrote on 14 August and 2 October 2008. Their letters informed the Committee that information had been provided to the Security Service and SIS by US liaison on *** May 2002, *** days before the Security Service officer interviewed Mr Mohamed. This information made it clear that Mr Mohamed had been intentionally deprived of sleep while in

detention in Pakistan for the purposes of his interrogation by US authorities. The interviewing officer said – on oath – that he could not recall whether or not he was aware of this information prior to the interview. There is no record that the Security Service took any action on receipt of this information: they continued to provide US liaison with background information, and questions to be put to Mr Mohamed, up until October 2002. (There is no record of the UK passing further information regarding Mr Mohamed to the US after this date.)⁷⁵

8. In October 2008, after pressure from the UK Government, the US authorities agreed to an exceptional disclosure of all the documents at issue in the Judicial Review to Mr Mohamed’s lawyers through his *Habeas Corpus* case in the US.

9. On 21 October 2008, following the resignation of the prosecutor in the Military Commission (due to concerns that exculpatory evidence was being suppressed in a different case), the Convening Authority dismissed all charges against Mr Mohamed, pending a review. The possibility of new charges being brought against Mr Mohamed had not been ruled out at that stage.

10. On 4 February 2009, the High Court issued its Fourth Judgment in relation to the Judicial Review. The documents in questions having already been provided to Mr Mohamed’s lawyers, this judgment was focused not on ensuring justice for Mr Mohamed, but on the public interest in the relevant documents being released into the public domain. The judgment – although scathing in its condemnation of the US refusal to allow the papers to be made public – agreed with the Foreign Secretary’s assessment that release of classified US documents into the public domain by a UK Court would damage the UK’s intelligence relationship with the US. However, following clarification by the Foreign Secretary, that the US did not threaten to “break off” intelligence cooperation with the UK, Mr Mohamed’s lawyers applied to the Court to have the Judgment reopened. We await the outcome of this development.

Implications for the UK/US relationship:

11. On this issue, we have since seen letters that assert, forcibly, that the US/UK intelligence relationship would be damaged if the material was to be made public. A letter from ***:

“***
***”

and

“***
***”

The letter concludes:

“***

***”

⁷⁵ Postscript: the Committee’s subsequent investigations (after this letter was sent) unearthed additional documentation showing that the Security Service continued to provide US authorities with background information, and questions to be put to Mr Mohamed, up until April 2003 (and information relating to him continued to be received from the US into 2004).

12. *** the Foreign Secretary has told us that the US has previously protected UK intelligence from court disclosure, and that therefore this is very much a reciprocal arrangement (although we note that at the time of writing the Foreign Office has not yet provided us with the background facts on this last point).

13. Given the implied consequences of compelled disclosure of the documents, and the importance of US intelligence to the UK's ability to protect itself from the terrorist threat, we conclude that it is indeed necessary for the documents to be withheld from the public.

4 February High Court judgment: Lord Justice Thomas and Mr Justice Lloyd Jones:

14. The judgment of 4 February 2009 made several references to the Intelligence and Security Committee. Despite Foreign Office and Cabinet Office officials having had sight of the judgment in draft form, the facts about the Committee were not checked. This is regrettable, since they are wrong and as a result there is now misleading information about this Committee in the public domain.

15. The judgment refers to the Committee having been supplied with the 42 documents⁷⁶ at issue (paragraph 88). At the time of the judgment we had not been given the documents – they were only provided to us on 9 February 2009.

16. The judgment also refers to the remit of the Intelligence and Security Committee (paragraph 89), stating that:

“we understand that with the agreement of the Prime Minister, [the Committee] has extended its remit to [investigate particular cases].”

It therefore concludes (paragraph 90) that the ISC will conduct a further investigation. This is, of course, not the case since individual allegations are, as we have already mentioned, a matter for the Investigatory Powers Tribunal to investigate.

17. Despite the remit of the Tribunal, this Committee considered nevertheless that some of the issues raised by the case, and the allegations arising from it, were so serious that they went right to the heart of how our security and intelligence Agencies operate – the policies they implement and the procedures they follow.

18. It is this aspect that is absolutely within the remit of this Committee, and it is this that we have been considering since we received the letter from the Director General of the Security Service in May last year. This letter contains our findings.

⁷⁶ *Postscript: there were, in fact, 46 relevant documents supplied to the Committee.*

Provision of information to the Committee:

19. During our investigation into rendition, we discussed the case of Mr Mohamed with Eliza Manningham-Buller, the then Director General of the Security Service. On 23 November 2006, in evidence to the Committee, she told us:

*“... at the beginning it was thought [Mr Mohamed] was [a British national], we were told by [the US] that they were going to move him to Afghanistan and we know that he was moved to Guantánamo. He has claimed that on the route there he was held in Morocco and that while in Morocco he was tortured... We do not know whether that happened... When we knew he was in custody, because he had information we believed relevant to the UK from having lived here, we passed the Americans questions and photographs to put to him, although we did not know where he was. Some of the questions match those which [Mr Mohamed] claims were put to him under torture... It is therefore possible... that the questions and the intelligence being put to him might have gone from *** to the Moroccans without our knowledge of it... That is a case where, with hindsight, we would regret not seeking proper full assurances at the time...”*

20. Based on this evidence, we concluded in our Report that:

“There is a reasonable probability that intelligence passed to the Americans was used in Mr Mohamed’s subsequent interrogation. We cannot confirm any part of Mr Mohamed’s account of his detention or mistreatment after his transfer from Pakistan. We agree with the Director General of the Security Service that, with hindsight, it is regrettable that assurances regarding proper treatment of detainees were not sought from the Americans in this case.”

21. On 22 May 2008, the new Director General of the Security Service, Jonathan Evans, wrote to the Committee to say that the Service had uncovered some additional information regarding Mr Mohamed’s case, which had not previously been submitted to the Committee. The information had been discovered when the Service undertook searches in response to the Judicial Review.

22. The Committee questioned why this information had not been uncovered when the Service was reviewing its records in response to our rendition inquiry. The Service has told us that searches conducted to meet their disclosure obligations in legal proceedings are more thorough:

“These searches are designed to unearth every mention, for example, of a particular name, or organisation, even if the piece of intelligence containing the key words is not significant. [These] searches include soft copy records contained in a number of Service databases. In [Mr Mohamed’s] instance, the... search, completed on 12 May 2008, unearthed a considerable amount of additional material – three times as much as was on his original hard copy [Personal File]. These included the ‘sleep deprivation’ telegrams, about which we alerted the Committee in DG’s letter of 22 May...”

23. The Committee further questioned the Director General in evidence on 3 March. He said that he cannot explain why the two key documents (which mention sleep deprivation) were overlooked – administrative or clerical error was the best explanation he could offer.

24. There is no convincing explanation as to why the information contained in these two key documents, which might implicate the Service in cruel, inhuman or degrading treatment, was not made available to this Committee.

25. It is clearly very worrying indeed that such vital information was overlooked and not provided to the Committee. Had the Service treated the Committee's enquiries with the same rigour as they did when legal disclosure was called for, and indeed had their records been fit for purpose, then this information would have come to light during our original inquiry.

26. The state of the Agencies' records has been a matter of concern for this Committee since 2007. You may recall that we criticised government record-keeping in our Rendition Report and we also raise concerns about Agency record-keeping in our *Review of the Intelligence on the London Terrorist Attacks on 7 July 2005* (which is currently with you, awaiting publication):

"MI5 believe that they keep a fully adequate record of their work and decisions. In the course of this Review, however, we have found that new information has come to light, sometimes as a result of current MI5 investigations, but often because of the questions we have asked and the specific issues we have pursued with them... This has suggested to us that, whilst MI5 might keep adequate records of what they do, they are not always easy to search and retrieve."

27. That we were not provided with all the relevant information in Mr Mohamed's case is yet another example of the problems caused by poor record-keeping, which reinforces our earlier concerns. We questioned the Security Service about their records and Jonathan Evans told the Committee:

"Service systems in place at the time [of your rendition inquiry] should have located this information. That they did not, shows that there was a fault with our processes or record-keeping."

28. 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 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."

29. 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.

30. 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.”

31. 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.

The case: Binyam Mohamed

32. Binyam Mohamed was detained as he attempted to depart Karachi using forged travel documents. *** suggested that he had been involved in terrorist training camps in Afghanistan, had contact with Al-Qaida while there, and was involved in the early stages of a plot to detonate a “dirty bomb” in the US.

33. The significance of the potential threat posed by Mr Mohamed is clear and was accepted by Lord Justice Thomas and Mr Justice Lloyd Jones – the summary of conclusions from their open judgment of 21 August 2008 stated:

“The court has no doubt that on the basis of [the available] information the Security Service were right to conclude that [Mr Mohamed] was a person of great potential significance and a serious potential threat to the national security of the United Kingdom. There was therefore every reason to seek to obtain as much intelligence from him as was possible in accordance with the rule of law and to cooperate as fully as possible with the United States authorities to that end.”

34. Intelligence is not evidence and Mr Mohamed is, rightly, to be presumed innocent until proven guilty. It is not for this Committee to judge his guilt or innocence. The only relevance of these matters to our inquiries is that it shows that the Security Service were right to seek to obtain intelligence from an individual who was assessed to pose a serious threat to the UK.

The case: the interview in May 2002

35. Given what the Security Service knew of Mr Mohamed, their decision to seek to interview him, as we have just explained, was completely justified. However, before that interview took place, we now know – from the 46 documents released to the court and to this Committee – that the Security Service (and SIS) had been informed that Mr Mohamed had been deprived of sleep. This is, rightly, a matter of serious concern.

36. There were *** telegrams, sent prior to the interview on 17 May 2002, which specifically referred to sleep deprivation ***. One of these documents – *** which was sent to *** people in the Security Service and to *** SIS *** – clearly sets out what was happening, and even what it was designed to achieve:

“***

***”

37. The issue of whether to launch a full criminal investigation into the actions of the individual officer who conducted the interview in Karachi in May 2002 (“Witness B”) is currently being considered by the Attorney General. The key question is whether or not the officer was aware of the sleep deprivation before he interviewed Mr Mohamed. He has said – on oath – that he cannot recall whether or not he saw the telegrams prior to interviewing Mr Mohamed. Lord Justice Thomas and Mr Justice Lloyd Jones chose not to believe his testimony and concluded that “*the probability is that Witness B read the reports either before he left for Karachi or before he conducted the interview*” but that if “Witness B” had not seen them himself, then other copy addressees should have made him aware of them.

38. Given the Attorney General’s current investigation, we have not sought at this time fully to explore whether the officer in question would have had time to see the telegrams mentioning sleep deprivation before departing for Pakistan to conduct the interview. We may return to this matter after the Attorney General has reached her decision and after any action which may arise from that, but we did not wish to delay informing you of our other findings in the meantime.

39. We do however wish to bring two observations about the interview in Karachi to your attention at this time.

40. The first is that, whether or not the interviewing officer committed a criminal offence, we strongly believe that the sole focus on the individual officer is unfortunate. He was not the only individual to whom the telegrams were sent, and some of these other copy addressees should, equally, have realised that Mr Mohamed was being mistreated and taken action. In our view, if there was a failure, the organisation as well as individuals should be held to account.

41. That brings us on to our second observation, which relates to the attitude of the Security Service as a whole. It has been apparent in our dealings with the Service that there is generally a very strong sense of ethics, in addition to a keen observance of the law. However, as we have probed this case, we became concerned as to whether it might indicate a failure to recognise the seriousness of sleep deprivation. We know that guidance issued to officers prior to May 2002 did not make explicit that sleep deprivation constituted Cruel, Inhuman or Degrading Treatment. The fact that the telegrams mentioning sleep deprivation were copied to as many as *** officers, none of whom remarked on the mistreatment, indicates that it was, in early 2002, not considered by the Agencies to be a serious breach of human rights and therefore may have, in certain circumstances, been discounted.

42. In assessing whether this case was indicative of wider problems, we have looked at other cases both before and after May 2002. Our Report into *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*, published in March 2005, contained an Annex listing these, but to summarise those incidents involving SIS or Security Service officers:

- i. In two separate incidents in January and March 2002 SIS officers were told of detainees being *** – they referred the matter back to London but no further action was taken because each incident was assumed to be a one-off.
- ii. In April, June and July 2002 three separate references to mistreatment (time spent in isolation, hooding and sleep deprivation) were reported back to London by officers (SIS in the April case and Security Service in the June and July cases) and in each case the matter was raised with the US.
- iii. In June 2003, there were two separate incidents (hooding and unacceptable living conditions) – in one case the SIS officers took no action (saying they were unaware that hooding was unacceptable) but in the other SIS raised concerns with the US and the problem was resolved.
- iv. In 2004 there were four further incidents (possible contravention of Geneva Convention, concerns about mental health, hooding, and sub-standard conditions). In the one case involving the Security Service, concerns were raised with the US at a high level and action taken; in two cases involving SIS, concerns were raised with the US at a high level and action taken; in the remaining case – also involving SIS – the SIS officer said that he was not aware of rules regarding hooding but steps were taken to ensure the individual was released.

43. This list shows that in all cases (other than Mr Mohamed's) where a Security Service officer became aware of mistreatment – in June and July 2002 and February 2004 – they took action.

44. More generally, across both Agencies, these cases show a lack of understanding in early 2002; a growing realisation and concern later in 2002 and in 2003; and then greater understanding in 2004 when, in all but one case, the incidents were raised at a senior level. They demonstrate, as we have said before, that the Agencies were slow to appreciate what was happening and that in the two cases in early 2002 there does appear to have been a tendency to discount reports of mistreatment such as ***. It was not until the three cases in late spring/early summer that they were treated with the seriousness they deserved and action taken.

The case: passing of questions in October 2002

45. Questions surrounding the Security Service interview of Mr Mohamed are unresolved at this point. However, there is a further allegation, related to the detailed questions passed to *** later that year for use in Mr Mohamed's interrogation, which is potentially far more serious.

46. In our 2007 Rendition Report, we said:

“There is a reasonable probability that intelligence passed to the Americans was used in [Mr Mohamed's] subsequent interrogation. We cannot confirm any part of [Mr Mohamed's] account of his detention or mistreatment after his transfer from Pakistan.”

47. The documentation we now have still does not provide any information as to Mr Mohamed's actual whereabouts in October 2002. Mr Mohamed and his lawyers allege that he was in Morocco at this time.

48. Whilst our Agencies did not know where he was being held, crucially they did know that he was in the custody of ***.⁷⁷

i. On 12 August 2002, the Security Service asked SIS to check whether Mr Mohamed had arrived at Bagram – they had been told by *** (on 15 July) that he was to be transferred there. They reported – with some surprise – that *** was now saying they had no information on his whereabouts. In response to the Security Service request to see if Mr Mohamed had arrived at Bagram, SIS said on 28 August that “there was no record of [him], which probably means he has not arrived at the facility yet”.

ii. ***

***.

***.

⁷⁷ Postscript: the courts have said that Mr Mohamed, at this time, was in the custody of a third country and not yet in US custody.

- iii. On *** September 2002, the Security Service received a report of another interview with Mr Mohamed carried out in late September 2002. This telegram includes the following text:

“***

***”

49. These exchanges, from August and September 2002, make it perfectly clear that the Security Service knew that Mr Mohamed was being held by ***,⁷⁸ even if they did not know who, and that ***.

50. Despite the fact that the Service had no information on where Mr Mohamed was and therefore no information as to how he was being treated, on 25 October 2002 the Security Service nevertheless decided to provide the US with a significant amount of background information, detailed questions and photographs to be used in Mr Mohamed’s interrogation.

51. We said in our *Rendition* Report that it was regrettable that assurances as to proper treatment “*were not sought from the Americans in this case*” (emphasis added). However we are now aware that the Security Service knew that Mr Mohamed was in the custody of ***.⁷⁹ The fact that, as we have previously accepted, the Agencies did not at this time consider that the Americans might use torture or CIDT does not therefore offer an excuse.

52. If the Security Service questions were used during Mr Mohamed’s interrogation then the Service is, albeit indirectly, implicated in however Mr Mohamed was treated by his custodians. Mr Mohamed has alleged that it was these questions that he was being asked when he alleges he was being tortured in Morocco.

53. Whether the Service should have passed questions to be put to a detainee when they did not know where he was being held, and could not make any assessment or seek any assurances as to his treatment, whether they should have sought ministerial approval before doing so, and indeed whether ministers should have then approved such action in such circumstances, is not an operational matter, but one of policy.

Policy questions

54. The case of Mr Mohamed is therefore significant not just in itself, but far more importantly in terms of what it shows about the policies of the security and intelligence Agencies in 2002, and the issues it raises about the policies that they should now be following. It brings into sharp focus some very difficult ethical questions that go to the heart of how the UK as a country responds to the terrorist threat.

⁷⁸ Postscript: the courts have said that Mr Mohamed, at this time, was in the custody of a third country and not yet in US custody.

⁷⁹ Postscript: the courts have said that Mr Mohamed, at this time, was in the custody of a third country and not yet in US custody.

55. The UK must not be involved in the torture or mistreatment of an individual. That is inviolable – not just in terms of law, but in terms of our own ethical standpoint as a country. To do otherwise reduces us to the level of those from whom we are seeking to protect ourselves.

56. However, the threat we face – an enemy that is bent on carrying out attacks designed to cause maximum fatalities to innocent individuals and is organised to the extent that it briefs its followers on how to resist interrogation – is a severe one. The events of 11 September 2001 and 7 July 2005 have provided harsh evidence of this. Our Agencies must therefore take every opportunity, and follow up every intelligence lead, if they are to be able to protect British citizens.

57. The issue is how to reconcile the need to obtain vital intelligence to protect the British public, with the need to ensure that an individual's human rights are not infringed.

58. When the UK is acting alone then the issue should not arise – our Agencies, military and police are clear as to the absolute prohibition on torture or CIDT. However, in tackling international terrorism, the UK cannot act in isolation but must engage with foreign liaison services. Explaining the international dimension, Eliza Manningham-Buller, the previous Director General of the Security Service, said in the course of the 2005 House of Lords Appeal on cases related to the Anti-Terrorism, Crime and Security Act 2001:

“Al-Qaida and its affiliates pose a uniquely transnational threat which requires an international response. This has led to increased co-operation between governments, including on security/intelligence channels. The need for enhanced international cooperation to combat the threat from Al-Qaida and its affiliates was recognised and has been emphasised since September 2001 in, for example, Security Council resolution 1373.”

59. This Committee made the same point in our *Rendition* Report, saying:

“intelligence-sharing relationships with foreign liaison services are vital to counter the threat from international terrorism”.

However, dealing with foreign liaison services can lead to difficult situations – this is most evident when another country has an individual in detention who our Agencies believe may have intelligence relevant to a threat to the UK.

60. Detainees can be a vital source of intelligence. Our *Rendition* Report in 2007 talked of individuals held in detention providing:

“important intelligence that has helped to prevent attacks on the UK”

and referred specifically to the case of Khaled Sheikh Mohammed:

“an illustration of the huge amount of significant information that came from one man in detention in an unknown place”.

The problem is that if detainees are not in our custody, we cannot be absolutely sure of how they are being treated.

61. As Eliza Manningham-Buller made clear in evidence to the court in 2005, our Agencies do not always know where the detainee is being held or how they are being treated – and even when they ask are often not told. In the case referred to previously she told the Law Lords:

“Most credible threat reporting received by the Agencies requires immediate action. Often there is no specific timescale attached to the reporting, but public safety concerns dictate that the Agencies work from a position of possible imminence. The need to react swiftly to safeguard life precludes the possibility of spending days or weeks probing the precise sourcing of the intelligence before taking action upon it, especially when such probing is in any event unlikely to be productive.”

She continued on to describe the Meguerba case from 2002/3 (known as the Ricin plot), which illustrates this point in real terms, since intelligence from a detainee in Algeria led directly to the prevention of an imminent terrorist attack:

“Meguerba was already known to the Security Service and the police. The reporting required urgent operational action and was also relied upon for the purposes of immediate legal action... In those circumstances, no inquiries were made of Algerian liaison about the precise circumstances that attended the questioning of Meguerba. In any event, questioning of Algerian liaison about their methods of questioning detainees would almost certainly have been rebuffed and at the same time would have damaged the relationship to the detriment of our ability to counter international terrorism.”

This highlights how the operational imperative can take priority over checking that detainees are being properly treated.

62. Given the importance of obtaining intelligence from detainees, but also the difficulty of confirming how they are being treated, can we rely on other countries to uphold an individual’s human rights, as the UK would? Unfortunately the case of Mr Mohamed has shown that even our closest allies are capable of what we would describe as CIDT. Our questioning of the Director General of the Security Service, the Chief of SIS and the Foreign Secretary reveals that there are only a very small number of countries who they would be relatively confident would never use torture or CIDT.

63. Therefore, if the UK is to avoid any possible involvement in torture or CIDT, however indirect, then we could only share intelligence with a handful of countries, at most. Effectively this would leave the UK isolated and incapable of protecting itself. It is clear therefore that the need to protect the UK may not always be compatible with the need to guarantee that an individual’s human rights will not be infringed.

64. There is a balance to be struck between gathering and exploiting as much intelligence as possible in order to protect our citizens, and the possibility that our actions might lead, albeit inadvertently, to the mistreatment of detainees. How, then, do we minimise the risk of the latter?

Direct contact with detainees:

65. The first step must be to ensure that all those who may potentially come into contact with detainees know what is expected of them. We do not believe that in early 2002 officers had been made fully aware of what they might encounter, what they should look out for, and what they should do in such circumstances. However, staff involved in questioning detainees in the custody of foreign liaison services have since been issued with guidance, and we covered this in our Report into *The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq*.

Wider intelligence sharing and passing of questions:

66. The second step is to minimise the risk of UK actions resulting in mistreatment. Since 2002 guidance to staff on the system of safeguards used has been revised (in 2004 and again in 2006). We saw this guidance during our rendition inquiry. It makes clear that where there is a possible risk of mistreatment then caveats must be used and assurances sought (and assessed on the basis of what is known about the organisation and whether the assurances have any foundation), and where these are not thought sufficient then ministers should be consulted.

67. Assessing the soundness of an assurance is an inexact science. There is therefore always a potential risk that an individual will be mistreated. We therefore consider – in the light of what we know now – that it is essential that such cases are referred to ministers: this is a political, policy decision that can only be taken by those in charge. It is not right to delegate authority on such a crucial matter.

68. Once the case is referred to a minister, it is for them to make a judgement. In our opinion, if it is certain that mistreatment would result from our actions, then approval cannot be given and potentially useful intelligence will be lost. If there is a possible risk that an individual may be mistreated then this needs to be assessed and weighed against the intelligence that may be gained and the potential lawfulness of the proposed action.

Realistic expectations:

69. There are some who argue that to take action (such as passing questions to be put to a detainee or providing background information on a detainee) without a 100% guarantee of acceptable treatment would be to facilitate mistreatment and that any risk of mistreatment is unacceptable. This ignores the reality of the situation, which, as we have set out above, can come down to the safety of a country versus the potential mistreatment of an individual.

70. Professor A C Grayling of Birkbeck College, writing in *The Independent* earlier this year, described this dilemma accurately:

“Do we abide by normal standards of human decency in times of danger or is it justifiable to use harsher methods of getting information to safeguard the public?... The crux is whether an individual’s human rights can be put into temporary abeyance in the interests of thousands at risk... Would it be acceptable to mistreat someone who knows the whereabouts of a bomb in the centre of a city? The utilitarian view in ethics says that torturing one person to save many is justified. The deontological view in ethics says that torture is unacceptable even in the extremist circumstances. Real life does not seem to fit well with such a stark contrast.”

71. We are fully aware of the difficulty of such a decision in each and every case. The Foreign Secretary told us: *“the threat to life weighs on you in deciding what to do”*. Those who believe that there is a neat solution here and that the UK can be protected from the terrorist threat at the same time as being completely confident that the UK will never be involved, however indirectly or inadvertently, in an individual’s mistreatment, should recognise the dilemma.

Recommendation:

72. The reality of the situation should be made clear publicly. This is a matter of Government policy, not Agency operation, and therefore it is not for this Committee to explain or defend. We recommend that a statement is made by the Government which sets it out in simple terms. We believe that the Government should, indeed must, be explicit in setting out the position and have confidence that the British public will understand the dilemma and the difficulty of the decisions that must be taken.

A handwritten signature in black ink, appearing to read 'Yours Kim', with a stylized flourish.

KIM HOWELLS

ANNEX D: FCO OVERSIGHT OF ACTIVITY ON DIEGO GARCIA

The Commissioner for the British Indian Ocean Territory (BIOT) and his administrator are based in London. The Commissioner is responsible for liaising with the US military in matters concerning the territory, and passing any necessary legislation. The BIOT administrator acts as the Commissioner's assistant as well as Head of Foreign Policy for BIOT.

The Commissioner is represented on the island by the senior British Military Officer – a Royal Navy Commander in charge of approximately 40 British military staff.⁴⁷¹ The Naval Service personnel conduct civilian and military roles; some are also trained as policemen, others in customs, excise and borders roles (with training provided by Home Office immigration officials).

The restrictions around how the island operates are set out in 'letters of note'. Should the US wish to conduct any activity outside these (e.g. building new facilities, bringing non-military personnel via Diego Garcia), permission would have to be formally requested from the UK via the Navy Commander who would liaise with the London-based BIOT policy team (and potentially others).

There are approximately 3,000 US Armed Forces and contractors on Diego Garcia. The island is also used by Japan and Australia. A shared command building is used by the UK and US Commanders.

Formal meetings between the UK and US legal and policy teams are held annually. They address a variety of topics, including: the environmental impact of the US military on the island and its surrounding waters (e.g. dumping of sewage from ships in the lagoon); updates on the ongoing claims of the Chagossian people to return to the islands; and broader operational decisions. The primary evidence indicates that these meetings can be challenging.

While requests for renditions or extraditions via Diego Garcia could be made by the US via a variety of HMG organisations (e.g. through the UK Agencies, formal FCO channels, or to the Commander on Diego Garcia), all requests require approval from the Foreign Secretary.

Flights transiting or stopping in Diego Garcia 'may' complete a Passenger Manifest, General Declaration and Immigration Card. UK officials should also maintain a Daily Occurrence Log. The senior UK customs and immigration official should be informed five days in advance by the US via a daily flight schedule. However, it is not clear whether these records are mandatory, whether they mirror those required for other UK airports/airspace, or how UK officials on Diego Garcia might use them to identify any form of criminal activity, such as a rendition.

No evidence has been provided to date on what maritime records, including immigration details, are collected.⁴⁷²

⁴⁷¹ Written evidence – Foreign and Commonwealth Office, 27 July 2016.

⁴⁷² Written evidence – Foreign and Commonwealth Office, 14 November 2014. Information concerning maritime immigration records was sought from the FCO but it had not been provided at the time of writing.

ANNEX E: CODE WORDS

In many instances throughout this Report, it is not possible to reveal publicly the names and nationalities of the detainees involved, or other geographic indicators such as where an operation took place. To make the Report more readable, however, rather than simply redacting those details that cannot be disclosed, we have substituted them with code words. No significance is intended by, nor should be inferred from, the matching of code words to the real names they have been substituted for.

Detainees' names

It is not possible to disclose the name of detainees in the majority of the Report. This is to protect personal identities and to safeguard against damage to operations – sometimes, revealing details about past operations can still have damaging consequences for operations currently being conducted or which may be mounted in the future.

The code words used in this Report are on the left; the names on the right are the names by which the Agencies frequently refer to the individuals concerned in records disclosed to this Inquiry, though other names or aliases are used in some records. (***)

BITTERN.....	***	GARGANEY	***
BLACKBIRD.....	***	GOLDENEYE	***
BLACKCAP	***	GOLDFINCH	***
BULLFINCH	***	GREENFINCH	***
CHIFFCHAFF	***	GREENSHANK	***
COOT.....	***	GUILLEMOT	***
CORMORANT	***	KITTIWAKE.....	***
CROSSBILL	***	LINNET	***
CUCKOO.....	***	MALLARD.....	***
CURLEW.....	***	MANDARIN.....	***
DIPPER.....	***	PHEASANT.....	***
FIELDFARE	***	PINTAIL	***
FULMAR.....	***	POCHARD	***
GADWALL	***		

Geographic indicators

Some geographic indicators cannot be revealed in the Report in order to protect personal identities, maintain liaison relationships with overseas organisations and safeguard against damage to operations. The list below applies to the nationalities of detainees; the location of incidents, deployments, Stations, bases and detention facilities; and to the location of various countries' governments and intelligence, security and law-enforcement bodies. Code words are not used consistently for the same geographic indicator in order to provide protection.

ABERDEEN	***	DINGWALL	***
ALLOA	***	DORCHESTER	***
ALNWICK.....	***	DORNOCH.....	***
APPLEBY	***	DUMBARTON	***
ARMAGH.....	***	EDINBURGH.....	***
AYLESBURY.....	***	EXETER	***
AYR.....	***	FORFAR	***
BANFF	***	GLOUCESTER.....	***
BEAUMARIS	***	HALIFAX	***
BEDFORD.....	***	HAVERFORDWEST	***
BEVERLEY.....	***	HEREFORD	***
BIRMINGHAM.....	***	IPSWICH	***
BRISTOL	***	JEDBURGH.....	***
BURY	***	KINROSS.....	***
CAERNARFON.....	***	KIRKWALL.....	***
CARDIFF	***	LANARK	***
CARDIGAN	***	LANCASTER.....	***
CARLISLE	***	LEEDS	***
CARMARTHEN.....	***	LEICESTER	***
CHELMSFORD.....	***	LEWES	***
CHESTER.....	***	LINCOLN	***
CHICHESTER.....	***	LIVERPOOL	***
CIRENCESTER.....	***	MALVERN	***
COLERAINE.....	***	MANCHESTER	***
CROMARTY	***	MATLOCK	***
CUPAR.....	***	NEWBURY.....	***
DAVENTRY	***	NORTHALLERTON	***
DERBY	***	PENZANCE.....	***

PERTH	***	STONEHAVEN	***
PLYMOUTH.....	***	STRATFORD.....	***
PORTSMOUTH.....	***	SWINDON.....	***
PRESTEIGNE.....	***	TAUNTON	***
PRESTON	***	TROWBRIDGE	***
READING.....	***	TRURO	***
RENFREW	***	WARRINGTON.....	***
RUTHIN.....	***	WARWICK	***
SALFORD	***	WELSHPOOL	***
SELKIRK.....	***	WICK.....	***
SHREWSBURY	***	WIGTOWN	***
SLOUGH	***	WINCHESTER.....	***
SOUTHAMPTON	***	WORCESTER.....	***
STAFFORD	***	YORK.....	***
STIRLING	***		

Staff and operational names

We have also substituted a code word where it has been necessary to refer to a particular member of staff, or the name of an operation, in order to protect classified information. This is indicated by a footnote in the Report where these instances occur.

ANNEX F: GLOSSARY

The following is a list of terms used in the Report that may be unfamiliar to some readers or require additional explanation.

Abu Ghraib	a (now closed) prison complex in Abu Ghraib (a city in Iraq about 32 km west of Baghdad) that was used as both a base and detention facility by the US for some time during the Iraq War – it was the site of revelations about the mistreatment of detainees by members of the US Military Police brigade responsible for running the prison facility there in 2003–2004.
Al Qaida	an Islamic fundamentalist group.
Baghdad International Airport (BIAP)	used, following its capture, as a principal base for US military operations during the Iraq War – a number of detention facilities, including those within Camps Cropper and Fernandez, were located at particular times within or close to its perimeter.
Bagram air base	an airfield used as a US military base during the conflict in Afghanistan (and still in use today).
‘Black facilities/sites’	CIA detention facilities/sites, details of which were tightly held and not disclosed, even to close allies of the US. They became commonly referred to as ‘black sites’ – ‘black’ meaning secret or undisclosed.
Camp Bucca	a US detention facility during the Iraq War, near Umm Qasr.
Camp Cropper	see Baghdad International Airport .
Camp Fernandez	see Baghdad International Airport .
CENTCOM	United States Central Command – the unified body commanding US military forces in the Middle East and in parts of North Africa and central Asia, including Iraq and Afghanistan.
Démarche	a position or protest presented through diplomatic channels by one State to another State.
Divisional Internment Facility	a UK military detention facility constructed at Basra air base in Iraq.

Enhanced Interrogation Techniques	a set of harsh interrogation methods used by the CIA, designed to persuade a detainee to co-operate by discomforting them (such as making them feel as if they have no control over when they sleep, take meals or other basic human needs), correcting or intimidating them and/or placing them under increased physical or psychological stress.
European Convention on Human Rights (ECHR)	Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; Treaty Series No. 71 (1953); Cmd 8969), ratified by the UK on 8 March 1951.
Exceptional leave to remain	a former category of temporary immigration status in the UK given principally to asylum applicants who were deemed not to qualify for refugee status but about whom it was believed that they would face a real risk of serious harm should they be returned to their country of origin.
Extraordinary rendition	see rendition .
FCO eGram	electronically conveyed messages, offering much of the flexibility of an email, that replaced FCO telegrams in 2005 – both telegrams and the eGrams were used for significant communications, primarily between the FCO in London and British missions overseas, and formed part of the FCO official record (they have since been replaced by newer technology).
Five Eyes	a non-official term for the intelligence alliance comprising the UK, Australia, Canada, New Zealand and the US, built on but not limited to the UKUSA Agreement (see below) – the term has its origins as a shorthand for a ‘AUS/CAN/NZ/UK/US EYES ONLY’ classification level.
Foreign liaison services	the security and intelligence organisations of other countries whom SIS, MI5 and/or GCHQ engage with.
Foreign Policy Adviser to the Prime Minister	a senior official in the Prime Minister’s Office who was responsible for advising the Prime Minister personally on foreign affairs, as well as heading the Overseas and Defence Policy Secretariat in the Cabinet Office – the responsibilities of the post were subsumed into the new post of National Security Adviser after 2010.

Geneva Conventions	Conventions for the Protection of War Victims (Geneva, 12 August 1949; Treaty Series No. 39 (1958); Cmnd 550), ratified by the UK on 23 September 1957 (and entering into force for the UK on 23 March 1958) – the Conventions comprise the Geneva Convention for the Amelioration of the Wounded and Sick in Armed Forces in the Field (the First Convention), the Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (the Second Convention), the Geneva Convention relative to the Treatment of Prisoners of War (the Third Convention) and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Convention).
Ghost prison	a term that has been used for detention facilities in ‘ black facilities/sites ’ (see above).
High Value Target/High Value Detainee	generally, a suspected senior member of Al Qaida or an associated terrorist group whom the CIA believed had knowledge of imminent terrorist threats or direct involvement in planning and preparing terrorist acts.
International Covenant on Civil and Political Rights (ICCPR)	International Covenant on Civil and Political Rights (New York, 19 December 1966; Treaty Series No. 6 (1977); Cmnd 6702), ratified by the UK on 20 May 1976 (and entering into force for the UK on 20 August 1977).
International Law Commission	established by the UN General Assembly in 1947 to undertake the Assembly’s mandate under the UN Charter to “ <i>initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification</i> ”.
Investigatory Powers Tribunal	the tribunal in the UK which investigates and determines allegations of unlawful intrusion by public bodies, including the Agencies, the police and local authorities.
Iraq Survey Group (ISG)	an organisation established by the US-led multi-national force during the Iraq War and formed of military and civilian personnel from the US, UK and Australia to uncover Iraq’s alleged Weapons of Mass Destruction (WMD) programmes.

Joint Intelligence Committee (JIC)	comprises senior officials from across HMG and is responsible for producing co-ordinated all-source intelligence assessments on a range of (primarily security, defence and foreign-affairs-related) issues of immediate and long-term importance to the UK's national interest, and for approving the UK's forward-looking requirements and priorities for intelligence in these areas – it is supported by the Joint Intelligence Organisation and based in the Cabinet Office.
Northern Alliance	a united military front, known officially as the United Islamic Front for the Salvation of Afghanistan, which was formed by key Afghan leaders after the Taliban took over Kabul in 1996 and fought a defensive war against them until the Taliban were defeated following the US invasion.
Office of Legal Counsel	division of the US Department of Justice that assists the US Attorney General's position as legal adviser to the President and all US Government agencies by providing legal advice within government.
Presidential Finding	a specific form of presidential directive in the US, almost always classified due to the sensitive nature of the content: under an amendment to the Foreign Assistance Act of 1961, US public funds cannot be used by the CIA for intelligence activities unless and until the President " <i>finds</i> " that a particular covert operation is important to US national security and reports its description and scope, in a timely fashion, to the appropriate committees of Congress – the intention of the 1974 amendment was to ensure that clear responsibility for such actions was attributable to the President, and that Congress was always made aware of them.
Rendition	the extra-judicial transfer of a person from one jurisdiction or State to another – a 'rendition to justice' is for the purpose of placing the person on trial in a country with an established and recognised legal and judicial system; 'extraordinary rendition' is the term that has become used to refer to transfers involving detention and interrogation outside normal legal systems, where there is a real risk of the person being subject to torture or CIDT (see also paragraph 180 of this Report).

Security and Intelligence Co-ordinator	a senior official post created in 2002 in the aftermath of the 9/11 attacks to oversee both the Agencies as a whole and the Cabinet Office's Civil Contingencies Secretariat (the role was intended to provide more dedicated focus for these areas than the Cabinet Secretary could provide) – under Sir Richard Mottram, the post also included chairmanship of the JIC (see above) but this function was separated off again in 2007, and the remaining responsibilities were subsumed into the new role of National Security Adviser after 2010.
Senate Select Committee on Intelligence	the committee of the US Senate charged with overseeing the intelligence activities and programmes of the US Government – it is the US counterpart of the ISC. ⁴⁷³
State party	a State that is party to an international treaty.
Statute of the International Criminal Court	Rome Statute of the International Criminal Court (Rome, 17 July 1998; Treaty Series No. 35 (2002); Cm 5590), ratified by the UK on 4 October 2001 (and entering into force for the UK on 1 July 2002).
Submission	a formal briefing note, prepared for Ministers by officials, providing information or seeking a decision – in the context of SIS, submissions are the formal means by which Ministerial approval is sought from the Foreign Secretary for sensitive activities and operations overseas. ⁴⁷⁴
Tactical Screening Facility (TSF)	(sometimes also referred to in contemporary documents as the Temporary Screening Facility) a detention facility run by the US military located in Balad (about 60 km north of Baghdad) in Iraq.
Taliban	fundamentalist Muslim movement of Afghanistan, in power over roughly three-quarters of the country from 1996 to 2001.
United Kingdom–United States Communication Intelligence Agreement (UKUSA)	a formerly top-secret SIGINT sharing agreement, originally signed as the 'British–US Communications Intelligence Agreement' on 5 March 1946 by the London Signals Intelligence Board and its US counterpart – its basis is the unfettered sharing of intelligence material between the member organisations, and it was extended in the 1950s, including to cover the SIGINT agencies of Canada, Australia and New Zealand.

⁴⁷³ References in this Report to the *Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* (Senate Report 113-288) are to the version published by the Senate Committee itself in Washington on 9 December 2014 (available on the webpages of the Senate Committee at www.intelligence.senate.gov/publications/reports) – the available parts of the report have subsequently been published in other versions, including commercially, with different pagination.

⁴⁷⁴ Where submissions are addressed to the Private Secretaries to Ministers (a practice common until the mid-2000s), it has been assumed that they were for the attention of the relevant Minister and have been described as such in this Report.

United Nations Convention Against Torture (UNCAT)	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (New York, 4 February 1985; Treaty Series No. 107 (1991); Cm 1775), ratified by the UK on 8 December 1988 (and entering into force for the UK on 7 January 1989).
Waterboarding	an interrogation technique simulating the experience of drowning, in which a person is strapped head downwards on a sloping board or bench with the mouth and nose covered, while large quantities of water are poured over the face.
White noise	uncomfortably (but not permanently damaging) loud noise, which masks conversations of staff members and denies a detainee any auditory clues about their surroundings, deterring and disrupting their efforts to communicate with others – this method was used in all CIA High Value Detainee facilities (according to a 30 December 2004 memorandum from the CIA to the Office of Legal Counsel, released under the US Freedom of Information Act regime).

ANNEX G: WITNESSES AND CONTRIBUTORS

Ministers

The Right Hon. Theresa May MP – Home Secretary (to 12 July 2016)

The Right Hon. Amber Rudd MP – Home Secretary (from 13 July 2016)

The Right Hon. Philip Hammond MP – Foreign Secretary (to 12 July 2016)

The Right Hon. Boris Johnson MP – Foreign Secretary (from 13 July 2016)

Officials

Secret Intelligence Service (MI6)

Mr Alex Younger CMG – Chief

Other officials

Security Service (MI5)

Mr Andrew Parker – Director General

Other officials

Government Communications Headquarters (GCHQ)

Mr Robert Hannigan CMG – Director (to April 2017)

Other officials

Defence Intelligence

Air Marshal Philip Osborn CBE – Chief of Defence Intelligence

Other officials

Former officials

Sir Alex Allan KCB – oversaw Agency case reviews 2012–2014

A former MI5 member of staff

A former SIS officer

A former FCO official, Mr Craig Murray

Others

Former detainees: Mr Shaker Aamer, Mr Moazzam Begg and Mr Bisher al-Rawi, along with their legal representatives, Ms Gareth Peirce and Ms Irène Nembhard (this was a meeting rather than a witness session and the Committee was referred to the written evidence of these and other ex-detainees, given both to the police and in civil claims, in the first instance, rather than taking detailed oral evidence).

Mr Iain Livingstone QPM – Deputy Chief Constable, Police Scotland

Professor Ruth Blakeley (University of Sheffield) and Dr Sam Raphael (University of Westminster) – The Rendition Project

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