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COUNTER-TERRORISM AND HUMAN RIGHTS

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DAVID ANDERSON

Evidence heard in Public

Questions 1 - 29

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Members present:

Dr Hywel Francis (Chair)
Baroness Berridge
Baroness Kennedy of The Shaws
Lord Lester of Herne Hill
Baroness Lister of Burtersett
Baroness O'Loan
Mr Virendra Sharma
Sarah Teather

Examination of Witness

David Anderson, QC, Independent Reviewer of Terrorism Legislation

Q1 The Chair: Good morning, welcome to this evidence session on counter-terrorism and human rights of the Joint Committee on Human Rights. For the record, could the witness introduce himself?

David Anderson: I am David Anderson. I am the Independent Reviewer of Terrorism Legislation.

Q2 The Chair: Thank you very much and thank you for your attendance. Could I begin by asking for your observations on this very straightforward question? We asked the Government to provide us with more details on its counter-terrorism proposals shortly after the Prime Minister made the announcement on 1 September. So far, members of the press and of the Australian Parliament and fellows of RUSI have been given some information, but we have not been told and certainly, most importantly, Parliament has not been told. Do you think the Government has good cause for fast-tracking this legislation and if so, could it have done more to facilitate parliamentary scrutiny of its proposals by engaging with Committees, such as the Joint Committee on Human Rights, before the Bill was published? I understand that it is being published today.

David Anderson: I understand that the Bill will not be treated as urgent, but it will be fast-tracked. Perhaps it has to be if it is to be completed during this parliamentary Session by the end of March.

The Chair: So how does one square the fact that it is being fast-tracked but it is not urgent?

David Anderson: That is really a question for others. I am repeating what I have been told. As to whether Parliament or this Committee could have been told more, evidently they could.

The Chair: Have you asked the Ministers why it has taken three months?

David Anderson: I have asked them why it has taken three months and I have been told that it was necessary to consult with stakeholders and so on. My impression is also that, frankly, some of the policies announced on 1 September were well thought through, well worked out and well prepared, but others not so much.

The Chair: It is an interesting turn of phrase, “stakeholders”, isn’t it? Where does Parliament fit into that?

David Anderson: I am not disagreeing with you in any way, Chairman, but as you will appreciate, my locus in this is pretty limited.

Lord Lester of Herne Hill: I have no knowledge at all about this, but might it be that the coalition partners were busy arguing with each other for some time before they could come up with a proposal that they could put before anybody?

David Anderson: Well, Lord Lester’s knowledge might be greater than mine in relation to that but, of course, it is perfectly possible.

Q3 Baroness O’Loan: The Government has proposed giving the police the power to seize a person’s passport at the border in order to investigate individuals suspected of travelling to take part in terrorist-related activities. Do you think such a power is necessary, considering the range of anti-terrorism powers which currently exist? Have you seen any evidence that there is a gap in the powers currently available to prevent travel? I have several questions but I will stop there.

David Anderson: There are a couple of at least superficially similar powers. One is the power under the royal prerogative, revived last spring by the Home Secretary, to withdraw people’s passport facilities—I think she told RUSI, but unfortunately not this Committee, that she had exercised that 29 times or something over the last 18 months. There is also the power that the police already have under schedule 7 to the Terrorism Act to take anything away for up to seven days. I don’t think there is any reason why that thing shouldn’t include a passport, although it is not my impression that the police have been using it for that purpose. Despite that, having spoken to the police about it, I know this is a power that they consider would be very useful. The situation that they envisage using it in—or, the classic situation—would be the person who is perhaps off to Turkey with a little bit of camping

equipment. They might stop him at the port and ask him a few questions; they might even keep him for as long as they are allowed to; but they would not then have any suspicion that would enable them to arrest him or take things any further.

The idea is that by revoking the passport for a period of up to a few weeks, with some internal review process and some recourse to a court part-way through that process, they would have more time to decide whether he could be charged or whether to refer him to the Home Secretary for the exercise of the royal prerogative. That is its purpose. That is not to say that the power could only exist in its current form. One might say, for example, that if the royal prerogative is there, perhaps the police would only need a shorter power—long enough to enable the royal prerogative to be properly exercised; although of course you could take issue with the royal prerogative and say that the whole thing would be better placed in statute in the first place. Indeed, there is litigation, which was referred to by the Prime Minister on 1 September, that, depending on the outcome, might have that result.

Q4 Baroness O’Loan: Can I ask you about TPIMs? The Committee has expressed concern that TPIMs have only been used for prevention but not for investigation. The initially stated aim of the TPIM was for investigation purposes. That seems to have shifted in the recent rhetoric. Would you expect it to be used primarily for prevention or investigation?

David Anderson: I think the clue is in the name: prevention and investigation. It always seems to me that if it succeeds in one, it is not going to succeed in the other. If terrorism-related activity is not happening while somebody is on a TPIM—perhaps because the TPIM has prevented it—there is going to be nothing to investigate. That pretty much seems to have been the universal experience so far.

Q5 Baroness O’Loan: Would you expect other safeguards in the Bill to ensure that new powers are exercised proportionately?

David Anderson: You are suggesting, I think—certainly it has been reported—that there is to be a new power to relocate TPIM subjects to other parts of the country. That is something that I was asked to report on myself to the Prime Minister, Deputy Prime Minister and Home Secretary—I put the summary of that report on my website this morning. I also made recommendations in what one might describe as a liberalising direction. My sense is that those have been taken on board, at least in part. Two important ones for me were: the definition of “terrorism-related activity”, which had got far too wide and was catching people who were only very peripherally concerned or said to be concerned with

terrorism; and the question of the standard of proof—to what standard the Home Secretary or eventually the court should be satisfied that somebody had engaged in terrorism before a TPIM could be imposed.

Q6 Baroness O’Loan: Did you expect the new power to extend to foreign passports? Are you aware of any evidence that such a power over foreign nationals is necessary, given that the Home Secretary is usually keen to deport foreign nationals who are suspected of involvement in terrorism-related activity rather than keep them in the UK, and that she has the power to exclude such individuals as soon as they have left the UK?

David Anderson: I have not been involved and it would have been wrong for me to have been involved in the formulation of these policies. My job is to come in after the event and say whether they are being properly operated. I have been made aware of examples of British nationals in respect of which the passport power could have made a difference. The purpose, as I understand it, of extending the power to foreign nationals—of course, the royal prerogative does not extend to the passports of foreign nationals—would perhaps be twofold. One purpose would be if there was a foreign national living in the UK who was going to Syria or Iraq to fight. The other, potentially, might be if there were a foreign national in transit, for example at Heathrow, in respect of which the same was thought—perhaps he had flown in from Denmark or something and was on his way to the connecting flight. I understand that that is the purpose of it. How many times it would be used one simply does not know.

Q7 Lord Lester of Herne Hill: Going back to the first question you were asked by Baroness O’Loan, I should declare an interest, because in my private Member’s Bill I tried to place the prerogative under Parliament, including passports, with safeguards. That was rejected by the Brown Government, as you probably know. Therefore, the position is as you just described it. There seems to be little prospect, as I see it, of placing royal prerogative or passports under statute. Have you any reason to think there is any prospect of doing so?

David Anderson: The only possible route that I am aware of is the litigation—I believe still pending; and in fact originating in Lord Lester’s chambers—in which it is suggested that the prerogative power should not be used because there is a passport removal power as part of a TPIM. The argument is that if Parliament has allowed for a way to remove passports, the royal prerogative should not be exercised in that field. If there is to be change, perhaps it would be by that route.

The Chair: What other safeguards would you expect to see in the Bill to ensure that the new power is exercised proportionately?

David Anderson: In terms of the passport removal? I am sure that the Committee will want to look pretty carefully at the procedures for authorisation: at what level in the police will the decision be taken? You will want to look at the standard: will it be reasonable suspicion, or something else? You will want to look at the provision for internal review within the police—one would certainly hope and assume that there will be internal review at a very senior level before there is any need to go to a court.

Finally—or, not quite finally—you would need to look at the judicial remedy itself: what can the court actually look at? If, hypothetically, one had to apply to a court within 14 days or something to get the order renewed for another couple of weeks, would the court simply be looking to see whether the police were proceeding expeditiously and diligently along the lines of working out whether there were grounds for arrest or charge? Or could the court—this, of course, would be very difficult—look in any way at the national security case? If one is not careful, one gets into the whole apparatus of closed hearings and so on, which would be difficult.

The final safeguard that I would mention, and I would apply this to everything in the Bill—perhaps this is me declaring an interest—is that surely these new powers need independent review. If the powers we have under the existing Terrorism Acts require that review, it would seem to me that these powers require it too.

Q8 Baroness Berridge: Moving on to temporary exclusion orders, is the power to exclude British citizens necessary? Are you aware of any other country that has introduced a similar power?

David Anderson: I sense that this power was an announcement waiting for a policy. Although it was announced on 1 September in terms that emphasised the need to exclude British nationals from their own country, I suspect it pretty soon became evident that neither legally nor practically was that going to work. So what we now have is a power that, although it entitled exclusion orders or temporary exclusion orders, in reality it is much closer to managed return or controlled return, which are two phrases that the Home Secretary used at RUSI.

My understanding is that someone who is seeking to fly home may be presented with an order at the check-in desk and told, “You’re more than welcome to come home, but when you come home, you’ll have to comply with certain obligations”—those are the obligations

in the order. No doubt there will be cases about whether that is lawful, but certainly in terms of restricting the right of abode, it is nothing like as dramatic as what appeared to be originally proposed.

Baroness Berridge: Without going into detail of individual cases, are you aware of any cases where a person has returned from terrorist activity abroad and it has not been possible to prosecute them here in the UK?

David Anderson: There were references, I suppose, to that possibility in the ISC's report of yesterday. I have no doubt that such cases will arise from time to time.

Of course, one could look at this in two ways. One could look at it as yet another oppressive measure that imposes impositions—albeit relatively light ones—on people who have not been convicted of anything. Or one could look at it in terms of possibly young, vulnerable people who got caught up with the wrong crowd in Syria and did not really know exactly what they were doing. Do you want to throw the book at them straight away, in terms of arrest and charge; or, even if you do suspect them of having fought, is there something to be said for keeping them under a very light regime where they might have to report daily to a police station and notify their residence and agree to go along to meetings with probation or some similar interlocutor? That might be a more sensible way of dealing with some people than putting them straight into the criminal justice process.

Q9 Baroness Berridge: But this is a power that is exercised when they are not in the country. All that you say about having the flexibility of dealing with the different people who have got caught up in this is, I think, completely right, but how will this person who is abroad be notified that they are now under a temporary exclusion order? Do you have any idea how it will work when they are actually at the check-in desk? What if they say, “No, actually, I've not been up to anything; I have my passport,” and they produce it—everybody always quotes Turkey—at the desk? If they say no, they can come back, can't they?

David Anderson: Obviously the exercise of this power would require the co-operation of carriers, such as airlines, and also of some states in which these people might find themselves. You would have to talk to the Government about how that exercise is going, but certainly if the person is presented with such an order, say, at the check-in desk, they might react in one of two ways. They might say, “Well, I want to go home, and I've obviously got no choice, because they can remove my travel documents and prevent me coming home. I have to go home and submit to these things”, or they might decide not to come home. The Government would probably say that is self-exclusion, rather than the Government

requiring them to be excluded, and therefore they would say that was consistent with the right of abode, but it may well be that that would be the outcome in some cases.

The concern I have about this power—the central concern about it—is where the courts are in all of this. With TPIMs, if the Home Secretary wants to impose a TPIM, she has to go to the court first, and if the court thinks she has got it wrong, it will say so. Even more importantly, she has to disclose everything to the court, and if it turns out that she did not make full disclosure to the court, the TPIM will be set aside. We have seen an example of that recently in the case of CC. Here one can only go by what has been reported, of course, but I think one will want to look very carefully to see whether this is a power that requires the intervention of the court at any stage, or whether it is simply envisaged as something that the Home Secretary imposes. Of course there is, notionally, judicial review, but if you are abroad when this order is served on you, it is a little difficult to see in practical terms how a right to judicial review could be exercised.

Baroness Berridge: Going back to my first question, whether we call this managed return or temporary exclusion, are you aware of any other jurisdiction that has introduced this similar procedure or power?

David Anderson: I have not done a comparative study, so I don't think my answer has great significance, but no, I am not.

The Chair: We have two more supplementaries. Lord Lester had his hand up first and then, Baroness Kennedy.

Q10 Lord Lester of Herne Hill: Obviously public confidence is crucial—confidence of the public at large and public confidence, especially, of British Muslims. I am trying to imagine a situation where there is no such power and what practical solution there could be as an alternative. If there were no such power and there was simply ordinary freedom of movement, I am not sure how that would work, frankly. If there is such a power and judicial intervention, I am also not sure how that could work. It seems to me, on the face of it, that managed return of this kind, sensitively handled, is probably the best choice of evils, but can you think of anything better?

David Anderson: When a subject of interest, if that is the right term, comes back at the moment—assuming you realise they have come back—there is really a choice if you want to intervene. You could give them a schedule 7 examination, but there is a limit now of six hours on that, and you can only do it in order to determine whether they are a terrorist; or if you had the reasonable suspicion, you could arrest them and hold them for up to 14 days

while you made the charging decision. If one accepts that there is a category of people in respect of whom it is not possible to make such rapid decisions, and if one accepts that people in this country can disappear and melt away with relative ease, I think one can understand the point of this power. One can see how it might make a certain amount of sense, particularly if one looks at it in not just a punitive way, but possibly in a rehabilitative way, because one thing that these people can be obliged to do when they come back—in fact, probably the main thing—will be to submit to compulsory interviews with probation or other similar people who might be able to give them a point of reference, and help work out what has been going on and whether it does need the intervention of the criminal law.

Q11 Baroness Kennedy of The Shaws: Lord Lester raised the question of what the alternative is. If someone is coming back—not in subterfuge or through some circuitous route, but if they actually arrive in Turkey and check into an airport—rather than handing them an order saying, “You are having your passport removed and you’re not allowed to return to the United Kingdom,” is the alternative not to let them check in? There would be a notification when the airline realises who they are, because a passport has been presented. They are then picked up at the receiving end, rather than at the entry point in Turkey. You pick them up as they get off the plane; you take them in and say to them, “There are a number of processes: you can either be investigated with a view to prosecution for criminal offences, or you can agree to a number of different steps that could be taken, subject to an order.” In other words, you go through the kind of managed return in the way that you described. The main point is: where do you do it? Do you do it outside of the country or in-country? That is the important thing.

When you talk about a managed return, there will be some people where a managed return might not be the option that you are thinking of, if you are the authorities. You may be thinking that these are people who have been posting things on Facebook, and where there are photographs or there have been intercepts of calls and e-mails to family members or friends back in Britain. There is then evidence that shows engagement rather than them being there for humanitarian purposes or driving an ambulance in the middle of Damascus: here are people who have been involved with ISIS. You would wait for them to come in and the authorities then intervene, rather than us engaging with the possibility of leaving someone without a passport in another country, and the implications of that for our relationships with other countries. Is that not a better route to go down?

David Anderson: It is very much a policy decision, and I am not privy to the operational thinking that went into that. Certainly if one is trying to sell this as an exclusion order, I can see the advantages of imposing it before someone flies back. It may be that the by-product of some people choosing not to come back but to stay out there is seen in some quarters as a welcome one. Where that leaves us in relation to not only the right of abode but, I would stress, the responsibility of the citizenship-granting country to look after its own is another matter. I understand that the solution Baroness Kennedy proposes might be more consistent with the full exercise of that responsibility.

Baroness Kennedy of The Shaws: Is it not better that people who are committing crimes against humanity and conducting themselves in a criminal way are prosecuted for crimes back here, if they are British citizens who have been brought up and educated here or come to live here?

The Chair: Can we have a short supplementary, please?

Baroness Kennedy of The Shaws: Is it not better for us to prosecute them for crimes?

David Anderson: It is always better to prosecute people. This measure in no way stops that from happening if the two elements of the prosecutorial test are met. The decision was taken to seek to intervene at an earlier stage, so that their passport is effectively not available to them and they have to come back and submit to requirements. Whether that is preferable to restraining them only when they arrive is a question for you as parliamentarians, rather than for me.

The Chair: We will have two short supplementaries and then move on to the main question from Mr Sharma.

Baroness O'Loan: Is there is a third route for the citizen who presents and is told that they cannot come back to the UK? Could they, for example, buy a ticket to Dublin and fly into Dublin, or would their passport not be operative when they got there? If that happened, what would happen to them? If they did get into Dublin, they could then simply travel to the UK without a passport.

David Anderson: Yes, and we would have to have a look at the Bill when the final version appears. If part of the mechanism is to remove the travel document or the ability to travel, that would prevent travel to other countries as well as travel back home.

Q12 Baroness Berridge: I believe you were on the "Today" programme in September regarding these powers, and one of the things you mentioned in that was the reciprocal potential of this power. Are you still concerned that if we start introducing a power like this,

which is exercised out of country, and we refuse to allow our citizens back, other countries that do not have the rule of law might start doing that to other nations—not just ourselves—and we could inadvertently develop that as an international practice?

David Anderson: Yes, it remains a concern. It is not as acute a concern as it was in September, because what seemed to be proposed then really was exclusion, preventing these people from exercising their right of abode in the UK. I can only assume that negotiations must be taking place with other states, and it will be interesting to see how those negotiations are going and whether things are being done on a reciprocal basis, but I don't have any knowledge of that.

Q13 Baroness Lister of Burtersett: Bearing on that, in response to Baroness Kennedy you rightly focused on the position of the person affected. However, are there not also implications for our international obligations to other states in terms of the question of where you apply this when someone is leaving or arriving?

David Anderson: That could well be the case, but I am afraid I cannot give you a legal opinion on that today.

Q14 Baroness Berridge: You have touched on this partly, but what reintegration and rehabilitation services are you aware of in the UK for those suspected of returning as foreign fighters? Will any of the deradicalisation strands of the Government's Prevent work apply, as far as you are aware, to those returning foreign fighters?

Apparently, the Government in Denmark have started an initiative. To your knowledge, is anyone in the Home Office actively looking at that initiative to see whether it would be applicable here? It is a three-trunk question.

David Anderson: I am not a spy in the Home Office, nor do I have any responsibility for Prevent, although incidentally I do think somebody ought to review the Prevent programme, even though it perhaps doesn't need to be me.

In terms of the Prevent initiative, the Channel programme seems to me one of its great unsung successes, although perhaps it is not unsung. However, it is a voluntary programme. I have met some of the people who mentor the Channel programme. It might be an older man who has perhaps done his fighting in Bosnia, seen the error of his ways, and can seek to dissuade younger people or talk to people in a language they can understand. That can be very effective and is, incidentally, also very cheap. But it is important to accept that that is, and must remain, a voluntary programme. What we are looking at now is compulsion and, furthermore, compulsion outside the criminal justice system. I have already indicated that I

think that could be used as a force for good and that it need not be associated with punitive measures. Whether politicians will present it that way or whether the Home Office has originally conceived of it that way, I do not know. It seems to me that it has that potential.

There is another element that I think is important with compulsory meetings of this kind. I raised a concern in my report in March on TPIMs, but the same would apply to compulsory deradicalisation of other kinds. Where is the person's privilege against incriminating themselves? Are they to have an assurance of any kind that things they say in that dialogue are not going to be used as evidence in criminal proceedings against them? There is at least one provision of a similar kind in SOCPA that provides for orders to be made to that effect. It seems to me that if you are going to go down the route of compulsory deradicalisation—and I think that does have its place—you are going to have to put in protections as well. Otherwise the whole thing will just be seen as an arm of the criminal justice process.

Q15 Mr Sharma: Is the current proposal compatible with the statutory right of abode in section 2 of the Immigration Act 1971, and with EU law?

David Anderson: They are good questions, but I am afraid I am not going to offer you immediate answers to them, partly because I have not been asked to write legal opinions on them or to think about them—I am sure the Government will have taken legal advice—and partly because if I ever become the reviewer of these powers, I don't think it would be a very good start if I announced right at the beginning that they were obviously lawful or unlawful. So I am afraid I am just going to duck that one.

Q16 Mr Sharma: Would the UK be entitled, in international law, to refuse to accept a British citizen who is deported to the UK by a state that does not want them in their own country?

David Anderson: It seems to me, off the cuff, that if somebody is deported, we need to accept them. We'll see what the Act has to say about that, but I think that would be a pretty difficult obligation to avoid.

Q17 Mr Sharma: What minimum safeguards would you expect to see in the Bill? Is reasonable suspicion a firm enough basis to exercise a power as intrusive as preventing someone from returning to their own country?

David Anderson: Probably not, but I think this power will not be presented as a power to prevent people from returning; rather, it is a power to require them to undertake obligations, for example of reporting to the police and of attending compulsory meetings once they have returned. Of course, reasonable suspicion was the threshold for the old

control orders. That threshold was then raised when TPIMs came in, and we may soon find that it is going to be raised again.

However, one could make the argument that with all the uncertainty there is out in Syria—you have heard intelligence officials state that we have pretty limited coverage out there—and bearing in mind the temporary nature of the measure and the fact that the restrictions are not of the most onerous kind, one could perhaps justify a reasonable suspicion standard.

Q18 Lord Lester of Herne Hill: May I ask you about extraterritorial jurisdiction for terrorist crimes? I am not a criminal lawyer. My understanding is that there always has been extraterritorial jurisdiction for murder, but here the proposal is to extend it to certain terrorist offences. Do you have any concerns about that? Is there a risk of affecting those who travel for legitimate aims?

David Anderson: I support the extension of extraterritorial application, in particular to section 5 of the Terrorism Act 2006, which is preparation for an act of terrorism. It seems logical with the scheme of the Act, which already gives extraterritorial effect to many terrorism-related offences, and section 5 is a pretty important one.

There is an argument, “Well, how will you ever assemble the evidence? You’re hardly going to get much co-operation from President Assad’s judicial authorities in Syria, for example.” However, I think that you yourself alluded to the fact that, like other young people, jihadis are quite keen on social media; photographs get taken and things get sent back. And of course, other people are out there with them and may come back disillusioned and with things to report. So it seems to me not a hopeless endeavour and one that is worth while, bearing in mind not only the damage that those people could do out there but the damage that it is possible some of them could do when they come back.

Q19 Lord Lester of Herne Hill: On the other side of the coin, are there gaps, in your view, in the powers available to prosecute those who travel abroad for terrorist purposes—gaps that need to be filled?

David Anderson: I must say that I rather assume that there are others more attentive even than me to the existence of such gaps, and I have not heard any police officer or prosecutor complain to me that gaps will remain.

Q20 Baroness Kennedy of The Shaws: The Government seem to have done a volte-face on the whole business of relocation powers—internal exile—and I just wanted to know what your view of internal exile is. Are you in favour of it?

David Anderson: I am in favour of TPIMs as opposed to control orders, because they made some major changes. In particular, they are no longer indefinite; they have come down to two years. Curfew was originally 18 hours; it is down to a maximum of 10. And there is the right to a computer and mobile phone. I think they are much more civilised measures.

The one I have always been more doubtful about is the ending of relocation, because it is patently of assistance in preventing people from meeting associates and in preventing them from absconding. I think what we have seen, as you identified in your report of—I think—January this year, is a TPIMs system that is, of course, only designed for the most serious and difficult cases, but none the less is a system that has withered on the vine. That is because people have been absconding, and there is no longer the confidence in the system.

It got to the stage where the advocacy organisation CAGE said to this Committee that if people want to abscond, they will. It seems to me that when you get to that stage, you go one of two ways: you either scrap the whole scheme and start again; or you try to remedy the defects so that, once again, the orders become enforceable.

I sat on the fence in my report of March, because I am acutely aware that you should not make available any weapons that are not strictly necessary. It seemed to me that it might be possible to deal with this problem of continued association with terrorist groups by exclusion orders—by saying, “Don’t go into this street,” or perhaps, “Don’t go into this region of Birmingham.” I thought you could see whether you could do it that way. So I said that the Government should look at doing that if possible, and if that wasn’t enough, they could possibly introduce relocation.

In September, I was then asked by the Home Secretary, on behalf of the Prime Minister and the Deputy Prime Minister, to do a further, secret report, only for them. I spoke to the Metropolitan police and to three other police forces, to MI5, to the Home Office. Of course, I also speak to people who have been subject to these orders, and their representatives, and I do know how disruptive they are to family life and how much they are resented by families. I then came to some conclusions, and I am afraid that the nub of it was that relocation remains extremely useful and does things that exclusion orders simply cannot do, particularly if you are looking at the people who are travelling to Syria and Iraq at the moment.

I am repeating only what has been said publicly by the police, but a very high proportion of those people come from London. They may come from relatively small areas of London, whether in the east or west of London, and the idea that by putting someone under a TPIM

you can prevent them from keeping up their old associations is simply not tenable, unless you have the resources to keep them under permanent surveillance, which of course you do not. All that you can do is put on a GPS tag and do such other bits of surveillance as you are able, but you cannot monitor or control the movements of all those associates. Whether you are in Kensington or Tower Hamlets, the reality is that those associations are going to be very difficult to break unless you have the ability to move somebody away.

The other thing, of course, is that ending relocation was very expensive. The police and the intelligence agencies persuaded the Government to give a sadly undisclosed sum—but it has been said to amount to tens of millions of pounds—in compensation for the ending of relocation, very largely, simply because it is so much more resource-intensive to try to keep an eye on people when they are in their own area.

The other thing that gives me comfort is that when the courts looked at relocation under control orders—they did so many times, because 23 people were relocated under control orders—only very rarely did they say that relocation was disproportionate. On a couple of occasions, they did say, “This is playing too much havoc with your family life.” In one of those cases it was also counter-productive, because it was thought that had the man been with his family, who had refused to move with him, he would have been less likely to engage in plotting. But in the majority of cases, the courts upheld relocation as proportionate.

In the case of Ibrahim Magag, who absconded in December 2012, the High Court had said only a year or two previously that it would be too dangerous to allow him to return to London, partly because he could then take up with his former associates, but also, in part, because those associates could help him to escape. He did come back to London when relocation was ended in 2012, and by the end of the year he had escaped. I should say that I also looked at the Home Office internal reviews into how he and Mohammed Mohamed effected their escapes in 2012 and 2013.

So, with a heavy heart, but none the less with decisiveness, I recommended that these measures were going to be a lot more effective if relocation were introduced, and I hoped very much that if it was introduced it would be balanced by certain other liberalising measures—I believe that there may well have been a lot of movement on that.

Q21 Baroness Kennedy of The Shaws: Mr Anderson, may I ask whether you spoke to, for example, Gareth Peirce?

David Anderson: Yes, I have spoken to Gareth Peirce.

Baroness Kennedy of The Shaws: About this business of relocation?

David Anderson: Well, I speak regularly to members of Gareth Pierce's firm, and I am sure that relocation is one of the issues that I have discussed with them. I do not think I spoke to her in the specific period of the few days in which I was doing the review in September, but I am well aware of, and have quoted in my reports, exactly how the families and the men who have been relocated feel about this.

Q22 Baroness Kennedy of The Shaws: I really want to press you on what this does to family life. First, if single men are relocated to a multi-storey block of flats in some town up north where they have no connections, that is a fairly punitive experience that for many is worse than being in prison. The second thing is that if someone has, for example, a young wife and family, with babies, taking her away from her support system of family, sisters and so on can be hugely punitive of someone other than the person who is being overseen. I wonder whether the consequential effects on the community of doing this kind of thing have come into your considerations.

David Anderson: Yes, they are very much part of my consideration. If you read my first report, which was the control order report, you will see I quoted a very large part of a witness statement that the wife of one of these men gave to court and that the judge said was entirely trustworthy and compelling. So I do have some idea of how they feel about it. I take comfort from the fact that every single one of these cases is subject to an automatic appeal to the High Court and the High Court judge pronounces on whether the damage to family life is so great that it exceeds the national security benefit and is disproportionate. As I say, in a couple of cases—I certainly know of two—the courts have said, "No, this was unduly disruptive of family life. You shouldn't have done it. You better bring them back to where they come from." In the other cases they have said that it is a fair price to pay.

Baroness Berridge: Can I just bring you back to the point you made about the effect on families themselves? I think we have talked about this before. If my memory serves me correctly, we asked Mr Brokenshire about this and he made reference to the troubled families programme. Are you aware of any initiative within the work on preventing radicalisation that is focused around the families to make sure that we are really on the case with regard to the huge effect on children and young people, and on their family life, because of their father—that is who is usually the subject of a control order or TPIM—to ensure that that is not becoming a means to radicalise the family members?

David Anderson: Of course, all families are different. Some may be more sympathetic than others to the person who is under the order. I am aware that, as you would expect, Prevent

work goes on around the margins of people who are subject to TPIMS. Whether that is in school, in the family or in some other setting will depend on the individual case.

Q23 Baroness Lister of Burtersett: With reference to the Home Secretary's speech this week, are you aware of any evidence of a need to require universities to adopt extremist speaker policies and to be subject to direction by the Home Secretary if they fail consistently to comply with the Government's guidance about such policies, as part of what I gather is a proposed new duty to help prevent people being drawn into terrorism?

David Anderson: Again, I have to say that Prevent is not my responsibility. I did talk to some vice-chancellors about this a little while ago. I would not wish to argue against the principle that a wide range of public institutions should be obliged to have regard to the need to prevent people from being drawn into terrorism, just as they are subject, for example, to a public sector equality duty, nor would I oppose in principle the idea that there should be guidelines as to how that obligation should be performed. For example, having an extremist speaker policy seems to be an absolute necessity for any university. Surely it makes sense at least to have drawn up a policy that enables you to ensure that people at least direct their minds to whether there will be sufficient balance in the way that a debate is held, or whatever.

Where it gets much more difficult is when you get into the area of direction, because you run into academic freedom and so on. If I were looking at this—and I stress it is not my responsibility and I have not been asked to look at it—I might take as my starting point the public sector equality duty, and look at what the equivalent obligations, regulations and directions are that can be placed on public bodies and what attempts have been made to reconcile that with freedom of religion, academic freedom and so on. But I am afraid that it is not something I have looked at in any detail.

The Chair: Lord Lester, did you want to ask a supplementary?

Lord Lester of Herne Hill: Would you welcome having some concern in your official functions with respect to that?

David Anderson: The scope of my functions is a whole other subject. There is provision in the Bill about it. I set out this summer what I hoped would happen and what I thought should happen to the function of independent reviewer. The first thing is that my remit should be expanded. I did not say as far as Prevent, but I did say as far as all the anti-terrorism laws, because I only look at four of them and don't look at the others, and the

immigration law in so far as it is applied for counter-terrorist purposes—so we are looking at royal prerogative passport withdrawal and so on.

The second thing I said I needed was the ability to set out an annual work plan, rather as the Chief Inspector of Borders and Immigration does, discuss that perhaps with yourselves—if you would hear me first—and with the Home Affairs Committee, with the Home Secretary, with the Northern Ireland Secretary and the Northern Ireland Policing Board, and then select, in any given year, what it was important to look at.

The third thing I said I needed was more support on the ground. I do the job effectively on my own. I don't ask for a bureaucracy, because I loathe bureaucracy; I ask for a junior. Provision is made in the Bill for the independent reviewer, but not along those lines. The first two concerns are not addressed and the third concern—the request for a junior—is addressed by the suggestion that there should be a board. Whether the function of the board is to advise or to assist, I am not quite clear. It may well be that something good and useful could be made out of it, but it does have, to me, rather a bureaucratic smell at the moment and I should be very anxious not to endorse anything that simply added procedural complexity to the work I try to do and did not give me the body or bodies on the ground, which is really what I need in order to do an effective job.

Lord Lester of Herne Hill: I am going to asking you later about that. I was asking a very narrow question indeed, which is: would you welcome having some oversight or role in relation to the Prevent policy?

David Anderson: Yes, and I should answer the question. I think Prevent needs oversight. It seems to me that Pursue, which is effectively what I oversee now, is very appropriate for a QC to oversee, because it is basically about the law and the various ancillary powers of arrest and search, and so on. Prevent, it seems to me, is much broader. I don't think you would just appoint an English QC as the reviewer of the Prevent programme. That, perhaps, is an area where some diversity of expertise might be more useful, whether you are looking at people from affected communities, people with understanding of online activity, people who know a bit about education, people who know a bit about prisons. I just think it would make sense to have that breadth of expertise on the Prevent review.

Q24 Mr Sharma: Without prejudging your ongoing review into communications data, what is your view on the recent announcement of a planned requirement for ISPs to retain IP-matching data? Is this needed?

David Anderson: This was the easiest and least controversial part of the Communications Data Bill that was introduced in 2012, and I think, in principle, this is a desirable power that is needed. The point of it, as I understand it, is that if, for example, you seize a server under a warrant, because you have grounds to suspect that some terrorism has been going on or something else, and you see that there had been a number of communications with the server from a given IP address, because IP addresses are in short supply, there could be dozens, even hundreds and, I think, even thousands, of devices that use the same IP address. The power that—if we can believe reports—is to be legislated for, or at least proposed under this Bill, is to enable the authorities to identify which device was using that IP address. We will have to look very carefully at how the power is worded. I know there are a lot of technically minded people out there who will be looking at that very carefully as soon as they see a copy of the Bill. Without their expertise I would not want to comment on that, but so long as the power is limited to what is necessary in order to obtain details of that kind, I have no doubt it will be a very useful tool, not only in the fight against terrorism, but in law enforcement more generally.

The Chair: Lord Lester will ask a question, and I know that Baroness Kennedy wants to ask a supplementary or supplementaries after you.

Q25 Lord Lester of Herne Hill: I would like to come back to what you were saying before, about the proposed board and your role. Your role—if I flatter you, I apologise—makes you the conscience of the nation when it comes to looking at these powers. The board would be separate. What you have told us so far is that you would like to have some expansion of what you have to deal with and some support by someone under your control: a junior—I think that is what you have told us so far. The proposal at the moment is different, I think, which is: there you are, but you do not have a junior under your control; you work in parallel with a separate board. Do you welcome that?

David Anderson: It may even be that I am to chair the board. One cannot say for sure until one has seen the Bill. The concept of advice and assistance I find a difficult one to understand. I take advice—some of you around the table know this—from a huge range of people and find that it is always fully and freely given. I hope that I will be able to continue to do that. If the intention is to put wise people on the board, that is wonderful and I will of course ask their advice, but I suspect that one could probably ask their advice anyway.

If the purpose is to assist, it seems a little odd to constitute it as a board with its own staff, secretariat and so on, because, as you rightly point out, what I really need is someone to

whom I can say, “There seems to be a problem at this particular northern airport. Could you go up there, talk to the chief superintendent, look through the logs, see what’s gone wrong and report back?” or “There’s a Somali community meeting this evening. I can’t go because I am doing something else. Why don’t you go and show your face and see what’s on their minds?” That’s the sort of thing. It would also be about assistance in putting reports together. Perhaps because I am at the Bar and have never worked in a bureaucracy or indeed in an organisation of any size, that is how I like to operate. I am just slightly alarmed by the prospect of a board with its own bureaucratic apparatus.

Even if I were to report to that board or chair that board or direct that board, it seems an expensive and possibly not a particularly effective way of achieving what I really need. It ignores what is becoming a major gap in the functions of the independent reviewer, because for as long as one reviews only part of the picture, there will always be people coming along and saying, “What you review might be all right, but what about all the other stuff? Isn’t that where they do their dirty work?” I am not suggesting that they do dirty work, but someone needs to be there to look at that and, if appropriate, give reassurances about it.

Lord Lester of Herne Hill: Have you heard any objection from Whitehall at all to your having a junior?

David Anderson: What they get up to in their internal discussions I am not privy to.

Lord Lester of Herne Hill: No—in their dealings with you. When you’ve talked about your ideas, has anybody given a good reason or any reason for your not having someone of that kind working with you?

David Anderson: No. I made the recommendation in July, and I have since corresponded with the Home Secretary about it. No doubt that recommendation and that request remain under consideration.

Q26 Baroness Kennedy of The Shaws: I have few questions. I like this idea of your being the conscience of the nation when it comes to these matters.

David Anderson: I think this Committee is the conscience of the nation.

Baroness Kennedy of The Shaws: We try to be a bit of a conscience. Your role really depends on your independence, and we give you plaudits for the way in which you conduct it, but there is always a worry—I am sure that this is one of the things that you guard against—of capture by the powers that be or by the establishment of the security system. That capture thing is always a risk. Do you think that there is more of a risk once you are embroiled in a board and in a committee-type structure?

David Anderson: It depends who's on the board. If the board consists of civil liberties activists who say that I am not doing enough, I get that all the time in chambers. I get it from the NGOs in any event. I get it on Twitter.

Baroness Kennedy of The Shaws: You get it from people like me.

David Anderson: I get it from Committees doing an admirable job, such as this one. If they put on the board a lot of old securocrats, I talk to these people anyway and I hope that I am not unduly influenced by what they have to say. It would all depend. It is just not clear to me what this board is going to do. When it was first announced in July, it was said that it would replace the independent reviewer. I think that we can now assume from the Home Secretary's speech on Monday, when she used the word "support", that that idea has gone. I think you will have to wait to see the Bill itself to work out whether it is any clearer to you than it is to me how this would function in practice.

Q27 Baroness Kennedy of The Shaws: I want to raise two matters. One is that it has been a source of great alarm to many lawyers to have had it disclosed that communications between lawyers and their clients have been listened to by the security services. I have to tell you that it came as no great surprise to me, having had the kind of practice that I have had over many years, but it was publicly admitted to. Has that been something that you have taken up with the security services or had anything to do with since?

David Anderson: After I have seen this Committee, I am going to spend three days in Cheltenham. It is certainly something that I shall mention at GCHQ.

More broadly, I am doing this report on intercept. It is not for me to tread on the toes of the interception of communications commissioner, but it is for me to look to see whether the legal framework is sufficient to prevent abuse of that kind—whether that is lawyers, the pursuit of journalists or, indeed, MPs' conversations with prisoners.

Baroness Kennedy of The Shaws: All those were on my list for you. We have communicated with the National Union of Journalists, which is also concerned about the disclosures in relation to the surveillance or intercept of journalists. That, again, is one of those things that we thought were sacrosanct. I understand when security services say that, sometimes, if you are listening to someone who is a suspect, they may phone their solicitor and you are therefore hearing things that you did not intend to hear because you are listening to the suspect. But what one is concerned about is just how far this goes. Is there listening in in prison cells? Is there listening in at meetings in solicitors' offices and barristers' chambers? How far does this go?

David Anderson: Of course, these issues are before courts as well. The issue of the intelligence agencies and their policies on Chinese walls is before the Investigatory Powers Tribunal. I believe that there will be a hearing on that, presumably in the new year, and a judgment after that. The issue of eavesdropping on lawyer-client communications in the police cell is before the European Court of Human Rights, in the case of McE, which split the House of Lords when it was decided here. Plainly, it is not for me to pre-empt or seek to replicate what those courts are doing, but it is for me to look at the legal framework as part of my investigatory powers review. I have had some extremely helpful submissions from the Media Lawyers Association, individual journalists, media outlets and, indeed, members of the legal profession. It is something I will be looking at very carefully.

The Chair: Are parliamentarians being listened in to?

David Anderson: Are they being listened to?

The Chair: I mean eavesdropped on.

David Anderson: That seems very much part of it as well. We saw the story recently about the prison visits.

The Chair: So the answer is yes?

David Anderson: Well, I have not as yet investigated that. It is something which, when I report in May, I shall need to have looked into.

Lord Lester of Herne Hill: When I asked my late boss Roy Jenkins, who was Home Secretary, if I was being listened into, he said, "If your telephone is working extremely well, the answer is yes." When you go to Cheltenham, will you be discussing what is in the interests of the Security Service—a more transparent policy and replacing the neither confirm nor deny approach and obscurity about the legal safeguards with something much more open and transparent, so that we all know much better where we are? It is my impression that better attempts have been made across the Atlantic to achieve that than in this country. Would that be the kind of thing you might discuss when you go to Cheltenham?

David Anderson: Yes. I already have the strong sense that the security and intelligence agencies see the need to be more transparent. What they are perhaps not quite so clear about is how that could realistically be best achieved. I will certainly discuss that with them and consider it in the course of my review. I would say, though, that we need to give ourselves credit for what we have done. Even just in the last year, we have seen a report of the interception of communications commissioner that was far more detailed and frank than

anything from that office before, dealing specifically with a number of the Snowden allegations. We have seen the Investigatory Powers Tribunal beginning to have public hearings and develop more profile. Only yesterday, we had the report of the ISC into the Lee Rigby killings. Whatever one thinks about Facebook and the recommendations and so on, it is probably the most comprehensive account that there has ever been—certainly in Europe—of the operations of intelligence agencies.

I happened to be with the pre-eminent German professor of intelligence law yesterday evening. They have a very similar committee in Germany; it is similarly staffed. He says that their reports are never more than six pages long. When I showed him this report and gave him a copy to take away, his jaw dropped at our already getting to the stage of being as transparent as we are. There is a lot further to go, and the law in particular is very far from transparent. It seems to me that the first and most basic function of a law is that it should be comprehensible. We arguably fail on that count, at least. But yes, I will be discussing it and trying to work out how it could best be achieved.

Lord Lester of Herne Hill: In your work, will you be able to tell the public where the law needs to be more transparent?

David Anderson: Indeed.

Q28 Baroness Berridge: I will bring you back to the comments that you made about the panel and about the comprehensive oversight that you have of one part of the picture of the terrorism legislation. You have made recommendations for the expansion of that, and then there is the Prevent stream. Going back to the subject of people subject to TPIMs and their families, these are highly secret hearings and their identities are not even normally on the court list. If there were a situation where the families or children of someone subject to a TPIM were in an educational establishment that Ofsted has been looking into at the moment, within that panoply who would join those dots for us? Have you any idea who would put that piece of intelligence together?

David Anderson: I do not think that it would constitute review of the operation of the TPIM Act. Having said that, in reality if there was a concern I could probably go to the Prevent people and, if anything untoward was going on, I could probably draw somebody's attention to it.

Baroness Berridge: I am just wondering because we always said that that is siloed. You gave an impression that different people have different parts. Do you have any insights as to

who is in a position to join those things together, or do we just not know? Are there social workers assigned through Prevent to these families, and would they make the connect?

David Anderson: This is really a question for Government, which have their mechanisms for joining things up. There are regular meetings to discuss the cases of these TPIM subjects into which, as with any sort of case meeting of that kind, expertise might come from a variety of sources.

Q29 Sarah Teather: I want to take you back to something you said near the beginning. You expressed concern about an overly broad definition of terrorism and you hinted that you had made these recommendations and that you thought that the Government had taken them on board. Could you expand on that?

David Anderson: We're playing a guessing game with the Bill but I said in July that I thought that the definition of terrorism was far too broad. I identified three specific areas where it seemed that there was an unanswerable case for reducing it. I have not heard anybody say that the Bill is going to attack the first two of those—the fact that an act can be a terrorist act even if it seeks only to influence rather than to intimidate a Government, and the special treatment of explosives and firearms offences that means it is even easier to be a terrorist, even if you are really a racist man with a gun. As far as I know, those are not being addressed. The third is what I call the penumbra of terrorism, which includes concepts such as “terrorist activity” and “terrorism-related activity”. It seemed that every time a new Act came along, that penumbra got broader. I have seen reports that we are going to see terrorism-related activity perhaps cut down to size. I would welcome that very much indeed.

Sarah Teather: A number of the definitions appear to interact with other things that the Government are doing. At the moment, I am serving on a pre-legislative scrutiny Committee looking at the operation of the new charities Bill, for example. The provisions there are likely to interact quite strongly with any definitions of terrorism. Do you have any perspective on that?

David Anderson: Not yet, but when I give evidence to that Committee next week, I hope I will have acquired one.

Sarah Teather: Of course, I had forgotten that you were giving evidence next week.

The Chair: Thank you, Mr Anderson. As ever, you have been extremely helpful to us.