



All Party Parliamentary Group on Extraordinary Rendition
House of Commons

Press release: **Immediate, Monday 18th April 2011**

The Information Tribunal releases its judgment in the APPG's Freedom of Information case regarding documents held by the MOD. It orders the MOD to disclose information on detainees and rendition to the APPG, and finds that the MOD was wrong to refuse to provide further information on cost limit grounds.

Andrew Tyrie MP said: "I welcome the Tribunal's decision to order the release of this information. This is another step towards establishing the full extent and limits of UK involvement in rendition."

"For closure on rendition we need disclosure. One way or another, the truth will eventually come out. Unless the MOD decides to appeal, this judgment will add to the drip drip of information on rendition in recent years. Far better for us to get to the bottom of this quickly, to learn the lessons and to move on. It is therefore crucial that the Gibson Inquiry looks in full at the transfer of detainees in theatre. The Prime Minister has left the Inquiry's remit on this unclear. That is why I wrote to the Prime Minister on 28 March 2011 to seek confirmation on this point."

"The MOD made two important objections – on costs and on foreign policy grounds – which were forcefully rejected by the Tribunal. The Tribunal's finding that more of a government review of detention practices should be published by the MOD, and in particular, that any damage to international relations was '*strongly outweighed by the public interest in the disclosure of the information*', is important if we are to subject the investigation of these and other allegations to scrutiny. Details of detainee transfers in Afghanistan, also ordered to be disclosed by the Tribunal, will assist with this."

"I also welcome the Tribunal's finding that the MOD's estimate of the costs of dealing with the Group's request for assurances on detainee handovers was not reasonable. Publication of these understandings is important to ensure that adequate safeguards are in place to prevent any future involvement."

"As the Tribunal observed: '*Since the maintenance of the rule of law and protection of fundamental rights is known to be a core value of the government of the United Kingdom, it is difficult to see how any responsible government with whom we have friendly relations could take offence at open disclosure of the terms of an agreement or similar practical arrangements to ensure that the law is upheld... It is difficult to see how the Secretary of State for Defence, let alone the general public concerned*'"

with the issue, could be assured by assurances with a foreign government that was unwilling to have the terms of such arrangements made open'.”

“I made these requests over three years ago in response to allegations about the involvement of British Forces in rendition. Since then there have been a string of Government admissions. We now know that two detainees captured by UK Forces, and subsequently handed over to the US, were rendered to Bagram in 2004.”

Ends.

Notes to Editors

The APPG was represented by Tom Hickman, instructed by Hogan Lovells International LLP, both acting *pro bono*. Both Tom and Hogan Lovells have represented the APPG on a *pro bono* basis in relation to this and a variety of other matters since early 2008. Jamie Potter of Hogan Lovells is available to discuss the case on 020 7296 5499.

The judgment in full can be found here:
<http://www.judiciary.gov.uk/media/judgments/2011/appger-v-the-ic>.

In 2008, The APPG made a number of Freedom of Information requests to the Ministry of Defence. Very little information was disclosed by the MoD. Having exhausted the options for internal review and complained to the Information Commissioner, the APPG appealed to the Information Tribunal. The case was heard on 27-31 January 2001. In summary, the requests and the judgment’s findings are:

1. Diplomatic Assurances: The APPG is seeking ‘understandings’ and related documents between the UK and Iraqi, Afghan and US governments on the handling of detainees. The MOD claimed that to comply with this request would take too long and therefore exceed the cost limit under FOIA.

The Tribunal allowed the APPG’s appeal and found that the MOD was wrong to rely on the costs exemption. There will be another hearing to determine whether the MOD is able to rely on any substantive exemptions. The Tribunal cast considerable doubt (without deciding the issue) over whether damage to international relations, which the MOD had first cited as a reason not to disclose the relevant agreement to the APPG, could be successfully relied on by the MOD: ‘Unless cogent evidence is adduced to show why a particular government would have strong concerns about disclosure of such information as we are here considering, we would be minded to conclude that no case of prejudice to

international relations would be made out. If, on the other hand, there was such a case, then the public interest in disclosing the terms of those arrangements becomes that much more pressing and weighty.’ (para 66)

2. Detention Practices Review: In February 2008, Ben Griffin, a former member of the UK Special Forces, alleged that detainees captured by UK Special Forces had been transferred to US forces under whose authority they had been tortured or unlawfully removed from Iraq, and that UK forces had 'detained' but not 'arrested' individuals, in order to avoid legal responsibility. In response to questions about these allegations, the Secretary of State for Defence confirmed in March 2008 that he had ordered a review of detention practices in Iraq and Afghanistan. The APPG made an FOI request for this Review. The MoD disclosed a small extract of the Detention Practices Review in July 2008, which amounted to just 17% of the Review, or 4% if annexes were included. The extracts demonstrated that the review was based on a mere 48hr visit to Iraq, and the conclusion was that: *“The picture is a positive one. The UK has met its obligations by a combination of assurances, operational judgement, and record keeping. The Department will always be open to baseless speculation that we have been complicit in rendition or ill treatment. To end all speculation would require us to prove a negative. We can say, however, that we have no evidence of unlawful rendition and we have looked”*. This conclusion was shown to be inaccurate when the Secretary of State for Defence confirmed on 26 February 2009 that two detainees captured by UK Forces and handed over to the US had subsequently been rendered to Bagram.

The Tribunal allowed parts of the APPG’s appeal and ordered the MOD to provide further extracts of the Review. Specifically, it held that there was no prejudice to the capability of the armed forces and that the public interest in disclosure ‘strongly outweighed’ any damage to international relations (para 73). In relation to other sections of the review the Tribunal upheld the MOD’s decision not to disclose the information as it either related to Special Forces or was legal advice, the public interest favouring the maintaining of the exemption.

3. UK Policy on capture in Iraq and Afghanistan: Following the allegations of Ben Griffin, the APPGER also requested in June 2008 a documentary record of the policy (whether at governmental level, within the UK forces or the UKSF) that UKSF operating within the joint task force referred to by Mr Griffin, would detain or capture individuals but not arrest them.

The Tribunal dismissed the APPG’s appeal given that this would reveal information about Special Forces. [These are the sort of issues which can be examined in closed session by the Gibson Inquiry and a further demonstration of the importance of his engaging with these issues]

4. Detainee information in Iraq and Afghanistan: The APPG is seeking information relating to all individuals detained or captured by UK soldiers operating within the joint US/UK task force, referred to by Ben Griffin, or detained or captured jointly by British forces and forces of another country in Iraq and Afghanistan. This included statistics on how many of those captured by UK forces were subsequently transferred to Guantanamo Bay, Bagram, Abu Ghraib, etc, and for the details of those transfers. The Information Commissioner found that the MoD should release statistics relating to the overall number of individuals captured and transferred to certain detention centres.

The MOD was ordered to disclose information on certain detainees captured in Afghanistan, including the dates of detention, the location of any transfers (e.g. to Guantanamo Bay, Bagram or elsewhere) and the MOD’s definition of ‘capture’ and ‘detention’. Other requested information related to Special Forces and so was exempt from disclosure under FOIA. In relation to the MOD’s argument that to comply with the request would exceed the cost limit, the Tribunal held that ‘MOD seeks to rely on s12 [the costs exemption] merely as a convenient reason for not providing the information when the time for relying on it has long expired’ (para 96).

The requests in full, the MoD’s responses and the Information Commissioner’s Decision Notices are all available in full on the Group’s website at: www.extraordinaryrendition.org

The APPG has made parallel requests for information on rendition in the US under American Freedom of Information legislation. These are also the subject of litigation in the US, which is ongoing.

On 22 February 2008, former SAS soldier Ben Griffin made the following allegations, on which some of the APPG’s information requests were based:

“...it has been British soldiers detaining the victims of Extraordinary Rendition in the first place. Since the invasion of Afghanistan in the autumn of 2001 UKSF has operated within a joint US/UK Task Force. This Task Force has been responsible for the detention of hundreds if not thousands of individuals in Afghanistan and Iraq. Individuals detained by British soldiers within this Task force have ended up in Guantanamo Bay Detention Camp, Bagram Theatre Internment Facility, Balad Special Forces Base, Camp Nama BIAP and Abu Ghraib Prison... As UK soldiers within this Task Force a policy that we would detain individuals but not arrest them was continually enforced. Since it was commonly assumed by my colleagues that anyone we detained would subsequently be tortured this policy of detention and not arrest was regarded as a clumsy legal tool used to distance British soldiers from the whole process.”

In his letter to Sir Peter Gibson, asking him to chair an inquiry to examine whether “*the UK... [was] involved in improper treatment of detainees held by other countries in counter-terrorism operations overseas...*”, the Prime Minister specifically confirmed that detainee transfers would be included. However, the Prime Minister’s letter to Sir Peter of 6 July 2010 stated that “*military detention operations in Iraq and Afghanistan post-2003 are being addressed by separate arrangements made by the [MOD]*”. These separate arrangements appear inadequate (see Andrew Tyrie’s letter to Rt Hon Dr Liam Fox, 19 January 2011).

The inquiry’s ability both to make policy recommendations and to consider the “*evolution of the Government’s response to... changing practices of other countries towards detainees*” would be impaired by an arbitrary cut off. Given that rendition will be at the heart of the inquiry, and that we know UK forces were involved in rendition to some extent post-2003, a full examination is necessary in order to draw a line under these issues and to restore public confidence.

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