[2015] UKIPTrib 14_79-CH

Case Nos: IPT/14/79/CH
IPT/14/80/CH
IPT/14/172/CH

IN THE INVESTIGATORY POWERS TRIBUNAL

P.O. Box 33220
London
SW1H 9ZQ

Date: 14/10/2015

Before :

MR JUSTICE BURTON
(President)
MR JUSTICE MITTING
(Vice-President)
MR ROBERT SEABROOK QC HIS HONOUR GEOFFREY RIVLIN QC
SIR RICHARD MCLAUGHLIN

- -

Between :

(1) Caroline Lucas MP **(2) Baroness Jones of Moulsecoomb AM** **(3) George Galloway**	**Claimants**
- and -	
(1) Security Service **(2) Secret Intelligence Service** **(3) Government Communications Headquarters** **(4) Secretary of State for The Home Department** **(5) Secretary of State for Foreign and Commonwealth Affairs**	**Respondents**

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- -

Ben Jaffey and Jude Bunting (instructed by **Leigh Day**) for the **First and Second Claimants**
Rupert Bowers QC and Abigail Bright (instructed by **Chambers Solicitors**) for the **Third Claimant**
James Eadie QC, Kate Grange and Richard O'Brien (instructed by **Government Legal Department**) for the **Respondents**

Hearing dates: 23rd and 24th July 2015

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MR JUSTICE BURTON

Mr Justice Burton (President) :

1. This is the judgment of the Tribunal.

2. This has been the hearing of a preliminary issue relating to the status, meaning and effect of what has been called the Harold Wilson Doctrine, or the Wilson Doctrine, originating in the statement in the House of Commons on 17 November 1966 by the Rt Hon Harold Wilson, the then Prime Minister (Hansard HC Deb 17 November 1966 Vol 736, columns 634-641).

3. The Claimants are an MP and a Peeress, Caroline Lucas MP and Baroness Jones of Moulsecoomb, who have been represented by Mr Ben Jaffey and Mr Jude Bunting of Counsel, and an ex-MP, who was still an MP at the time of the issue of these proceedings, Mr George Galloway, represented by Mr Rupert Bowers QC and Abigail Bright. The Respondents are the three Security Intelligence Agencies (SS, SIS and GCHQ), and the Secretaries of State for the Home Department and for Foreign and Commonwealth Affairs, responsible for the Security and Intelligence Agencies and for the grant of warrants under s.8(1) and 8(4) of the Regulation of Investigatory Powers Act 2000 ("RIPA"), all of whom have been represented by Mr James Eadie QC, with Ms Kate Grange and Mr Richard O'Brien of counsel. We have been very grateful for the very thorough preparation and the very lucid presentation of this case.

4. The statement by Mr (as he then was) Harold Wilson was some nine years after a report of a Committee of Privy Councillors appointed to enquire into the Interception of Communications (Cmd 283 October 1957), the Birkett Report, which had concluded that the power to intercept communications had been recognised as a lawful power by a succession of statutes over the previous 200 years or so, and that its use had been effective in detecting major criminals and preventing injury to national security: it stated at paragraph 124 that:

> "*A Member of Parliament is not to be distinguished from an ordinary member of the public, so far as the interception of communications is concerned, unless the communications were held to be in connection with a Parliamentary proceeding.*"

5. Mr Wilson's statement appears to have arisen in the context of a discussion about the existence of a "*tightly knit group of politically motivated men*" (HC Deb 20 June 1966 Vol 730, Cols 42-33), which was said to have led to the suggestion that telephones of some members of the House of Commons could have been tapped. The Prime Minister said as follows:

> "*On the issue of the belief of certain hon. Members that their telephones are being tapped, I would point out that my postbag and those of many other right hon. and hon. Members suggest that a very high proportion of the electorate generally are under the delusion that their telephones are being tapped. This delusion spreads to hon. Members and I should say that I used to suffer from it myself at one time.*
>
> *As for the general position, I hope that my statement will be an answer to some of the scurrilous comment in the Press during*

> *the last three or four days about the attitude of the Government to this question and will also answer, I hope, some questions put by hon. Members on Monday and the usual Pavlovian titter which occurred when the name of my right hon. friend the Paymaster-General* [George Wigg MP] *was mentioned—not least because the only connection that he has had with this question was when I sought his advice on reviewing the practice about tapping Members' telephones when we came into office. He therefore shares such responsibility as I can take for the present arrangements.*
>
> . . .
>
> *The position regarding unauthorised tapping . . . is as follows: any tapping that, in accordance with the rules of the Report, becomes necessary by any Crown servant concerned with the things covered in that Report, can only be done with the individual authority of my right hon. Friend the Home Secretary under very strict conditions.*"

He then concluded as follows:

> "*I hold no responsibility for what was done in this matter before the present Government came to power but it is fair to point out that the Privy Councillors' Report itself said that*
>
> *Members of Parliament should not be treated differently from members of the public. It is always a difficult problem. As Mr Macmillan once said, there can only be complete security with a police State, and perhaps not even then, and there is always a difficult balance between the requirements of democracy in a free society and the requirements of security.*
>
> *With my right hon. Friends, I reviewed the practice when we came to office and decided on balance—and the arguments were very fine—that the balance should be tipped the other way and that I should give this instruction that there was to be no tapping of the telephones of Members of Parliament. That was our decision and that is our policy. But if there was any development of a kind which required a change in the general policy, I would, at such moment as seemed compatible with the security of the country, on my own initiative make a statement in the House about it. I am aware of all the considerations which I had to take into account and I felt that it was right to lay down the policy of no tapping of the telephones of Members of Parliament.*"

6. It is the last paragraph which has been subsequently referred to or repeated as constituting the Wilson Doctrine. It was extended to members of the House of Lords by a formal statement by the Earl of Longford as Lord Privy Seal on 22 November 1966 (HL Deb Vol 278, Cols 122-3).

7. There has been a number of repetitions or clarifications of the Wilson Doctrine since, including a repetition by Mrs Thatcher (HC Deb 06 February 1980 Vol 978, Cols 244-5), and in particular:

   i) Mr Blair (HC Deb 4 December 1997 Vol 302, Col 321) stated that the "*policy . . . applies in relation to telephone interception and to the use of electronic surveillance by any of the three Security and Intelligence Agencies*": on 21 January 2002, HC Deb Vol 378, Col 589, he clarified that "*the policy extends to all forms of warranted interception of communications*".

   ii) This was further clarified so far as necessary by Mr Gordon Brown (HC Deb 12 September 2007 Vol 463, Col 2013): "*the Wilson Doctrine applies to all forms of interception that are subject to authorisation by Secretary of State warrant*".

   iii) The most recent statements have been in the House of Commons by the Home Secretary Mrs Theresa May (HC Deb 15 July 2014 Vol 583, Col 713) and in the House of Lords by Baroness Chisholm of Owlpen (HL Deb 22 July 2015 Vol 764, Cols 1107-9. As to the former, Mrs May was speaking in a debate on the Data Retention and Investigatory Powers Bill ("DRIPA"), and she pointed out that "*the House will know that interception can only take place when a warrant has been authorised by a Secretary of State*". In answer to a question which followed from Mr Tom Watson about the Wilson Doctrine and its application to parliamentarians, Mrs May replied:

> "*Obviously, the Wilson Doctrine applies to parliamentarians. It does not absolutely exclude the use of these powers against parliamentarians, but it sets certain requirements for those powers to be used in relation to a parliamentarian. It is not the case that parliamentarians are excluded and nobody else in the country is, but there is a certain set of rules and protocols that have to be met if there is a requirement to use any of these powers against a parliamentarian.*"

8. Mr Jaffey submitted that this answer only applied to DRIPA, because this was the particular topic of the debate. But it is quite apparent that it related to the Wilson Doctrine generally, both because she was dealing with that part of DRIPA which related to interception, but also because the answer was so obviously a general one, and in particular referred to "*a certain set of rules and protocols that have to be met if there is a requirement to use any of these powers* [i.e. powers of interception] *against a parliamentarian*". It is plain that the reference to such rules and protocols is to the relevant Interception of Communication Codes of Practice, and the relevant Official Guidance for the Security and Intelligence Agencies, to which we shall turn below. In any event the matter is put beyond doubt by the separate and subsequent response by Baroness Chisholm in the course of the debate on (and headed up as) the "*Wilson Doctrine*", when she said, in answer to a question from Lord King of Bridgwater, who had opined that "*it would be quite wrong for parliamentarians to be totally excluded at all times*" from susceptibility to interception by GCHQ, that:

> "*As he said, it is not the case that parliamentarians are excluded, but certain rules and protocols have to be met if there is a requirement to use any of these powers against parliamentarians.*"

9. There was detailed criticism of the Wilson Doctrine by the then Interception of Communications Commissioner Sir Swinton Thomas in his Report for 2005-6, and it seems in direct communication between him and the then Prime Minister Mr Blair to the same effect. In that part of his Report headed "*The Wilson Doctrine*" he expressed his view (*inter alia*) as follows:

> "*48. The Doctrine may have been defensible when it was first enunciated in 1966, when there was no legislation governing interception and there was no independent oversight. In 1966 there was no requirement for a warrant with all the safeguards that are attached to that operation now.*
>
> *49. Now, in 2006, the interception of communications is the primary source of intelligence in relation to serious crime and terrorism and is strictly regulated. The Doctrine means that MPs and Peers can engage in serious crime or terrorism without running the risk of being investigated in the same way as any other member of the public. In the course of many meetings I have had with Ministers and Members of Parliament, it has become clear that many are determined that that state of affairs should continue.*
>
> *50. It is fundamental to the Constitution of this country that no-one is above the law or is seen to be above the law. But in this instance, MPs and Peers are anything but equal with the rest of the citizens of this country and are above the law.*
>
> . . .
>
> *57. In my view the Doctrine flies in the face of our Constitution and is wrong. I do not think that it provides MPs with additional protection. I think in fact that it is damaging to them."*

Mr Blair however reported to Parliament (HC Deb 30 March 2006 Vol 444, Cols 95-6):

> "*I have considered Sir Swinton's advice very seriously . . . I have decided that the Wilson Doctrine should be maintained.*"

10. There are relevant passages in the Codes, to which we are satisfied the Home Secretary was referring: the Interception of Communications Code of Practice pursuant to Section 71 of RIPA in force until this year ("the Code") does not make express reference to communications between parliamentarians and their constituents as being confidential, in that such communications are not listed among the examples given, but they are particularised in the new draft Code which has been *de facto* in

operation since the beginning of this year, and complied with by the Security and Intelligence Agencies, although it has been the subject of consultation and has not yet been put before or approved by Parliament ("the Draft Code").

i) The Code

Chapter 3: Special Rules on Interception with a Warrant:

"*Collateral Intrusion*

3.1 Consideration should be given to any infringement of the privacy of individuals who are not the subject of the intended interception, especially where communications relating to religious, medical, journalistic or legally privileged material may be involved. An application for an interception warrant should draw attention to any circumstances which give rise to an unusual degree of collateral infringement of privacy, and this will be taken into account by the Secretary of State when considering a warrant application. Should an interception operation reach the point where individuals other than the subject of the authorisation are identified as directly relevant to the operation, consideration should be given to applying for separate warrants covering those individuals.

Confidential Information

3.2 Particular consideration should also be given in cases where the subject of the interception might reasonably assume a high degree of privacy, or where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material (see paragraphs 3.9-3.11). For example, extra consideration should be given where interception might involve communications between a minister of religion and an individual relating to the latter's spiritual welfare, or where matters of medical or journalistic confidentiality or legal privilege may be involved."

Chapter 4: Interception Warrants (Section 8(1))

"*4.2 Each application* [for a Section 8(1) Warrant] . . . *should contain the following information:*

. . .

- *A consideration of any unusual degree of collateral intrusion and why that intrusion is justified in the circumstances. In particular,*

> *where the communications in question might affect religious, medical or journalistic confidentiality or legal privilege, this must be specified in the application.*

There is a similar provision in Chapter 5: Interception Warrants (Section 8(4)) under paragraph 5.2.

ii) The Draft Code

Chapter 4: Special rules on interception with a Warrant:

Collateral intrusion

4.1 Consideration should be given to any interference with the privacy of individuals who are not the subject of the intended interception, especially where communications relating to religious, medical, journalistic or legally privileged material may be involved, or where communications between a Member of Parliament and another person on constituency business may be involved. An application for an interception warrant should state whether the interception is likely to give rise to a degree of collateral infringement of privacy. A person applying for an interception warrant must also consider measures, including the use of automated systems, to reduce the extent of collateral intrusion. Where it is possible to do so, the application should specify those measures. These circumstances and measures will be taken into account by the Secretary of State when considering a warrant application made under s.8(1) of RIPA. Should an interception operation reach the point where individuals other than the subject of the authorisation are identified as investigative targets in their own right, consideration should be given to applying for separate warrants covering those individuals.

Confidential information

4.2 Particular consideration should also be given in cases where the subject of the interception might reasonably assume a high degree of privacy, or where confidential information is involved. This includes where the communications relate to legally privileged material; where confidential journalistic material may be involved; where interception might involve communications between a medical professional or minister of religion and an individual relating to the latter's health or spiritual welfare; or where communications between a

> *Member of Parliament and another person on constituency business may be involved.*
>
> . . .
>
> *Communications involving confidential journalistic material, confidential personal information, communications between a Member of Parliament and another person on constituency business.*
>
> *4.19 Particular consideration must also be given to the interception of communications that involve confidential journalistic material, confidential personal information, or communications between a Member of Parliament and another person on constituency business. Confidential journalistic material is explained at paragraph 4.3. Confidential personal information is information held in confidence concerning an individual (whether living or dead) who can be identified from it, and the material in question relates to his or her physical or mental health or to spiritual counselling. Such information can include both oral and written communications. Such information as described above is held in confidence if it is held is subject to an express or implied undertaking to hold it in confidence, or is subject to a restriction on disclosure or an obligation of confidentiality contained in existing legislation. For example, confidential personal information might include consultations between a health professional and a patient, or information from a patient's medical records.*

There follow paragraphs dealing with the safeguarding of such confidential communications.

Chapter 5: Interception warrants (section 8(1))

> *5.2 . . . Each application* [for a section 8(1) warrant] *should contain the following information:*
>
> . . .
>
> - *Whether the communications in question might affect religious, medical or journalistic confidentiality or legal privilege, or communications between a Member of Parliament and another person on constituency business.*

There is no specific similar provision in Chapter 6: Interception Warrants (Section 8(4)), given the unlikelihood of the need for any such consideration

when an 'untargeted' s.8(4) warrant is applied for. But it is plainly subject to Chapter 3, which relates to both kinds of warrants.

11. There was disclosed for the first time in the course of these proceedings, either in full or in gist, the Official Guidance to each of the three Intelligence and Security Agencies which, we are satisfied, was primarily what the Home Secretary was referring to in Parliament in July 2014. Earlier versions of the Official Guidance were also disclosed in similar form, and Mr Jaffey has rightly pointed out differences between the forms of the Guidance in place at various times, though all of them referred expressly to the Wilson Doctrine and its effect. The Guidance for each of the three Agencies differs in certain respects, but they are not materially dissimilar. We propose to set out in this judgment the whole of the disclosed (in part redacted) version of the Official Guidance presently in force in respect of the SS and to supplement it by reference to certain express passages in the Guidance in force for the other two Agencies. As in the actual disclosed documents, those parts of them which are gisted, as opposed to quoted verbatim, are distinguished by the underlining below:

i) **SS**: 27 February 2015

"*Policy Aim*

This document sets out the Service's policy on the application of the Wilson Doctrine.

Audience

All analysts and investigators.

Principles

1. The rationale for the Wilson Doctrine is to protect the communications of Parliamentarians in the performance of their Parliamentary and constituency duties without fear that their communications are being targeted other than exceptionally where there is a compelling reason for doing so. The Wilson Doctrine is important as it reflects the ***political sensitivity*** *of the interception of such communications and, in respect of the Agencies, the provision in section 2(2)(b) of the Security Service Act 1989 (and the corresponding provisions in the Intelligence Services Act 1994) which* ***prohibits the Agencies from furthering the interests of any political party****.*

Summary

- *The Wilson Doctrine is important as it reflects the political sensitivity of the interception of communications of Parliamentarians. Such targeting should be regarded as exceptional.*
- *The application of the Doctrine is limited to members of the Westminster Parliament only (MPs and Peers) and the deliberate targeting of their communications.*

- *It covers all forms of interception of communications and 'electronic surveillance' (including eavesdropping) that are subject to authorisation by a warrant signed by a Secretary of State.*

History of the Wilson Doctrine

*2. In answer to questions in the House of Commons, on 17 November 1966 the then Prime Minister, Harold Wilson, stated, that he had decided to give an instruction "**that there was to be no tapping of the telephones of Members of Parliament... [b]ut that, if there was any development which required a change in the general policy, [he] would at such moment as seemed compatible with the security of the country, on [his] own initiative, make a statement in the House about it.**"*

*3. This principle has been referred to since as the 'Wilson Doctrine'. In the intervening years since 1966, public statements have been made on the subject by successive Administrations clarifying the Doctrine. They have also confirmed that the targeting of any Parliamentarian's communications should continue to be regarded as **exceptional**.*

Scope of the Wilson Doctrine

*4. The Doctrine was clarified to apply to Lords as well as Members of Parliament. Its application is limited to members of the **Westminster Parliament** only (both MPs and Peers, referred to in this guidance as 'Parliamentarians') and has never been extended to Members of the European Parliament or Devolved Administrations.*

*5. The Doctrine covers all forms of interception of communications and 'electronic surveillance' (including eavesdropping) that are **subject to authorisation by a warrant signed by a Secretary of State only**.*

6. The Wilson Doctrine does not <u>prohibit</u> the interception (etc) of Parliamentarians' communications. There is no such prohibition in the relevant law (RIPA). Further, it is not, and has never been, Government policy that Parliamentarians' communications may not be the subject of interception.

7. Thus, on 15 July 2014, in the Parliamentary debate on the Data Retention and Investigatory Powers Bill the Home Secretary made it clear in the House of Commons that the Wilson Doctrine "does not absolutely exclude the use of these [interception/electronic surveillance] powers against Parliamentarians, but it sets certain requirements for those powers to be used in relation to Parliamentarians."

*8. The Doctrine applies to the **deliberate targeting** of Parliamentarians' communications by interception or electronic surveillance. An application for a Secretary of State warrant which names a Parliamentarian as the subject of the interception/electronic surveillance will engage the Wilson Doctrine. So too will an application which names another person as the subject of the*

interception/electronic surveillance where the sole or primary purpose is to acquire intelligence about a Parliamentarian.

9. For the avoidance of doubt, the Wilson Doctrine applies equally to any targeting under section 8(4) of RIPA where there is a deliberate intention to select the communications of a Parliamentarian.

Cases falling outside the scope of the Wilson Doctrine

10. It follows that the Wilson Doctrine would not apply to:

(a) An application for the interception or electronic surveillance of the communications of a Member of the European Parliament or of a Devolved Administration;

(b) The acquisition of intelligence relating to a Parliamentarian as a result of the warranted interception or electronic surveillance of the communications of another person, where it is not the sole or primary purpose to acquire intelligence about the Parliamentarian.

(c) The interception of Parliamentarians' communications which are incidentally intercepted pursuant to a warrant under section 8(4) of RlPA, but not targeted, selected or examined in the way described in paragraph 10 above.

11. Although not engaging the Wilson Doctrine, exceptional circumstances of the sort described in paragraph 10 above would also of course necessitate sensitive and serious consideration before any proposal to progress to an application is put forward, or the intelligence is further disseminated within Ml5 or disclosed to an outside body.

The Authorisation Process

12. In an exceptional case where it is proposed to apply to the Secretary of State for a warrant in respect of a Parliamentarian's communications, the normal warrantry procedure should be followed. Careful consideration is invariably given to whether proposed interception/electronic surveillance is necessary and proportionate, but in cases in which the Wilson Doctrine is engaged, this consideration must be undertaken with particular care.

13. A legal adviser, the head of the warrantry section and a senior policy officer must be informed of the proposed application and their advice invited. This advice must be recorded on the Central Record. In addition to deputy director general authorisation of the warrantry submission, DG must also be consulted before the application for the warrant is submitted to the Secretary of State's office.

14. Before deciding whether to issue a warrant, the Secretary of State will need to consult the Prime Minister, via the Cabinet Secretary.

Handling and Disclosure of Material

15. In the event that a warrant is issued pursuant to the authorisation procedure described in paragraphs 12-14 above, in relation to any intelligence acquired pursuant to such a warrant (or, in the case of a warrant under section 8(4) of RIPA, in relation to any material selected for examination in the way described in paragraph 10 above), legal adviser advice must be sought in terms of retention and subsequent internal handling. Material that is not of intelligence interest must be deleted. Any intelligence that is retained must be caveated to provide a warning that it relates to a Parliamentarian, informing subsequent internal recipients that a legal adviser should be consulted before any disclosure of the intelligence takes place.

16. In addition, in the event that it is proposed to disclose any such intelligence (or, in the case of a section 8(4) warrant, any such selected material) to an outside body, this is only permitted if such disclosure is both necessary and proportionate for the purposes of section 2(2)(a) of the Security Service Act 1989. Before any such disclosure is undertaken, advice must first be requested from a legal adviser, head of warrantry and a senior policy officer, who will consult further as appropriate, and authorisation obtained from the deputy director general, who will consider whether clearance should be sought from Ministers. All such disclosure authorisations must be recorded on the Central Record.

Oversight

17. Any warrant within the scope of paragraphs 4, 5 and 8 above of which a Parliamentarian is the subject, or the sole or primary purpose of which is to acquire intelligence about a Parliamentarian (or, in the case of a warrant under section 8(4) of RIPA, where there is a deliberate intention to select the communications of a Parliamentarian) will explicitly be brought to the attention of the Interception or Intelligence Services Commissioner (as appropriate) on their next inspection. Any material that is still being retained should be made available to him or her if requested, including detail of whether that material has been disclosed."

ii) **SIS**: 26 February 2015

"*8. Requests for communications data do not fall within the scope of the Wilson Doctrine. However, serious consideration would be required before submitting a request to acquire communications data relating to a Parliamentarian and the policy team and the Legal Advisors must be consulted.*

. . .

11. In rare cases where direct communications between a target and a MP (or member of the House of Lords) appear to include significant operational intelligence on the opinions or activities of the target himself (not the MP) authorisation to report the intelligence must be sought from the policy team and the Legal Advisors who will consult further as appropriate and consider whether political clearance should be sought. If authorisation is given for a report or reports to be issued, these should wherever possible provide the

operational intelligence on the target without identifying the Parliamentarian. All authorisation to issue must be recorded within the report issuing 1W.

12. In still rarer cases where direct communications between a target and an MP (or member of the House of Lords) appear to raise concerns about the latter's conduct in relation to national security or serious crime, authorisation to report the matter must be sought from the policy team and the Legal Advisors who will consult further as appropriate and consider whether political clearance should be sought. The policy Director will then advise whether, and if so, how and to whom any material may be issued. All authorisations to issue must be recorded.

13. However if a warranted target reports to a third party on communications he/she has had with an MP (or member of the House of Lords) this material may be transcribed and reported if it is of clear intelligence value bearing in mind any special handling requirements for sensitive material as described in the Transcribers Handbook. Transcribers should always consult the policy team and the Legal Advisors in the first instance.

14. Any such reporting must be caveated to provide a warning that it relates to a Parliamentarian in order to inform subsequent internal recipients that the Legal Advisors should be consulted before any further action on the intelligence is taken.

15. If an MP is recorded, unless the call comes under one of the scenarios mentioned in paragraphs 11-12 above, the call should be deleted immediately."

iii) **GCHQ**: June 2015

. . .

"*Selecting 'related communications data' obtained under the 8(4) regime, where there is a deliberate intention to acquire such data related to communications to or from a Parliamentarian, while not directly engaging the Wilson Doctrine is also politically sensitive. In any case of this nature you must consult DD Mission Policy, who will consult with FCO.*

Requests for communications data under the provisions of RIPA Part I Chapter II do not fall within the scope of the Wilson Doctrine. However, serious consideration is required before submitting a request to acquire communications data relating to a Parliamentarian. In any case of this nature you must consult Mission Policy.

The authorisation process

If circumstances arise where it is proposed that a Parliamentarian is to be subject to any form of interception of communications and/or electronic surveillance that is subject to authorisation by a warrant signed by a Secretary of State, the normal warrantry procedure should be followed. In addition, Mission Policy will seek specific advice from LA and DD Mission Policy will

> *also consult Director before any warrant application is submitted to FCO. Further, the Secretary of State will also need to consult the Prime Minister, via the Cabinet Secretary, before any final decision is taken.*
>
> *A similar process of authorisation will be followed where there is a deliberate intention to select for examination the communications of a Parliamentarian intercepted under the 8(4) regime. In any case of this nature you must consult Mission Policy, who will initiate the required procedure.*"

12. The parties have agreed a list of preliminary legal issues, a copy of which is attached to this judgment, but in essence they can be summarised as follows:

    i) What does the Wilson Doctrine mean?

    ii) What is its continuing effect in respect of parliamentary communications?

    iii) What status does it (or its continuing effect) have in English law?

    iv) Does the system relating to interception of parliamentary communications comply with Articles 8/10 of the ECHR?

The purpose and effect of the Wilson Doctrine

13. This Tribunal has described the warrants under RIPA at some length in previous judgments, but in particular we refer to **Liberty v GCHQ** (No.1) 2014 UKIPTrib 13_77-H ("**Liberty/Privacy**"). In general terms s.8(1) is what can be described as a 'targeted warrant', addressed to an identified person or persons or organisation or organisations. A s.8(4) warrant is directed at the communications or class of communications identified in the warrant and can be described as an 'untargeted' warrant or a 'strategic' warrant (by reference to the similar warrant in **Weber and Saravia v Germany** [2008] 46 EHRR SE5) or as a 'certificated' warrant. In paragraph 70 of **Liberty/Privacy** this Tribunal approved the description of the s.8(4) regime as one which in principle "*permits a substantial volume of communications to be intercepted, and then requires the application of a selection process to identify a smaller volume of intercepted material that can actually be examined by persons, with a prohibition on the remainder being so examined*". For the purposes of this issue, the context of s.8(1) will relate to whether a parliamentarian can be targeted by a s.8(1) warrant, and whether his or her communications can be intercepted collaterally or incidentally in the course of the targeting of someone else. As for s.8(4) it is apparent that there is no targeting at the time of grant of the warrant. Large quantities of communications will then be gathered, from which some may be selected to be accessed and read, and it is only at the stage of selection and examination that there may be accessing of a parliamentarian's communications. Material intercepted under a s.8(4) warrant cannot be accessed if it relates to an individual who is known to be likely to be present in the British Isles (such as a parliamentarian) without a certificate being obtained under s.16(3) from the Secretary of State.

14. Mr Jaffey and Mr Bowers both submit that the Wilson Doctrine applies to the obtaining of both a s.8(1) and a s.8(4) warrant, and to the communications of parliamentarians whether targeted or collaterally or incidentally obtained. Mr Eadie submits that the Wilson Doctrine (particularly by reference to the Codes and

Guidance referred to above, which were intended to put into effect the *spirit* of the Wilson Doctrine) only applies to a s.8(1) warrant, whereby the parliamentarian is targeted: it has no reference to a s.8(4) warrant at all, unless and until there is a decision to access/select a parliamentarian's communications, and a s.16(3) certificate is sought for such purpose.

15. A number of disputed issues arose in relation to the consideration of the Wilson Doctrine:

i) Targeted or incidental/collateral

Mr Wilson's statement was plainly in the context of whether MPs' telephones were being tapped (and in the context of whether or not they were part of or communicating with the *tightly knit group*) i.e. directly targeted. Mr Jaffey accepted that this was indeed the "*historical genesis*" of the statement, but submitted that its effect is not so limited. The thrust of his submissions about the Wilson Doctrine was directed to the confidentiality of communications between parliamentarians and those wishing to communicate with them, whether constituents or (for example) whistleblowers pursuant to the Employment Rights Act 1996 s.43(f), whereby MPs are listed as potential recipients of a protected disclosure.

ii) Absolute effect?

Mr Bowers in particular submitted that the Doctrine is absolute. Thus there can be no targeted interception of parliamentarians at all, and no communication with parliamentarians obtained pursuant to any warrant can be accessed. Indeed he went so far as to accept, and "*take it on the chin*", that the consequence of his submission was that no s.8(4) warrant could be issued if there was a risk that there might be interception of communications with a parliamentarian; and given the admittedly very large quantities of communications which are bound to be swept up pursuant to a s.8(4) warrant, such risk could on the face of it never be eliminated, thus rendering s.8(4) incapable of effective operation. Certainly he submitted that there was a 'duty of candour' in making an application for such a warrant, as indeed this Tribunal has found to be the case in relation to the making of an application for a warrant under s.93 of the Police Act 1997 (see our judgment in **Chatwani v National Crime Agency** [2015] UKIPTrib 15_84_88-CH at paragraph 15ff), and indeed would be uncontroversial. But on Mr Bowers' case this duty involves the need on every application for a s.8(4) warrant to disclose to the Home Secretary the existence of the Wilson Doctrine (a matter of which she would be bound already to be aware). However even if this were done, neither he nor Mr Jaffey was able to suggest how in reality the risk of communications with parliamentarians being caught by the warrant could be avoided. Mr Jaffey was however not so 'absolutist'. Primarily because of his '*abrogation*' theory, to which we shall return, he accepted in terms, rather similarly to the attitude of Lord King in his question to Baroness Chisholm recited in paragraph 8 above, that he was not submitting that it was never appropriate to intercept the communications of parliamentarians, for example if they were suspected of paedophilia. Mr Eadie on the other hand submits that the Wilson Doctrine was never more than a *policy* or a *general policy*, and

that Mrs May was not spelling out anything new when she articulated the Wilson Doctrine in July 2014 in the way she did.

iii) Change/abrogation

This was Mr Jaffey's route away from 'absolutism'. He submits that:

(a) the policy of no interception or surveillance of parliamentarians may be *abrogated*, perhaps temporarily or perhaps in part:

(b) if and when it was so abrogated, the Prime Minister, would, as indicated by Mr Wilson, inform Parliament at a time which "*seemed compatible with the security of the country*", a time which could well be some years in the future. This, he submitted, would permit the interception of the communications of individual parliamentarians, but each such abrogation would be an individual or one-off *abrogation*.

iv) The Role of the Prime Minister

Mr Jaffey formulates his case in respect of *abrogation* by submitting that each and any such abrogation must be by the Prime Minister, and thus that each and any authorisation of interception of a parliamentarian's communications must be with the consent or acquiescence of the Prime Minister. Thus it is that in his submissions he accepted in terms (Day 1/81) that interception of a parliamentarian's communications would not breach the Wilson Doctrine if the Secretary of State has sought the Prime Minister's acquiescence. Mr Bowers submitted (Day 1/178) that if a warrant was used by the Secretary of State without the permission of the Prime Minister that would not mean an *abrogation* of the policy but a violation.

16. We are wholly unpersuaded by Mr Bowers' submission that the Wilson Doctrine applies to every warrant, whether s.8(1) or 8(4), at the stage of application and grant, and that no warrant where there might be interception of a parliamentarian's communications as a result can thus be granted. The suggestion was made that any such risk could be avoided by adding to any s.8(4) warrant a provision so as to exclude from interception the telephone numbers and email addresses (private or official) of all parliamentarians (if obtainable). In the light of the arguments, to which we shall return, that communications with parliamentarians should be regarded analogously with communications subject to legal and professional privilege (LPP), we noted that the procedure in respect of the protection of LPP communications is (as provided in the Code and the Draft Code, whether satisfactory or otherwise) itself dealt with at the stage of access, selection and reading of communications by the Agencies: and this does not involve, for example, the exclusion at the stage of application for the s. 8(4) warrant of all email addresses or telephone numbers of all solicitors and barristers (and not just in England and Wales). We are entirely satisfied that the Wilson Doctrine, which commenced in respect of the tapping of MP's telephones, was not intended to extend, and could not in practice extend, to prohibit the interception, as part of a very large quantity of communications, of communications by parliamentarians which were not targeted by the warrant applied for. Unless such were the case it would in fact render impossible the very procedure,

namely the grant of s.8(4) warrants, which Parliament, those very parliamentarians, itself approved.

17. We do not accept that the Wilson Doctrine was ever absolute. The *policy* or *general policy* of which Mr Wilson spoke was one of not tapping the telephones of Members of Parliament. It seems unlikely to us that such policy, particularly once RIPA was passed by Parliament, with its statutory justification for s.8 warrants by reference to the necessity for the interests of national security or the purpose of preventing or detecting serious crime etc (s.5(3)), was intended to rule out any tapping of such telephones or other similar direct surveillance and certainly not any incidental interception. It is difficult to see how there could be an absolute policy which would rule out interception of any communications with parliamentarians, as opposed to a policy relating to those involving confidential communications with constituents etc. Mr Jaffey himself asserted (Day 1/140) that in respect of that category an adequate system of safeguards could be found. It is to be noted that the applications before us are by parliamentarians, contending that the absolute protection applies to all their communications, and not by, for example, civil liberties groups addressing the protection of such communications.

18. We have already referred above to Mr Jaffey's suggested concept of *abrogation*. There is in our judgment no room for this. What he describes as *abrogation* is either a recognition that the *general policy* is not absolute or is or amounts to a *change* in that policy: the no doubt studied ambiguity in the enunciation of the Doctrine would allow for either. Mr Wilson provided, as Mr Jaffey accepts, for the event of "*any development of a kind requiring a change in the general policy*". This means that there could be such a change, and one which did not need to be disclosed to Parliament at any foreseeable time. There is no basis in our judgment for the proposition that this would (only) relate to one-off decisions and for what Mr Jaffey described as *abrogation* for a particular purpose or a temporary *abrogation*. The change would or could be one that would permit, by way of change of the general policy, the interception of communications of parliamentarians. When and insofar as there was such a change, then that change could continue, no doubt operating only in exceptional circumstances and where necessary and proportionate, as indeed adumbrated in the recent Guidance. There is no reason to conclude that the Prime Minister would be required to be involved on every occasion once there had been such a change, subject only to the need for a Prime Minister to reveal or announce such change to Parliament at some stage in the future. There is no basis therefore for the role for the Prime Minister which Mr Jaffey postulates by reference to his need to *abrogate* the policy on each occasion, nor for a case that without his involvement on each occasion there would, as Mr Bowers submits, be a violation of the Doctrine. If the policy has changed, it is impossible to conclude that the Prime Minister does not know this, not least by virtue of the publication of Mrs May's statement as recorded in Hansard, to be followed no doubt by some statement from this or a future Prime Minister at some stage in the future to the same effect.

19. The Doctrine cannot in any event prevent submissions being made by the Agencies to the relevant Secretary of State for the issue of a s.8(1) or (4) warrant in relation to a parliamentarian. There can be no lawful interception without a Secretary of State's warrant. Accordingly, the critical stage at which the Wilson Doctrine would bite is at that stage, not earlier.

20. The changes in the Doctrine, which have resulted in its operation as now described by Mrs May, were permitted and foreseen by the Doctrine itself. If the Doctrine was ever an 'absolute' one, it is no longer, but is operated in line with the Draft Code and the Guidance of the Agencies. As Home Secretary, and responsible for the issue of warrants, and in that capacity a Respondent to this claim, she is in the best position to recognise and explain how the Doctrine is operated.

Is the Wilson Doctrine enforceable at law?

21. If the above analysis is correct, as we conceive it to be, then the case put forward that there can be no interception of parliamentarians' communications (or none such without the Prime Minister's express agreement) falls in any event. But what is the status of the Wilson Doctrine: is it enforceable at law? Those acting for Mr Galloway sought the view of the Speaker of the House of Commons, and the Speaker's secretary responded by letter of 4 February 2015, which he specifically requested should be drawn to the Tribunal's attention and which stated that the Speaker's Counsel had advised the Speaker materially as follows:

> "*My immediate reaction is that the "Wilson Doctrine" . . . is an undertaking given by the Prime Minister as to Executive forbearance in the practice of interception. It was given at a time when interception was not subject to statutory requirements for a warrant (these were introduced following the ECHR case of Malone v. United Kingdom).*
>
> *It may well be that Members are treated differently from members of the public in relation to the exercise of powers under Regulation of Investigatory Powers Act 2000, but this is because the Executive undertakes to treat them differently, and there is, of course, no legal obligation to intercept-just a warrant regime which must be followed if it is to be undertaken. The difference in treatment is not a matter of* [parliamentary] *privilege, or even of law, whether common law or statute.*"

None of the parties based their case upon what is there stated, one way or the other, but the Speaker, who can be expected to represent the interests of MPs, provides no support for the Claimants' proposition.

22. The Claimants submit that the Doctrine is enforceable by way of the concept of legitimate expectation:

i) The requirement for the establishment of such concept is, as made clear by Bingham LJ (as he then was) in **R v Inland Revenue Commissioners, Ex p MFK Underwriting Agents Ltd** [1990] 1 WLR 1545 at 1569 (inter alia) that "*it is necessary that the ruling or statement relied upon should be clear, unambiguous and devoid of relevant qualification*". Enough has been said in the course of our conclusions above to make it clear that at the very least the statement by Mr Wilson was ambiguous and had relevant qualification, both as to the nature and the effect of the *policy* which he was enunciating. There is in effect, as we have pointed out in paragraph 18 above, a studied ambiguity as to

all save the promise at some stage to notify the House of any change in general policy.

ii) In any event it is plainly necessary, before there can be any expectation (legitimate or otherwise), that such statement (or policy) will have continuing effect. It is manifest that it could not be expected that the policy would remain. It could be *abrogated* (or changed) at any time, and without any publication at any time in the foreseeable future. It would be impossible to know whether there had been an *abrogation* or change, and the promise to report at some unforeseeable time of a Prime Minister's own choosing was an unenforceable obligation, if ever there was one, even without the superimposition of the restriction upon the Court's jurisdiction enunciated in **R (Wheeler) v Office of the Prime Minister** [2008] EWHC 1409 (Admin).

iii) The (unlikely) alleged legitimate expectation of the parliamentarians to whom the statement was made would have to be that it would, and in due course did, oust (*sub silentio*) the effect of legislation which parliamentarians themselves would pass or had passed. Prior filtering out of parliamentarians' communications is impracticable, as discussed in paragraph 16 above. The Doctrine cannot have been intended or understood to impose an obligation with which it was impossible in practice to comply.

iv) The statement was made to MPs. It seems plain from what Mr Jaffey described as the *historical genesis* that it was for their benefit, as indeed Sir Swinton Thomas pointed out in stringent terms in paragraphs 49 and 50 of his Report cited in paragraph 9 above. It seems to us to have had nothing whatever to do with confidential communications with constituents or whistle blowers. There was and is no such protection for the benefit of elected Councillors, for MEPs, for MSPs or for Members of the Welsh or Northern Ireland Assembly.

v) It is difficult to gainsay what Mitting J in the course of argument encapsulated as Mr Eadie's submission, namely that the statement by Mr Wilson was "*a political statement in a political context, encompassing the ambiguity that is sometimes to be found in political statements*". The statement was in effect "*in the realm of politics, not of the courts*": see **Wheeler** at paragraph 41. The "*political sensitivity*" is emphasised (by emboldening) and repeated in the Guidance of all three Agencies.

23. We are satisfied that the Wilson Doctrine is not enforceable in English law by the Claimants or other MPs or peers by way of legitimate expectation.

24. The Code gave some implicit protection, and the Draft Code more expressly, in respect of the confidential communications between MPs and constituents to which Mr Jaffey referred. Each Guidance gives a great deal of protection, as set out at length in paragraph 11 above. As there set out, these protections were not disclosed prior to these proceedings, and we emphasise this as an important aspect of the advantages that can be gained by litigating in this Tribunal – witness the substantial disclosures made by the Respondents in the course of **Liberty/Privacy**, and in **Belhadj** [2015] UKIPTrib 13_132-H. The fact is that even without such disclosure, claimants, such as the Claimants here, could have brought a claim before this Tribunal

to assert a belief that their communications were being intercepted, and the Tribunal could have considered, as indeed it will be considering in this case, whether there has been a failure by any of the Agencies to comply with their own Guidance. It would seem to us sensible that the three Agencies should cooperate in producing one single Guidance applicable to all three Agencies.

S.8(1)

25. It is clear to us that the Wilson Doctrine as now constituted is as explained by Mrs May in July 2014 - whether or not there is a need for a further statement by the Prime Minister in Parliament to emphasise the changes and comply with Mr Wilson's (unenforceable) promise. There was in the Code, and in any event is expressly set out in the Draft Code, so far as confidential communications between MPs and their constituents are concerned, a requirement for disclosure of material facts on an application for a s.8(1) warrant, if there were an application by an agency targeting a parliamentarian, or for a warrant which would inevitably lead to interception of a parliamentarian's communications, e.g. if the target shared a home with the parliamentarian. Such an application will only occur in exceptional circumstances, but, as Mr Jaffey himself accepted there may be amongst parliamentarians what was described in the hearing as "*bad apples*". The Guidance for each of the Agencies sets out provision for such exceptional circumstances with care and provides for the need for consultation with the Prime Minister (absent in some earlier versions of the Guidance). In this connection there was a further issue raised by Mr Jaffey in his reply which it seemed to us had not been previously considered, namely as to whether there might within the provisions of s.8(1) of RIPA be a possibility for a subsequent addition of a parliamentarian's name and contact details to the schedule to a s.8(1) warrant once it had been issued, but it seemed to us clear that if that could occur (and it was far from clear to us that it could), the provisions of the Guidance would inevitably be followed, and if appropriate they could be clarified.

S.8(4)

26. We are satisfied that the Wilson Doctrine does not in any event apply to an application for the grant of a s.8(4) warrant. As described in paragraphs 10 and 13 above, it is not likely that at the grant stage there would or could be consideration of the possibility of interception of a Parliamentarian's communications, although paragraph 4.19 of the Draft Code is there as a reminder. However, as the Guidance of the Agencies makes clear, as and when the selection of material to be accessed arises, particularly in the light of s.16(3), what Mr Eadie described as the *spirit* of the Wilson Doctrine will arise.

Articles 8 and 10 of the ECHR

27. The ECtHR and this Tribunal have already been satisfied that the s.8(1) (**Kennedy** [2011] 52 EHRR 4) and 8(4) (**Liberty/Privacy**) regimes are in generic terms compliant with the requirements of Articles 8 and 10. The question is raised by the Claimants in this case as to whether anything further and specific is required by the ECHR to deal with interception of communications by parliamentarians. As to this it is common ground that:

i) There is protection for freedom of speech by parliamentarians within Parliament – hence the need for absolute parliamentary immunity was concluded to override the applicant's Articles 8 and 6 rights in **A v UK** (App 35 373/97 judgment 17 March 2003) (see also **Castells v Spain** 14 EHRR 445).

ii) There is no case in the ECtHR, or founded upon the ECHR, which supports the superimposition of specific protections relating to communications by parliamentarians, outside Parliament, whether with constituents or otherwise.

The UK does have a system, described in this judgment, consisting of the Wilson Doctrine as explained by Mrs May, i.e. by reference to the Draft Code and the Guidance of the Agencies. It is also common ground that unless these rules were required by the provisions of Articles 8 and 10, the ECHR requirements of *foreseeability* or *accessibility* do not prevent reliance upon or reference to such Guidance, prior to the publication of it in these proceedings. Mr Jaffey rightly conceded in argument that if the Rules in fact operated are not required by the ECHR, then lack of foreseeability or accessibility (prior to these proceedings) is of no relevance.

28. Since it is accepted that there is no authority that the ECHR requires additional protection for communications with parliamentarians, the question is whether this Tribunal could or should now establish such authority. Mr Eadie has pointed to the words of caution expressed by Lord Brown and Lord Carnwath in minority opinions in (respectively) **Rabone v Pennine Care NHS Trust** [2012] 2 AC at para 112 and **Kennedy v The Charity Commissioners** [2015] 1 AC 455 at 211-214, as to the role of the English Courts in interpreting the requirements of the ECHR and the '*direction of travel*' of the ECtHR in cases where there is no direct authority. But Mr Jaffey submits that we should spell out such requirements by analogy with other areas requiring additional protection, namely LPP and journalistic communications.

29. The first question to be asked is: what are the communications for which such additional protection is required? A court enunciating (and for the first time) such requirements must obviously be in a position to give adequate identification of what they are:

i) What group is to be identified? Is it to be all "*elected representatives of the people*" (**Castells** at 476)? It is difficult to see why it should be limited to members of the House of Commons and the House of Lords, and not (as discussed above) so as to include elected regional or local Councillors or elected Members of other Assemblies (or the European Parliament). Of course the wider the category the greater the effect on the effective operation of the interception system, certainly if any absolute protection were to be required for such communications, as opposed to the need for caution in relation to any interception.

ii) The next question is whether such protection is to be in respect of all communications by such elected representatives. At present the Guidance of the three Agencies does give some protection to all communications by parliamentarians, but only in respect of the care to be taken in assessing and identifying them, and only in respect of the procedure to be followed, not by

way of absolute protection. It would need to be clear whether it was to be communications with constituents (or whistle blowers), or all communications by parliamentarians (or other elected representatives ?) which was to be given absolute or other protection.

iii) There must obviously be set against such considerations the powerful views of Sir Swinton Thomas cited in paragraph 9 above, and of Lord King as expressed in paragraph 8 above, as to the undesirability and inappropriateness of any such protection over and above that given by the system generally.

30. The next question to be considered is what the nature of such protection is to be – whether absolute, as with LPP – and how and at what stage it is to be enforced. As against Mr Bowers' *taking on the chin the practical consequences* of a substantial emasculation of the s.8(4) process, the only suggested way, which we have discussed in paragraph 16 above, was the *automatic deletion* suggestion at the grant application stage, which is not even required in respect of potential LPP communications, and would be impossible to operate in any event.

31. Hence the real question is as to whether there is any analogy to be drawn from any ECHR authority, such as to cause this Tribunal to conclude that anything superadded over the provisions of the Code or the Draft Code is required. The only analogy relied upon by Mr Jaffey is that relating to the obtaining of journalistic sources: and that of course would only be relevant to a targeted application. Mr Jaffey submits that the imposition of a system of judicial pre-authorisation of the grant of any application which might lead to the interception of parliamentarians' communications can and should be derived by analogy from the decisions on journalistic sources. As to this:

i) It appears to us that comparison between a need for judicial pre-authorisation in respect of an application for journalists' sources (not in respect of any interception of journalistic communications), which is a very specific and sensitive area, does not found an argument for its application in relation to interception of any communications by a parliamentarian – it is, as was put in the course of argument, a 'massive jump'.

ii) Even as to applications for journalistic sources the law is not yet settled. This Tribunal referred in paragraph 150 of **Liberty/Privacy** to the words of Laws LJ in **Miranda v the Secretary of State for the Home Department** [2014] 1 WLR 3140. We do not consider that either **Sanoma Uitgevers v The Netherlands** [2011] EMLR 4 or **Telegraaf Media Nederland Landelijke Media B.V. v The Netherlands** [2012] 34 BHRC 192 requires the interposition of judicial pre-authorisation before the grant of such authorisation or approval.

iii) Even if judicial pre-authorisation were established to be required in respect of an application for journalistic sources, this Tribunal has previously expressed the view in **Liberty/Privacy** (at paragraph 116(vi)) that extension of such a system any further in the area of national security or interception by the Agencies is not justified or required.

32. We are persuaded by Mr Eadie's principal proposition that the interception regime, which has been approved by the ECtHR in **Kennedy** and the Tribunal in

Liberty/Privacy, provides, particularly having regard to the well-established proposition as to the reduced *foreseeability* required in the field of national security, a sufficient and adequate system for ECHR purposes, and one which does not require the Wilson Doctrine to underlie it. Unlike journalists' and lawyers' communications, there is no ECHR authority for enhanced protection for parliamentarians. There are very good reasons, as Sir Swinton Thomas pointed out, for parliamentarians not being treated differently from other citizens. The s.5 RIPA criteria and the approved interception regimes, including other statutory provisions for the respective Agencies, impose and signal a high threshold for interception. It is not necessary for this Tribunal to make new law. Moreover any attempt to do so would entail inventing a new code to define the types of communications covered and where lines are to be drawn. The Wilson Doctrine, as now enunciated and put into effect, highlights a need for caution and circumspection in respect of parliamentarians' communications. But such caution and circumspection will be called for in respect of many other types of confidential and sensitive private communications, which come to be considered under the interception regimes.

Answers to the preliminary issues

33. The Tribunal accordingly answers the preliminary issues attached to this judgment as follows:

i) The Wilson Doctrine does not apply to s.8(4) warrants at the stage of issue.

ii) It applies to targeted, but not incidental, interception of parliamentarians' communications, both in respect of s.8(1) warrants at date of issue and in respect of s.8(4) warrants at the date of accessing/selecting such communications.

iii) The Wilson Doctrine does not operate so as to create a substantive legitimate expectation.

iv) The Wilson Doctrine has no legal effect, but in practice the Agencies must comply with the Draft Code and with their own Guidance.

v) The regime for the interception of parliamentarians' communications is in accordance with the law under Article 8(2) and prescribed by law under Article 10(2), in particular by reference to s.5(3) of RIPA.

34. MPs' communications with their constituents and others are protected, like those of every other person, by the statutory regime established by Part 1 of RIPA 2000. The critical control is the requirement for a Secretary of State's warrant, which can only be issued if the requirements of Section 5 are satisfied. That regime is sufficient to protect such communications and nothing further is required by the ECHR.

ANNEX

OPEN PRELIMINARY LEGAL ISSUES

I. What is the meaning and scope of the Wilson doctrine? In particular:

a. Does the Wilson doctrine apply to all interception of communications pursuant to a warrant under RIPA 2000, including certificated warrants issued under section 8(4)?

b. Does the doctrine apply to both "targeted" and "incidental" interception of Parliamentarians' communications?

II. Does the Wilson doctrine operate so as to create a substantive legitimate expectation and/or operate to prevent the interception of Parliamentarians' communications, either targeted or incidental?

III. What is the legal effect of the Wilson doctrine on:

a. the information that ought to be put before the Secretary of State when making an application for a warrant under section 8(1) or 8(4) RIPA;

b. the decision as to whether to issue a warrant under section 8(1) or 8(4) RIPA;

c. the interception and/or selection for examination of communications under section 8(4) RIPA;

d. a decision to read, look at or listen to communications collected under section 8(4) RIPA?

IV. Is the regime for the interception of Parliamentarians' communications ("the regime") in accordance with the law under Article 8(2) ECHR / prescribed by law under Article 10(2) ECHR? In particular:

a. Is the regime sufficiently clear and certain to be prescribed by law / in accordance with the law?

b. Does the regime provide sufficient protection against arbitrary and disproportionate conduct in relation to Parliamentarians' communications?

c. If 'yes' was this the case throughout the period commencing 1 year prior to the date of complaint?