

[REDACTED]

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CROWN PROSECUTION SERVICE COUNTER TERRORISM DIVISION,

**THE SENIOR NATIONAL CO-ORDINATOR ON BEHALF OF THE POLICE
COUNTER TERRORISM NETWORK**

&

THE SECURITY SERVICE

Introduction

1. This Memorandum of Understanding (MoU) has been agreed between the Counter Terrorism Division (CTD) of the Crown Prosecution Service Special Crime and Counter Terrorism Division, the Senior National Co-ordinator Terrorist Investigations, and the Security Service (MI5). It supersedes the MoU between the CPS CTD and MI5 signed on 11 December 2013 and 09 January 2014 by [REDACTED] and [REDACTED] respectively.
2. Its aim is to identify and provide 'best practice' guidance in relation to the respective roles and responsibilities of CTD, counter terrorism police and MI5 in relation to MI5 material which may be relevant to counter terrorism investigations and prosecutions to ensure effective decision making processes, proper revelation and secure handling.
3. All parties will ensure that all relevant staff are familiar with this MoU.
4. This MoU will be shared with other police specialist counter-terrorism units and may be shared with other police forces on a case by case basis as necessary, with the prior agreement of all three parties.
5. All parties will review the working of this MoU annually, on or around 30 March. Any party may request a review of the provisions of this MoU earlier.

Roles and responsibilities

CTD:

6. CTD is responsible for prosecuting terrorism, all cases involving incitement to racial and religious hatred, and hatred based upon sexual orientation, war crimes, genocide and related offences, prosecutions under the Official Secrets Acts and hijacking. CTD also deals with other proceedings ancillary to its prosecution work, including SOCPA agreements and reviews and breaches of TPIMs.
 7. CTD is based at Rose Court, Southwark Bridge, London and provides a national service taking work from all police forces, although most of its casework comes from the Metropolitan Police Counter Terrorism Command and the regional Police Counter Terrorism Units.
- [REDACTED]

[REDACTED]

8. [REDACTED]

Counter Terrorism Police

9. The police service has a common law duty, and in Scotland a statutory duty, to protect life and property, and to prevent and detect offences including terrorism and domestic extremism, in the United Kingdom. The threat and unpredictable nature of terrorism often requires intervention at an early stage to protect public safety. To counter this threat, MI5 and the Counter Terrorism Police work together in terrorism investigations.
10. The role of a Counter Terrorism Police Senior Investigation Officer (SIO) includes exploiting any opportunities for gathering covert or overt evidence for the purposes of disrupting terrorist activity.
11. Counter Terrorism Police investigate offences falling within a number of statutes, including the Terrorism Act 2000, the Terrorism Act 2006, the Counter Terrorism Act 2008, Terrorism Prevention and Investigation Measures Act 2011 & the Counter Terrorism and Security Act 2015.
12. [REDACTED]

Security Service

13. MI5's functions are set out in the Security Service Act 1989 (SSA). They are the protection of national security, to safeguard the economic well-being of the United Kingdom against threats posed by the actions or intentions of persons outside the British Islands, and to act (when tasked) in support of law enforcement agencies in the prevention and detection of serious crime. MI5's counter terrorism investigations are conducted under its function to protect national security.
 14. The SSA restricts MI5's ability to obtain and disclose information. In particular, MI5 is permitted to disclose information only to the extent necessary for the proper discharge of its statutory functions, for the purpose of the prevention or detection of serious crime, or for the purpose of any criminal proceedings.
 15. MI5 is under no legal obligation to conduct its operations in accordance with evidential procedures or to release its material for use in evidence. However, in cases in which MI5 believes that criminal prosecution would present an effective means of disrupting the activities of its targets, thereby protecting national security, it may collect and handle material in a manner intended to preserve the possibility of making that material available for evidential use by the Crown.
 16. In respect of counter terrorism operations, the SSA permits the release of material for evidential use by the Crown where and to the extent that the disclosure in question is judged necessary for the protection of national security and/or for the purpose of criminal proceedings.
- [REDACTED]

[REDACTED]

17. MI5 is a third party within the meaning of the Criminal Procedure and Investigations Act (CPIA) 1996 and the Code of Practice issued under Part II of that Act. The Code of Practice issued under Part II of the CPIA 1996 does not therefore apply to MI5. MI5's policies on the recording and retention of information that comes into its possession are governed by the SSA (and other legislation where relevant, including the Regulation of Investigatory Powers Act (RIPA) 2000, the Intelligence Services Act 1994 and the Data Protection Act 1998). Accordingly, material will be obtained, recorded and retained for as long as it is necessary and proportionate for the protection of national security or otherwise for the purposes of the Service's statutory functions. However, where MI5 receives notification in accordance with paragraph 3.6 of the Codes of Practice issued under Part II of the CPIA 1996 that it is in possession of material that may be relevant to the investigation, it will retain such material as is specified within that notice.

18.

[REDACTED]

Best Practice guidance

The investigative process

19. In most MI5 led intelligence investigations, whether it is intended or anticipated that the operation will result in prosecution or disruption by some other means, a police Senior Investigating Officer (SIO) is appointed at an early stage.

20.

[REDACTED]

" This refers to the initial stage of an investigation "

21.

[REDACTED]

" The CPS may also be consulted in particularly complex or high risk cases "

[REDACTED]

[REDACTED]

[REDACTED]

22.

[REDACTED]

23.

[REDACTED]

24.

[REDACTED]

25.

[REDACTED]

"The paragraph sets out the circumstances where there should be consultation with the CPS"

26.

[REDACTED]

27.

[REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

Pre-arrest disclosure process

29. [REDACTED]

" If the operation reaches a point at which it is decided arrests will take place, MI5 will audit the information it holds to ensure that any relevant information is identified so that it can be disclosed "

30. [REDACTED]

31. [REDACTED]

32. Where SIS or GCHQ might have relevant material or input, which may be particularly the case in relation to investigations involving [REDACTED] the CPS lawyer should consult them and request relevant material.

Post arrest but pre charge process

33. [REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35.

[REDACTED]

36.

[REDACTED]

" Paragraphs 37 - 57 describe the disclosure processes that will be followed by MI5 following a charge, and the liaison process between MI5, the CPS and the Police "

Post charge process

37.

[REDACTED]

38.

[REDACTED]

39.

[REDACTED]

40.

[REDACTED]

41.

[REDACTED]

42.

[REDACTED]

[REDACTED]

[REDACTED]

43. [REDACTED]

44. It will be the CTD specialist prosecutor's responsibility to discharge the prosecutor's obligations under Section 3 of the CPIA 1996 to determine whether such material either undermines the prosecution case or might reasonably be expected to assist the case for the defence.

45. [REDACTED]

46. [REDACTED]

47. [REDACTED]

48. [REDACTED]

49. [REDACTED]

50. The CTD specialist prosecutor has a continuing duty of disclosure under the CPIA 1996.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

51 [REDACTED]

52 [REDACTED]

53. If the CTD specialist prosecutor determines that material in the possession of MI5 either undermines the prosecution case or might reasonably be expected to assist the case for the defence, he/she shall notify the "MI5 Lawyer" in writing of his/her conclusions, describing the material and the reasons why it is considered to meet the disclosure test. Such advice should be provided in good time to enable a Ministerial Certificate to be obtained if necessary.
54. Where the material identified as relevant by the CTD specialist prosecutor would, if disclosed, cause a real risk of serious prejudice to an important public interest, the "MI5 Lawyer" will obtain a Ministerial Certificate providing an assessment of the damage that would be caused by disclosure of the material.
55. Where material identified as relevant originates from another agency or department of the Crown, the CTD specialist prosecutor will liaise directly with that agency or department in relation to the use or disclosure of that material. However, where disclosure of such material would cause damage to the work of MI5 the CTD specialist prosecutor will, in addition, continue to liaise with MI5
56. Further guidance on liaison between the Crown Prosecution Service, Police and MI5 in relation to disclosure can be found at Chapters 33 and 34 of the Manual. This Memorandum of Understanding is designed to complement and not replace that guidance.
57. Section 17 of RIPA 2000 provides an exception to the disclosure regime under the Common Law and the CPIA 1996. In dealing with this material prosecutors should refer to [REDACTED] guidelines published by the Attorney General.

Release of Service material for evidential use

58. Where the CTD specialist prosecutor is of the view that the evidential use of MI5 material is a necessary part of the prosecution case, he or she will provide the "MI5 lawyer" with written advice specifying the material requested, stating that its use in evidence is necessary to secure a successful prosecution and explaining why. [REDACTED]

59 [REDACTED]

[REDACTED]

" The relevant MI5 lawyer will follow internal procedures and where appropriate seek the relevant authority to release the material for evidential use where the overall benefit to national security interests is sufficient to justify the cost (in terms of risks to sensitive information or the resources required) "

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61

" Where a requirement to use MI5 material in evidence is identified, MI5 will consider whether it is necessary to use special handling requirements. "

REBUTTAL EVIDENCE

62. There may be cases where the CTD specialist prosecutor is required to consider whether rebuttal evidence is needed from MI5.

63.

64.

[REDACTED]

[REDACTED]

Procedure for dealing with Jury Checks

65. [REDACTED]

66. [REDACTED]

67. [REDACTED]

68. [REDACTED]

69. [REDACTED]

[REDACTED]

[Redacted]

70. [Redacted]

Post-trial debriefs

71. [Redacted]
72. [Redacted]
73. [Redacted]

Organisational Learning and Training

74. [Redacted]
75. [Redacted]
76. [Redacted]
77. [Redacted]
78. [Redacted]

[Redacted]

Signed: [Redacted]
Date: 29 March 2016
[Redacted]
Crown Prosecution Service
Special Crime and Counter Terrorism Division

[Redacted]

Signed:
Date: 30 March 2016.
[Redacted]
The Senior National Co-Ordinator Terrorist Investigations

[Redacted]

Signed:

Date:

5 April 2016

Security Service

Legal Adviser's Branch