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TO BABAR AHMAD AT HM PRISON WOODHILL**

REPORT OF INVESTIGATION

BY

THE RT HON SIR CHRISTOPHER ROSE

CHIEF SURVEILLANCE COMMISSIONER



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Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

February 2008

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REPORT ON TWO VISITS BY SADIQ KHAN MP TO BABAR AHMAD AT HM PRISON WOODHILL

1. As Chief Surveillance Commissioner, I have responsibility for keeping under review the carrying-out of covert surveillance (except by interception of communications) by public authorities (apart from the Security Services) under the Police Act 1997, the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000 (the legislation). The Office of Surveillance Commissioners (OSC) which I head is, currently, a team of 28 people. It consists of Commissioners and Assistant Commissioners who are retired Judges, Surveillance Inspectors, most of whom are retired senior police officers, and civil servants who provide the necessary office and administrative back-up.
2. The central purpose of the legislation and of my oversight role is that covert surveillance should only be carried out:
 - (i) when it is necessary and proportionate to what is sought to be achieved and
 - (ii) in a way which interferes as little as possible with the rights of those likely to be affected by it.

All authorisations for property interference or intrusive surveillance are appraised by Commissioners before or immediately after they have been given. The way in which all covert activity, including directed surveillance, is carried out is subject to scrutiny, in the case of all law enforcement agencies and some other public authorities including HM Prison Service, at annual inspection by my Inspectors. They report to me. Every Chief Constable and the Head of the Prison Service is visited by me or one of my Commissioners following each inspection

in order to discuss the report. If I have concerns I report them to the Prime Minister or Scottish Ministers. I report annually to the Prime Minister and Scottish Ministers about the work of the OSC. The report is placed before both Parliaments. The most recent report was in July 2007 and contains a fuller account of what the OSC does than the brief summary above. Further information about the OSC is available from its website.

3. The legislation does not exempt Members of Parliament or anyone else from liability to covert surveillance if the circumstances warrant it. My views are not sought on the legislation or on the 1966 Wilson Doctrine which relates to the tapping of MPs' telephones and which, as the present Prime Minister said in his written Parliamentary answer on 12th September 2007, applies to all forms of interception subject to authorisation by Secretary of State warrant. The surveillance which I am investigating does not appear to me to be within the Wilson Doctrine, because it does not give rise to interception as defined by the legislation, nor would it require authorisation by the Secretary of State. If I am wrong about this, the need for clarification which I suggest at the end of this Report is emphasised.
4. I have been asked by the Lord Chancellor and Secretary of State for Justice, The Rt Hon Jack Straw MP, to conduct a fact-finding investigation into the circumstances in which, on two occasions, Sadiq Khan MP met Babar Ahmad at HM Prison Woodhill where the latter was in custody.
5. My Terms of Reference, as set out in Mr Straw's statement to the House of Commons on 4 February 2008, are:

'To investigate the circumstances relating to the visits to Babar Ahmad at HMP Woodhill by Sadiq Khan MP in May 2005 and June 2006, to establish whether the visits were subject to any form of surveillance and if so by whose authority and with whose knowledge,

and to report his findings to the Prime Minister, the Home Secretary and to me as the Justice Secretary.’

I have read the Hansard report of proceedings in the House at the time of Mr Straw’s statement and immediately thereafter.

6. My report was sought as a matter of urgency. I therefore undertook to produce it, if possible, within two weeks. My intention has been to establish the facts as clearly as possible within this timescale. In the event, I do not believe that further time or investigation would result in greater clarity in relation to the crucial facts.
7. Both the way in which I have carried out my investigation and the contents of this report are my responsibility alone: I have not sought or accepted, from any quarter, suggestions about either. I have endeavoured to express this report in such terms as to facilitate its publication if Ministers decide that that is appropriate.
8. I have studied the extensive, detailed and comprehensive paper trail of documents authorising surveillance of Babar Ahmad in Woodhill from 12 August 2004 to 1 December 2006. The originals of all these documents were in my possession within less than 48 hours of Mr Straw’s statement to the House. I have also seen prison documents relating to the authorisation of Mr Khan as a visitor to Babar Ahmad under the Approved Visitors Scheme for Category A prisoners. I have read a report from the Security Service about Babar Ahmad.
9. The many documents and other records from police and prison sources contemporaneous to the events which I am investigating are of primary importance to my inquiry. No doubt there are very many people who might be able to provide me with some further information: as an example, approximately 30 police and prison officers compiled and/or signed documents

forming part of the authorisation process and there are others who have played roles of varying significance in relation to the surveillance of Babar Ahmad. By reason of the timescale of my inquiry, I have had to make a judgment, in the light of the material in the documents and records, as to who would be likely to provide the most helpful further information, having regard to the extent of their involvement in events, their responsibility for those events and their likely credibility. I have borne in mind, in relation to all of those from whom I have obtained information, the possibility that serving some interest of their own might inspire a departure from candour and that none of them has been subject to the rigour of cross-examination such as a trial process would provide.

10. With regard to the former police officer, identified in the media, awaiting Crown Court trial on serious charges, to whom I shall refer as X, I have taken into account a further factor in addition to those referred to in the last paragraph. He is entitled to a fair trial. It would be highly unfortunate if the conduct of my inquiry were to have, or could be claimed to have, an adverse impact on that right. I am aware of the claims he is recently reported in the Press to have made and I have read the relevant part of the defence statement lodged for his trial. I have a statement from the then Deputy Governor of Woodhill (Mr Robert Davis) to whose office X had regular access and with whom Prison Intelligence Officers from Thames Valley Police (TVP) including X, had daily contact. I am also aware that, representing TVP, between mid-2004 and January 2007, X attended a total of about 17 regular meetings, every two or three months, of the ACPO Prison Intelligence Working Group chaired by Commander Sawyer of the Metropolitan Police Service (MPS). Those meetings were attended by, among others of varying ranks from Detective Constable upwards, Detective Superintendent McKinney, Head of the Counter-Terrorism Prisons Intelligence Unit and Detective Superintendent

Deal, Head of the Prison Advisers Section. Furthermore, Detective Superintendent McKinney, in the course of reviewing technical capability at Woodhill Prison, met X and other officers from TVP Prison Intelligence Unit on 3 September 2006, which was only a few weeks after Mr Khan's last visit to Babar Ahmad in late June. At none of the many meetings which I have identified did X express to anyone concerns of any kind as to how counter-terrorism surveillance in prison was being carried out by him or anyone else. Nor did X take the less formal opportunities of access to Mr Davis to express any such concerns. Nor did he express such concerns to either of his two colleagues in TVP Prison Intelligence Unit based at Woodhill. In the light of these matters, I concluded that it was neither necessary nor appropriate for me either to seek information from X at this time or to delay this report until the criminal proceedings against him have been completed.

11. At my direction, statements were obtained for me from those officers principally involved in the surveillance application, review and authorisation process and one of those involved in the actual monitoring. They were taken by a senior police officer with no connection with these events, with either of the Police Forces involved or with the Prison Service. I personally interviewed the former, but now retired, Assistant Commissioner, Andy Hayman Head of MPS Counter-Terrorism at the time. He was the most senior of the officers involved in the authorisation process and was the authorising officer in relation to Babar Ahmad throughout the relevant period. I have also spoken to other relevant officers in the Prison Service who assented to the surveillance and I have seen Acting Assistant Commissioner MPS Special Operations Peter Clarke who temporarily succeeded Mr Hayman on the latter's retirement. In addition, I have caused a considerable number of other enquiries to be made and in most such cases I have the fruits of those enquiries in writing.

12. The statement-taking officer to whom I refer in paragraph 11 has also, at my direction, seen Mr Khan and enquired as to the basis of his alleged concern, reported in the Press, on 10th February 2008, that “It beggars belief that [the police and prison authorities] did not know who I was”. Mr Khan has kindly provided me with a written statement. He ceased being a practising solicitor on 31 October 2004. He went to see Babar Ahmad in October 2004 on a legal visit. He is not sure of the dates of his two further visits but accepts they could have been in May 2005 and June 2006. He says there was much local concern and media coverage about the earlier arrest and subsequent release of Babar Ahmad in December 2003, as well as about his August 2004 arrest in relation to extradition. He says that, by June 2006, he was “relatively well-known as a Member of Parliament”. He would be surprised if the review process and risk assessment carried out in relation to the surveillance authorisation process did not reveal his occupation. He asserts that all three of his visits were covered by legal privilege and/or the Wilson Doctrine. It is pertinent to comment that the election of a person as a new Member of Parliament, albeit of great interest to his or her family, friends, political colleagues and constituents, is not necessarily noteworthy for the wider public, particularly if that election occurs at a General Election rather than in the media spotlight which often accompanies by-elections. The contemporaneous authorisation documents and the statements which I have obtained from many others do not support the proposition that there was general knowledge in the police or prison services in 2005 or 2006 that Mr Khan was an MP. But, as will appear, some individual officers knew that this was so.
13. The statement-taking officer has also, at my direction, sought assistance from the journalists apparently responsible for two articles in the *Sunday Times* on 10 February 2008. Michael Gillard and Jonathan Calvert confirmed to him that they were the authors of the articles. They declined to clarify whether they had a source other than X. They also declined to

provide any further information than appeared in the articles, save that they gave the officer the names of two police officers which had apparently been given to them by X. Later, the journalists provided me with a written statement which contained nothing additional of use to my investigation. The two named officers have given written statements. They firmly deny the allegations which X is said to have made against them. Neither knew until recently that Sadiq Khan was an MP. Both were of junior rank to X.

14. I called for the product of the monitoring on 21 May 2005 and 24 June 2006. It is obvious from the product that the conversation monitored on 21 May contained material plainly showing that Mr Khan was an MP. The record of monitoring on 24 June contains an express reference to him being an MP. It follows that those officers who monitored the visits and reviewed the detail of the product later had knowledge of that fact. There is nothing to suggest that any of these officers believed at the time that this fact was of any significance in relation to the surveillance.
15. Leaving to one side the journalists, I believe (albeit cautiously so, because of the healthy scepticism to which the last sentence of paragraph 9 above refers) I have had full and frank co-operation from all those from whom I have sought assistance. I am greatly indebted to a number of public servants who have contributed considerable time and effort towards the mechanics of my investigation and to satisfying the many and, no doubt, intermittently irritating demands which I have made upon them. (I wish that, during the last two weeks or so, I had had the spare time of another newspaper journalist who, at the beginning of last week complained of the slow pace of my inquiry and tried persistently, with inevitable lack of success because it was not so, to establish that I was on holiday rather than pursuing this investigation!)

16. I shall set out, in narrative form, the facts as I find them clearly to be.
17. Babar Ahmad was arrested on an extradition warrant on 5 August 2004 and, the following day, remanded in custody to Woodhill. On 12 August an intrusive surveillance authorisation in relation to closed non-legal visits to him was properly authorised by the Chief Constable of TVP and approved by the duty Surveillance Commissioner. That surveillance was directed to ascertaining the extent of Babar Ahmad's terrorist activities and contacts within the United Kingdom. That authority was reviewed in September and October and renewed in November. On 8 December 2004 it was cancelled. All the appropriate procedures were correctly followed throughout.
18. On 8 September 2004, directed surveillance to monitor and record open non-legal visits to Babar Ahmad was correctly authorised through the MPS and accepted by the Prison Service. It was directed to identifying individuals intent on carrying out terrorist acts within the United Kingdom and abroad. From that date until 1 December 2006, when the surveillance was cancelled, TVP disappeared from the authorisation picture. Following the events of July 2005, Babar Ahmad was one of many terrorists or possible terrorists in prison who were the subject of surveillance authorities through the Prison Intelligence Unit emanating from officers of MPS Counter-Terrorism Unit.
19. No useful purpose would be served by rehearsing the detailed history of applications, authorisations, reviews and renewals for directed surveillance until cancellation in December 2006. It suffices to say that the documentation shows that correct procedures in accordance with the legislation and Codes of Practice were followed and proper considerations addressed.

20. The documentation refers to Mr Khan for the first time in October 2004. A legal visit by him as a solicitor to Babar Ahmad was booked on 4, 5 and 15 of that month but cancelled for reasons not known to the police or prison services. On 21 October 2004 he attended as a solicitor on a legal visit to Babar Ahmad from 9.35 to 11.15 am, although it does not appear that he personally, unlike a number of other solicitors, was ever instructed by Babar Ahmad to act as his solicitor. The place for legal visits at Woodhill did not have surveillance equipment and Mr Khan's visit was not monitored in any way. Nor, as will appear in paragraph 26, has any other legal visit to Woodhill since 2005 been monitored.

21. On 18 January 2005 Mr Khan applied, under the Approved Visitors Scheme for Category A prisoners, to be an approved visitor to Babar Ahmad. This necessitated enquiries being made in accordance with the detailed, written procedures laid down for the Prison Service, prisoners and those wishing to become visitors. The Scheme expressly exempts from its operation a number of categories of people, including legal advisers and members of either House of Parliament. Members of Parliament and others in the exempted categories would usually be permitted to visit prisoners in the part of the premises where there was no surveillance equipment. There are a number of express references in the documents relating to Babar Ahmad to the fact that his legal visits are not monitored and take place where there is no monitoring equipment. Among those documents are the authorisation of 11 May which covered the first non-legal visit on 21 May 2005 and a review carried out and recorded on 30 June 2006, shortly after the second and last such visit.

22. On 8 March 2005, pursuant to the application to be an approved visitor, Mr Khan was visited at his home by a Detective Constable from MPS Special Branch who completed an enquiry questionnaire for the benefit of the prison and a report for the police. It is apparent from

these documents that Mr Khan told the officer that he had given up his full-time job as a human rights lawyer with his own company to become a prospective Labour Parliamentary candidate for Tooting. His application for approval as a visitor was based on his relationship to Babar Ahmad as a friend whom he had known since they were 12 or 13 years old; they were locals and attended the same mosque. The officer commented in his report that Mr Khan was very affable and forthcoming. On 14 March 2005, following this interview and the provision of appropriate details for identification, Mr Khan was added to the list of Babar Ahmad's approved visitors as a friend entitled to make open visits. There were about 20 such approved visitors listed as friend or relation. With only one exception, all the names appear to be of Middle Eastern origin.

23. Mr Khan was elected a Member of Parliament at the General Election on 5 May 2005. At no time thereafter did he seek to have his relationship as a visitor to Babar Ahmad re-categorised to reflect his new status. He remained listed in the prison records as a friend and there is nothing in Mr Khan's statement or in the other material before me to suggest that, on visiting the prison or otherwise, he alerted the prison authorities to the fact that he was now an MP.
24. On 21 May 2005 between 9.47 and 10.49 am and on 24 June 2006 between 9.16 and 10.37 am Mr Khan visited Babar Ahmad. The prison records of the visits show him as a friend. Both visits were monitored by surveillance. In relation to 21 May, surveillance was applied for by a Detective Constable on 6th May 2005, (after Babar Ahmad had returned to Woodhill from Belmarsh), recommended to ACPO rank by Detective Superintendent Fuller, agreed to by Deputy Governor Davis and approved by Assistant Commissioner Hayman on 11 May 2005. The authorisation was to monitor and record non-legal visits to Babar Ahmad by 18 named people including Sadiq Khan. Prison policy required that prisoners, not visitors, be targeted

for surveillance. That authorisation, subject to monthly review and three monthly renewal, effectively remained in force until December 2006. It was reviewed on 7 June by Mr Fuller and on 14 June 2005 by Mr Hayman. The record of that review indicates that information had been gained that a recently elected Member of Parliament had offered Babar Ahmad help to fight extradition but there is no indication that the Member of Parliament in question was Mr Khan. In relation to 24 June 2006, the authorisation was reviewed on 7 June 2006 by another Detective Constable, recommended to ACPO rank by Detective Superintendent McKinney, agreed to by Deputy Governor Davis and continued by Mr Hayman on 9 June 2006. The product of the monitoring of both visits was summarised by a TVP officer in written reports for the Security Service (who took no part in the authorisation process or the monitoring). Those reports were filed and the Service took no action on them.

25. All the people to whom I refer in paragraph 24 knew that Sadiq Khan, being listed in the authorisation, was liable to be monitored when visiting Babar Ahmad. There was nothing in the material before Mr Fuller, Mr Davis, Mr McKinney or Mr Hayman to suggest to them that Sadiq Khan was a Member of Parliament. I find that none of these officers knew at the time that the Sadiq Khan listed as a friend was a Member of Parliament. If they had known, a special risk assessment would have been carried out before consideration was given to authorising the monitoring of his visits. I further find that the fact that he is a Member of Parliament first became known to Mr Fuller, Mr McKinney, Mr Davis and Mr Hayman (none of whom saw the intelligence reports compiled for the Security Service following the two visits) as a result of Press reports since mid-December 2007. Two Detective Constables (one of whom applied for the original authorisation in May 2005 and one of whom reviewed it in June 2006) knew, as they readily admit, that Sadiq Khan was an MP. The officer who applied for the original authorisation did not know this until he reviewed the product of 21 May and

completed the branch note summarising it for the Security Service. The reviewing officer in June 2006 knew this before completing the review. Neither officer believed it was relevant that Sadiq Khan was an MP and therefore they did not bring this fact to the attention of more senior officers. It seems unlikely that, in 2005 or 2006, the Wilson Doctrine was the focus of much, if any, discussion in police canteens and, even if it had been, there would be no reason for these officers to believe it was applicable to the surveillance on which they were engaged. In addition to the officers to whom I have specifically referred, there will have been a number of other police and prison officers who were aware that visits to Babar Ahmad by persons not exempt from the Approved Visitors Scheme would be monitored. Three officers involved in the actual monitoring knew or had the means of knowledge that Sadiq Khan was an MP because of what he said at his visit on 21 May. There is nothing to establish that, at that time, they believed this had any bearing on the legality or propriety of the monitoring process.

26. It is difficult and commonly impossible to prove a negative, but detailed enquiries on my behalf show no trace in recent years in prison records or elsewhere of any person known to be a Member of Parliament having been monitored during a prison visit. This is not due to the Wilson Doctrine. It is due, at least so far as Category A prisoners are concerned, to the Approved Visitors Scheme from which MPs are exempt. Although this is not within my Terms of Reference, I understand from further enquiries which I have made that, since 2005 at least, there have been no authorities for directed surveillance of legal visits in prisons in England and Wales to prisoners in custody in relation to terrorist or other criminal matters. I know nothing to suggest that any unauthorised directed surveillance has taken place in relation to legal visits to such prisoners during the period to which my investigation relates.

27. Summary of factual conclusions

The conversations between Mr Khan and Babar Ahmad on 21 May 2005 and 24 June 2006 were monitored. The monitoring was carried out lawfully under the legislation. It was properly authorised and fully documented. Mr Khan had been authorised to visit Babar Ahmad as a friend, before he became a Member of Parliament. A person known to be a Member of Parliament would have been exempt from the need for such authorisation. After he became a Member of Parliament Mr Khan made no application for re-categorisation or exemption nor did he inform the prison authorities that he had become a Member of Parliament. He continued to be listed in prison records and surveillance authorisations as a friend of Babar Ahmad and, like 20 or so others, he was liable to be monitored when visiting. None of those who authorised the monitoring knew at the time that he was a Member of Parliament. A considerable number of other prison and police officers would have known that visitors to Babar Ahmad who were authorised and listed as friends would be monitored. Two junior officers who applied for or reviewed authorisation and three who were directly involved in the monitoring knew that Mr Khan was a Member of Parliament but they had no reason to regard this as significant.

28. Coda

I am not asked to make recommendations and do not do so. However my statutory duty as Chief Surveillance Commissioner requires me to draw specific attention in this Report and, if necessary, in my Annual Report to the Prime Minister later this year, to one matter which is apparent from my investigation. It is this: there is manifest scope for confusion in the minds of officers of public authorities and MPs as to the correct inter-relationship between the Wilson Doctrine and the legislation. It is obvious, but worth saying, that law enforcement

agencies are expected to enforce and obey the law. In addition to law enforcement agencies, there are many hundreds of other public authorities empowered by the legislation to carry out directed surveillance. In the light of my findings and the different circumstances with regard to terrorism and covert surveillance capacity which prevail now, in comparison to 1966, I believe that clarification of this inter-relationship would be welcomed by everyone.

The Rt Hon Sir Christopher Rose

20 February 2008

Chief Surveillance Commissioner



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ISBN 978-0-10-173362-5



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