Application notice

For help in completing this form please read the notes for guidance form N244 Notes.

Name of court High Court of Justice Queen's Bench Division	
Claim no.	HQ08X01180, HQ08X01416, HQ08X03220, HQ08X01686
Warrant no. (if applicable)	
Claimant's name (including ref.)	(1)Bisher Al Rawi, (2)Jamil El Banna (3)Richard Belmar (4) Omar Deghayes (5)Binyam Mohammed (6) Martin Mubanga
Defendant's name (including ref.)	(1)The Security Service (2)The Secret Intelligence Service (3)The Attorney-General (4)The Foreign & Commonwealth Office(5) The Home Office
Date	12.04.2010

NOTICE OF MEANS
APPLICATION TO BE HEARD AT THE ROYAL COURTS
OF JUSTICE WC2A 2LL ON
DATE: 22-23 APR 10
TIME: TBC
IN A COURT TO BE CONFIRMED

1. What is your name or, if you are a solicitor, the name of your firm?

Birnberg Peirce & Partners

2. Are you a ☐ Claimant ☐ Defendant ☒ Solicitor

☐ Other *(please specify)*

If you are a solicitor whom do you represent? The 1st - 4th Claimants

3. What order are you asking the court to make and why?

(a) For liability to be tried as a preliminary issue (i.e. a split trial);

(b) For the appointment of special advocates to deal with any public interest immunity issues raised in these proceedings;

(c) For the Defendants to serve a further witness statement explaining the nature of their approach to redaction in the disclosure provided to date, by 6 May 2010;

(d) For the Defendants to perimit inspection forthwith of the remaining documents referred to in paragraphs 4&5 of the Order of Silber J, dated 14 December 2009;

(e) For replies by the Defendants to the Claimants' Request for Further Information dated 17 February 2010 to be provided by 6 May 2010;

(f) For the Defendants to serve a schedule in response to the Claimants' statement of issues, by 6 May 2010;

(g) For further limited disclosure to be provided by 30 June 2010;

(h) For liberty to apply for wider disclosure is so advised thereafter;

(i) For exchange of witness statements relevant to issues of liability to take place by 30 September 2010; and

(j) For a further Case Management Conference to be fixed in September 2010 for the purpose of fixing a provisional trial date in the first half of 2011.

Continued

4. Have you attached a draft of the order you are applying for? [x] Yes [ ] No

5. How do you want to have this application dealt with? [x] at a hearing [ ] without a hearing [ ] at a telephone hearing

6. How long do you think the hearing will last? 6 Hours [ ] Minutes

   Is this time estimate agreed by all parties? [x] Yes [ ] No

7. Give details of any fixed trial date or period: CMH on 22 & 23rd April 2010

8. What level of Judge does your hearing need? Mr Justice Silber

9. Who should be served with this application? The Defendants

10. What information will you be relying on, in support of your application?

- [x] the attached witness statement
- [ ] the statement of case
- [ ] the evidence set out in the box below

If necessary, please continue on a separate sheet.

Continued

If necessary, please continue on a separate sheet.

Statement of Truth

(I believe) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true.

Signed I Nembhard Dated 07th April 2010

Applicant('s Solicitor)~~('s litigation friend)~~

Full name Irène Nembhard

Name of applicant's solicitor's firm Birnberg Peirce & Partners

Position or office held Solicitor

(if signing on behalf of firm or company)

11. Signature and address details

Signed I Nembhard Dated 07th April 2010

Applicant('s Solicitor)~~('s litigation friend)~~

Position or office held Solicitor

(if signing on behalf of firm or company)

Applicant's address to which documents about this application should be sent

Birnberg Peirce & Partners
14 Inverness Street
Camden Town
London

Postcode N W 1 7 H J

If applicable	
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IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim Numbers: HQ08X01180
HQ08X01416
HQ08X03220
HQ08X01686

B E T W E E N :

(1) BISHER AL RAWI
(2) JAMIL EL BANNA
(3) RICHARD BELMAR
(4) OMAR DEGHAYES
(5) BINYAM MOHAMMED
(6) MARTIN MUBANGA

Claimants

and

(1) THE SECURITY SERVICE
(2) THE SECRET INTELLIGENCE SERVICE
(3) THE ATTORNEY GENERAL
(4) THE FOREIGN AND COMMONWEALTH OFFICE
(5) THE HOME OFFICE

Defendants

FOURTH WITNESS STATEMENT OF LOUISE CHRISTIAN

I, LOUISE CHRISTIAN, Solicitor of the Supreme Court of 5 Gower Street, London WC1E 6HA will say as follows:

1. I am a partner in the firm of Christian Khan of the above address and I have the conduct of this matter on behalf of Sixth Claimant Martin Mubanga. I make this statement on behalf of my client and on behalf of the other Claimants' solicitors Messrs Birnberg Peirce and Messrs Leigh Day & Co and their clients. Save where otherwise stated the matters referred to are within my own knowledge.

Application by Claimants

2. I make this witness statement in support of an application by all the Claimants, including for:-

(a) liability to be tried as a preliminary issue (i.e. a split trial);

(b) the appointment of special advocates to deal with any public interest immunity issues raised in these proceedings;

(c) the Defendants to serve a further witness statement explaining the nature of their approach to redaction in the disclosure provided to date by 6 May 2010;

(d) replies by the Defendants to the Claimants' Request for Further Information dated 17 February 2010 to be provided by 6 May 2010;

(e) the Defendants to serve a schedule in response to the Claimants' statement of issues by 6 May 2010;

(f) further limited disclosure to be provided by 30 June 2010;

(g) exchange of witness statements relevant to issues of liability to take place by 30 September 2010; and

(h) a further Case Management Conference to be fixed in September 2010 for the purpose of fixing a provisional trial date in the first half of 2011.

3. There is now produced and shown to me marked "LC4" a copy of the Order we are seeking.

Mr Mackie's Eighth Witness statement

4. I also make this witness statement in response to the eighth witness statement of David Mackie served on 2 February 2010 pursuant to paragraphs 4 and 9 of the Order of Mr Justice Silber made on 14 December 2009. This fourth witness statement follows on from my third witness statement of 9th December 2009, made on behalf of all the Claimants' solicitors, which at that time was responding to Mr Mackie's sixth witness statement, dated 1st December 2009, both served in preparation for the Case Management Conference on 14 December 2009. Prior to that hearing, Mr Mackie served a further, seventh, witness statement on 9th December 2009, and since that hearing, Mr Mackie has served his eighth witness statement, as ordered by Mr Justice Silber.

5. The purpose of Mr Mackie's further witness statement, as ordered by Mr Justice Silber, was to state what would be required for the Defendants to comply with the Order made by Mr Justice Silber on 29 October 2009 that the Defendants provide standard disclosure in these proceedings by 30 June 2010, as well as providing details of the *"radical initiatives to streamline and accelerate the disclosure process"* referred to in paragraph 3 of Mr Mackie's sixth witness statement and details of resources devoted to disclosure to date.

6. Mr Mackie's eighth witness statement sets out lengthy mathematical computations of very large numbers of hours and extra civil servants and barristers who would be needed for standard disclosure to happen by 30 June 2010. It makes it clear that the Defendants' position is that disclosure cannot take place at any foreseeable time in the future. The suggestion is that the disclosure process will take many years, that this is unavoidable and that if the Court attempts to impose a tighter timetable on the SYS this will "significantly undermine SYS' ability to protect UK national security" (paragraph 24). However, despite the initial Order of Mr Justice Holroyde of 23 April 2009 that standard disclosure be made by 9 October 2009 and the subsequent Order by Mr Justice Silber on 29 October 2009 that standard

disclosure be made by 30 June 2010 the Defendants have never put forward a date on which they say standard disclosure can be made. In paragraph 43 of Mr Mackie's eighth witness statement he states that the Defendants will make an application to vary paragraph 1 of the Order of 29 October 2009. I note that nearly two months after his witness statement was signed no such application has been made.

7. Mr Mackie's eighth witness statement is also devoted to explaining in detail that the Defendants are setting up or have set up a dedicated single Document Management System ("DMS") to assist them processing the 250,000 documents they state exist in relation to this case. Mr Mackie states that the Defendants are planning on having the DMS operational by the end of March (paragraph 3); however he also states that the Defendants would not implement the DMS if the end date for standard disclosure remained 30 June 2010 (paragraph 12). In light of the absence of any application to vary the end date for standard disclosure, it remains 30 June 2010. Moreover, the estimates given as to resources needed to meet the deadline of 30 June 2010 have been predicated on the assumption that no DMS system has been implemented. The Claimants are therefore entirely in the dark as to the size of any potential savings.

8. The criticisms I made in my third witness statement of Mr Mackie's failure to set out a staged disclosure process and of the "convoluted and inefficient" approach of the Defendants still stand. Moreover, there are categories of documentation, the inspection of which was mandated by paragraphs 4 and 5 the Order of 14 December 2010, which have not to date been provided, as Mr Mackie acknowledges (paragraphs 45-47 of his eighth witness statement. Those are:

(a) SyS: the document listed at entry O-0019 of Mr Mubanga's schedule has still not been provided, despite it being indicated it would be provided by 12 March 2010;

(b) SIS: a significant amount of the material listed in the open disclosure schedules relating to documents collated for the purposes of collating the defences to the claims of the third to sixth Claimants, now to be provided by 30 April 2010;

(c) FCO: 30% of the documents collated for the purposes of preparing the defences, half of which are now provided by 12 March 2010 although to date they have not been provided.

There is no good reason why these cannot now all be provided by 30 April 2010.

9. I note that in paragraph 44 of his eighth witness statement, Mr Mackie states that the test which the Defendants have been adopting (and will continue to adopt) in conducting the Public Interest Review of documents is the Public Interest Immunity test of *"substantial harm"* or *"real damage"* as adopted by the House of Lords in *R v Chief Constable of West Midlands Police ex parte Wiley* [1995] 1 AC 274 (see Lord Templeman at 261 and Lord Lloyd of Berwick at 308). However, in both *R (Binyam Mohamed) v SSFCA* [2009] EWHC 152 at paragraph 34(ii), and subsequently in *R (Al-Sweady) v SSD* [2009] EWHC 1687 at paragraph 34(iii), the Court has endorsed a test of *"serious harm"*. Moreover, Mr Mackie has himself stated that the Defendants consider that *"the test of serious harm or real damage to the public interest, which is the first part of the test applied in conventional PII"* (Sixth Witness Statement of Mr Mackie, paragraph 4). The Claimants solicitors have therefore sought to obtain the Defendants' acceptance that the test is in fact one of "serious harm", however, the Defendants solicitors have repeatedly refused to give that acceptance that the two tests amount to the same. Copies of this correspondence are at Exhibit 6. I respectfully invite the Court to require the Defendants to clarify their position.

Disclosure: General

10. Taking a step back, it is clear that the position in relation to disclosure is completely unacceptable. Despite the time and resources that have allegedly been devoted to the disclosure exercise, the Claimants have received only a small amount of documentation, much of it repetitive and all of it very heavily redacted.

11. The documents disclosed to Leigh Day & Co and to Birnberg Peirce Solicitors reveal the following. The Defendants have to date disclosed a total of only 527 documents. Of these documents, 220 are either duplicates, are press reports in the public domain or are correspondence between the Defendants and the Claimants' solicitors, which the Claimants obviously already possess. Therefore after more than a year only 307 documents have in fact been disclosed. And of these, 191 have been so heavily redacted that less than 30% of the original text remains. The remainder are heavily redacted with significant material parts of the text obscured. Moreover, most of the disclosure contained in these 307 relates to welfare reports and interrogation reports resulting from visits by officers of the Defendants to the Claimants when they were being unlawfully detained in Afghanistan and Guantanamo Bay. These documents will not have been difficult for the Defendants to identify and locate, they were relied upon in drafting the defences, and they are not operationally sensitive.

12. Moreover, the welfare reports relating to Mr Belmar and Mr Begg have also already been disclosed to them in 2004 and 2005 pursuant to Freedom of Information Act requests. It is notable that these requests also produced a considerable amount of internal communications relied upon in pleading the Claimant's case which is not amongst the disclosure so far provided (as far as the Claimants' representatives are able to tell).

13. In short, very little indeed has been disclosed to the Claimants after all of this time and what has been disclosed should have been disclosed without difficulty or delay.

14. Examples of the extraordinary redactions that have been made are set out below.

Case Management

15. The Claimants' legal representatives have anxiously considered how in this situation they can assist the Court by proposing an effective case management of this case which the Court has now been striving to achieve for over a year. During this time we have been attempting to point out that the disclosure process is not as the Defendants contend something that can be sensibly examined by way of a mathematical exercise that starts from the premise that a vast amount of mostly irrelevant or duplicative documentation will need to be reviewed at some stage. In proceedings against a number of different government departments it is inevitable that there will be a very large number of documents and very many of them will be duplicated because of communications between departments. However it is clear that in these proceedings that the Defendants have been able to plead defences, to identify personnel involved and to investigate the detailed allegations contained in each of the Particulars of Claim. The view of the Claimants' representatives is that if disclosure is approached in a proportionate and focused way the existing deadline of the 30 June 2010 is still achievable. There is a sense in which the Defendants seem to have viewed this litigation as an opportunity to collate and catalogue every last document possibly touching on the issues in these proceedings.

The Draft Statement of Issues

16. To this end, the Claimants served a draft Statement of Issues ("CSOI") on 19 November 2009. On 14 December 2009 the Court ordered the Defendants to

serve their comments on the CSOI by way of annotation. On 23 December 2009 the Defendants purported to comply with this direction by serving their own Draft Statement of Issues ("DSOI"). However they did so by completely redrafting the CSOI and thereby failed to comply with the Court's directions. There is now produced and shown to me marked "LC5" a copy of the CSOI and the DSOI. There is further produced and shown to me marked "LC6" copies of the correspondence between the parties concerning the CSOI, and the DSOI.

Replies

17. In the same letters, the Defendants' raise criticisms of the Claimants for failing to serve any Replies to Defences. In the letters from Mr Samuel dated 18 March to my firm and to the other Claimants' solicitors it is suggested that there is a difference between us as to the service of Replies. However none of the Claimants have proposed to serve Replies alleging new facts in response to the Defences as served. The letter from my firm simply sought to keep open the possibility that the Defendants' Reply to our Request for Further Information might contain information as to the law in other jurisdictions which required a reply. As the Defendants have refused an extension of time for serving the Reply we do not propose to pursue this point at this stage.

Requests for Further Information

18. With a view to effectively managing these proceedings, the Claimants on 17th February 2010 served a Request for Further Information raising twenty questions to be answered by the Defendants. The purpose of the Request was firstly to seek to clarify aspects of the Defendants' Defence to these claims and secondly to identify the limited areas of significant disclosure which the Claimants contend constitute a proportionate response to the disclosure obligation.

Focused Disclosure

19. The Court has already ordered staged disclosure and has sought a proportionate response from the Defendants as to how disclosure can be achieved in a limited time frame. As Mr Mackie's eighth witness statement merely continues the approach the Defendants have adopted hereto of a purely mathematical approach to disclosure by calculating number of hours and personnel required to sift through all the documents, the Claimants now seek to substitute a limited disclosure process which could achieve a trial by 2011.

Guidance to the Security Services

20. One obvious category of documents, the disclosure of which would be a proportionate response to the disclosure obligation is the guidance addressed to the Security Services in respect of the interrogation of detainees held overseas, which the Claimants have been requesting for some time now, as well as guidance relating to information sharing more broadly. Paragraph 5 of the Court Order of 29 October 2009 ordered Mr Mackie specifically to deal with this category of documents in his sixth witness statement, stating the progress that would be made by 31st December 2009 and then by the last day of each month up until 30 June 2010 the progress that had been made and that would be made towards the disclosure of this category of documents (as well as other categories of documents, to be dealt with separately). Paragraphs 18(f)(a), 19(a), 20(g)(i), 21(c) of that witness statement deal with these documents. They made clear that SyS had not made any progress with this category of documents, and would only turn to them after reviewing personal files (paragraph 18(f)(a)); SIS had conducted a text search for these documents only and would complete an initial review by 30 June 2010 (paragraph 19(a)); the FCO did not propose a detailed search for these documents (paragraph 20(g)(i)) and nor did the Home Office (paragraph 21(c)). No mention was made of these documents in either Mr Mackie's seventh or eighth witness statement, even though they are obviously

absolutely central both to the Claimants' case and to the Defendants' Defence. If the guidance either permitted or mandated the behaviour by the Security Services of which complaint is made then this will have a significant impact on the Claimants' ability to prove liability. Alternatively, if the Guidance failed to provide any adequate guidance, or if it is clear that officers were acting contrary to such guidance, this would also be significant for the claims.

21. The Claimants are by no means the only persons who have sought information as to the disclosure of these guidelines. They have long been the subject of Parliamentary inquiry in pursuit of Parliamentary scrutiny of the Security Services. Two Parliamentary Committees have pursued these matters. The first is the Intelligence and Security Committee ("ISC") which is the Committee set up by Parliament to oversee the Security Services. The second is the Joint Committee on Human Rights ("JCHR") which is the Joint Committee of the House of Lords and House of Commons which has produced two reports on allegations of UK complicity and torture.

22. On 1 March 2005 the Intelligence and Security Committee published a report entitled *"The Handing of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq"*, in which it published part of the guidance in place as at 11 January 2002 and commented on the same. There is now produced and shown to me marked "LC7" a copy of paragraphs 38, 46, 47, 50, 119, 120, and 123 to 126 of the ISC report of 2005. I draw attention particularly to paragraph 47, which provides an extract of instructions sent to an SIS officer who had interviewed a detainee in Afghanistan the previous day and reported back to London, raising concerns about the US treatment of detainees. Those instructions were copied to all SIS and Security Services officers in Afghanistan, and stated:-

> *"It appears from your description that they may not have been treated in accordance with the appropriate standard. Given that they are not within our custody or control the law does not require you to intervene to prevent this. That said, HMG stated commitment to human rights makes it important that the Americans understand that we cannot be parties to such ill-treatment nor can we be seen to condone it."*

Paragraph 123 of the same report reveals that the instructions by the Security Services to their staff before June 2004 did not instruct them to report on the ill-treatment of detainees but only to *"consider drawing this to the attention of a suitable senior US official if circumstances allow"*. Paragraphs 125 and 126 stated that concerns were not always fully followed up and that there was a tendency to deal with each report of potential abuse as an isolated incident.

23. In July 2007 the ISC produced a further report entitled *"Rendition"*. There is now produced and shown to me marked "LC8" paragraphs 82 and 173 to 175 of that report. Paragraph 82 accepts that from 2004 it became clear to SIS and SYS that their existing guidance to staff was *"insufficiently detailed"*.

24. On 11 March 2010, the ISC laid its Annual Report for 2008-2010 before Parliament, and released a statement. There is now produced and shown to me marked "LC9" the statement made by the Intelligence and Security Committee on 11 March 2010 which accompanied the Annual Report. This revealed that:-

> *"On 18 March 2009 the Prime Minister wrote to the Committee inviting us to review the UK Intelligence and Security Agencies current guidance concerning the treatment and interviewing of detainees overseas. It was a matter of great disappointment to the Committee that this guidance had not been received by the end of July 2009, when we completed this annual report, despite our repeated requests to the Cabinet of this."*

It was therefore clear that the ISC had been making significant attempts to obtain the guidance since the Prime Minister's request of 18 March 2009 that the ISC review the current guidance, but these attempts were to no avail.

25. The statement went on to say:

> *"We eventually received the guidance on 18 November 2009 and have taken evidence on it since then. We reported our findings to [the Prime Minister] on Friday 5 March 2010. Publication is a matter for the Prime Minister but we have been assured by him that this will take place in good time before the debate in the House of Commons on this report, scheduled for 18 March".*

However, on 18 March 2010, the Prime Minister announced that the publication of the new guidance is to be delayed without time limit, notwithstanding the assurance given to the ISC. There is now produced and shown to me marked "LC10" a bundle of Press cuttings and an Amnesty report in relation to this announcement.

26. Meanwhile, on 4 August 2009 the JCHR published a report entitled *"Allegations of UK Complicity in Torture"*. There is now produced and shown to me marked "LC11" a copy of page 37 paragraphs 3 and 4 which states that:

> *"Systematic, regular receipt of information obtained under torture is in our view capable of amounting to "aid or assistance" in maintaining the situation created by other State serious breaches of the peremptory norm prohibiting torture.*

27. The Committee went on to find that if the UK is demonstrated to have had such a general practice the UK would be likely to be in breach of the UK's international law obligation under the United Nations Convention Against Torture; under customary international law; and according to the general principles of States' responsibility for internationally wrongful acts.

28. There is now produced and shown to me marked "LC12" a further report of the JCHR, published on 25 March 2010 and entitled *"Counter-terrorism policy and human rights"*. This complains of evasive and unsatisfactory answers by Ministers and of a narrow formulation of the meaning of complicity without any legal basis. It states at paragraph 41 that:

> *"The government's formulation appears to be carefully designed to enable it to say that although it knew of should have known that some intelligence it received was or might have been obtained through torture, this did not amount to complicity in torture because it did not know or believe that such receipt would encourage the use of torture by other States."*

29. It is notable that the Government has not made any direct comment about why it has not published the previous guidance which has now been replaced. This is particularly so given the nature of the disclosure that has been received to

date in these proceedings shows that not only was the United Kingdom Government content to authorise Security Services officers to attend at United States run places of detention, particularly but not exclusively in Afghanistan, Pakistan and Guantanamo Bay, but it was also content that such detentions occurred and sought to exploit the detentions and threat of continued detention to extract information. Moreover, Security Services officers also sought to benefit from the appalling mistreatment and torture that was inflicted on the Claimants during these periods of unlawful detention. For example:

(a) There is now produced and shown to me a memorandum of the 10th January 2002 which is contained in volume 1 page 23 of the disclosure from the Foreign and Commonwealth Office, relating to all of the Claimants. At paragraph 3 of this memorandum whose author and recipient are redacted it is stated,

> *"Transfer of UK Nationals held by US forces in Afghanistan to the US base in Guantanamo is the best way to meet our counter terrorism objectives by ensuring that they are securely held. The only alternative is for the UK to take custody of them, either by UK forces in Afghanistan (who do not have the capacity to hold prisoners) or repatriation (redacted passage of approximately three lines). The Security Services are currently in Afghanistan interviewing detainees with a UK connection."*

(b) At page 67 of the SyS disclosure in relation to my client Martin Mubanga a paragraph in an SyS memo of the 22nd August 2002 read:-

> *"The telegram raises the possibility that Mubanga might be sent to GTMO, stating that "whether they do so as a matter solely for the US. However we would hope that they would have legitimate reasons, and see real advantage in taking this action".*

(c) The disclosure relating to Mr Deghayes, although like all the disclosure, is very heavily redacted, at least makes clear that the Security Service withheld their assistance from Mr Deghayes unless and until he provided them with useful intelligence, which they

believed—wrongly in fact—that he possessed. For example a Telegram dated 26 June 2002 records an interrogation by the Security Service:

> *"2. We went on to explain that he was being held in custody solely by the Americans, and as we understood it he could face a long period of incarceration. We may be able to help him but the only circumstances in which we would even consider this is if he were to be completely honest and tell us everything we wanted to know."* (Deghayes Schedule 1, Version 2, page 8, duplicated at page 95)

Later it is recorded (at paragraph 17) that the Security Service stated to Mr Deghayes that his answers were "simply not good enough" and he was told again that, "we wanted to help him but as it was he would be staying in prison for a long time because we knew he was lying".

(d) The same Telegram and accompanying Interview Report (page 14) records that Mr Deghayes was brought into the interview room shackled and hooded and remained shackled throughout. He claimed to be suffering from Malaria and he "looked pale and shaky". The interrogating officers claimed to be satisfied that he was "well enough to continue" but do not specify what checks they conducted or what standard they applied to determine this, if any.

(e) At a subsequent interrogation by the Security Service at Bagram detention facility on 3 July 2002, Mr Deghayes is recorded as having told UK officers,

> *"He was also being treated badly, with head-braces and lock-down positions being the order of the day. He was treated better by the Pakistanis; what kind of world was it where the Amercians were more barbaric than the Pakistanis?"* (page 15)

Then, on 11 July an Security Service officer records that he exerted further pressure on Mr Deghayes by making clear to him that he could influence his US captors so as to prolong his detention and worsen his plight:

"I asked [redacted] a senior [US] officer [at Bagram], to come into the room. I told [him] in Deghayes s hearing that Deghayes was not cooperating."

The following sentence is, unaccountably, redacted. The report goes on to record that Deghayes, "said he had only been drinking water and eating bread and couldn't think straight". But the interrogation continued. These extracts from the interrogation of Mr Deghayes demonstrate both a close degree of co-ordination and concerted action on the part of UK officials and their US counterparts. They also show the degree to which they sought to exploit the mistreatment and mental and physical frailty of the Claimants during their detention.

(f) In a telegram sent on 2 March 2002 contained in Volume 1 page 112 – 118 of SyS Open Belmar Schedule, whose author and recipient is redacted, the sender seeks instructions on how to treat the next interview with Mr Belmar on 4 March, which is described as the 'decider'. The two options are described as follows:

"If he sticks to his story and just give us a few more details, we propose disengaging and allowing events here to take their course. [redacted] If however he satisfies us that he is giving us everything, we proposed leaving for Kandahar (via Islamabad) [redacted] before returning to Karachi to see him again."

The documents referred to above are included with Exhibit "LC13" at pages [212]. Other examples could be given in relation to other Claimants and examples are set out in the Claimants' pleaded case.

30. The decision on the part of the Security Services to exploit the unlawful detention and mistreatment of those detained by the US authorities can also be seen from disclosures made during the course of the previous Binyam Mohamed proceedings. The documents and findings of fact made by the Divisional Court based upon them, are to the effect that the UK Govt was content to facilitate and participate in the interrogation of a detainee whom they knew had been subjected to, at the very least, cruel, inhuman and degrading treatment,

treatment that was contrary to the Government's undertaking to Parliament in 1972; and that they continued to facilitate his interrogation—including by supplying lists of questions and receiving answers—in the knowledge that he was being held at a covert location which was not "a regular US military facility", in a third country, and in the knowledge of the previous unlawful treatment to which he had been subjected. The Court is referred to the amended paragraphs 87(v)-(vii), (ix)-(x) and 88 of the Divisional Court's First Judgment [2008] EWHC 2048 (Admin) and to the seven paragraphs that were restored to the Divisional Court's First Judgment by the Court of Appeal, as set out in an appendix to its judgment ([2010] EWCA Civ 65).

31. The extent of UK participation and involvement in the extraordinary rendition and mistreatment of the Claimants underscores the public interest in the Guidance pursuant to which the Security Services officers purported to be acting being disclosed without further delay.

Other Categories of Limited Disclosure

32. Apart from the guidance given to the Security Services the Claimants have set out in the draft order a limited description of other categories of disclosure which the Claimants' legal representatives consider could well be sufficient to enable the matter to proceed to trial. In circumstances where the Defendants have yet to plead fully to the Claimants' claims and where so little disclosure has been provided to date they have, however, also provided for liberty to apply in the draft Order.

Redactions

33. The redactions made to the documents are so heavy and extraordinary that it is obvious that there has been an egregious amount of over-claiming by the Defendants.

34. The FCO disclosure common to all of the Claimants contains the following examples that demonstrate the flawed nature of the basis on which the redactions have been made (copies of these documents are exhibited at "LC13"):

(a) The document dated 2nd January 2002 appears to set out the SIS and SyS approach as to "how and where to question detainees" but is heavily redacted. There is no indication of why this is needed to avoid real damage to the public interest.

(b) In the documents "Draft Press Lines" dated 4th January 2002 and Head of Consular Division memo to Mr Bradshaw / Baroness Amos dated 4th January 2002, detainee identities appear to have been redacted from certain of the documentation disclosed and even where publication of the names in question had already appeared in the press. Indeed, there seems to be a consistent practice of redacting almost all names of UK public officials (as opposed to Ministers) and all other individuals including the Claimants themselves (see eg the memo dated 4 January 2002, pages 10-12). This even extends to redacting names of persons reported in the press (e.g. "The press have been focusing on the case of [redacted]", (ibid. paragraph 5)) and "Today's 'Times' contains an article about UK national – [redacted] – held in Pakistan [rest redacted]" (2 January 2002, paragraph 4)). This not only makes the disclosure impossible properly to understand, but it effectively prevents the Claimants from identifying what was and was not known to the Defendants at the material times and, importantly given the nature of the claims in tort, which public officials were aware of what and which public officials were responsible for drafting which memos.

(c) The letters dated 24 February 2002 and 5 April 2004 are examples of correspondence from the Claimants' own solicitors which had already relied upon in earlier proceedings against the Secretary of State for Foreign and Commonwealth Affairs but which have been redacted;

(d) Certain documents have been redacted which are already available in un-redacted form in the public domain (see eg. FCO Schedule (File 2) served 10 Feb 2010, pg 405, 'FCO: Letter: 'Detainees' 7/12/05,

which is a letter that was subsequently leaked to the press and is now available in unredacted form on the internet).

35. The very heavily redacted copies of interview reports also demonstrate the egregious over-claiming by the Defendants. Even remarks and comments made by the Claimants themselves have been redacted. Any number of examples could be given, see interview reports of Mr Deghayes contained at LC13, including that dated 10 June 2002 which is almost completely redacted. The Court is also referred to other examples: e.g. Belmar SyS disclosure Telegram 040956Z MAR 02; Deghayes SyS disclosure Loose Minute 17/6/03; Mubanga SyS disclosure Telegram 25/3/02, attached in Exhibit LC13 at pages 200 - 237.

36. In relation to the separate SyS disclosure provided to date, there are now produced and shown to me marked "LC14", "LC15" and "LC16" some notes on the redactions to those documents as provided to each of the three firms of solicitors representing the Claimants in respect of their clients. In places just part of a sentence has been left un-redacted and it is obvious that the un-redacted part of the sentence is one which the person carrying out the redactions felt would help the Defendants case. The underlying documents to which the notes relate are exhibited behind the notes at "LC14" and "LC15".

37. The Defendants' approach to redaction also appears internally inconsistent. There are instances of the same document being redacted differently by the same Defendant according to who has produced it (see e.g. Mubanga SyS disclosure Telegram 27/3/02 at p.5 and p.6), and the same sorts of information being redacted differently by different Defendants (eg. treatment of Mubanga's date and place of birth, schooling and identities of family members in FCO disclosure Report on Welfare Visit 31/5/02 cf. in SyS Intelligence Pack 18/4/02 pp.27-28 and SyS Interview Notes 2/4/02 p.11);

38. In the view of the Claimants' legal representatives all these matters show an approach to redaction which they reasonably believe does not depend on a real risk of serious harm to the public interest but is instead motivated

improperly by other matters. At the very least, they demonstrate a serious misapplication of that test .In view of this the Claimants seek an order that the Defendants explain their approach to redaction in a witness statement to be provided by 6 May 2010, to enable consideration of whether closer scrutiny is required, including, for example, inspection by the Court of the unredacted documents (with the assistance of a Special Advocate) to ascertain whether redactions are being properly made.

Split Trial Case Management Conference and Trial Fixing

39. The Claimants assert that there is no reason why at least limited disclosure cannot be given by the 30th June 2010 and that the Court cannot relatively speedily examine the redaction policy. Subject to this the Claimants propose as a realistic date for exchange of witness statements the 30th September 2010 and that there should be a further Case Management Conference in September 2010 for the purpose of fixing a trial date in 2011.

40. Such a timetable is made eminently workable by the Claimants' proposal that there be a split trial with liability being decided as a preliminary issue. The Claimants' solicitors have recently been surprised that the Defendants' solicitors have been devoting resources to raising enquiries about the quantum of the claim despite what they say of their resource difficulties in relation to the disclosure process. In particular the Defendants have served Requests for Further Information in relation to the Schedule of Losses served on behalf of the Claimants. In relation to my client's claim this suggested that a large number of supplementary medical reports should be obtained and that further very substantial work should be done in quantifying the Sixth Claimant's losses. The Claimants are all publicly funded and it is the invariable practice of the Legal Services Commission to require that where substantive work needs to be done on quantifying a claim for damages a publicly funded claimant should apply for liability to be determined as a preliminary issue. I can confirm that the Legal Services Commission also takes this view in relation to the current proceedings in that it will be a waste of public money for the Claimants to be required to devote resources to quantifying their claim before determination of liability.

41. I believe the contents of this statement to be true.

Signed .....

Dated .....

Claim Numbers: HQ08X01180
HQ08X01416
HQ08X03220
HQ08X01686

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

B E T W E E N :

(1) BISHER AL RAWI
(2) JAMIL EL BANNA
(3) RICHARD BELMAR
(4) OMAR DEGHAYES
(5) MOAZZAM BEGG
(6) BINYAM MOHAMMED
(7) MARTIN MUBANGA

Claimants

and

(1) THE SECURITY SERVICE
(2) THE SECRET INTELLIGENCE SERVICE
(3) THE ATTORNEY GENERAL
(4) THE FOREIGN AND COMMONWEALTH OFFICE
(5) THE HOME OFFICE

Defendants

Fourth WITNESS STATEMENT
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