

Summary of the Work of the Prime Minister's Special Envoy on Intelligence and Law Enforcement Data Sharing – Sir Nigel Sheinwald

The Context

Following the passage of the Data Retention and Investigatory Powers Act (DRIPA) in July 2014, the role of Special Envoy was announced to work with foreign governments and the US Communication Service Providers (CSPs) to improve access to data across different jurisdictions for intelligence and law enforcement purposes. I was appointed as Special Envoy in September 2014. Over the last nine months I have made three visits to the US for meetings with the US Government, agencies and former practitioners in Washington. I have met with the main CSPs on the West Coast and leads in London. I have also visited Brussels, engaged other international partners, and consulted selected experts, academics and reviewers in London.

It is clear that limited and proportionate access to private communications play a vital part in keeping our country safe – whether it be to ascertain the location of a kidnapped child, or to obtain information about terrorists' attack planning.

However, the speed of technological change, in particular the growth of encryption and the rise of new market entrants and different types of platform, is having an increasing impact on our capability to access data in a readable format. New companies are increasingly pushing their offer of "end-to-end" encryption and storing content on users' own devices rather than in data centres. There are also complex legal conflicts between different jurisdictions, in particular from the United States' Wiretap and Stored Communications Acts. In most circumstances, these prohibit the disclosure of the content of electronic communications stored or intercepted in the United States.

The Snowden leaks provide a challenging backdrop to this work and have increased the focus on the debate around privacy and security.

Short Term Cooperation

Since my appointment, I have focussed on building new strategic relationships with the companies and working with the US Government and others on developing new solutions to the legal and jurisdictional problems.

Since September, we have also worked with the companies on the most urgent requests, particularly in the areas of counter-terrorism and other threat to life and child protection cases. The companies' assistance in these cases has improved, showing the value of active engagement with them. But cooperation remains incomplete, and the companies and governments concerned agree that we need to work on longer term solutions.

Longer term proposals

I have recommended pursuing the following:

- **Improving Government-to-Government cooperation:** There is scope for greater data sharing between like-minded countries, where threats are often shared. This would

reduce multiple requests to companies for the same information, and subsequent jurisdictional conflicts. The EU's Mutual Legal Assistance Convention (MLAC) also provides a mechanism within Europe for sharing data between member states for content and communications data related to serious crime. We have also identified a number of channels for improved cooperation between the British and partner agencies.

- Reforming our existing **US/UK Mutual Legal Assistance Treaty (MLAT)**: MLATs are essential tools for the law enforcement community, primarily in order to obtain information to an evidential standard from other jurisdictions. However, the MLAT process is widely criticised for being slow, unresponsive (it can take up to nine months for information to be returned) and bureaucratic (it currently involves hard copies of legal documents being couriered across the Atlantic through numerous intermediary bodies). We have suggested a series of practical reforms to our existing MLAT with the United States including standardisation of processes, training and improved guidance. In addition, there is scope to make it easier for UK police authorities to access communications data directly from the US CSPs. There is no bar to this in US law. We have discussed options with the companies to improve the process for making communications data requests. The companies are developing their own technical solutions to this end, including online portals. We should encourage more of this.
- Building a **new international framework**: While we should improve our current Mutual Legal Assistance Treaty, it will never be fast enough or have a scope wide enough to allow for urgent counter-terrorism and similar requests. I have therefore been discussing with the companies and the US and other governments a solution that would allow certain democratic countries - with similar values and high standards of oversight, transparency and privacy protection - to gain access to content in serious crime and counter-terrorism cases through direct requests to the companies. This proposal offers a sustainable and longer-term solution to data sharing and would aid in resolving inter-jurisdictional issues. This does not undermine the case for updated powers, or greater oversight, which can be taken forward in parallel.
- As part of this work, I have also recommended that the Government looks at how it can improve **transparency** around the number and nature of our requests to overseas and domestic Communication Service Providers. Relationships with the companies also need to be better coordinated, linking the business, technological and security aspects of those relationships. A single forum within Whitehall would ensure these issues are properly joined up.

Taking this Forward

Despite progress in improving short term cooperation, my work has reinforced the need for new longer-term, international arrangements, and more strategic relationships with the companies. The departments concerned will now be taking this work forward.