The Independent Reviewer of Terrorism Legislation’s Annual Report into the Terrorism Prevention and Investigation Measures in 2014

Big Brother Watch response

Daniel Nesbitt, research director of Big Brother Watch, said: “David Anderson is right to say that TPIMS are exceptionally intrusive”

“It is concerning that these measures are used to punish people, placing a huge constrain on their freedom and liberty, in cases where there isn’t sufficient evidence to convict them of a crime. Yet the courts are still not permitted to use the evidence obtained from intercepting communications.

“The UK is currently the only country in the developed world not to allow this evidence to used in court. It is concerning that there has not been a properly independent or open review process into this extremely effective measure. This should be a priority for the next government.”

The reports

- Independent Reviewer of Terrorism Legislation’s report.¹
- The Government response.²

Big Brother Watch Overview

This is a fairly brief report; mainly due to the fact that as the Reviewer notes “2014 was a barren year for the use of TPIMs, but a fertile one in terms of adapting them for future use” (Paragraph 4.1, Page 20). As a result of this large portions are dedicated to commenting on the Counter-Terrorism and Security Act 2015 and how it affected the TPIM regime.

It also notes the difference in review process going forward. Although the requirement to report annually on TPIMs has been dropped the Reviewer intends to still examine them on a regular basis and communicate his findings (Paragraph 4.4, Page 20).

The report notes there are currently no individuals on TPIMs (Paragraph 2.3, Page 5). This is due to 7 expiring between 2nd January 2014 and 10th February 2014 as well as two subjects absconding and another being revoked (Paragraph 2.3, Page 5).

The case and protracted appeal process of subject DD is highlighted at length. The Reviewer concludes that it would not be appropriate for him to comment on the case as it was still ongoing. He did take the opportunity to reiterate that TPIMs should only be issued as “when unavoidable and as a last resort”. In concluding, he argued that “though it is important that TPIMs should be fit for use in those rare cases [where prosecution/deportation is not possible], the sparing use to date of both control orders and TPIMs is no cause for regret” (Paragraph 2.12, Page 8).

David Anderson outlines the recommendations he made for changing the system at the time of the CTS Act (Paragraph 3.1, Pages 9-10). He noted that the following two recommendations weren’t implemented (Paragraph 3.9, Page 12):

1. Courts do not have to be satisfied on the balance of probabilities that an individual is involved in terrorism related activity.
2. There is no statutory provision for the giving of assurances in relation to the non-use of information given at compulsory interviews.

David Anderson reiterates his opinion that the removal of relocation powers “was a perfectly proper decision for Parliament to take on civil liberties grounds”. However he also argues that the increased costs attached to the removal alongside the disappearance of two subjects made him keen to revisit the idea (Paragraph 3.18, Page 15). He notes that he spent time trying to have his report into relocation orders redacted and published alongside this report, however “it proved impossible to agree” the necessary changes in time (Paragraph 3.23, Page 16).

The reviewer believes that the reforms to the system will make the new generation of TPIMs “fairer and more serviceable” than either of its predecessors. However he does not that “I hope no one will lose sight of the fact that these exceptionally intrusive measures, thought a powerful weapon against the undoubted threat of terrorism, are also a last resort” (Paragraph 4.3, Page 20).

**Government response**

Again it is fairly brief. The Home Secretary makes clear that both she and a court would reach conclusion based on a balance of probabilities. She also registered concern at the idea of excluding evidence, as a key part of the TPIM system is that each measure is kept under constant review in case the subject may be brought to trial. She noted that courts have the power to exclude evidence that may be unfair and that she considered that to be a good enough safeguard.