

The Defence Press and Broadcasting Advisory Committee

Minutes of a Meeting Held in the Ministry of Defence

At 6pm on Thursday 7 November 2013

D/DPBAC/3/2/1

The following were present:

Mr Tom McKane (MOD)
Acting Chairman

Mr Simon Bucks,
Vice-Chairman

Mr Simon Thomas
(representing Mr Laurie Bristow, FCO)
Mr Robert Hunt
(representing Mr Mark Sedwill
Home Office)

Mr Peter Barron
Mr John Battle
Jane Crust
Mr Ed Curran
Mr James Green
Mr Michael Jermey
Ursula Mackenzie
Mr James MacManus
Mr Geoff Martin
Mr Bob Satchwell
Mr Richard Walker

Air Vice-Marshal Andrew Vallance
Air Commodore David Adams
Brigadier Geoffrey Dodds

Secretary
First Deputy Secretary
Second Deputy Secretary

1. Apologies had been received from Mr Jon Thompson (Chairman), Mr Laurie Bristow (FCO) (represented by Mr Simon Thomas), Mr Oliver Robbins (Cabinet Office), Mr Mark Sedwill (Home Office) (represented by Mr Robert Hunt), Mr Charles Garside, Mr Jonathan Grun, Mr David Higgerson, Mr David Jordan and Mr Barry McIlheney.

2. The Chairman opened the meeting by saying that, although not present today, a new member, David Higgerson (Trinity Mirror Regionals), had been appointed to replace Ed Curran as one of the Newspaper Society's two representatives.

Agenda Item 1 – Minutes of the Meeting held on 7 May 2013

3. There were no amendments to the minutes of the meeting held on 7 May 2013, which were approved by the Committee as an accurate record.

Agenda Item 2 – Matters Arising from the Previous Meeting

4. There were 4 matters arising from the May 2013 meeting:

- a. Para 17: Managing National Security Disclosures. This would be dealt with under Item 3.
- b. Para 21: DA Notice 5. This would be dealt with under Item 4
- c. Para 23: Special Forces Public Information Policy. This would be dealt with under Item 5.
- d. Para 28: Composition of the DPBAC Media Side. This would be dealt with under Item 6.

Agenda Item 3 – Secretary's Report

5. Day-to-Day Business. During the last 6-month period the Secretariat had received some 124 enquiries and requests for DA Notice advice, averaging about 4.7 per week. This was a higher rate than for the previous two reporting periods, which had seen unprecedentedly few enquiries, and was closer to the historical norm. The dominant aspect of this reporting period was the publication by *The Guardian*, and latterly by *The Independent*, of information from the classified documents stolen by the NSA fugitive Edward Snowden. This event was very concerning because at the outset *The Guardian* avoided engaging with the DA Notice System before publishing the first tranche of information. As a member of the Newspaper Publishers Association (NPA), *The Guardian* was obliged to seek (but not necessarily to accept) DA Notice advice under the terms of the DA Notice code. This failure to seek advice was a key source of concern and considerable efforts had been made to address it. There was also an important international dimension which played into the already complex equation. *The Guardian* was not the only newspaper involved in disclosing Snowden's information, as the New York Times (NYT) was also publishing the same details in parallel. This meant that - even if *The Guardian* had sought and followed DA Notice advice - the highly sensitive information about GCHQ could still have been disclosed and - once disclosed would immediately be widely

repeated across the internet. This fact complicated subsequent dealings with *The Guardian*. Towards the end of July *The Guardian* had begun to seek and accept DA Notice advice not to publish certain highly sensitive details, and since then the dialogue with the Secretariat had been reasonable and improving. The events of the last few months had undoubtedly raised questions in some minds about the System's future usefulness.

6. DA Notice 'Advisory' Letters to All Editors. The Secretariat sent out only one so-called 'Advisory' during this reporting period, that of 7 June when Geoffrey Dodds reminded editors of the terms of DA Notice 5, after several articles had been published on some of the ways in which UK Intelligence Services obtain information from foreign sources. Although the intelligence agencies in particular had continued to ask for more advisories to be sent out, the Secretary said he remained convinced that great care was needed to avoid 'Advisories' becoming commonplace and thus ignored; it would also increase the danger that DA Notice guidance might not be sought when it was really needed.

7. Main Areas of Enquiry. Requests by the media and officials for DA Notice advice during the period were focussed on three principal areas: the Intelligence Agencies, the Special Forces and the DA Notice System itself.

8. The Intelligence Agencies. Some two thirds of the requests for DA Notice advice received during the period were from the intelligence agencies. Media interest in them and their work continued over the period to be concerned with the usual subjects of the naming of officers and the alleged involvement of the agencies in the death of Princess Diana. However, most of the requests for advice were related to the publication by *The Guardian* (and more recently by *The Independent*) of selected parts of the highly sensitive intelligence information stolen by Edward Snowden.

9. Special Forces (SF). During the period there were only 7 requests for DA Notice advice on SF issues. These included residual questions over the court martial of Sgt Danny Nightingale (the SAS sniper tried for holding an unauthorised weapon and quantities of ammunition) and the prosecution witness 'Soldier N' of the SF. There were also several requests for advice on aspects of the reports of SAS involvement in the death of Princess Diana, one of which spilled over into the province of Special Forces' tactics and procedures. However, there were no breaches in the DA Notice code concerning SF during the period. The

Secretary said that he continued to try to develop a more productive dialogue with the DSF staff.

10. The DA Notice System. During the last 6 months the Secretary had responded to 16 enquiries about the workings of the DA Notice System: from the media themselves, officials, academics, fringe organisations and members of the public. Several of these enquiries were triggered by concerns that the DA Notice System was being used/abused to cover up crimes or abuses by senior members of past governments. It was in the nature of the internet that a scurrilous accusation can be made without any supporting evidence and then be taken up by other equally eccentric commentators as 'gospel'. There was little that could be done about this, and the Secretary said that it was rarely wise to try to refute such accusations as that was often cited as confirmation that the allegations were true.

11. The statement made by the Prime Minister on 28 October, implying that the D Notice System together with injunctions might be used by the Government as 'tougher measures' to cope with the Snowden disclosures caused a flurry of enquiries for clarification. The Secretary had responded by explaining the nature of the DA notice System and the fact that – apart from the 16 June disclosures - *The Guardian* had been engaged.

12. Also during the period, the Secretariat had been tasked by the office of PUS (MOD) to examine an enhanced 'administrative relationship between the DPBAC Secretariat and the MOD's Directorate of Media and Communications (DMC)'. The resulting paper (submitted on 7 October) had concluded that there was very little scope for this. Although the DMC staff and the DPBAC Secretariat operate within much of the same media-centric sphere, their status, roles and responsibilities in that sphere are quite different and in many important respects incompatible. There was no apparent need for such an enhanced relationship, which would offer few if any benefits to either organization and could yield few if any economies. On the other hand, such an administrative relationship would pose real risks to the continued credibility of the DA Notice System by potentially compromising the confidentiality on which the System relies and, indeed, calling into question the independence of the Secretariat and through that of the DPBAC. The Secretary said he was awaiting a response to the paper.

13. Other Areas of Enquiry. The period included 6 requests on 'current' British military operations. Other enquiries concerned the Hollie Greig

child abuse case and the alleged cover up of misdemeanours in high places.

14. Managing National Security Disclosures. The Secretary recalled the discussions with The Ministry of Justice (MoJ) aimed at creating some mechanism whereby judges, coroners and chairmen of tribunals could be informed of any DA Notice guidance that had been previously issued in connection with cases they were hearing. Following the Secretary's initial meeting with the responsible MoJ official, the issue had been brought before the Government Litigators Group (GLG) at its 3-monthly meeting at the end of October 2012. The GLG were already aware of the problem and during the meeting some form of action was decided upon. However, exactly what has still not yet emerged. The aim remained to ensure that direction was given to judges/coroners/tribunal chairmen so that they could take into account any DA Notice advice given. The Secretary said that he would continue to press for an answer.

ACTION: The Secretary

15. Promotion of the DA Notice System. The Secretary continued to put a priority on doing all he could to promote a better understanding of the DA Notice System. He had given 5 lectures/seminars during the 6-month period, and future plans included:

- 10 November: Panel discussion at the Society of Editors' Annual Conference
- 12 November: Lecture to the School of Journalism Goldsmiths College, University of London
- 21 November: Lecture to the School of Journalism, University of London (Harrow Campus)

More lectures and seminars were in the pipeline for the New Year. The Secretary continued to submit regular articles for publication in the Society of Editors' 'Monthly Briefing'.

16. Discussion. The Chairman thanked the Secretary for his comprehensive report which he felt had raised three important points for further discussion:

- The impact of the Guardian affair
- The attitude of DSF towards more openness

- The PM's remarks of 28 October and what action should be taken with No 10

The Vice-Chairman said that the Media Side had discussed the Guardian affair at some length. Although views were diverse it was agreed that 99% of the media remained committed to the DA Notice System. It was, however, important to distinguish between embarrassment and genuine concerns for national security. The Vice-Chairman felt that much of the material published by the Guardian fell into the former category. They also understood that the Guardian's initial unwillingness to engage was due to a misunderstanding of the DA Notice Code and in particular its commitment to confidentiality. The Editor feared that if he shared details of his story with the secretariat it might potentially attract an injunction. Education was required on both sides; the PM's remarks on 28 October being an example of misunderstanding on the Government side of how the system operated. He recommended an approach to No 10 offering a briefing on the DA Notice System. The Vice-Chairman went on to say that this lack of understanding seemed to highlight a greater malaise on the official side where there was worrying evidence of disengagement. For example, the DPBAC Chairman had not attended the last two meetings, no Cabinet Office representative was present and the Home Office and FCO principals had both sent representatives. By contrast, the Media Side were well represented and its members made significant efforts to attend.

17. Turning to the question of the relationship with DSF, the Vice-Chairman said that the Committee should continue its attempts to improve contact. There had been no direct involvement for nearly 3 years and previous contacts had been highly valued by the Committee.

18. The Vice-Chairman highlighted another area of concern that had been raised by the Secretary; the suggestion that PUS (MOD) was pushing for a relationship between the Secretariat and MOD DMC. He said that the Media Side saw any such link as a dangerous development which could threaten the Committee's independence.

19. In summing up this part of the discussion, the Chairman agreed to represent the views of the Committee to PUS (MOD) both on the perceived lack of official side engagement and on the proposal for links with DMC. He agreed that the Secretary should make an approach to No 10 to offer a briefing. He also supported the Committee's wish to continue pressing for a closer dialogue with DSF.

ACTION: The Chairman

The Secretary

20. The Chairman then returned the discussion to the subject of spreading the word about the Committee; its purposes and limitations. The Vice-Chairman felt that the Secretariat needed to be more proactive in developing contacts with journalists with the aim of spreading the word and developing trust. The Chairman supported this view and said he would encourage it where possible, stressing the need for the Committee to remain relevant. He suggested that the Vice-Chairman write to editors offering further contact with the Secretariat and opening a few doors. The Vice-Chairman agreed. The Chairman said he would ask PUS(MOD) to do the same on the official side.

**ACTION: The Chairman
The Vice Chairman**

Agenda Item 4 – Proposed amendment to DA Notice 5

21. The Chairman asked the Secretary to summarise the paper which he had circulated earlier. At the last meeting it had been agreed to see if there was room for more flexibility to the wording on naming. This discussion had arisen following the Sgt Nightingale (SAS) case when the Sunday Telegraph had chosen not to accept the Secretary's advice not to name Nightingale or publish his photograph. The Sunday Telegraph's position had been that not only was this in the public interest, but also that Nightingale was content for his details to be published.

22. The Secretary said that he had concluded that it was not the job of the Secretariat to decide where the public interest lay; that was for editors. He added that the Secretariat already had a degree of flexibility when a name was already widely available in the public domain, but it would not be wise to make such decisions more subjective. In discussion the Chairman said that the Nightingale case was unique and was not a sufficient basis for change. He agreed that the Secretariat already had some leeway when making such decisions. The Vice-Chairman agreed.

The Committee agreed there would be no change to DA Notice 5 on naming.

Agenda Item 5 – Special Forces Public Information Policy

23. The Secretary said that interest in SF matters had dropped significantly over recent months as the intensity of operations in Afghanistan had been reduced. As highlighted in his earlier report at Item 3 he said that continued efforts to try to develop a more productive dialogue with DSF staff were not particularly successful. The Chairman proposed that this topic should cease to be a standing item on the

agenda of the DPBAC meetings. The Vice-Chairman agreed with this but said that the increased openness of the Agencies was in marked contrast to the DSF position. Anything that could be done to encourage DSF to engage more with the Media would be welcome. In conclusion, the Chairman said that he would talk to DSF with a view to encouraging some form of dialogue.

ACTION: The Chairman

Agenda Item 6 – Composition of the DPBAC Media Side

24. The Vice-Chairman said that the new member (David Higerson) had the right background in digital media and would bring an important new dimension to the Committee.

Agenda Item 7 – Any Other Business

25. There was no other business.

Closing Remarks

26. The Chairman thanked Ed Curran for 9 years of much-valued service to the Committee. We would be saying our farewells at the dinner after the meeting.

Next Meeting

27. The next DPBAC meeting was planned for 6.00 pm on Thursday 8 May 2014, immediately after the Media-side pre-meeting, which would begin at 5.00 pm.

Andrew Vallance

Andrew Vallance
AVM
Secretary, DPBAC

21 November 2013

Distribution

All DPBAC Members
The 'dnotice' Website