

IN THE FIRST-TIER TRIBUNAL
INFORMATION RIGHTS

EA/2021/0035

BETWEEN:-

CHRIS COLE

Appellant

-v-

THE INFORMATION COMMISSIONER

First Respondent

-and-

THE MINISTRY OF DEFENCE

Second Respondent

WITNESS STATEMENT OF CLIVE LEWIS

I, Clive Lewis MP say as follow:

Introduction

1. I am making this witness statement in Tribunal cases EA/2021/035 in support of Chris Cole's appeal against the Information Commissioner. Insofar as the matters set out in the statement are within my personal knowledge, they are true, and insofar as they are not within my personal knowledge, they are true to the best of my knowledge, information and belief.

Background and experience

2. I am making this statement on the following basis. I have been a Labour Member of Parliament for Norwich South since 2015. Previously I served as an infantry officer with the Territorial Army, serving a tour of duty in Afghanistan in 2009. In 2016 I was appointed for a short time, Shadow Defence Secretary. I have been a member of the All-Party Parliamentary Group on Drones since 2015.
3. The All Party Parliamentary Group on Drones (APPG Drones) is a cross-Party and cross-House Group formed in October 2012 with the objective of examining how governments use unmanned aerial vehicles (UAVs) -commonly known as drones - for domestic and international, military and civilian purposes. Inherent within this work is the use of Parliamentary mechanisms to increase transparency and accountability on the development and use of unmanned aerial vehicles, complemented by the strategic use of the Freedom of Information Act 2000. The Group holds regular meetings in Parliament to educate Parliamentarians on key aspects of UAV use and development; the notes and briefings from these meetings are publicly available on the APPG's website. The APPG seeks to facilitate and encourage Parliamentary debate and scrutiny of unmanned aerial vehicles and to actively participate in the broader public debate on this issue.
4. Central to the work of the APPG has been the need to facilitate increased public information on this technology. Perceived to be shrouded in mystery, the acquisition, development and deployment of drones by the UK Government, and the significance of this weapon to the UK's relationships with its allies has given rise to ill-informed and occasionally damaging public discourse . The Ministry of Defence's Joint Doctrine Publication 30.2 on Unmanned Aircraft Systems makes clear the importance of the need for increased transparency and understanding of how remotely piloted aircraft are used by the UK "in order to help 'debunk' the mythology associated with the subject."¹
5. I, along with other MPs and Peers, have also asked a number of question in parliament about the use of armed UAVs and in particular, about the UK's use of these systems. This is in part to fulfil our democratic responsibility to hold the Government to account for its actions and in part to increase transparency and understanding of the use of these systems.
6. In 2020, I became aware that the UK had deployed its armed Reaper drones on operations outside of Operation Shader (the name of the UK military operations to defeat ISIS in Iraq and Syria) but was refusing to give details of the location or purpose of the missions.² Parliamentary questions were put down in both the House of Commons and the House of Lords by my colleagues seeking some basic details of these operations. Ministers refused to answer the question giving the following standard answer:

¹ Unmanned Aircraft Systems (JDP 0-30.2), Ministry of Defence, September 2017, <https://www.gov.uk/government/publications/unmanned-aircraft-systems-jdp-0-302>

² Jamie Doward, Ministers refuse to reveal target of new RAF killer drone missions, *The Guardian*, 6 June 2020, <https://www.theguardian.com/world/2020/jun/06/ministers-refuse-to-reveal-target-of-new-raf-killer-drone-missions>

“REAPER is an intelligence, surveillance and reconnaissance platform. We do not comment on intelligence matters and I am therefore withholding the information as its disclosure would or would be likely to prejudice the capability, effectiveness or security of the Armed Forces.”³

7. A brief look at Hansard shows that on multiple occasions, and contrary to the assertion of the Ministry of Defence, it has given details of the location of Reaper operations and the purpose of those missions. For example:

- 30 October 2012: Lord Astor confirms new RAF Reaper UAVs will be deployed to Afghanistan as part of Operation Herrick.
- 16 October 2014: Secretary of State Michael Fallon’s written statement in House of Commons reports that RAF Reapers will be deployed from Afghanistan to the Middle East for use against ISIL in Iraq.
- 14 January 2015 Minister Mark Francois reports that some RAF Reapers have been relocated from Afghanistan to the UK and will be put in storage.
- 14 Dec 2015: Secretary of State Michael Fallon details that RAF Reapers are now flying combat missions against Daesh in Syria as well as Iraq.
- 18 Jan 2016: Minister Penny Mordaunt confirms that RAF Reapers are not being used in Libya but remain operational in Iraq and Syria.
- 10 Jan 2017: Minister Mike Penning confirms that RAF Reapers continue to support Operation Shader in Iraq and Syria.

On 24th July 2020 I wrote to the Secretary of State for Defence, Ben Wallace, expressing concern about the refusal to disclose information about the new deployment of Reaper and urging some level of transparency about the operation. I am attaching my letter, and the Secretary of State’s reply, to this statement. As I made clear:

“Since Reaper was first deployed to Afghanistan in 2007, the UK government has always been willing to disclose where it is being operated and for what purpose. In my view, the refusal to do that now for non-Shader missions represents a serious backward step in terms of transparency and accountability.”

8. There is a particular need for transparency and public and parliamentary oversight of the use of unmanned aerial vehicles due to their unique capabilities. Through enabling ‘risk free’ use of force, it is argued they are lowering the threshold for the use of force. In some circumstances, for example, political leaders may be seduced into using force where they would not have done so as there is no risk to one’s own personnel. Some contend that unmanned systems are transferring the risk of armed combat from soldiers to civilians on the ground, while others argue that drones have enabled the rise of so-called ‘targeted

³ Response to Baroness Stern, 9 June 2020, HL5486, <https://questions-statements.parliament.uk/written-questions/detail/2020-06-09/hl5486> and to Ed Davey, 11 June 2020, 58612, <https://questions-statements.parliament.uk/written-questions/detail/2020-06-11/58612>

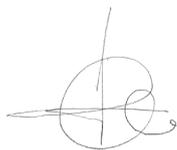
killing'. For all these reasons, it is right that the public and parliament are aware of how and where the UK's Reaper drones are being used.

9. There is, of course, an argument, as put forward by the Ministry of Defence, that the capability, effectiveness or security of the armed forces or that of any forces cooperating with them should not be compromised by disclosing information that would allow the enemy to improve their techniques, tactics and procedures and thus negatively impact the effectiveness of unmanned aerial vehicles. However, the public interest in the need for greater transparency and accountability over the use of unmanned aerial vehicles by the UK government outweighs this argument. It is in the public interest that some basic details about these missions are released.

Conclusion

10. The refusal to answer parliamentary questions, personal pleas from Members of Parliament as well as Freedom of Information requests on this matter has shown that the Ministry of Defence denies the importance of the public interest in this matter, over-valuing the withholding of information. This is particularly concerning as it inhibits the quality and quantity of Parliamentary scrutiny of the use of unmanned aerial vehicles.
11. Without accurate information about the deployment and use of UAVs, neither Parliamentarians nor the public are able to effectively participate in an informed public debate and scrutinise the issues outlined above. The UK is ideally placed to lead the way in developing an approach to UAV use which is compliant with domestic and international law, effectively furthers the UK's objectives internationally and is undertaken in a manner which values the democratic process and public consent to such activities. However, the continued resistance, by Government, to sharing information on the development, deployment and use of UAVs, indicates that such an approach is unlikely.
12. There is, I believe, a powerful public interest in furthering the examination of the UK Government's use of unmanned aerial vehicles; such scrutiny is dependent upon the release of basic information about how and where the UK Government operates these systems.

Signed:



Name: CLIVE LEWIS

Date: 14TH OCTOBER 2021

Appendix: Correspondence with Secretary of State for Defence, Ben Wallace



HOUSE OF COMMONS

LONDON SW1A 0AA

Rt Hon Ben Wallace MP

Secretary of State for Defence

House of Commons

Westminster

SW1A 0AA

24/07/2020

cc. Julian Lewis MP, Chair of the Intelligence and Security Committee

Dear Mr Wallace,

I am writing to express my concern that your department is refusing to divulge details of UK Reaper missions currently taking place outside of Operation Shader, and to ask you to disclose the purpose and location of these operations.

As you will be aware, Parliamentarians and expert observers have raised a number of issues about the use of remotely-controlled military systems such as Reaper, including how these systems are lowering the threshold for the use of force as well as expanding and normalising the practice of so-called 'targeted killing'. While I understand that you may not share the apprehensions about the technology itself, I hope you will agree that one of the best ways to allay fears about these systems is for the government to be as transparent as possible about how they are being used on a day-to-day basis. Since Reaper was first deployed to Afghanistan in 2007, the UK government has always been willing to disclose where it is being operated and for what purpose. In my view, the refusal to do that now for non-Shader missions represents a serious backward step in terms of transparency and accountability.

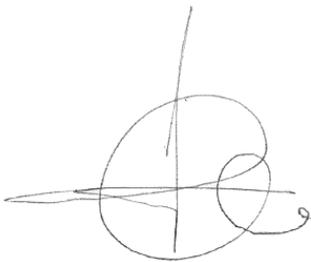
Of particular relevance here is the new report on the use of drones and targeted killing, by Agnes Callamard, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, to the UN Human Rights Council, published earlier this month. In the report Callamard states that:

“Drones sit at the intersection of several oversight regimes, but, being an intelligence asset, they somehow fall between them. With few to no risks involved for those directing or operating drones, including little risk of legal accountability, “the typical decision-making barriers to the use of force become eroded ... because they do not attract “the public scrutiny that a troop deployment invites”, as then US President Barrack Obama conceded in May 2013. In general, at the domestic level, there seems to be many loopholes by which to avoid scrutiny, not the least because the matter can fall within the remit of many agencies but under the responsibility of none.”⁴

It is therefore vital that the UK, as one of the leading users of this technology sets appropriate standards of transparency that give the public and parliamentarians confidence that the UK’s armed drones are not being misused and are being operated in accordance with international law. Parliamentary scrutiny of the deployment of military forces, assets and on-going operations is essential in a democracy, and certainly not something to be avoided, as I’m sure you agree.

I therefore look forward to receiving further information from you about the deployment of RAF Reapers outside of Operation Shader and how you intend to act on the recommendations in Agnes Callamard’s report.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Clive Lewis', written over a circular scribble.

Clive Lewis MP

Labour MP for Norwich South

⁴ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/44/38, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_38_AUV.docx,



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Dear Clive,

16 September 2020

Thank you for your letter regarding the UK's REAPER remotely piloted aerial system (RPAS).

I agree with you that it is important to be as transparent as possible about UK Armed Forces operations and that parliamentary scrutiny is essential for democratic accountability – I can assure you that the Government is equally committed to this principle. As I am sure you will agree all governments also have a duty to protect the nation against our adversaries and sometimes it is necessary that information is withheld because it could compromise operational or personnel security.

REAPER is not conducting strike operations outside those theatres for which Parliament has approved the deployment of UK Armed Forces. The vast majority of REAPER missions are reconnaissance and surveillance operations and as I am sure you can understand, to reveal where it is conducting those missions would provide valuable information to our adversaries.

All UK weapons systems, whether manned or unmanned, operating from sea, land or air, are used in full accordance with robust Rules of Engagement to ensure that our Armed Forces comply with UK and International Law at all times. The Government has been clear that, where we identify an imminent threat, we will take lawful action to address it. Lethal force is used in accordance with international law, and reported to Parliament afterwards.

THE RT HON BEN WALLACE MP

Clive Lewis MP
House of Commons
London SW1A 0AA