

[REDACTED]
Witness: [REDACTED] [MI5 Witness 2]

Party: 4th Respondent

Number: 2

Exhibit: [REDACTED] 1-7

Date: 30/11/2018

Case Nos. IPT/17/86 & 87/CH

IN THE INVESTIGATORY POWERS TRIBUNAL
BETWEEN:

- (1) PRIVACY INTERNATIONAL
(2) REPRIEVE
(3) COMMITTEE ON THE ADMINISTRATION OF JUSTICE
(4) PAT FINUCANE CENTRE

Claimants

and

- (1) SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS
(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT
(3) GOVERNMENT COMMUNICATION HEADQUARTERS
(4) SECURITY SERVICE
(5) SECRET INTELLIGENCE SERVICE

Respondents

SECOND WITNESS STATEMENT OF [REDACTED] [MI5 Witness 2]

[MI5 Witness 2]

I, [REDACTED], of the Security Service, of Thames House, London SW1, WILL SAY as follows:

1) I have worked for MI5 for 20 years. [REDACTED]
[REDACTED]
[REDACTED] I have been involved in MI5's agent-running activities since 2001.

2) I am authorised to make this statement on behalf of MI5. The contents of this statement are within my own knowledge and are true to the best of my knowledge and belief. Where matters are not within my own knowledge they are based upon documentation made available to me and from discussions with others within MI5.

[REDACTED]

- [REDACTED]
- 3) For ease of reference, throughout this statement I will refer to [REDACTED]
[REDACTED] CHIS operations [REDACTED] CHIS stands for "Covert Human
Intelligence Source". [REDACTED]
- [REDACTED]

- 4) In its Order of 4 October 2018 the Tribunal ordered the Respondents "to disclose to CTT the following class of documents, as well as the class of documents identified in the CLOSED Annex to this order, over the period from 2 October 2000 to date ("the relevant period"), in CLOSED save to the extent agreed by the Respondents that documents can be produced into OPEN:

- (i) Any undisclosed iterations of the policy now contained in the Investigatory Powers Commissioner (Additional Directed Oversight Functions) (Security Service Agent Participation In Criminality) Direction 2017; and
- (ii) Any undisclosed versions of the guidelines."

- 5) The class of documents identified in the CLOSED Annex to the Order is "documentation and/or a description of the practical operation of the policy over the relevant period".
- [REDACTED]

- 7) On 14 November the Tribunal agreed to extend the deadline for disclosure of this material until 30 November 2018.

Oversight

Investigatory Powers Commissioner (IPC) (2017 to present)

- 8) The IPC have had oversight of MI5's agent-running and agent participation in criminality operations since 1 September 2017. I understand from the team [REDACTED] with responsibility for liaising with IPC and their office, IPCO, that the following process is followed when preparing for IPCO inspections.
- [REDACTED]

- [REDACTED]
- 9) First, the team creates a list [REDACTED] of all CHIS authorisations (not just of those with participation in criminality authorisations ("PICs"))
- [REDACTED]

This selection list is then provided to the IPC for them to choose which cases they would like to review at the inspection,

- 10) Until recently, once the cases were chosen by IPC, the relevant material was collated going back 2 years from the period under review. Thus, if the period under review was, for example, 1 March 2017-30 August 2017, the Commissioner saw the relevant paper-work (for the selected cases) for the period from 1 March 2015 to 30 August 2017.

- 11) It has been agreed with IPCO within the last six months that, for future inspections, MI5 will only provide PICs which were active within the last 12 months. This will allow IPCO to focus on inspecting recent activity/current practices and will mean that IPCO are not reviewing older PICs [REDACTED] for a second time.

- 12) IPCO inspection reports for 2017 were provided to the Tribunal in September 2018. No Annual Report has yet been published.

Intelligence Services Commissioner (ISCOM) (October 2000- August 2017)

- 13) The Tribunal was provided with the relevant extracts from the ISCOM Annual Reports and Inspection Reports for the period from 2012 to 2017 in September 2018. From October 2000 to August 2017 MI5's agent-running operations and CHIS authorisations under Part 2 of RIPA were overseen by the Intelligence Services Commissioner ('ISCOM'). ISCOM's selection of [REDACTED] authorisations for inspection (including CHIS authorisations under Part 2 of RIPA) would take place five to six weeks before an inspection. The Commissioner would make the selection randomly from lists produced [REDACTED] These lists would itemise all the CHIS authorisations that the Service had issued in the time-period since the last inspection and would indicate whether material that attracted legal professional privilege or confidential material has been obtained by the CHIS and provided to the Service. These lists would break down the agent authorisations into different categories: [REDACTED]

[REDACTED] In some cases, this list also included an indication of cases where any participation in crime had been authorised.

[REDACTED]

[REDACTED]

Material relating to Oversight prior to 2012

14) The material that has been retrieved in the course of our searches includes all OPEN ISCOM Annual Reports which refer to ISCOM's oversight of MI5's CHIS authorisations under Part 2 of RIPA and agent-running generally for the period between 2000 and 2011. However, so far as the Confidential Annexes to those Reports are concerned, the position is as follows:

- a) We have located the final versions for 2006, 2007 and 2011.
- b) We have located the draft versions, but not the final versions, for 2001 and 2003.
- c) We have located no version for 2002, 2004, 2005 and 2008-2010.

15) On the basis of that material, it appears that we regularly provided lists of CHIS RIPA Part 2 authorisations to ISCOM before his inspection visits during the period 2000-2011 and that these lists included an indication of cases where any participation in crime had been authorised. Thus, ISCOM was able to view participation authorisations in the course of his oversight. Also, following ISCOM's inspection visit on 4 and 5 May 2011, we agreed to provide him with a copy of the recently updated internal Guidelines on CHIS Participation in Criminality.

16) However, the scope of ISCOM's oversight remit was described by Sir Peter Gibson, the then Intelligence Services Commissioner, at paragraph 25 of his Annual Report for 2010 as follows:

"Both I and my predecessor, Lord Brown, before me in our annual reports set out the functions of the Intelligence Services Commissioner. Despite that, it is apparent from the publicised criticisms of my appointment as chairman of the Detainee Inquiry that misconceptions as to the functions of the Commissioner still remain. The Commissioner does not have blanket oversight of the intelligence services and the Commissioner is not authorised to keep under review all activities of the intelligence services. Save where the Commissioner has been asked, and has agreed, to perform an extra-statutory function (see paragraph 28 below for one example), his functions are limited by the governing legislation and are consistent with the statutory requirement that the Commissioner should be or have been a senior judge. Those functions are:

- a. to keep under review the exercise by the Secretary of State of his powers to issue, renew and cancel warrants under sections 5 and 6 of ISA, i.e. warrants for entry on or interference with property or with wireless telegraphy, warrants in practice mainly issued by the Home Secretary or the Secretary of State for Northern Ireland;*
- [REDACTED]

[REDACTED]

b. to keep under review the exercise by the Secretary of State of his powers to give, renew and cancel authorisations under section 7 of ISA, i.e. authorisations for acts done outside the UK, authorisations in practice normally issued by the Foreign Secretary;

c. to keep under review the exercise and performance by the Secretary of State of his powers and duties under Parts II and III of RIPA in relation to the activities of the intelligence services and (except in Northern Ireland) of Ministry of Defence (MOD) officials and members of the armed forces, in practice the Secretary of State's powers and duties with regard to the grant of authorisations for intrusive surveillance and the investigation of electronic data protected by encryption;

d. to keep under review the exercise and performance by members of the intelligence services of their powers and duties under Parts II and III of RIPA, in particular with regard to the grant of authorisations for directed surveillance and for the conduct and use of covert human intelligence sources and the investigation of electronic data protected by encryption;

e. to keep under review the exercise and performance in places other than Northern Ireland by MOD officials and members of the armed forces of their powers and duties under Parts II and III of RIPA, in particular with regard to the grant of authorisations for directed surveillance and the conduct and use of covert human intelligence sources and the investigation of electronic data protected by encryption;"

17) The reference in the above excerpt – "an extra-statutory function (see paragraph 28 below for one example)" – is to the oversight exercised by the Commissioner with effect from 6 July 2010 in relation to compliance by intelligence officers and military personnel with the Consolidated Guidance on the standards to be followed during the detention and interviewing of detainees.

18) The above description in ISCOM's Annual Report for 2010 of ISCOM's oversight functions during the pre-2012 period is consistent with the descriptions contained in other Annual Reports by ISCOM between 2000 and 2011.

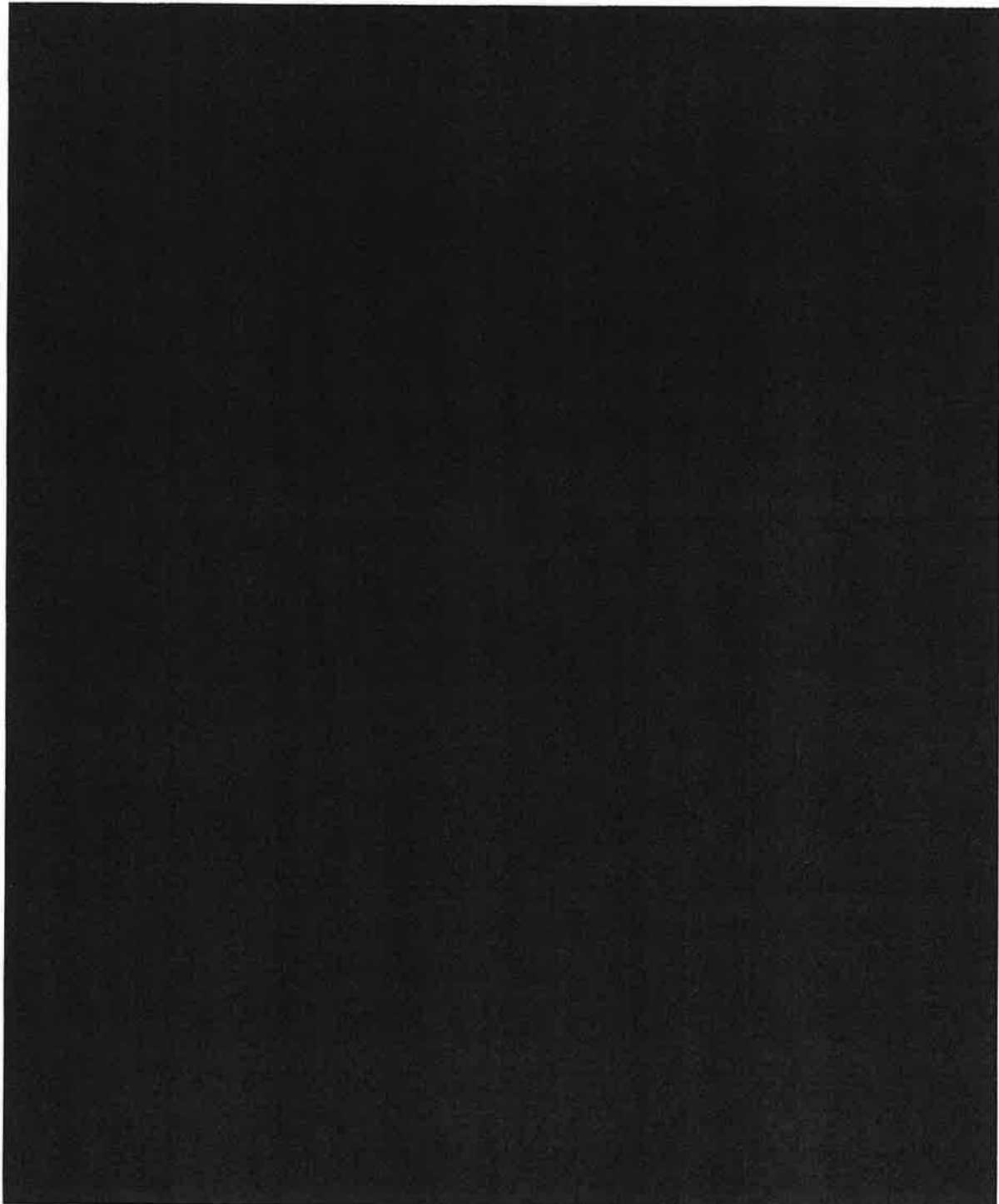
19) Save for the above, there is nothing material in the Reports to disclose.

Guidelines/policy

[REDACTED]



20) We have located policy and guidance material going back to October 2000 (in addition to the material which has been disclosed at earlier stages of these proceedings, in particular [M15 Witness 1's]  witness statement). As well as providing the material, we have summarised the new documents in the Chronology which is exhibited to this statement (Exhibit ). [Exhibit 1 to second Witness Statement of M15 Witness 2]



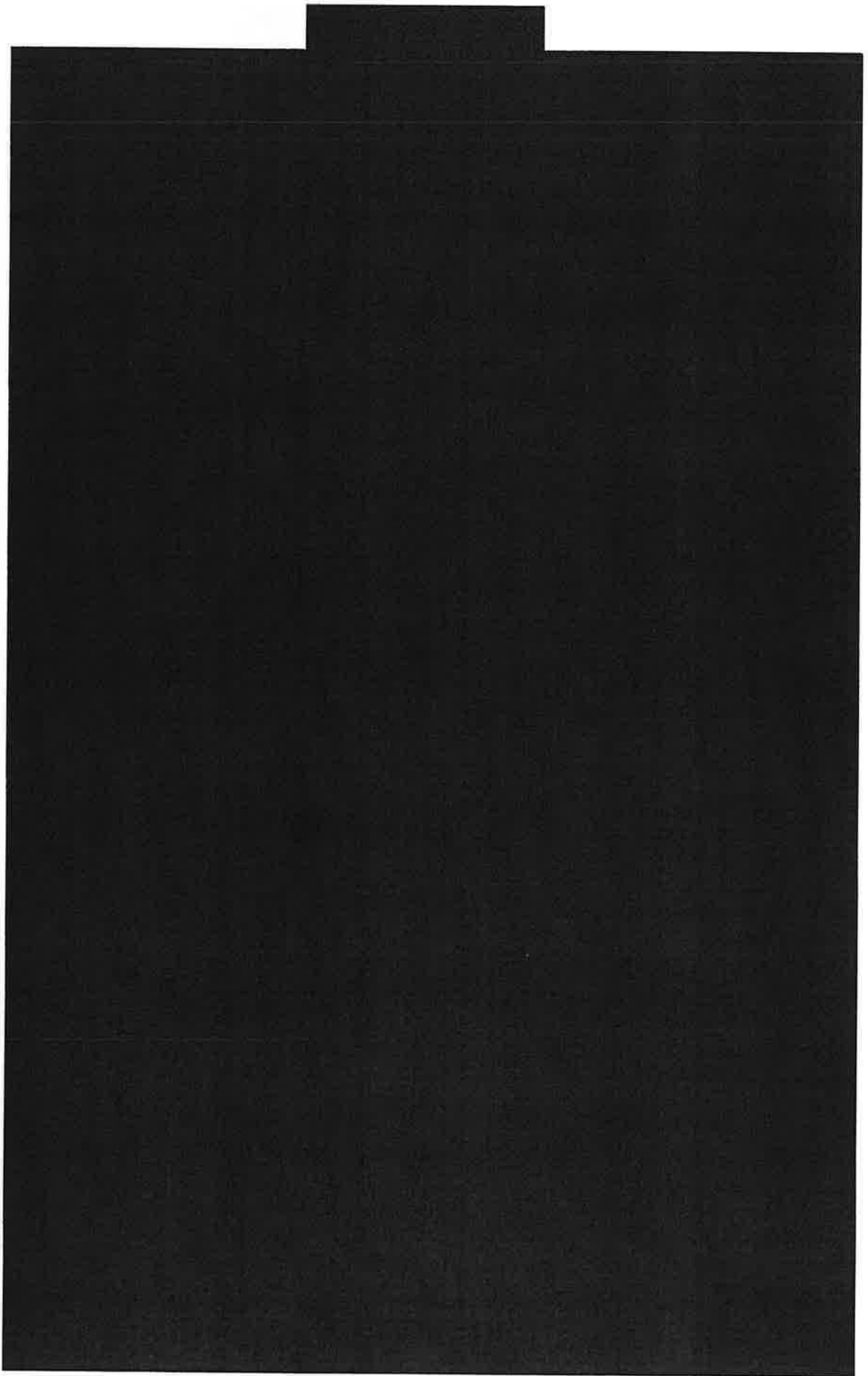
[REDACTED]

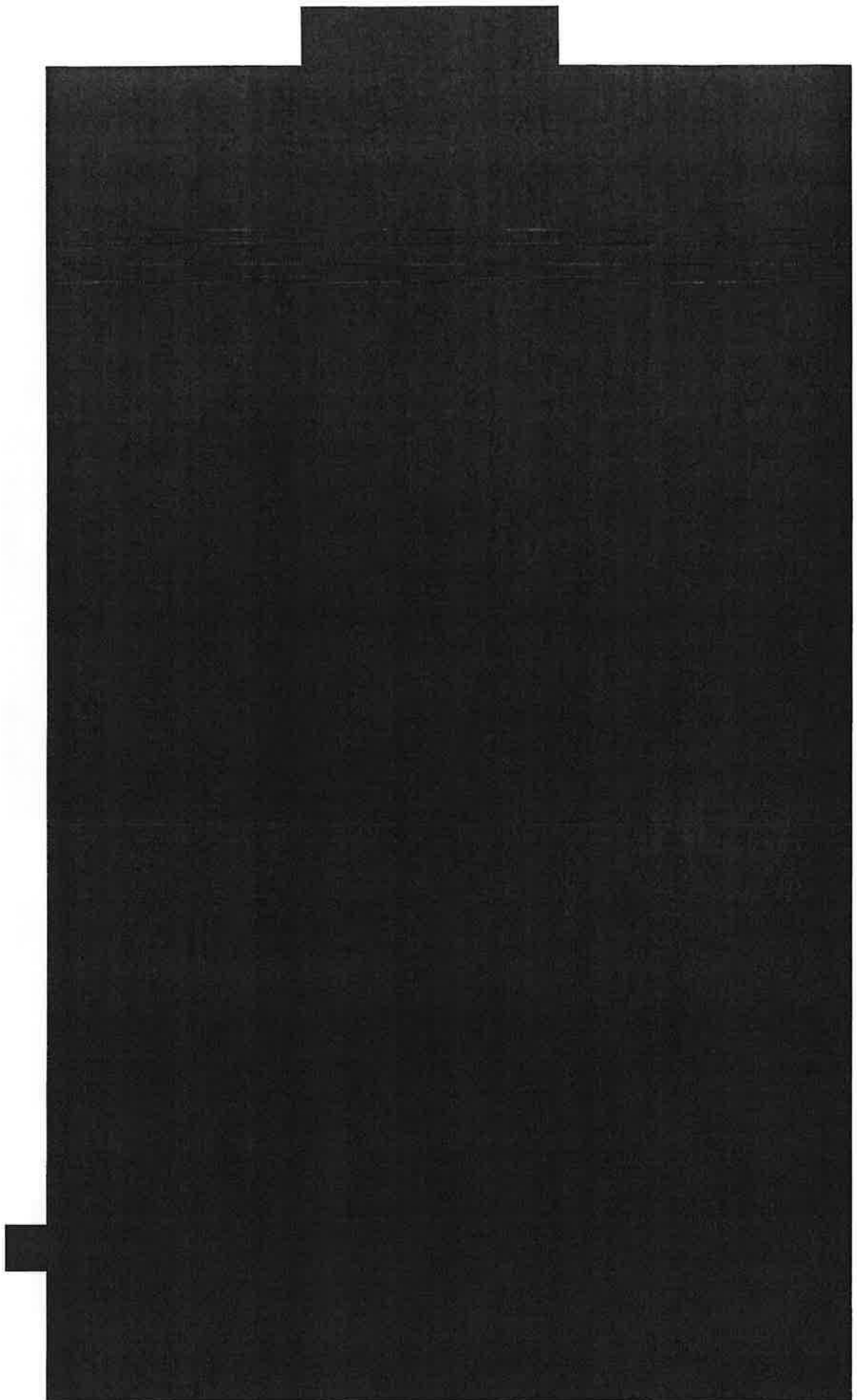
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





[Redacted]
[An authorisation form will be completed]
[Redacted]
[Redacted]

Training:

18 33) Great important^{se} is attached to providing appropriate training for all those involved with agent running and agent participation. [Redacted]

[Redacted] This course includes training and briefing by our Legal Advisers on the Human Rights Act 1998 as well as a detailed briefing on how the Security Service approaches agent participation in criminality. [Redacted]
[Redacted]
[Redacted]

[REDACTED]

Working with the Police

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

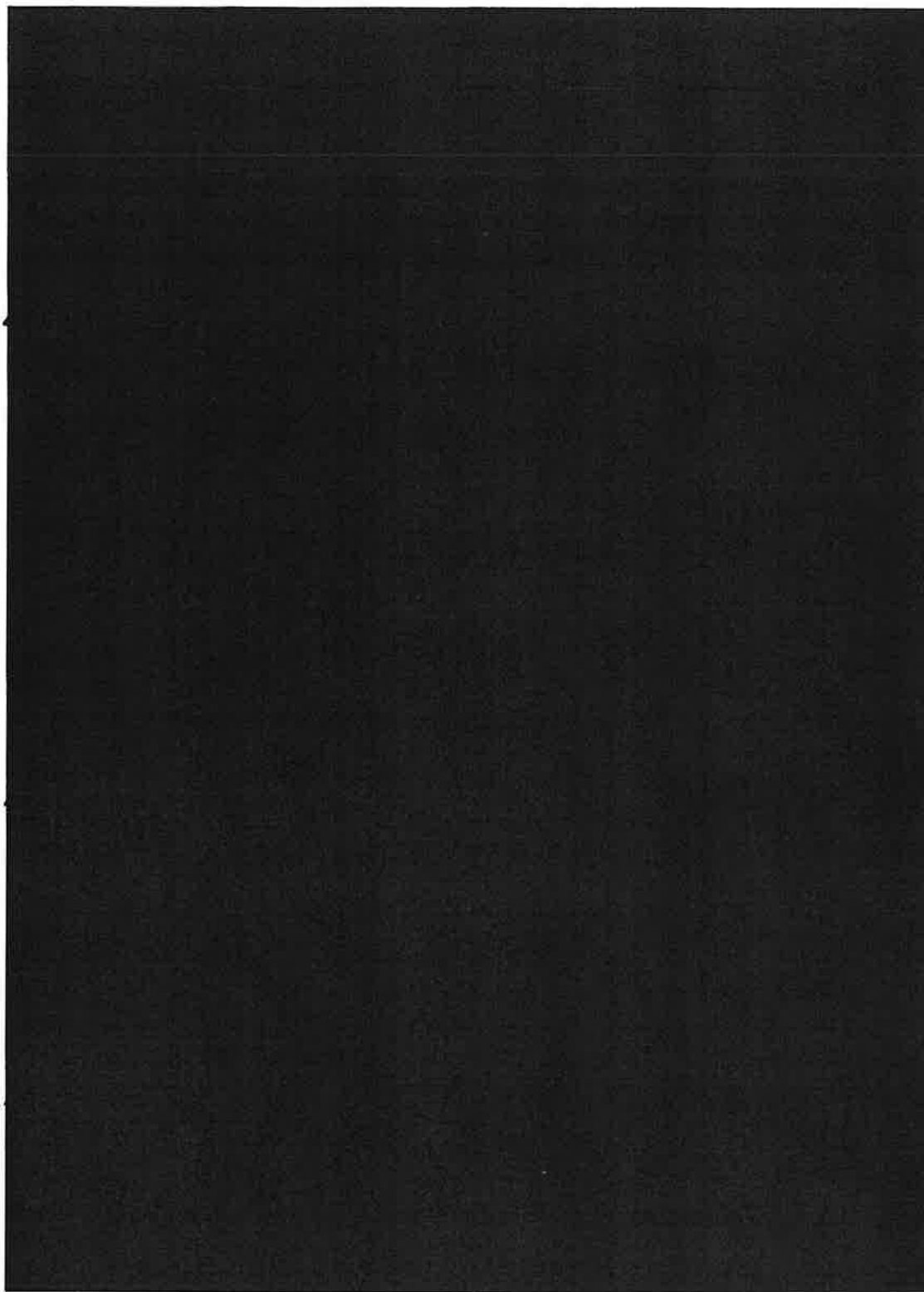
[REDACTED]

[REDACTED] in the course of considering this issue in the context of the present litigation, we have formed the view that we should in the future (a) include within our record-keeping system [REDACTED] a record of any views that we have expressed to the police [REDACTED]

[REDACTED] and (b) ensure that such records are readily searchable.

[Copies of all Participation in Criminality forms for 24 May 2013 - 25 September 2018 have been provided to CtT. Other relevant materials have also been provided in CLOSED to the Tribunal and the CtT.]

[REDACTED]



Statement of Truth

I believe that the facts stated in this witness statement are true.

[Redacted signature]

Dated: 30 November 2018

[Redacted signature]