



**JOINT COMMITTEE ON HUMAN RIGHTS**  
COMMITTEE OFFICE, HOUSE OF COMMONS  
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**PRESS NOTICE**

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**EMBARGOED UNTIL 0001 on Wednesday 4 April**

**Human Rights Committee calls for statutory clarification of law on disclosure of national security-sensitive material, but finds no case for more extensive change**

The Joint Committee on Human Rights (JCHR) today publishes its Report on the Government's Justice and Security Green Paper.

The Committee concludes that the Government has failed to make the case for extending "closed material procedures" to all civil proceedings and to inquests: the Government has not demonstrated by reference to evidence that the fairness concern on which it relies to justify the proposal is in fact a real and practical problem.

The Committee agrees with the special advocates, who are employed in closed material procedures to represent the interests of the person who is excluded, that closed material procedures are inherently unfair. The Committee also does not accept that replacing the current law governing disclosure of sensitive material (the law of Public Interest Immunity, or "PII") with closed material procedures is justified. The rule of law requires that decisions about the disclosure of material in legal proceedings be taken by judges not ministers and the current legal framework of PII has not been shown to be inadequate. There is a case, however, for that legal framework to be made clearer in the way in which it applies to national security-sensitive material and the Committee suggests how that could be done by legislation and changes to the Coroners Rules and guidance.

The Committee considers that proposals for reform which are intended to provide the US with a cast-iron guarantee that any intelligence they share can never be disclosed in a UK court cannot be justified. Such an aim is incompatible with the Government's commitment to the rule of law. The Committee also considers that the Government should proactively address the apparent misperception of US officials that UK courts cannot be trusted to ensure that national security-sensitive material is not disclosed.

However, the Committee accepts that it is a legitimate objective for the Government to seek to reassure intelligence partners by legislating to remove any legal uncertainty which can reasonably be said to exist about the power of the courts to order disclosure of national security-sensitive material. The proportionate response to that legitimate objective is a statutory clarification of the legal framework concerning disclosure of material in legal proceedings as it applies to national security-sensitive material.

The Committee therefore recommends clarification of the law on public interest immunity (PII) as it applies to national security-sensitive material, including:

- introducing statutory presumptions against disclosure of, for example, intelligence material or foreign intelligence material, rebuttable only by compelling reasons;
- listing express factors to which the court must have regard when balancing the competing public interests to determine the disclosure question;

- requiring the court to give consideration to a non-exhaustive list of the sorts of devices (such as redactions, confidentiality rings, and “in private” hearings) to which the courts may have resort in order to enable the determination of a claim without damaging national security.

The Committee also recommends that the obligation to disclose sufficient material to enable effective instructions to be given to an individual’s special advocate should always apply in any proceedings in which closed material procedures are used.

The Committee draws attention to the disparity between the narrow scope of the proposals set out by the Chancellor in the Foreword to the Green Paper and in evidence to the Committee, and their much broader scope in the Green Paper itself. The anxiety that this has caused in the public and which has been reflected in the media was avoidable.

The Committee regrets that the Green Paper overlooks the very considerable impact of its proposals on the freedom and ability of the media to report on matters of public interest and concern. It is also concerned about the possible impact of the proposals on public confidence and trust in both the Government and the courts.

The Committee also considers it important that some mechanism is found whereby representative judicial views on legislative proposals to reform the administration of justice should be made available to inform parliamentary scrutiny. It calls on the Government to ensure that discussions it has with the judiciary on such proposals should be as open and transparent as possible.

Dr Hywel Francis MP, Chair of the Committee, said: *“I was troubled that the Lord Chancellor did not seem to think that the proposals in the Green Paper were as radical a departure from our longstanding traditions of open justice and fairness as I, the Committee and many others believe them to be. It was also troubling to note that, as the Lord Chancellor himself acknowledged to the Committee, the Green Paper was not as clear as it should have been on the scope of its proposals or the narrowness of the justification for changing the law.*

*Closed material procedures are inherently unfair and the Government has failed to show that extending their use might in some instances contribute to greater fairness. All other means should be pursued to allow proceedings to take place without resort to them. Much can still be done with Public Interest Immunity both to allay national security concerns and to ensure that cases can be decided by the courts. We have come to the clear view that the way to meet what turns out to be the Government’s narrow concern is to bring forward legislation to clarify how Public Interest Immunity applies to national security-sensitive information.”*

THE MEMBERS OF THE COMMITTEE ARE:

Rehman Chishti MP (Conservative <i>Gillingham and Rainham</i> )	Baroness Berridge ( <i>Conservative</i> )
Mike Crockart MP (Liberal Democrat <i>Edinburgh West</i> )	Lord Bowness ( <i>Conservative</i> )
Dr Hywel Francis MP (Labour <i>Aberavon</i> ) (Chair)	Baroness Campbell of Surbiton ( <i>Cross-Bencher</i> )
Mr Dominic Raab MP (Conservative <i>Esher and Walton</i> )	Lord Dubs ( <i>Labour</i> )
Mr Virendra Sharma MP (Labour <i>Ealing Southall</i> )	Lord Lester of Herne Hill ( <i>Liberal Democrat</i> )
Mr Richard Shepherd MP (Conservative <i>Aldridge-Brownhills</i> )	Lord Morris of Handsworth ( <i>Labour</i> )

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