



THE CRIMINAL BAR ASSOCIATION

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**Response to the Justice and Security Green Paper**

1. The Criminal Bar Association (“CBA”) represents about 3,600 employed and self-employed members of the Bar who appear to prosecute and defend the most serious criminal cases across the whole of England and Wales. They also appear in other proceedings, including inquests, regulatory proceedings, parole board hearings and control order proceedings. The CBA is the largest specialist bar association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy of members of the CBA guarantee the delivery of justice in our courts. We welcome the opportunity to provide a response to this Green Paper on Justice and Security.
2. We are conscious that criminal proceedings are specifically excluded from the remit of this Green Paper. Our response will therefore be confined to the main issue of general principle raised by the Green Paper, namely the proposed extension of the use of Closed Material Procedures (‘CMPs’) in civil proceedings.

3. We understand and have sympathy with the underlying rationale of the Government's proposals. We are mindful that some important cases involving serious allegations against the Security Services have not proceeded ostensibly because of difficulties presented by sensitive material. We support attempts to enable the courts to deal with 'closed' material whilst still maintaining the fundamental elements of a fair trial.
4. Nevertheless, we have significant reservations about the use of CMPs and are concerned at the proposal to extend their use into a broader range of civil proceedings. CMPs have repeatedly been subject to criticism from many quarters, including the Parliamentary Joint Committee on Human Rights ('the JCHR')<sup>1</sup>. We are in broad agreement with the view expressed by the JCHR that such procedures are not only offensive to the principles of adversarial justice but also are very much against the notions of fair play as the public would understand them.
5. We also note the views of the majority of the members of the Supreme Court in *Al-Rawi v Security Service* [2011] 3 WLR 388 as to the desirability of the broader use of CMPs. The proceedings involved the consideration of a preliminary issue as to whether the court was entitled to order the adoption of a CMP in an ordinary civil claim for damages. The Supreme Court recognised that any change to the current system to provide for such CMPs was ultimately a matter for Parliament, but expressed significant reservations about the use of such procedures and found there was no compelling reason for such a change.
6. In formulating our response, we have also had the considerable benefit of seeing the response of the Special Advocates to the Green Paper. The pool of Special Advocates is drawn from very experienced counsel with different specialisms in the law. It is made up of criminal as well as civil practitioners. The principal views expressed by the Special Advocates on the operation of CPMs are:
  - (a) The system of CMPs has considerable shortcomings in ensuring justice

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<sup>1</sup> See 19<sup>th</sup> Report of the Joint Committee on Human Rights 16 July 2007

(b) A Special Advocate often has little realistic opportunity of effectively responding to the “closed” case against a person

(c) The system of CMPs does not work effectively and deliver real procedural fairness, rather it is inherently unfair

7. Special Advocates are uniquely positioned to assess and comment upon the operation of CMPs. In our view, their considered response is one which the Government should pay particular attention to.