

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's briefing on "*Report of the
Bulk Powers Review*"**

August 2016

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

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Introduction

1. The *Report of the Bulk Powers Review* by David Anderson Q.C. concluded that an operational case has been made for the bulk surveillance powers proposed in the Investigatory Powers Bill, as the powers provide “*real utility*” for the police and Security and Intelligence Agencies. However, by assessing the usefulness of the powers the review failed to establish a proven case for the *necessity* of the powers.
2. Liberty regrets that the review was conducted to a rushed time-frame and thus procedurally compromised, and that the central question of whether bulk powers are strictly *necessary* remains unanswered.
3. Liberty concludes that:
 - I. David Anderson did not assess the necessity or proportionality of the bulk powers, but rather the ‘utility’ according to the security and intelligence agencies’ terms. The important question of the necessity of bulk powers remains outstanding.
 - II. The question of proportionality, and overall desirability of mass surveillance powers in a democracy, remains for Parliament to consider.
 - III. No operational case for ‘internet connection records’ has been elaborated, and no case has been made as to their necessity. This new power should be removed from the Bill.
 - IV. The cases made in favour of bulk equipment interference (mass hacking) as the future of state security, and the use of big data (bulk personal datasets) in policing and intelligence, are deeply disturbing, in conflict with fundamental human rights principles, and highly likely to be unlawful.
 - V. The short time-frame allowed for the review rendered it an unduly challenging task and prevented the possibility of independent experts receiving security clearance and being appointed to the Review.
4. Liberty recommends that:
 - An independent review should be commissioned to assess the strict *necessity* of the bulk powers, with a fully evidenced consideration of alternative existing and innovative methods. . In particular, we would recommend that the option

of targeted interception from bearers is given full, independent examination (see our submission to David Anderson for further analysis).¹

- Parliament should carefully assess the proportionality of bulk powers, and whether such mass surveillance powers are desirable in a democracy.
- Proposals for ‘internet connection records’ must be immediately rejected, particularly in absence of any operational case in the *Bulk Powers Review*.
- Parliament should thoroughly consider the dual question of the necessity and proportionality of bulk powers before considering the appropriateness of bulk powers in legislation.

Background

5. Liberty has campaigned for an independent review of the necessity of bulk surveillance powers since the publication of the Draft Investigatory Powers Bill. Following campaigning from civil society groups including Liberty, pressure from the Opposition, and a recommendation from the Joint Committee on the Draft Investigatory Powers Bill, the Government appointed its Reviewer of Terrorism Legislation, David Anderson Q.C., to review the ‘operational case’ for bulk surveillance powers contained in the Bill.
6. The terms of reference for the review were published on 7th June 2016. Mr Anderson undertook to complete the Review in time for it to be considered when the bulk powers in Parts 6 and 7 of the Bill reach Committee Stage in the House of Lords, scheduled for early September. Mr Anderson submitted his final report to the Prime Minister two months later, on 7th August 2016.
7. Liberty gave cautious welcome to the Government’s decision to commission a review due to our reservations about the imposition of an excessively rushed time-frame; the appointments of former Agency Directors to the review team; and the apparent loss of the objective to test the strict ‘necessity’ of bulk surveillance powers from the review’s terms of reference.
8. Liberty submitted written evidence² to the Review including a detailed explanation of the potential for interception of bearers to be undertaken in a targeted manner.

¹ Liberty’s submission to the Terrorism Reviewer’s Review of Bulk Powers, August 2016: <https://www.liberty-human-rights.org.uk/sites/default/files/campaigns/resources/Liberty%27s%20submission%20to%20the%20Terrorism%20Reviewer%27s%20Review%20of%20Bulk%20Powers.pdf>

9. The Report was published on Friday 19th August, 2016, concluding that an operational case had been made for bulk powers, but failing to test or draw conclusions on the *necessity* of the powers.

About the review procedure

The review team

10. It was essential that the Reviewer and the review team had security clearance – a process that can take six months. With just a fraction of this time to complete the review, those appointed would need to already have security clearance. This restricted the pool of potential reviewers significantly, particularly to those with current or recent ties to state institutions.
11. David Anderson QC, the Government’s well-respected Reviewer of Terrorism Legislation, was appointed to head the review. In 2014, the Reviewer was tasked with scrutinising the operation and regulation of investigatory powers. In his report, *A Question of Trust*, he made extensive, detailed recommendations. While Mr Anderson was not tasked to evaluate the necessity of bulk powers in that review, after analysing case studies provided by GCHQ he concluded that: “*They leave me in not the slightest doubt that bulk interception, as it is currently practised, has a valuable role to play in protecting national security*”.³ Many criticised those case studies at the time on the basis that they simply did not contain sufficient information to lead to that unequivocal conclusion. Parliament’s insistence on a further review supports that. In the *Report on the Review of Bulk Powers*, Mr Anderson stressed that he was “*not too proud to change my mind*” about the bulk interception power, arguing that his previous conclusion was reached “*without the expert assistance that has been made available to this Review*.”⁴ However, the fact that Mr Anderson has expressed such a clear-cut view on the one of the review’s core questions creates the inevitable perception – however right or wrong – of a foregone conclusion.
12. Mr Anderson appointed three advisers, notably including Robert Nowill, GCHQ’s former Director of Technology and Engineering, and Gordon Meldrum, the National Crime Agency’s former Director of Intelligence. A panel tasked with this vitally important inquiry must be seen as institutionally independent of the security and law enforcement agencies. With two of three advisers so closely associated with the

² Ibid.

³ *A Question of Trust: Report of the Investigatory Powers Review* – David Anderson QC, June 2015, para. 7.26, p.130

⁴ *Report of the Bulk Powers Review* – David Anderson Q.C., 19 August 2016, para. 1.27, pp.11-12

agencies, this review was unable to inspire confidence in its independence and neutrality.

The time frame

13. Mr Anderson undertook to complete the Review in time for it to be considered when the bulk powers in the Bill reach Committee Stage in the House of Lords. Thus, with the terms of reference for the review published on 7th June 2016, Mr Anderson submitted his final report to the Prime Minister just two months later on 7th August 2016.
14. By way of comparison, less ambitious reports, analysing the necessity of just one bulk power, have taken upwards of six months to complete.⁵ We believe it would have been preferable to pause the passage of the Bill to allow adequate time for an independent review, providing for confidence in the legal ‘necessity’ or otherwise of the powers in question, rather than to rush the process and risk later legal challenges.

The terms of reference

15. For surveillance powers to be lawful, they must be necessary and proportionate. Civil society groups and the Opposition called for an independent review into bulk powers to answer the question of whether the bulk powers, as drafted in the Investigatory Powers Bill, are *necessary*. The question would be best answered by an independent review panel, with neutral opinions on the issue, resourced with expert technical, legal and analytical skills and a six to twelve month time frame to thoroughly investigate the matter.
16. In a letter dated 6 June 2016 to Rt Hon John Hayes MP, then Minister of State for Security, Keir Starmer QC MP, then Shadow Home Office Minister, wrote: “As we have discussed the review will (...) examine the operational case for the bulk powers in the Bill, not merely in respect of the utility of the powers, but also their necessity”. Hayes responded to Starmer on 6 June to confirm, “it is absolutely the case that this review will be addressing the specific question of whether the bulk capabilities provided for in the Bill are necessary”.⁶

⁵ *Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court* – Privacy and Civil Liberties Oversight Board, 23 Jan 2014

⁶ *Report of the Bulk Powers Review* – David Anderson Q.C., 19 August 2016; see Annex 3: Exchange of letters, pp.137-139

17. However, the word “*necessary*” did not appear in the review’s terms of reference, published 7th July 2016. Rather, the terms stated that the aim of the review was to “*examine the operational case for the investigatory powers contained in Parts 6 and 7 of the Investigatory Powers Bill*”, which would merely “*inform Parliament’s consideration of the need for the bulk powers in the Bill*”. The document was titled, “*Independent review of the operational case for bulk powers: Terms of Reference*”.⁷

The test: strictly necessary for the obtaining of vital intelligence in an individual operation

18. Over the past forty years, the European Court of Human Rights has considered numerous challenges to State interception laws and practices across the Council of Europe. It has developed a body of case law consisting of legal tests and safeguards to measure the lawfulness of member states’ legislative systems. The Court has repeatedly stated its principal test that “*powers to instruct secret surveillance of citizens are only tolerated under Article 8 to the extent that they are strictly necessary for safeguarding democratic institutions. In practice, this means that there must be adequate and effective guarantees against abuse. The assessment depends on all the circumstances of the case, such as the nature, scope and duration of the possible measures...*”⁸ (emphasis added).

19. In *Liberty v UK* (2008) which concerned the pre-RIPA external interception regime the Court found a violation of Article 8 on the grounds that the legal discretion granted to the Executive for the physical capture of “*such external communications as described in the warrant*” was “*virtually unfettered*” and the discretion governing which communications of the total volume captured were listened to or read was also too broad.

20. In *Szabo and Vissy v Hungary* (2016) the Court further refined its principal test, holding that “*A measure of secret surveillance can be found as being in compliance with the Convention only if it is strictly necessary, as a general consideration for safeguarding the democratic institutions and moreover if it is strictly necessary as a particular consideration, for the obtaining of vital intelligence in an individual operation*” (emphasis added).

⁷ Ibid, see Annex 2: Terms of Reference, p. 136

⁸ Kennedy v UK, Application no 26839/05, 2010, paragraph 153.

About the review's findings

Reviewing 'utility' – not necessity

21. Mr Anderson reviewed the “*utility*” rather than necessity of the powers, and titled Chapter 4 of the report “*Criteria for determining utility*”. Mr Anderson used “utility” as the measure by which to establish the operational case for the bulk powers, opening Chapter 4 with the statement: “*The purpose of this chapter (4. Criteria for determining utility) is to explain the methodology by which I have sought to evaluate the operational case for the powers under review*”.⁹

22. In a footnote to the report's conclusions and recommendations, Mr Anderson finally explains that he has not sought to establish whether the bulk powers are necessary:

*“The legal significance of the familiar terms “necessity” and “proportionality” is not altogether straightforward: AQOT 5.18. I have accordingly (in keeping with my terms of reference) **avoided pronouncing on whether the powers under review are “necessary”**, a word which in its everyday meaning could be taken to encompass assessments of proportionality or overall desirability which are excluded from my remit.”¹⁰ (emphasis added).*

Mr Anderson provides two distinct reasons for “avoiding” reporting on the necessity of bulk powers: first, because he deems the legal significance “*not altogether straightforward*”; second, to report “*in keeping with my terms of reference*”.

23. Mr Anderson's questioning of the theoretical legal significance of the extent of distinction between necessity and proportionality is irrelevant in the context of the review. In AQOT 5.18, to which Mr Anderson refers to qualify his statement, Mr Anderson wrote that although the legal boundary “*is not so clear as the summary suggests*”, if both the necessity and proportionality elements are satisfied “*the precise way in which they are distinguished is of secondary importance*”. He continued to explain that although the concept “*might be questioned as a matter of legal theory*”, the distinction is “*firmly embedded not only in RIPA (...) but in the practices and training materials of all public authorities who apply it*”.¹¹ Plainly, the necessity test is core to the lawfulness of the powers in question and whilst its distinction from proportionality may be academically intriguing, the tests are presented distinctively as fundamental safeguards throughout both RIPA and the Investigatory Powers Bill.

⁹ Ibid, see Chapter 4, p.72

¹⁰ Ibid, see footnote 245, p.119

¹¹ AQOT 5.18

24. Mr Anderson is correct that the “necessity” test was omitted from the terms of reference, despite express agreement in writing from the Minister of State for Security that it would be “*absolutely the case*” just one day prior to the publication of the terms of reference. As testing the necessity of four bulk powers would be a challenging, albeit essential, task, it would not be possible to complete such a review in the short time-frame allowed to Mr Anderson. It is inferable that the evaluation of necessity may have been excluded from the review’s terms due to the impossibility of fulfilling such a task in the short time-frame; however, in doing so, the review has defeated its key purpose. We have no further insight as to the necessity, and thus the lawfulness, of the bulk powers despite the unique opportunity of their explicit provisions in legislative proposals for the first time, the Investigatory Powers Bill.
25. The terms of reference of the review rendered it one of limited significance. The “utility” of the bulk powers are infrequently questioned. There is of course “utility” in a range of possible policing and surveillance powers, from bulk data collection to biometric databases, omnipresent CCTV cameras, DNA databases, and so on. However, the question of whether such powers are strictly *necessary* in pursuit of a legitimate aim is vital when considering whether such powers would be desirable in a democracy and in accordance with human rights law.
26. Even so, in his consideration of the “utility” of bulk surveillance powers, Mr Anderson deferred the framework for measurement to the security and intelligence agencies: he “*asked them (SIAs) to agree a classification against which their claims of utility could be evaluated*”¹² and adopted it for the Report.

¹² *Report of the Bulk Powers Review* – David Anderson Q.C., 19 August 2016, see paras 4.6 and 4.10, pp.72-

Bulk interception

27. In Chapter 2, Mr Anderson describes that “*Bulk interception involves three stages, which may be called **collection, filtering and selection for examination***”¹³ (see Figure 2). However, this summarised three-step description obscures the vital filtering that can occur *prior* to collection (see Figure 1). The process is more accurately described as five-stages: **extraction, filtering, store** (collection), **querying, selection for examination** (analyse). **Whether signals are filtered before storage/collection, or after, is of enormous consequence, as this can determine whether the signals interception is targeted or in bulk.**

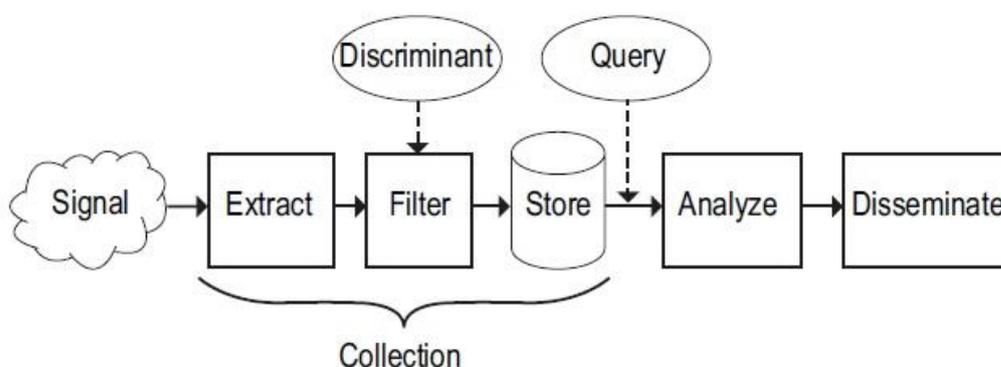


FIGURE 1: The National Academy of Sciences' model of bearer interception¹⁴



FIGURE 2: David Anderson's model of bearer interception

28. Obscuring the potential to filter prior to the collection of communications precludes a very limited view of bearer interception as inevitably 'bulk'. Indeed, despite Liberty's detailed and technical evidence to Mr Anderson on the mechanisms of targeted interception of bearers – the most obvious and innovative alternative to bulk interception, which we believe would be an efficient, human rights compliant regime without any compromise to legitimate operational effectiveness – Mr Anderson did not consider or even reference this alternative.

¹³ Ibid, paras 2.13-2.18, pp.23-24

¹⁴ *Bulk Collection of Signals Intelligence: Technical Options* – Committee on Responding to Section 5(d) of Presidential Policy Directive 28, 2015 (The National Academies Press), p.5

29. Mr Anderson assessed bulk interception in Chapter 5, opening with the subheading “*Claimed utility*”. Using the Agencies’ framework for assessment, and analysing a selection of case studies provided to the review team, Mr Anderson subsequently analyses the claimed usefulness of bulk interception. He summarises his opinion as, “*The bulk interception power has proven itself to be of vital utility*”.¹⁵
30. Also in Chapter 5, Mr Anderson included the subheadings “*Alternative methods*”, and “*No possible alternatives*”. In his consideration of alternatives, Mr Anderson did not consider the primary alternative: targeted signals interception from bearers. Mr Anderson did consider “targeted interception” as an alternative (para. 5.24) but in the form of warrants served to communications service providers (or similar), to request their aid with the interception of a target. Understandably, GCHQ responded that the location of some targets would render the restriction to that approach unpractical. Whilst Mr Anderson referenced the submission of our evidence (e.g. at para. 5.28), he appears to have either misunderstood or deliberately omitted to consider targeted interception from bearers – the focus of our submission – as an alternative to bulk interception.
31. Even without considering this unparalleled alternative, Mr Anderson reports, “*GCHQ accepted that some of the results obtained through the use of bulk interception could have been achieved through requesting targeted data from CSPs in the UK and abroad*” though this could be “*less satisfactory*”¹⁶. He added, “*I am conscious that I have seen only a small sample of the SIAs’ work, and that one cannot conclude on the basis of such a sample that alternative methods of evidence-gathering would never be available or appropriate. There are circumstances in which they certainly would*”.¹⁷

¹⁵ *Report of the Bulk Powers Review* – David Anderson Q.C., 19 August 2016, see para. 5.54, p.91

¹⁶ *Ibid*, para. 5.33, p.86

¹⁷ *Ibid*, para. 5.41, p.88

Bulk acquisition

32. Mr Anderson assessed bulk acquisition of communications data in Chapter 6, opening with the subheading “*Claimed utility*”. Using the Agencies’ framework for assessment, and analysing a selection of case studies provided to the review team, Mr Anderson subsequently analyses the claimed usefulness of bulk acquisition. He concludes, “*Bulk acquisition has been demonstrated to be crucial in a variety of fields*”.¹⁸
33. Considering alternatives – but not targeted interception from bearers, which rapidly produces valuable communications data – Mr Anderson reported: “*The SIAs told the Review team that targeted alternatives (to bulk acquisition and other bulk powers) would often be more time-consuming and costly*”. He quoted a response from MI5: “*Where alternatives to bulk capabilities exist, it is difficult if not impossible to say precisely how much additional resource, cost and time would have been required to obtain similar intelligence*”.¹⁹ It is concerning that no such analysis has taken place, and that the review did not seek to gain further insight into the necessity of bulk powers and feasibility of the full range of alternatives. Mr Anderson resolved, “*I cannot reach any firm conclusions about the level of cost or amount of time involved in the use of alternatives*”.²⁰

Internet connection records

34. In Chapter 2, Mr Anderson confirms that the Review does not cover the whole range of bulk powers, as the “*fall outside the scope of this Review*”²¹ (i.e. they were not explicitly stated in the terms of reference). As such, he did not review the proposed new power to require the retention of “internet connection records”, as stated in paragraph 2.5(b).²²
35. In oral evidence to the Joint Committee on the Draft Investigatory Powers Bill, on 2nd December 2015, Mr Anderson said:

They (the Government) have done what I recommended and made out an operational case as to the respects in which the police would find that useful. Does that mean they are deliverable? Not necessarily. I am not seeking to express a view on this, because I do not have one and I am not competent to

¹⁸ Ibid, para. 6.47(a), p.102

¹⁹ Ibid, para. 6.31, p.99

²⁰ Ibid, para. 6.32, p.99

²¹ Ibid, para 2.5, p.21

²² Ibid, para 2.5(b), p.21

*have one, but there are some serious questions there. Another Committee, I know, is taking evidence on some of these questions. Would it be technically feasible to assemble precisely the types of data that they say are wanted? Would it be operationally worthwhile? My understanding is that, although no other western country currently seeks to deliver internet connection records there was an attempt to do something very similar in Denmark. This happened until June 2014, when the law was repealed. One of the stated reasons for that is that the police had not found it as useful as they had hoped.*²³

36. In oral evidence to the Public Bill Committee on the Investigatory Powers Bill, on 24th March 2016, Mr Anderson said:

*I last looked in detail at internet connection records almost a year ago now, and even an operational case had not been made. (...) I am afraid that I have not followed in the same technical detail as the Joint Committee on the Draft Investigatory Powers Bill and the Select Committee on Science and Technology the arguments on the extent to which they have been properly defined, the extent to which it will be feasible to produce these records or, indeed, how much it would cost. Therefore, I cannot, I am afraid, raise any alarms on that or give you any reassurance, save to say that these would appear to remain live issues.*²⁴

37. The Government published its “Operational case for the retention of internet connection records” on 1st March 2016. However, this has not been reviewed or tested and the case for necessity (as with the other bulk powers) has not been made.

38. Liberty recommends that provisions for ‘internet connection records’ are removed from the Bill. Not only has the Government failed to demonstrate the necessity of the power, it would be vastly disproportionate, undeliverable, potentially falsely incriminating, and have a devastating impact on freedom of expression and privacy online.

²³ Joint Committee on the Draft Investigatory Powers Bill: Oral Evidence; David Anderson QC (QQ 61-75), p.19. <http://www.parliament.uk/documents/joint-committees/draft-investigatory-powers-bill/oral-evidence-draft-investigatory-powers-committee.pdf>

²⁴ Public Bill Committee on the Investigatory Powers Bill: Oral Evidence, 24 March 2016, <http://www.publications.parliament.uk/pa/cm201516/cmpublic/investigatorypowers/160324/am/160324s01.htm>

Bulk equipment interference

39. Mr Anderson assessed bulk equipment interference (hacking) in Chapter 7, opening with the subheading “*Claimed utility*”. Using the Agencies’ framework for assessment, and analysing hypothetical case studies provided to the review team, Mr Anderson subsequently analyses the claimed usefulness of bulk hacking. He reports, “*I conclude that there could in the future be situations in which the availability of a bulk EI power will bring useful results not achievable by other means*”.²⁵ Plainly, “*useful*” is far removed from a test of necessity.
40. However, as the bulk EI provision has never been in legislation, the conclusion is based upon “*plausible indications of scenarios in which bulk EI could be needed*”.²⁶ Mr Anderson explains that the “*entire debate about its utility is thus focused on the SIAs’ assessment of future developments in technology, on extrapolation from the use made of other powers, and on hypothetical case studies*”.²⁷
41. Targeted EI is the obvious alternative to bulk hacking. However, in explaining why this would not be considered an appropriate alternative, Mr Anderson revealed an alarming feature of bulk EI provisions:

*Rather, the case for the inadequacy of targeted EI as a substitute for bulk EI is put on the basis of the trend towards the anonymisation of devices. This is said to mean that in future, GCHQ will increasingly need to conduct operations in which **it is not fully possible to assess the degree of intrusion, at the point of authorisation and approval, because it does not at that point have sufficient information about the equipment with which it will interfere, the data it will collect or the precise analysis that will be required.** This would rule out even thematic EI, which should be used only when it is possible to foresee the extent of the intrusion of the outset.*²⁸
(emphasis added).

In other words, the bulk hacking power is reserved for speculative, mass surveillance where it is impossible to assess how many people will be affected and how much data will be gathered.

²⁵ *Report of the Bulk Powers Review – David Anderson Q.C.*, 19 August 2016, see para. 7.22, p.107

²⁶ *Ibid*, para. 7.35, p.109

²⁷ *Ibid*, para. 7.1, p.103

²⁸ *Ibid*, para 7.17, p.106

42. This deeply concerning purpose of bulk hacking for suspicionless surveillance is further elucidated:

*Bulk EI is distinguished from targeted thematic EI not on the basis of its scope (...) but on the basis that there will be cases in which “the Secretary of State and the Judicial Commissioner is **not .. able to assess the necessity and proportionality** to a sufficient degree at the time of issuing the warrant” for example “where the purpose of the operation is **target discovery**”.*²⁹
(emphasis added)

43. It is not feasible that such a power could be lawful. Its very existence relies on the impossibility of assessing of the lawfulness of its use. Nevertheless, Mr Anderson’s report reveals that bulk hacking is viewed as the future of UK surveillance with internal GCHQ documents describing a desire for “CNE (computer network exploitation) *scaling*”; a clear legal basis for “*bulk CNE*”; and “*the **delivery of implants to devices not precisely identified** in advance, for the purpose of discovering targets*”³⁰ (emph. added).

44. The notion of bulk hacking raises multiple concerns for human rights and civil liberties, but also for the future of cybersecurity. Mr Anderson acknowledged that “*Serious allegations have been made about the potential of CNE to create security vulnerabilities or leave users vulnerable to damage*” but asserted “*It is not for me to determine the truth of such allegations*”.³¹

45. Liberty contends that bulk equipment interference is unlawful, and recommends that it is removed from the Investigatory Powers Bill.

²⁹ Ibid, para 7.3, pp.103-104

³⁰ Ibid, para. 7.29, p.108

³¹ Ibid, para. 7.26, p.108

Bulk personal datasets

46. Mr Anderson assessed bulk personal datasets (BPDs) in Chapter 8, opening with the subheading “*Claimed utility*”. Using the Agencies’ framework for assessment, and analysing case studies provided to the review team, Mr Anderson subsequently analyses the claimed usefulness of BPDs. He reported, “*I have no hesitation in concluding that BPDs are of great utility to the SIAs*”.³²

47. However, considering alternative methods, Mr Anderson concludes, “*It will often be possible, in a given instance, to identify an alternative technique that could have been used. However many such alternatives would be slower, less comprehensive or more intrusive*”.³³

48. The case studies reviewed by Mr Anderson “*demonstrated the use of BPDs as a swift and efficient method of identifying potential MI6 agents (A11/1,4), hostile state actors (A11/2-3), and potential terrorists (A11/5-15)*”.³⁴ We have serious concerns about such a broad, intrusive surveillance power being justified for recruitment purposes – “*identifying potential MI6 agents*”.

49. MI6 was particularly candid about the ‘necessity’ of BPDs:

*MI6, a principal user of BPDs, does not assert that it could not carry out its work without them. Managers explained to the Review team that MI6 has recruited agents for many years, and would always find ways to do so.*³⁵

50. Liberty is concerned about the unproven necessity of BPDs, particularly given that the SIAs would like this bulk power to feature in the UK’s future policing and surveillance. Mr Anderson reported:

*The use to which bulk data can be put is in the course of rapid evolution. MI5 recognised in July 2015 that the development of new technologies and data types, including machine learning and **predictive analytics**, offered “additional promise” in this field.*³⁶ (emph. added)

³² Ibid, para. 8.33, p.117

³³ Ibid, para. 8.35, p.117

³⁴ Ibid, para. 8.13, p.113

³⁵ Ibid, para. 8.15, p.113

³⁶ Ibid, para. 8.37, p.118

Conclusion & recommendations

51. Liberty concludes that:

- I. David Anderson did not assess the necessity or proportionality of the bulk powers, but rather the 'utility' according to the security and intelligence agencies' terms. The important question of the necessity of bulk powers remains outstanding.
- II. The question of proportionality, and overall desirability of mass surveillance powers in a democracy, remains for Parliament to consider.
- III. No operational case for 'internet connection records' has been elaborated, and no case has been made as to their necessity. This new power should be removed from the Bill.
- IV. The cases made in favour of bulk equipment interference (mass hacking) as the future of state security, and the use of big data (bulk personal datasets) in policing and intelligence, are deeply disturbing, in conflict with fundamental human rights principles, and highly likely to be unlawful.
- V. The short time-frame allowed for the review rendered it an unduly challenging task and prevented the possibility of independent experts receiving security clearance and being appointed to the Review.

52. Liberty recommends that:

- An independent review should be commissioned to assess the strict *necessity* of the bulk powers, with a fully evidenced consideration of alternative existing and innovative methods. In particular, we would recommend that the option of targeted interception from bearers is given full, independent examination (see our submission to David Anderson for further analysis).³⁷
- Parliament should carefully assess the proportionality of bulk powers, and whether such mass surveillance powers are desirable in a democracy.
- Proposals for 'internet connection records' must be immediately rejected, particularly in absence of any operational case in the *Bulk Powers Review*.

³⁷ Liberty's submission to the Terrorism Reviewer's Review of Bulk Powers, August 2016: <https://www.liberty-human-rights.org.uk/sites/default/files/campaigns/resources/Liberty%27s%20submission%20to%20the%20Terrorism%20Reviewer%27s%20Review%20of%20Bulk%20Powers.pdf>

- Parliament should thoroughly consider the dual question of the necessity and proportionality of bulk powers before considering the appropriateness of bulk powers in legislation.