

# Review of Complex Consular Cases

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1. The Foreign Secretary asked me to look into the policy and handling of complex Consular cases, with particular reference to

- a) the way in which the Foreign and Commonwealth Office balances the needs of the individual consular customer and the broader bilateral relationship; and
- b) The steps taken to keep families informed of its actions to support their relatives, while protecting sensitive information.

2. In addition, the Foreign Secretary asked me to examine whether there were cultural issues which affected the handling of these two areas or processes which hampered effective communication with the families affected and if so, to put forward practical recommendations for improvement.

3. I was asked to carry out this review as a former Head of Mission in the Diplomatic Service but with no specific consular policy background or current link to the FCO. My review was focused on general policy prescriptions- not on the detail of specific cases. As agreed, whether and how these policy recommendations are taken forward is a matter for FCO officials and Ministers.

4. My findings are set out in paras 8-20 of the text and my recommendations are outlined in paragraphs 20-21 below.

## Scope of the Review

5. Over a period of some four weeks, I was given access to internal and external Consular guidance, and to papers on a small number of past and ongoing complex cases. I met the families involved in these cases, all of whom were willing for me to look at their cases and speak to them about their experiences. I also spoke to members of Consular Directorate, Consular Regional Directors, Heads of Teams dealing with the range of consular cases, and a number of casework leads for recent complex cases. I consulted the FCO's Multilateral Policy Director, Geographical Directors and Heads of Mission involved in some of the cases, Geographical Department leads for specific cases, FCO Press Leads for Consular and Middle East Affairs, the Head of the Diplomatic Academy, Legal Advisers and Private Office, plus Minister Baldwin and Mr Burt and Special Advisers

## Definitions

6. The FCO In 2017/18 responded to 22,000 new consular cases and supported a further 10,000 from previous years: including some 5,000 who were detained or imprisoned and 25 who were kidnapped. The range of issues and geographical spread is extremely broad. My particular focus was on recent

cases of high complexity, requiring significant political engagement to move forward: where British citizens had been detained for unclear reasons and where there were failures in the subsequent legal process. They were also cases where consular access by our staff had been withheld or delayed by the other State on various grounds, including that of dual nationality.

7. Some of the families I met had worked with MPs and NGOs (Redress, Amnesty International and Reprieve) generating considerable public, parliamentary and social media interest in their cases. Others were extremely wary of drawing public attention to their problems and concerned for possible fall out on their own cases of forward leaning government action for others. Despite their common elements, each case was highly individual - happening in different political circumstances, within particular bilateral relationships and with varying views from family members on how they should be resolved.

## Findings

8. In the complex cases I reviewed,

- **The FCO placed the interests and the welfare of the individual at the heart of its policy and practice.**
- **I found no evidence of a systematic attempt to protect the bilateral relationship at the expense of the individual, although political teams were mindful of the impact, and more importantly, the effectiveness of any course of action with host countries.**
- **The dedication, resilience and commitment of the consular teams handling such difficult and demanding cases, especially in working with the families, was impressive.**
- **Successive changes had streamlined the handling of consular cases to ensure a more consistent and capable 24/7 response but Consular Directorate were consciously challenging and seeking to improve their assistance to UK citizens.**

9. Despite this generally good bill of health, in my conversations with staff and families, there were areas where people thought improvements could be made, especially:

- **in the recognition, speed and initial handling of such cases across consular teams worldwide;**
- **in generating the fullest cross FCO and cross HMG response to managing and resolving such cases;**
- **in developing a better relationship of trust and shared interests with the families involved and**
- **in publicly recognising that the FCO is a concerned, compassionate champion of UK citizens in difficulty: consistent with its wider espousal of the rule of law and protection of human rights.**

## Recognition and escalation

10. Despite the high profile of this work, many people felt **the FCO as a whole did not seize quickly enough the political sensitivity of these complex cases and escalate accordingly.** For Posts, this could reflect the difficulty in many countries of establishing the circumstances of an arrest or disappearance,

plus the lack of access to the responsible authorities. But other factors such as: the level of wider political experience in often quite junior consular teams, the degree of coordination and communication between political and consular teams in missions and the accessibility and active involvement of the Head of Mission were cited as important and in practice, variable.

11. There was also concern whether **consular teams always had sufficient access to and knowledge** of the criminal law systems in place in their host countries, including evaluations of the human rights situation in that country and possible UK sponsored rule of law programmes led by other parts of the mission.

12. **In London**, there was a feeling that the sheer volume of cases, regular staff turnover and the largely junior case handling teams meant there was **a need for more active ongoing training, monitoring and quality control than resource currently permitted to** ensure staff were better able to recognise and escalate potentially sensitive issues at an early stage.

### One FCO Handling

13. A second area of enquiry was whether - once a complex case had been established - **the FCO moved quickly enough across all the departments involved to establish the widest range of options and a plan of actions/escalations, alongside a clear communications and family engagement strategy.** In part, this reflected a wish to handle all consular requests consistently, to assist in accordance with public guidance (including in respect of policy towards dual nationals) and to focus attention on helping the individuals detained pursue due legal process. **The question posed was whether in the small number of cases that would involve significant political attention, it would be better to recognise that these were “not normal cases” and flex the approach accordingly and at an earlier stage.**

14. The question was also raised about when and **how Ministers should be informed and involved in complex consular assistance cases**, with the feeling that this could be more systematised: in terms of the nature of cases to be raised at their level and the division of activity between Ministers. It was felt that the current practice of **systematic UK intervention** in cases where capital punishment was involved, could serve as a model for cases where there was a significant risk of either torture/mistreatment or a failure of due process when assessed against international human rights norms.

15. An important subset of this was a **concern that political and consular teams were not joined up in ensuring cases were included in briefing for Ministers for international trips or political talks- or were given insufficient priority in such fora.** Lobbying of Foreign Ministers could be less effective **if not part of a more concerted strategy to reach out to wider government or political parties.** Language and the specific requests used in such lobbying were also extremely important, in either a private or a wider setting, and needed careful consideration, taking account of the local political situation and specific legal process being pursued.

## Working with Families

16. Linked to this was the question of **the FCO's relationship with and help to the families involved**. The majority of the families to whom I spoke were clear in their appreciation for the FCO's support and empathy. They respected the political expertise and country understanding held in the organization and were grateful for the efforts made to improve conditions for their relatives, although there was a feeling that the objectives of HMG and those of the families could at times differ. Against that background, there was a common wish:

a) **to be brought in more closely** on the strategy being taken to resolve their cases - as partners rather than as 'receivers' - using their insights and links with the countries in question more proactively. There was a shared belief - albeit with different levels of acceptance- that the FCO was overly sparing with what was revealed to them and when, which had undermined their trust in the FCO.

b) **to have more proactive communication from and with** the FCO - with more support especially at the beginning when their shock, lack of understanding and general vulnerability were most acute. But as the cases wore on, there was equally a feeling of isolation and a lack of understanding of what the Government's actions were designed to achieve or were in effect securing: including a lack of clarity of what HMG's legal duty of non-interference in the domestic affairs of other states (which extends to its representatives on the ground) meant in practice.

c) to have a clearer sense that **the FCO recognised the legal shortcomings** of the countries concerned and was more willing **privately or publicly** to express this- in line with the UK's general championship of human rights more widely.

d) that the FCO could be more flexible and more creative in handling their cases: not automatically rejecting wider actions lest they should set a precedent but **looking at cases individually and pragmatically**- and defending new actions as such.

e) **that the FCO could move from seeking to "manage and contain" complex cases and set out clearer plans to resolve them**- with a challenge from some that it often did not act unless or until public pressures forced its hand.

## Public Presentation

17. The **families** recognized that **'going public' was an area where their views often did and could differ from the FCO**. There was no consensus on what was the right course of action - with a strong plea by some against a blanket approach or actions on one case that could reverberate badly for others. But there was some challenge also that the FCO could appear too conservative in its approach on what constituted interference in other countries' affairs, and through caution risked being perceived as being at variance with its declared support for the rule of law and protection of fundamental freedoms. **Amongst FCO staff, there was a feeling the FCO could brief more actively and less defensively off line or through other advocates, on the considerable work being done to assist prisoners in detention, and across the consular reach. Staff believed the FCO should also look more actively at correcting errors**

**of fact, even if these came from briefing by families.** There were suggestions that the FCO should use more MPs, Church Leaders and members of the House of Lords as lobbyists and/or Special Envoys where access was difficult.

## Information Sharing

18. The **constraints on sharing information with relatives** were raised by some staff and families as a difficulty at a stressful moment. I was assured that the FCO keeps its data protection policy under review in terms of its responsibilities under GDPR, including how staff can act pragmatically to secure authorisation to share data quickly and appropriately. This can be more problematic where Consular teams cannot secure consular access or where permission to share (including within the same family) is not given. But the FCO has a duty to be compliant with the legislation and makes this -and the need to secure one point of contact with families-very clear in its public guidance.

19. Similarly there are constraints on the extent to which the FCO can-or should- share information relating to national security and international relations, including the content of diplomatic representations. **While there may continue to be sound reasons, including legal constraints, for not sharing information, it was clear that this can contribute to frustration and a lack of trust if not explained carefully and sensitively and where possible, as decisions are made.**

## Consistency and Discretion

20. **Consular Directorate has been considering ideas for moving to expand the areas of consular assistance where the FCO could inject more time and energy – building on its focus on the most vulnerable UK citizens.** This could include cases where there was a significant risk of torture/mistreatment or a failure of due process against international human rights norms. I understand there has also been pressure from NGOs for HMG to bind itself more clearly to undertake intervening in all cases where it judged the human rights of a British national were being seriously infringed. Amongst most staff and families to whom I spoke, I found support for retaining discretion on how and when to intervene on particular cases, alongside maintaining the greatest flexibility on options with attentiveness to the welfare of the individual. But equally there was a recognition that the public challenge would continue and grow.

## Recommendations

21. Against this background, I have the following suggestions for consideration. Many of these build on the work already being undertaken in Consular Directorate.

## FCO Recognition and Escalation

i) **For Heads of Mission.** The FCO should train all HoMs so that they see preparation for and handling of complex cases as being on a par with their Crisis Management responsibilities and other areas of work where the active and visible leadership of the HOM is mandatory. All HOMs should seek to know the Attorney General or equivalent in their host country, as well as others who could potentially be influential in handling or resolving judicial cases involving UK citizens. They should further ensure that:

a) Their **Consular staff** are confident in informing HOMs or DHMs promptly of pending cases of increased sensitivity. In countries where complex cases are more likely to arise- this risk should be recognised and mitigated.

b) that their **Mission as a whole is able to pool** its knowledge on general criminal law procedures and process applicable in their host countries, together with evaluations of the human rights situation and stated commitment to international norms: with the objective of ensuring that consular actions can be better informed by and supported by this information. **Action: Consular Directorate with the Diplomatic Academy, Legal Advisers, Honorary Legal Advisers and HRDD.**

ii) **For Consular Teams.** Training of staff on better recognition and understanding of complex cases should continue, especially in countries of greater risk. Renewed attempts should be made to devise more effective guidance to staff on when and how to escalate cases with the support of senior staff at Post. (Previous projects found difficulty in securing consistency across posts and awareness of what constituted “complex”: consideration should be given to greater use of case studies and good practice, as well as drawing on the wider knowledge in Post political teams.) **Action: Consular Directorate.**

iii) **For All Staff.** The FCO should ensure its internal narrative underlines clearly to its staff the importance of consular work, especially giving due priority to cases of extreme complexity and the interconnection with its rule of law/human rights promotion. This should recognise that the likelihood of incidents involving UK dual nationals (who are primarily and strongly attached to the UK) is likely to increase in the future and that in a post Brexit world, the FCO should seek a wider lobbying strategy, ensuring Ministerial interventions are as targeted, informed and effective as possible. This should include a short mandatory **course for all staff on Consular Work in the 21st Century, with refreshers as required.** **Action: Diplomatic Academy and Communications Directorate.**

## Task Force Approach

iv) Once complex cases are escalated to London and to different specialist teams, there should be a further check and early move to handle the most sensitive cases through a Task Force approach, led by the geographical directorate, bringing in as required relevant OGDs and UK interests. The Task Force should establish a plan of action: including case objectives, a timetable for Ministerial escalation, a tailored strategy for family engagement, and communications together with an analysis of all potential levers for action -with the recognition and challenge that these could be different from that for other similar cases, in different countries - and defended as such. Good practice already exists in the Middle

East and North Africa Directorate, this should be used as a template for action with other geographical directorates as required. **Action: Consular Directorate to with relevant Geographical Directorate.**

### Ministerial Involvement

v) **A prime action of the Task Force should be to determine what Ministerial involvement is required and within which timescale.** The current policy of gradual escalation of lobbying from senior officials through junior Ministers to the Foreign Secretary should continue- not least as cases may be prolonged and immediate escalation may not be the most effective course of action. But I recommend that **Ministers are kept informed of all pending complex cases: with the expectation that cases where there is a significant risk of torture/mistreatment or a failure of due process when assessed against international human rights norms, will be raised urgently and at the most senior levels.** Ideally, there should be **regular scheduled meetings** between Ministers and Consular leads to alert and brief Ministers for possible action. **Action: Consular Directorate with Geographical Directors and Private Offices.**

### Families and Building Trust

vi) **Restyle the FCO's approach to families in Complex Cases and appoint a Senior Officer for Family Engagement to work with and support teams to oversee the following:**

- Flex resource to ensure staff can reach out and support families more during the first few weeks of the detention or disappearance.
- Be more proactive in the engagement with families: e.g by reducing the number of casework handovers to the minimum, monitoring reactions and calling more frequently with updates passed as soon as this is possible.
- Seek to instil a greater sense of partnership: with the aim of sharing as much information as possible and in real time; explaining clearly and carefully when this was not possible and why: especially to clarify the difference between **non-interference** and **permissible interventions**. Ensure that records of meetings at which families are present are shared with them, so that misunderstandings or differences over interpretation are avoided.
- Be pragmatic about helping families more proactively where local circumstances are especially difficult- with finding legal assistance, understanding cultural differences or being put in contact with sources of counselling, and working with relevant NGOs, including Prisoners Abroad.
- Factor in proactively the families' need to meet periodically with senior FCO staff: Ambassadors, Directors and Ministers as requested or as the Task Force plan suggests: with careful briefing to ensure continuity of the dialogue with families.
- Change 'Family Handling' in FCO working parlance to 'Family Engagement' and avoid standardised phraseology: 'We are doing all we can.'....

## Action: Consular Directorate

### Public Presentation

vii). Consideration to be given to devising a new communication and soft power strategy to set out more openly the FCO's work on consular cases : building on recent interest in its forced marriage work, so that the work undertaken to support families can be seen more readily by the public and the FCO's role in supporting British nationals understood better. Invite families, case workers, and staff on the ground to be part of a media strategy to explain the challenges and the problems that can affect UK nationals travelling and living overseas in the 21<sup>st</sup> Century. Linking this in with the ongoing soft power work for the Global UK Campaign. **Action: Communications and Consular Directorates.**

### Measurement and Comparison

vii). Every case is different but collectively they will continue to grow and there are common elements. **Obtaining and systematising more and clearer data on what worked well to handle or resolve a difficult case in different countries would be useful- however demanding to determine.** In countries of especial difficulty: building on lessons learnt and engagement with friendly countries could yield useful insights. **Action: Consular Directorate with Posts/ Directorates/Research Analysts for Selected Countries.**

### Lessons Learnt

viii) **Strengthen the current practice of reviewing complex cases to improve handling.** But set a clearer template for such reviews, involving the widest participation and with a built in challenge mechanism. Ensure the case timeline captures all activity and information sharing. Set fixed deadlines for review of implementation of action and learning points. Invite the families involved to feed into this process on a regular basis. **Action: Consular Directorate**

### Resource Implications

22. My recommendations are focused on improving the speed, quality and impact of the FCO's complex case handling. **This has resource implications:** particularly in respect of the increase in staff time involved, through to potential increases in grading and capability of the teams handling Consular Assistance in London and overseas, plus the ability of wider geographical teams to flex resource to meet the demands of these high profile cases. **I do not think the change in performance, consistency and impact that these recommendations are aimed to achieve can be done without sufficient extra resource.** This should be factored into the wider strategic review of the Consular Network, now underway and the preparations for the next Spending Review.



## Conclusion

23. It would be unrealistic to suggest that there is a single measure or set of actions which can resolve all complex cases more readily and with complete approbation from all parties. **They are tough to handle for all those involved and will remain so.** But the FCO could sharpen its awareness, systematise and strengthen its handling, and seek to develop a more confident stance with families and the public. Implicit in these recommendations is the need for flexibility of action: balancing the need for quiet, patient diplomacy alongside a willingness to embrace public action where advantageous, balancing fairness and consistency with more proactive help when normal consular practice is politically or humanly unrealistic.

24. Overall the recommendations should enable the FCO to show more clearly that its espousal of the rule of law and defence of universal values fully encompasses its policy to British nationals in distress. Implementing the recommendations will require some additional resource and focus. But the need for change is a reality already upon the FCO: I consider that taking the front foot and driving improvement as the organization moves beyond Brexit into its wider foreign policy definition and explanation, is timely and makes sense.

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