

## **The Real Consensus Extension Beyond 28 Days: Unnecessary and Counter-productive**

“I like very many other people have not been convinced by the case for increasing the period. ... I would prefer, myself, to allow them to be charged and if, after they are charged, so that they know what they are facing, they are still subject to questioning - albeit in custody.”

**Lord Woolf, Former Lord Chief Justice<sup>1</sup>**

“Nothing has changed since [2005] to justify a further increase. It is common ground that the police have not needed more than 28 days in any case so far. It is common ground that it is only on “rare occasions”—the Government’s words, not mine—that the police will need to go beyond 14 days; 28 days is not the norm. Why, then, are we being asked to consider another increase so soon? It can only be counterproductive...It will only alienate still further those whose allegiance we ought to be seeking to secure by whatever means we can, if we are ever to see an end to terrorism.”

**Lord Lloyd, Former Lord Justice of Appeal<sup>2</sup>**

“I have not seen anything that convinces me that longer than 28 days is needed to stop people such as...Mohammed Sidique Khan...detonating his bombs in the future...it’s fundamentally important to us as a country that we do not hold people without them knowing what they’re being charged with and why”.

**Rachel North, Survivor of 7/7 Bombs in London<sup>3</sup>**

“I understand that terrorism cases are complex, but I also understand that busting international drug rings is a complex matter which may involve caches of evidence on computer, people speaking different languages that need translators, huge resources, private mercenaries, people scattered across the globe, and these people are held for four days before being charged, but I have not seen any evidence that convinces me that terrorism is so very different from organised crime that it requires an entirely different constitutional approach.”

**Rachel North, Survivor of 7/7 Bombs in London<sup>4</sup>**

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<sup>1</sup> Former Lord Chief Justice speaking on BBC Radio 4’s Today Programme, 23 November 2007

<sup>2</sup> Debate in the Lords, 12 November 2007, Lords *Hansard*, Columns 264-265

<sup>3</sup> Survivor of the 7/7 terrorist attack giving evidence to the Home Affairs Select Committee, 13 November 2007

<sup>4</sup> Ibid

“We have no evidence to support that we need beyond 28 days. We certainly have not needed it in any case up until now.”

**Sue Hemming, Head of Counter-Terrorism, Crown Prosecution Service**<sup>5</sup>

“The most I can say is that it is a matter of record that we have not asked for an increase. We are satisfied with the position as it stands at the moment.”

**Sir Ken MacDonald, Director of Public Prosecutions**<sup>6</sup>

“It seems to us that 28 days has been effective and has provided us with powers, if you like, supervised by the courts, which have been useful to us as prosecutors in making appropriate charging decisions within that period. We are, on the basis of what has occurred since then, satisfied with 28 days. We have not had any cases which would require a longer period than that”

**Sir Ken MacDonald, Director of Public Prosecutions**<sup>7</sup>

“I did not see any evidence during my time to indicate that longer than 28 days was necessary...If the 90-day proposal had come from the Commons unamended, I would have not found it possible to vote for it in the Lords and that would have had an obvious consequence in terms of my position within government.”

**Lord Goldsmith, Former Attorney General**<sup>8</sup>

“I have a concern that, if one appears to send out a message, even though it is not the message that is intended, that actually we are a society that is prepared to lock people up for a significant period of time without charge and then release them after what would be the equivalent of a reasonable sentence, that will actually damage [the struggle to win hearts and minds].”

**Lord Goldsmith, Former Attorney General**<sup>9</sup>

“Falconer has privately advised the chairman of the home affairs select committee, Keith Vaz, that he believes the government could only extend detention beyond 28 days if there had been a major incident ‘which so increases the threat that the safety of the nation required its extension’. Leaked emails show Falconer stating that the extension should be triggered only ‘if the major incident made it impossible for the police and Crown Prosecution Service to deal with the number of cases with which they are confronted within the 28-day period’.”

**Lord Falconer, Former Lord Chancellor (reported in *the Guardian*)**<sup>10</sup>

“If we now go back and make it look like we are going to challenge yet again the point of 28 days that we have reached, I fear that it will play into the hands of the propagandists, who will encourage young men and women – to all other intents and purposes, they are good people – to be misguided, brainwashed and induced into acts of martyrdom.”

**Lord Paul Condon, former Metropolitan Police Commissioner**<sup>11</sup>

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<sup>5</sup> Evidence to the Joint Committee on Human Rights, Wednesday 5 December 2007

<sup>6</sup> Director of Public Prosecutions giving Evidence to the Commons Home Affairs Committee, 21 November 2007

<sup>7</sup> Ibid

<sup>8</sup> Former Attorney General giving evidence to the Commons Home Affairs Committee, 21 November 2007

<sup>9</sup> Ibid

<sup>10</sup> Reported in *The Guardian*, “Former lord chancellor joins critics of detention beyond 28 days”, 13 December 2007

"We do not accept the need to extend detention without charge, based either on the evidence of operations to date or the most horrendous hypothetical scenarios dreamt up by ministers."

**David Davis, Shadow Home Secretary<sup>12</sup>**

"Neither the Director of Public Prosecutions nor the last Attorney-General have seen the evidence to go beyond 28 days. Terrorism will be defeated by good intelligence, professional policing and the rigorous application of justice, not by incursions into the freedoms and rights that British subjects have had for centuries."

**David Davis, Shadow Home Secretary<sup>13</sup>**

"On the issue of all-party consensus, there is already substantial consensus that we should not proceed beyond the present 28 days. That consensus embraces both Houses of Parliament, the Home Affairs Committee, the Joint Committee on Human Rights and many bodies outside."

**Dr Vincent Cable, Liberal Democrat Treasury Spokesman<sup>14</sup>**

"Lord Goldsmith has blown the government's cover. When their most senior law officer for much of the last 10 years says he is unpersuaded by the case to extend detention without charge then the hollowness of the government's case is there for all to see."

**Nick Clegg, Liberal Democrat Leader<sup>15</sup>**

"In the discussions which have been held in private between the Opposition parties and the Government and the debates which have been held in public on the floor of the House, no new evidence has been presented or marshalled to suggest that a material change in the law is necessary."

**Nick Clegg, Liberal Democrat Leader<sup>16</sup>**

"On the one hand to say this is a new chapter of British liberty, but he wants even longer to bang people up without charge or a trial. Totally muddled, totally incoherent. We have always said unless they can produce new evidence about why we should go further than 28 days we don't see the justification."

**David Cameron, Conservative Leader<sup>17</sup>**

"There has been no case to date where detention of a terrorist suspect without charge beyond 28 days has been necessary. 28 days is at the upper limit of what is acceptable...Going to 58 or 58 days is likely to make the Muslim community think twice about providing vital information to the police if they fear that information will be misused with the risk that potentially innocent people will be detained for long periods".

**Brian Paddick, Liberal Democrat London Mayoral Candidate and Former Police Chief<sup>18</sup>**

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<sup>11</sup> Former Metropolitan Police Commissioner, December 2005, *Hansard* House of Lords Debate, 13 December 2005, Column 1175.

<sup>12</sup> Shadow Home Secretary, House of Commons Debate, 7 November 2007

<sup>13</sup> *Ibid*

<sup>14</sup> Then Acting Leader of the Liberal Democrats during a House of Commons Debate on the Prime Minister's Statement on National Security, 4 November 2007

<sup>15</sup> Then Liberal Democrat Shadow Home Secretary giving evidence to the Commons Home Affairs Committee, 13 November 2007

<sup>16</sup> *Ibid*

<sup>17</sup> Leader of the Conservative Party speaking on Sunday Live on 28 October 2007

“The Government has admitted there is no evidence that more time is needed. As the UK already holds terrorist suspects far longer than any comparative country I cannot see any justification for a longer period of detention. I also fear any move to extend might prove divisive and undermine relationships between Londoners. I certainly would not wish anyone with information for the police to hesitate as a consequence of knowing that an innocent person might be detained for long periods.

**Boris Johnson MP, Conservative London Mayoral Candidate**<sup>19</sup>

“I do not believe that a convincing case has been made for an extension of detention without charge for terrorist suspects, particularly as there has to date been no instance where the existing period of 28 days detention has been fully used. I am fully aware of the nature and extent of the terrorist threat facing London and other UK cities but I feel this particular proposal could worsen that threat by undermining the community support that is essential for effective, intelligence-led anti-terrorist policing.”

**Ken Livingstone, Mayor of London**<sup>20</sup>

“it seems to the Committee that, on one of the Government’s most important proposals, to extend the period of pre-charge detention beyond 28 days, there is a clear national consensus that the case for further change has not been made by the Government ... In the Committee’s view a truly consensual approach should lead the Government to accept that it has failed to build the necessary national consensus for this very significant interference with the right to liberty and withdraw the proposal, to proceed with it as detailed by the Home Office calls into question the Government’s commitment to a consensual approach and raises questions of compatibility with human rights.”

**Parliamentary Joint Committee on Human Rights**<sup>21</sup>

“Neither the police nor the Government have made a convincing case for the need to extend the 28-day limit on pre-charge detention. We consider that there should be clearer evidence of need before civil liberties are further eroded, not least because without such evidence it would be difficult to persuade the communities principally affected that the new powers would be used only to facilitate evidence gathering and not as a form of internment.”

**Parliamentary Home Affairs Select Committee**<sup>22</sup>

“We do not have a case that has required us to go beyond 28 days”

**Sir Ian Blair, Met Chief Constable**<sup>23</sup>

“In terms of the impact on the Muslim community, it certainly will not ease it; it will not ease the feelings of the Muslim communities”

**Sir Ian Blair, Met Chief Constable**<sup>24</sup>

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<sup>18</sup> Liberal Democrat London Mayoral Candidate in a letter to Shami Chakrabarti, Director of Liberty, 22 November 2007

<sup>19</sup> Conservative London Mayoral Candidate in a letter to Shami Chakrabarti, Director of Liberty, 27 November 2007

<sup>20</sup> London Mayor in a letter to Shami Chakrabarti, Director of Liberty, 30 November 2007

<sup>21</sup> Second Report of 2007/08, “Counter-Terrorism Policy and Human Rights: 42 Days”, 14 December 2007, Summary

<sup>22</sup> First Report of 2007/08, “The Government’s Counter-Terrorism Proposals”, 13 December 2007, para 70

<sup>23</sup> The Commissioner of the Metropolitan Police giving evidence to the Home Affairs Select Committee, 9 October 2007

<sup>24</sup> Ibid

"I accept that there has not been a circumstance in which it has been necessary up to this point to go beyond 28 days, and I think everybody has been very open about that."  
**Jacqui Smith, Home Secretary**<sup>25</sup>

"Of course, it is possible that anybody who is detained for any reason who is then released without charge will have some sort of potential ill will towards the authorities that detained them. Of course, that is obviously going to be the case"  
**Jacqui Smith, Home Secretary**<sup>26</sup>

"I accept that what we are proposing to do does raise fundamental issues about people's liberty and the way in which our system responds to that"  
**Jacqui Smith, Home Secretary**<sup>27</sup>

"I want to have absolute evidence that we actually need longer than 28 days...I want to be totally convinced because I am not going to go and push for something that actually affects the liberty of the individual unless there is a real necessity for it... I still need to be fully convinced that we absolutely need more than 28 days and I also need to be convinced what is the best way of doing that".  
**Admiral Lord West of Spithead, Gordon Brown's Advisor on Security**<sup>28</sup>

"Even the most stupid of us would like to see a bit of evidence."  
**Gwyneth Dunwoody MP**<sup>29</sup>

"There's no evidence that more than 28 days is needed by police and the security services. All the key people are all quite satisfied with 28 days and that's where we should stick."  
**Peter Kilfoyle MP**<sup>30</sup>

"In my time the number of days has gone from three to seven and 14 to 28 and I think that's quite enough."  
**Chris Mullin MP**<sup>31</sup>

"The Government's position seems to me absolutely illogical. It's not more time that is needed, it is more efficiency."  
**Glenda Jackson MP**<sup>32</sup>

"We are eroding the liberties we hold so dear and that is what the terrorists want and we must resist that at all costs."  
**Fabian Hamilton MP**<sup>33</sup>

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<sup>25</sup> The Home Secretary giving evidence to the Home Affairs select Committee on 22 October 2007

<sup>26</sup> Ibid

<sup>27</sup> Ibid

<sup>28</sup> The Government's Security Minister on BBC 4's Today Programme as reported in *The Telegraph*, Wednesday 14 November 2007

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/11/14/nterror314.xml>

<sup>29</sup> Quoted in *The Independent* – 'Labour Revolts Against Brown', 27 December 2007 -

<http://www.independent.co.uk/news/uk/politics/labour-revolts-against-brown-766856.html>

<sup>30</sup> Ibid

<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> Ibid

"[The proposals are] crap...This could be part of a catalogue of self inflicted wounds by the Government."

**Alan Simpson MP<sup>34</sup>**

A ComRes poll of MPs found that:

- 61% of MPs oppose or strongly oppose increasing pre-charge detention
- 40% of Labour MPs oppose or strongly oppose increasing pre-charge detention
- 57% of MPs agreed or strongly agreed that any extension beyond 28 days would provide religious extremists with a propaganda coup
- 62% of MPs disagreed or strongly disagreed that extending pre-charge detention beyond 28 days would help tackle the threat of terrorism
- 63% of MPs agreed or strongly agreed that extending pre-charge detention would damage the UK's international reputation on human rights

**ComRes Poll on Behalf of Liberty<sup>35</sup>**

"That this Synod, mindful both of the Christian teaching that enforcement of law should be just in process and outcome, and of the challenge that the advent of suicide attacks poses for the general public and for those who bear responsibility for protecting the public from terrorism:

- (a) emphasise the importance of society maintaining a careful balance between the liberty of the individual and the needs of national security;
- (b) express grave concern that an extension to the current 28-day maximum period for detention without charge of terrorist suspects would, in the absence of the most compelling arguments, disturb the balance unacceptably;
- (c) while welcoming the release of most UK prisoners from Guantanamo Bay, deplore the continued holding of prisoners there without charge or due process and encourage Her Majesty's Government to continue to use all available means to press the United States administration to close the Guantanamo Bay facility and restore the full application of the rule of law; and
- (d) affirm the desirability of an early review by the Government of the restrictions and other obligations that may be imposed on individuals under the Prevention of Terrorism Act 2005 and the use of undisclosed material in control order proceedings"

**General Synod of the Church of England,  
passed by 235 votes in favour to 2 against<sup>36</sup>**

The Home Office consultation on extending pre-charge detention found that:

- The majority of respondents opposed legislating to extend pre-charge detention
- The majority of respondents supported Liberty's alternative – using existing powers in the Civil Contingencies Act in a genuine emergency

**Home Office Consultation Response<sup>37</sup>**

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<sup>34</sup> Ibid

<sup>35</sup> Conducted in November 2007

<sup>36</sup> General Synod, February 2008 Group of Sessions, 14 February 2008

A Compass survey of 800 Labour members and supporters found that:

- 40% favour the current 28 day limit and a further 45% want a return to the pre-2005 limit of 14 days. Only 9% support Government plans for 42 day detention
- 60% do not believe that the Government's proposed 'safeguards' make the proposals more acceptable
- 76% would support the use of intercept evidence in court and 69% would support post-charge questioning – two alternatives that Liberty has suggested instead of extending pre-charge detention
- 52% think that the current Counter-Terrorism Bill will *increase* the chances of a further terrorist attack in the UK. Only 9% said they thought the Bill would make an attack less likely.

**Compass Poll<sup>38</sup>**

A ComRes Poll of Muslim men found that:

- 89% agreed or strongly agreed that religious extremists would be provided with a propaganda coup if pre-charge detention was extended to 42 days
- 87% agreed or strongly agreed that any extension beyond the current 28 days would further damage community and police relations
- Only 9% thought that the extension of pre-charge detention to 42 days would help tackle terrorism

**ComRes Poll on behalf of Liberty<sup>39</sup>**

“The best way to combat terrorism is by maintaining and strengthening the freedoms that terrorism seeks to destroy. The protection of those freedoms will not be advanced by increasing the period in which terrorism suspects can be held without charge.”

**Archbishop Desmond Tutu, Nobel Peace Prize Winner<sup>40</sup>**

“There is a dangerous precedent to the UK government's attempt to increase the period for which terror suspects may be detained without charge. I am reminded of the course of events in apartheid South Africa which started with house arrest without charge, continued with 90 day detention without charge, then 180 days detention without charge, and finally, under the so-called Terrorism Act, indefinite detention without charge. I support your campaign.”

**Helen Suzman, anti-apartheid activist  
and South African politician<sup>41</sup>**

“In my country, Burma, many people are detained for months or even years without a chance to appear in court. I do not want to see that happen in Britain.”

**Htein Lin, artist and former political prisoner, Burma<sup>42</sup>**

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<sup>37</sup> Home Office - *Summary of Responses to the Counter-Terrorism Bill Consultation*, December 2007 - available at <http://security.homeoffice.gov.uk/news-publications/publication-search/consultation-responses/summary-of-responses?view=Binary>

<sup>38</sup> February 2008 Poll – see [www.compassonline.org.uk/article.asp?n=1333](http://www.compassonline.org.uk/article.asp?n=1333) for full details

<sup>39</sup> Conducted in December 2007

<sup>40</sup> Correspondence with Liberty

<sup>41</sup> Correspondence with Liberty

<sup>42</sup> Correspondence with Liberty

“Terrorism has threatened the lives of hundreds and thousands of people of all races and religions. It must be challenged so that the values of freedom, dignity and democracy can be preserved. At the same time, governments must avoid the temptation to undermine human rights norms to overpower forces that do ultimately want human rights eroded. Detention without charges for a fairly long period of time seriously exposes people to abuse. Britain has a proud history of promoting democratic norms and upholding human rights. It takes the lead in advancing the cause of human rights. A measure that sees a reverse trend will send a negative signal to the international community. The worry is that while Britain may make amends, they would have left a poor precedent for dictators to follow on the pretext of fighting terrorism. This downward trend will be detrimental to the rights of individuals and surely Britain would not want to be a part of it. In addition, reports from law enforcement confirm that exceptionally long periods of remand do not improve the quality of investigation but does increase the chances of abuse, victimisation and unfair practices.”

**Asma Jahangir, Chairperson,  
Human Rights Commission of Pakistan<sup>43</sup>**

“The Bush administration's national security policies have needlessly trampled on civil liberties and undermined American credibility and prestige on the world stage. The American Civil Liberties Union is fighting to ensure our nation returns to the rule of law, including closing Guantanamo Bay and bringing prisoners to the United States to be charged and tried, or transferring them to countries where they will not be tortured. Our efforts would not be helped by our friends across the Atlantic developing their own brand of injustice – detention without charge for over a month.”

**Anthony Romero, Executive Director,  
American Civil Liberties Union (ACLU)<sup>44</sup>**

“It is most disturbing, indeed shocking, to learn of the plans to extend detention without charge to a level that should be completely intolerable in any free society, and will surely be welcomed as a model by brutal and repressive governments everywhere. I see no way to improve on the words of Winston Churchill, at a time when the very survival of Britain was under severe threat: ‘The power of the executive to cast a man into prison without formulating any charge known to the law, and particularly to deny him the judgment of his peers, is in the highest degree odious, and the foundation of all totalitarian government whether Nazi or Communist.’”

**Noam Chomsky,  
Emeritus Professor of Linguistics at MIT and political activist<sup>45</sup>**

”Challenged yesterday over her plans to extend imprisonment without trial, Jacqui Smith had to admit there had never been a single case in which the police found the present 28-day detention limit inadequate. All she could say was it was ‘at least highly possible’ that such an instance would arise. Possible, Ms Smith? You’d water down a precious, hard-won liberty on the basis of a mere possibility?...”

***The Daily Mail* “What about liberty, Home Secretary?”<sup>46</sup>**

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<sup>43</sup> Correspondence with Liberty

<sup>44</sup> Correspondence with Liberty

<sup>45</sup> Correspondence with Liberty

<sup>46</sup> Leader – 8 November 2007

“But doubling from 28 days to 56 days the time suspects could be held before charge would be a disaster, alienating the very communities needed to defeat terrorists.”

***The Daily Mirror*, “Why this terror law is wrong”<sup>47</sup>**

“Yet the whole package is weakened by the plan to extend beyond 28 days the length of time a terrorist suspect can be detained without charge. The lack of evidence to justify the new power is deeply disturbing. Presumably if there were examples of how it would have helped, ministers would be keen to provide them. Instead we get assertion that the power is sure to be needed at some point. This is not enough. Such a shift away from basic rights requires a compelling case for change.”

***The Financial Times* “Tackling terrorism”<sup>48</sup>**

“We have frequently argued that because the police want something, they not automatically get it. That is nowhere more true than when considering detention without trial, because it strikes at the heart of one of our most cherished freedoms. In the face of Islamist terrorism, there is a fine line to tread between protecting the public from violent acts and protecting our liberties. Extending the 28-day limit would undoubtedly undermine our liberties, yet there is no convincing evidence that it would practically assist counter-terror operations”

***The Daily Telegraph* “Increasing detention limit offers no benefits”<sup>49</sup>**

“There is no more fundamental principle of liberty than that men and women should not be locked up without being allowed their day in court: it is a principle that can be compromised only when the case is overwhelming. Such a case has not been made now any more than it had been when MPs rightly rejected Mr Blair's plans to imprison suspects for 90 days in November 2005. Over recent months parliamentary committees have investigated the matter, interrogating police and politicians alike. No new argument has been forthcoming. Indeed, the Metropolitan police commissioner Sir Ian Blair has been clear: the police have not yet encountered a single case that would have required them to go beyond the existing 28-day limit. That limit is already one of the longest in the western world, and it should not be extended on the off-chance that this may at some stage prove helpful to the authorities”

***The Guardian* “Case not proven”<sup>50</sup>**

“On Tuesday, in the Queen's speech, the government will announce a new anti-terror bill. It will include an extension, perhaps a doubling, of the current provision for police to hold terror suspects without charge for up to 28 days. Such detention deforms a basic legal principle - the presumption of innocence. That step can only be sanctioned if there is sufficient evidence that it will protect the public. It must be proven to be worth the cost in universal liberties. ... The government only warns darkly of terror cells lurking in the body politic, and trumpets success in preventing attacks. But those plots have generally been foiled by traditional intelligence and police methods that pre-date the recent rush to legislate against jihadi violence”

***The Observer* “Fatal flaws in the fight against terror”<sup>51</sup>**

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<sup>47</sup> Leader – 26 July 2007

<sup>48</sup> Leader – 15 November 2007

<sup>49</sup> Leader – 8 November 2007

<sup>50</sup> Leader – 7 November 2007

<sup>51</sup> Leader – 4 November 2007

“In our view, anything that compromises the principle of habeas corpus is too much and detracts from this country's tradition of liberty and justice. But in all the arguments to and fro, we have heard nothing that suggests the police need even the 28 days they have at their disposal now, let alone the 56 days Mr Brown has proposed. Work, as is known, has a habit of expanding to fit the time available. The police are no exception to this rule. Has the Met, which has long angled for 90 days, nobbled the new Prime Minister so soon? We are back to playing politics with terror”

***The Independent*, “Tired games and time-honoured tricks”<sup>52</sup>**

“Mr Brown spoke of a “growing weight of opinion” on the need to extend the 28-day period of detention without charge for terrorist suspects. He clearly inclines towards the view, robustly championed by the previous Home Secretary, that this should be doubled. But he should think again. There is no need for a blanket extension”

***The Times*, “Tackling Terrorism”<sup>53</sup>**

**In addition, Liberty’s Charge or Release campaign against extending pre-charge detention beyond 28 days is supported by the following groups:**

Unite (The UK’s largest trade union)	National Union of Journalists (NUJ)
Muslim Council of Britain (MCB)	Muslim Association of Britain (MAB)
Forum Against Islamophobia and Racism (FAIR)	Muslim Safety Forum
Muslim Public Affairs Council UK (MPACUK)	City Circle
Federation of Student Islamic Societies (FOSIS)	Muslim Parliament
Green Light – Muslim Youth Forum	Cage Prisoners
Islamic Affairs Central Network	London Muslim Centre
Islamic Forum Europe	UK Islamic Mission
Justice	Liberal Conspiracy

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<sup>52</sup> Leader – 26 July 2007

<sup>53</sup> Leader – 26 July 2007