Section 5
Media Disclosures and Public Concerns

5.1 During the second half of 2013 (and since then) there were a series of disclosures in the media said to be derived from Edward Snowden, who was a contractor working at the United States (US) National Security Agency (NSA). Much of what has been reported concerned the alleged operational practices and activities of the NSA or other agencies in the US. Other disclosures concerned alleged UK operational activities, in particular by or relating to GCHQ. Relevant public and parliamentary debate followed and raised a number of legitimate questions.

5.2 Some of the media disclosures and questions concern the interception of communications and, to that extent, I have regarded these matters as within the scope of my statutory oversight responsibility. Obviously, if interception agencies or others are acting unlawfully under RIPA 2000 Part I, I have a duty to report it to the Prime Minister. Other questions may have overtones of policy, which is not perhaps within the literal terms of my statutory function, but there are instances where the borderlines are blurred.

5.3 I have undertaken extensive investigations into the subject matter of the media disclosures with two objectives in mind:

- to investigate and be able to report on the lawfulness (or otherwise) of relevant interception activities which UK interception agencies may undertake or have undertaken.
- to address and report on a variety of concerns which have been expressed publicly in Parliament or in the media arising out of the media disclosures. I have distilled my understanding of a number of those concerns and will address them in this report.

Before doing that there are a few introductory matters.

5.4 **Report to President Obama.** I have read in full the Report and Recommendations of The President's Review Group on Intelligence and Communications Technologies "Liberty and Security in a Changing World" of 12 December 2013. The Group was established and their review commissioned on 27 August 2013 in the wake of Snowden disclosures. It addresses issues some of which are generically much the same as some of those which I have addressed in this report.

5.5 The United States (US) Report necessarily addresses concern in the US with reference to US law and statute and to US intelligence and law enforcement agencies. It is clear that the relevant circumstances in the US are substantially different from those in the United Kingdom. Unsurprisingly, the broad approach to safeguarding freedom and privacy in a democratic society, and at the same time protecting national security and preventing and detecting crime, correspond in each country. But the detailed manifestation and application of these broad requirements diverge, such that it is not appropriate to extrapolate recommendations from the US report into UK circumstances. This is not to detract in any way from the value and interest of the report: rather to acknowledge that relevant UK questions need to be addressed in a UK context.

8. Do British intelligence agencies receive from US agencies intercept material about British citizens which could not lawfully be acquired by intercept in the UK and vice versa and thereby circumvent domestic oversight regimes?

6.8.1 No. I have investigated the facts relevant to the allegations that have been published, as to the details of which I am unable to comment publicly. However, the principles that I have applied in reaching this conclusion are as follows.

6.8.2 An intelligence agency in country A is entitled to share intelligence with an intelligence agency in country B if:

(i) the intelligence is lawfully acquired in country A; and

(ii) it is lawful in country A for its intelligence agency to share the intelligence with the intelligence agency in country B; and

(iii) it is lawful in country B for its intelligence agency to receive the intelligence; and for good measure

(iv) it would have been lawful for the intelligence agency in country B to acquire the intelligence in country B, if it had been available for lawful acquisition in that country.

6.8.3 As to (i) and (ii) and generally, I have no expertise in US law and have not personally investigated so much of it as might be relevant. I have however received appropriate assurances in this respect.

6.8.4 As to (ii), if country A is the UK, I have had particular regard to section 15(2) of RIPA 2000 which strictly limits the lawful dissemination of intercept material to the minimum that is necessary for the authorised purposes.

6.8.5 As to (iii), I know of no principle that an intelligence agency is disentitled from receiving intelligence information offered by a third party which a third party lawfully has, provided that its receipt is within the established statutory function of the intelligence agency, as to which see the *Intelligence Services Act 1994*. It happens all the time.

6.8.6 As to (iv), information lawfully obtained by interception abroad is not necessarily available by interception to an interception agency here. In many cases it will not be available. If it is to be lawfully provided from abroad, it is sometimes appropriate for the interception agencies to apply explicitly by analogy the RIPA 2000 Part I principles of necessity and proportionality to its receipt here even though RIPA 2000 Part I does not strictly apply, because the interception did not take place in the UK by an UK agency. This is responsibly done in a number of appropriate circumstances by various of the agencies, and I am asked to review the consequent arrangements, although this may not be within my statutory remit.