

Chapter 5

Options and decisions—paying a ransom

5.1 The committee understands and supports the government's no-ransom policy and as a consequence its position that it cannot be a direct party to any negotiations toward such a payment. Even so, the committee understands that the families of kidnap victims in their desperation to save the life of their loved one may be prepared to pay a ransom. In this regard, the committee notes DFAT's statement that it is open to others outside of government taking the lead in responding to kidnapping cases—employers who choose to act through their insurers and families who engage a private contractor.¹ As noted in the previous chapter, the department holds the view that these situations 'are entirely appropriate and it is open to employers and families to take whatever approach they consider most effective to achieve resolution'.²

5.2 Despite the government's no ransom policy, and its understanding and acceptance of families taking measures on their own initiative to secure the release of a family member, these families are likely to need government assistance. In this chapter, the committee explores the role of government agencies in cases where a family is contemplating the payment of a ransom.

Difficult decisions

5.3 At the time of a kidnapping, family members are confronted with difficult choices, including whether to pay a ransom. As noted in the previous chapter, both the Wood and Brennan families supported the government's no-ransom policy. Even so, both appreciated that when confronted with the reality of kidnapping, their prime concern was with the immediate and safe return of their loved one. Dr Wood explained to the committee that the 'threatened murder of a loved family member is emotionally taxing and poses vexatious questions of political and personal ethics'.³

5.4 Caught totally unaware by events, family members are in no position to make decisions about the appropriateness of offering and/or paying a ransom and ill-equipped to engage in negotiation with the hostage-takers. Yet at this time of confusion, uncertainty and distress, they are faced with difficult choices. Dr Wood stated:

The family had all sorts of people approaching us during the crisis suggesting all kinds of actions, including that [engagement of private contractors]. We needed to assess whether we were prudent to rely only on the government, basically, and our own exertions, which were pretty much

1 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

2 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

3 M Wood, *Submission 3*, p. 2.

limited to contacts with the Muslim community or making media releases and so on.⁴

5.5 He agreed that expert private contractors have a role.⁵ The Wood family, however, struggled with the prospect of paying a ransom:

In the first week of such a crisis a family tries almost anything...Anyway, to cover all bases I felt that we should at least be prepared to pay money or say something about money. So, you can imagine, the family...had some difficulty and faced some turmoil in coming to a position on that....in the end we resolved that we would not be prepared to pay a ransom but we could go so far as to offer to make a charitable donation to the people of Iraq...But the family does try to do whatever it can.⁶

5.6 Having made the decision to make a donation instead of paying a ransom, the family received confusing advice from government agencies. For example, while DFAT informed them that the decision to pay a ransom was the family's to make, some officials reportedly informed the family that a ransom would be necessary and that their offer should be explicitly distinguished from a ransom payment.⁷ Dr Wood explained that DFAT 'encouraged diplomatic ambiguity, to keep the captors guessing'.⁸ In his view, DFAT's opinion, carefully phrased and given orally, was clear—that only a ransom was likely to secure Douglas' release. He noted that although DFAT 'would not be party to any ransom being paid, they said what we might do was our business'.⁹

5.7 While Dr Wood understood the position DFAT officials were in, he suggested that the ambiguity of the advice caused some distress to the family:

It did seem that DFAT knew that we would need to pay some money if we wanted a successful outcome, unless there happened to be a rescue. But again, they did not feel in a position to advise anything about money—how much, how to get it, how to pay it, to whom, what mechanisms to use, banking arrangements. So we felt a little on our own, and I am not saying that it is necessarily wrong, because I do agree that the government should not be paying money.¹⁰

5.8 In this regard, Mr Brennan argued that if the Australian Government decides not to pay a ransom, then 'families of kidnapped persons should be told that immediately and provided [with] advice that alternatives exist external to the

4 *Committee Hansard*, 6 October 2011, p. 5.

5 *Committee Hansard*, 6 October 2011, p. 5.

6 *Committee Hansard*, 6 October 2011, p. 4.

7 M Wood, *Submission 3*, p. 3.

8 M Wood, *Submission 3*, p. 3.

9 M Wood, *Submission 3*, p. 3.

10 *Committee Hansard*, 6 October 2011, p. 3.

government'.¹¹ But while DFAT claimed to be open to families taking whatever approach they considered effective to achieve a resolution, evidence indicated that the department did not provide clear information or advice to the families on alternative approaches.

Paying a ransom and advice to families

5.9 As noted previously, kidnapping for ransom can be described as 'a lucrative business'. A large industry has grown in response to the number of kidnappings that take place worldwide with insurers offering kidnap and ransom insurance and companies hiring highly paid crisis response consultants, negotiators, lawyers and security personnel to protect their staff. For example, the President of the General Assembly in May 2010 noted that ship owners can 'take out private insurance that covers negotiation assistance and ransom payments'.¹²

5.10 A kidnap and ransom consultant informed the committee that in his experience when a kidnapping occurs 'a lot of people come out of the woodwork, approach the families and say, "I'm the bees knees, you just need to pay me a lot of money and I'll do it" or they will say, "tell you what: I'll work for free," because they just want the experience and the exposure'.¹³ Clearly, having weighed up the options for a safe release, a family considering paying a ransom needs guidance and support on how to proceed and whom to trust.

Assistance identifying a reputable intermediary

5.11 From the first day, DFAT made clear to the Wood family that 'in no circumstances would the Australian Government pay a ransom' and that it was entirely up to the Wood family to decide what to do. Dr Malcolm Wood noted that there 'was a bit of a disconnect between their official hands-off policy and their willingness to allow us to do whatever, including pay money'.¹⁴ He accepted that it was a tricky position for government officials but in his view 'there was perhaps some ambiguity or scope for misunderstanding'.¹⁵ Dr Wood explained:

As I recall, my eldest brother in England, Graeme, and my brother in Melbourne, Vernon, between them sussed out the existence of such firms from people that talked to them and then from the internet. They made contact with people in those firms. Our principal interest at this stage was not rescue; it was simply the matter of getting money into Baghdad. I then talked to DFAT about our interest in this and the extent, limited though it

11 N Brennan, *Submission 12*, [p. 5].

12 United Nations Security Council, 'Report of the Secretary-General pursuant to Security Council Resolution 1897 (2009)', S/2010/556, 27 October 2010, paragraph 68.

13 In camera evidence.

14 *Committee Hansard*, 6 October 2011, p. 2.

15 *Committee Hansard*, 6 October 2011, p. 2.

was, of our knowledge. They then told us what they knew, but not with any great detail. They indicated probably only orally that there were some firms that could help us. They could give us some names and it was then up to us to follow up. I think they did give us a couple of names. We already knew of those firms and we had already been in touch. So effectively, they were a bit behind the eight ball.¹⁶

5.12 In Dr Wood's view, DFAT held back information: that they were not as forthcoming as they could have been. He understood the position that the department was in but, at the same time, it was not easy for the family. While he acknowledged that the level of contact was exemplary:

There was a difficulty when money was necessarily being discussed in draft authorities [for a third party intermediary], about Foreign Affairs transmitting that to Nick Warner through their channels, because of the possibility that at some stage, if people knew that they had passed such information, they could be implicated in money.¹⁷

5.13 Dr Wood informed the committee that DFAT provided very little information on the services available from private firms that act as intermediaries to secure the release of a captive. He explained:

Only when we mentioned this to Foreign Affairs did they admit that there were such firms that could help.¹⁸

5.14 He was of the view that the department's advice was 'somewhat reactive and limited'.¹⁹

5.15 Mrs Bonney also acknowledged the overriding concern of securing the release of a family member, and in the case of the Brennan family, a ransom appeared to be the only viable option. She told the committee:

...if money was the thing that was going to get Nigel home, that was what we were going to provide. I do not think, when push comes to shove, that any other family would be able to do anything different.²⁰

5.16 The Brennan family also received mixed and confusing messages from government agencies about the payment of a ransom. Mrs Bonney explained that in April 2009 she rang a consular official 'no less than three times asking for names of companies'.²¹

16 *Committee Hansard*, 6 October 2011, p. 3.

17 *Committee Hansard*, 6 October 2011, pp. 3–4.

18 *Committee Hansard*, 6 October 2011, p. 7.

19 *Committee Hansard*, 6 October 2011, p. 7.

20 *Committee Hansard*, 11 October 2011, p. 12.

21 *Committee Hansard*, 11 October 2011, p. 7.

5.17 The family had, however, already undertaken preliminary research. According to Mrs Bonney, the family was not told explicitly to avoid engaging a K&R specialist. She recalled that she specifically asked for names:

We were hoping to achieve some sort of credibility in the names that we requested from the Australian government because we believed that there were companies that do train Australians and are used for that purpose. Two of them that we are in contact with now actually do and are quite involved with the ABC journalists. That was the information that I was trying to get because we had sourced five or six different ones. I wanted someone that I believed the Australian government felt comfortable about recommending to us. We were actually told by a consular official that they would not recommend anyone lest they be regarded as cowboys or mercenaries.²²

5.18 A K&R consultant suggested to the committee that DFAT could have a role in establishing the bona fides of such companies—'do due diligence, establish credentials'.²³ It was an ABC journalist who eventually referred Mrs Bonney to the company that finally secured her brother's release.²⁴ Mrs Bonney told the committee that she had spoken to the kidnap and ransom company that dealt with Colin Freeman, a British journalist held hostage in Somalia from late November 2008 until January 2009. Based on the actions of a family friend, Mr Freeman made contact and put Mrs Bonney in touch with his titular head who then referred her to the K&R company in question.²⁵

5.19 Evidence before the committee indicated that in addition to failing to assist family members to identify credible companies in the K&R field, pressure could be exerted on them to resist going down the ransom path. For example, Mrs Bonney explained that a letter from the then Minister for Foreign Affairs suggested that they should not be engaging a K&R firm: that that was not an option the family should be taking whilst the Australian government was involved.²⁶ Indeed, the committee was told by a consultant who specialises in kidnap and ransom cases that DFAT has not only discouraged families from engaging such specialists but pressured them into not doing so. The consultant gave an example of one case where, according to the family, DFAT told them that if they met a kidnap and ransom consultant the department 'would walk away from the case—"you make a decision: it is them or us"'.²⁷

22 *Committee Hansard*, 11 October 2011, p. 8.

23 In camera evidence.

24 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 290.

25 *Committee Hansard*, 11 October 2011, p. 7.

26 *Committee Hansard*, 11 October 2011, p. 8.

27 In camera evidence.

5.20 Government agencies are able to tap into a range of intelligence sources to gain an insight into the circumstances of the kidnap and the kidnappers, their motives and the way they operate. As such the agencies are in possession of vital information and well placed to explain to families the options available for the safe release of their loved one. Although the Australian government has a no-ransom policy, the committee believes that government agencies have an important role to inform the families of a kidnap victim of all the possible avenues open to them. This information should be presented to the families in such a way that would allow them to make a well informed decision including the payment of a ransom. When providing this information, agencies should be conscious of the need to be non-judgemental and to convey in clear language what government agencies can and cannot do in respect of each option.

Sharing information with private contractors

5.21 The committee also took evidence indicating that DFAT refused to pass on information about the circumstances of the kidnapping and intelligence on the hostage takers to the Brennan family's K&R consultant. Mr Brennan noted that when AKE came on board, the Australian Government refused to hand over any documentation or information because they said there was a security clearance problem which then slowed down the process.²⁸ In his opinion, DFAT's decision not to hand over this critical information or provide AKE with a formal situation briefing was a dangerous one: that 'through its actions my own Government prolonged my kidnap and duress by many months'.²⁹

5.22 In Mrs Bonney's assessment, there was a total lack of information and intelligence on the ground of the situation. She explained that DFAT had the 'constant security clearance issue'.³⁰ She wanted to know whether there was some way whereby they could have overcome these perceived security clearance issues:

Surely there is some way that that can be done. I do not know what you have to do, but there has to be some way around that.³¹

5.23 The committee understands that some of the intelligence gathered by Australian government agencies would have been highly sensitive yet of great benefit to the K&R consultant. It is of the view that DFAT should have done its utmost to converse with and to convey as much information as it could to the family's K&R consultant.

28 *Committee Hansard*, 11 October 2001, p. 5.

29 N Brennan, *Submission 12*, [p. 16].

30 *Committee Hansard*, 11 October 2011, p. 7.

31 *Committee Hansard*, 11 October 2011, p. 7.

Information on legal impediments

5.24 Finally, both the Wood and Brennan families were not informed about the legal implications of transferring large amounts of money to another country until the process was in train. The Wood family were only belatedly informed as to possible legal problems they could face in transmitting money to Iraq in order to facilitate a charitable donation. Dr Wood submitted that the family only learnt of possible issues when Vernon Wood's bank referred to certain provisions under the Criminal Code applicable to the transmitting of funds which may be used by or benefit terrorists. After raising the issue with DFAT, the family was informed of certain companies that could safely transmit funds on behalf of the Wood family.³² The Wood family had, however, already researched and become aware of these firms.³³

5.25 Similarly, the Brennan family found out about serious legal problems related to paying a ransom only after they had committed to this course of action. Mrs Bonney informed the committee that the government was well aware that her family was paying a ransom. According to Mrs Bonney, the bank expressed concerns about handling the transaction because they might have been liable to prosecution or sanctions themselves.³⁴ Mr Brennan noted further the same concerns related to generous individuals as well: that they would possibly face prosecution.³⁵

5.26 The Brennan family encountered not only a lack of information in regards to the legal issues around paying a ransom but also a lack of empathy for the distressing predicament in which they found themselves. Mr Brennan's sister-in-law, Kellie Brennan, arranged for the transfer of the ransom money from Australia. She encountered resistance from the Somali money transfer company, concerned that they could be prosecuted. The company was seeking reassurances from the Australian government. Kellie Brennan explained in *The Price of Life* that when she asked the head of DFAT operations in Canberra to call the company and let them know that the department was aware of the transaction, she was laughed at and told that the government cannot facilitate the payment. In Mrs Brennan's account, she was told: 'Kellie, this is your problem and we are not able to help. We won't stop the money going through but we can't help you get it there'.³⁶

5.27 The issue of legal impediments to ransom payments is examined further in chapter 10.

32 M Wood, *Submission 3*, p. 3.

33 *Committee Hansard*, 6 October 2011, p. 3.

34 *Committee Hansard*, 11 October 2011, p. 6.

35 *Committee Hansard*, 11 October 2011, p. 6.

36 N Brennan, N Bonney and K Brennan, *The Price of Life*, Penguin Books, Melbourne, 2011, p. 395. See also *Committee Hansard*, 11 October 2011, p. 6.

McCarthy review

5.28 The McCarthy review recommended that if the next of kin wishes to proceed with a contractor 'it would be in everyone's interest to provide them with the names of a couple of companies known to the Government that might be able to help'.³⁷

5.29 In light of recent experiences, DFAT has issued definite statements on its approach to managing future kidnapping events. It has acknowledged the appropriateness of a victim's family engaging a private contractor to lead a response to secure the release of a hostage. Furthermore, the department has recognised the importance of providing clear advice on the implications of the no-ransom policy for the handling of a particular case, including where a ransom payment has been demanded and the possible timelines. DFAT Deputy Secretary, Ms Gillian Bird, indicated that in future the department would be 'as upfront as we can'.³⁸ She explained that one of the lessons coming out of the Brennan kidnapping, identified in the McCarthy review, was the importance of communicating to next of kin from the outset, 'what the government can and cannot do in an international kidnapping case' and 'the option of engaging a private contractor should they wish to pay a ransom'.³⁹ She stated:

If the next of kin wishes to proceed with the contractor, we will provide them with the names of some companies which might be able to help.⁴⁰

5.30 Ms Bird explained further that the department had not in the past explicitly said to a family at the outset that there was the private contractor option—however, that option has always been open to families.⁴¹ She said:

We have never stood in the way of a family that wishes to engage a private contractor. That has always been an option for them, but we will in future be absolutely crystal clear at the outset that there is that option should they wish to pursue it.⁴²

5.31 Ms Bird explained that if a kidnapping occurred tomorrow, the department would give that advice orally. She stated:

We are also in the process, to ensure that it is absolutely crystal clear, of putting that in writing so that the family has a clear written advice as well as what we would provide orally... We are still in the process of ensuring that any names that we give are ones that we have done due diligence of. We are talking to the Brits, the Americans and others as part of that process.

37 Department of Foreign Affairs and Trade, *Submission 8*, [p. 10].

38 *Committee Hansard*, 6 October 2011, p. 38.

39 *Committee Hansard*, 6 October 2011, pp. 30, 33.

40 *Committee Hansard*, 6 October 2011, p. 30.

41 *Committee Hansard*, 6 October 2011, p. 33.

42 *Committee Hansard*, 6 October 2011, p. 33.

We are well advanced; we should have that done soon...my colleague made a good point that we would not be endorsing this...It is like we do overseas. We give lists of lawyers.⁴³

5.32 Importantly, the department has indicated that it would continue to provide consular support to the family and maintain the channels of communication between the Australian and other relevant governments and entities. It would also continue 'to monitor information on the case, including through intelligence networks, and monitor the efforts of the employer or negotiator'.⁴⁴

5.33 The committee welcomes the assurances given by DFAT that in future it would continue to support a family that chooses to pay a ransom and that it is taking concrete steps in the form of drafting written guidelines to provide to families.

Committee view

5.34 Even though, the Australian government has a clear no-ransom policy, it still has an important role in providing advice and guidance to the family members of a kidnap victim who opt to pay a ransom. They certainly should not be abandoned and left to their own devices.

5.35 During its consideration of these matters, the committee touched on the manner in which DFAT, in particular, related to the families. It noted instances where rather than help them with their difficult choices, DFAT added to their confusion, uncertainty, and distress; for example, by refusing to help the family identify reputable companies and declining requests to share information with the family's chosen negotiator. The committee also noted that the Wood and Brennan families were not made aware of possible legal complications concerning the transfer of funds to Iraq and Somalia. The committee was particularly concerned by the Brennan's reports of a DFAT officer laughing in response to a request by Kellie Brennan for assistance in regards to the transmitting of money to Somalia.⁴⁵

5.36 The committee believes that an important part of DFAT's consular role is to continue to provide assistance to a family that decides to pay a ransom. That support can take the form of providing information to the family on reputable firms that undertake K&R tasks; passing on relevant intelligence to the family's chosen K&R consultant; and informing the family about possible legal complications with the transfer of money.

5.37 The committee fully supports DFAT's acceptance of the McCarthy recommendation that it provide next of kin with the names of companies that might be able to help family members should they decide to proceed with a private K&R

43 *Committee Hansard*, 6 October 2011, p. 34.

44 Department of Foreign Affairs and Trade, *Submission 8*, [p. 5].

45 *Committee Hansard*, 11 October 2011, p. 6. See also paragraph 5.26 above.

specialist. The committee, however, would like to expand on some aspects of McCarthy's recommendation. These include ensuring that DFAT provides comprehensive advice to the family on the options before them promptly and in a non-judgemental way and, wherever possible, in a timely manner. Also, that the department improves its relationship with the private consultant, and that the family are made aware of the possible legal impediments to paying a ransom.

Recommendation 1

5.38 The committee recommends that:

- **DFAT ensures that the next of kin of any future kidnap victim are made aware of the option of engaging a private kidnap and ransom consultant; and**
- **if the next of kin decide to proceed with a private consultant, DFAT ensures that any advice or information it then provides to the family is given in a non-judgemental way; that it is willing to cooperate and to share relevant information with the consultant as appropriate (given national security concerns); and that it alerts the family to possible legal complications to paying a ransom.**