



# **Terrorism in Prisons**

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April 2022



## **Terrorism in Prisons**

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# 1. Introduction

- 1.1. Prisons are not cut off from the rest of the world or from each other: prisoners arrive, prisoners are released, visits take place, communications and deliveries (licit or illicit) occur, problem prisoners are moved to a different part of the prison estate. Being 'in custody' is distinguished from being 'in the community', but terrorism legislation applies to both. Conduct in prison may amount to acts of terrorism, and the prison interactions between the 200-plus convicted of terrorism or terrorism-connected offences (known as TACT offenders), and the violent, the dangerous, the impressionable and the power-seeking, are of upstream consequence when (and it generally is a when, not an if) those individuals are released.<sup>1</sup>
- 1.2. In the past, limited attention was given to terrorist risk in prisons by counter-terrorism police (CTP) and the Security Service (MI5). The sentencing of a terrorist risk offender was job done, and the prison environment was opaque.<sup>2</sup> For its part, the prison service (now Her Majesty's Prison and Probation Service, HMPPS) failed to recognise the dangers of Islamist gang-type activity and the influence of TACT offenders, and lost its role in the national endeavour to reduce the risk of terrorism.

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<sup>1</sup> Researchers differ on recidivism rates by released terrorist offenders, but tend to look at different cohorts. Silke, A., Morrison, J., 'Re-Offending by Released Terrorist Prisoners: Separating Hype from Reality', ICCT Policy Brief (September 2020) estimate that 3% (2013 to 2019) of GB terrorist prisoners go on to commit a further terrorist offence (figures for January 2013 and December 2019, but excluding terrorist re-offenders who were not prosecuted such as Usman Khan, who was shot dead). Simcox, R., Stuart, H., 'The Threat from Europe's Jihadi Prisoners and Prison Leavers', CTC Sentinel (2020) reach a figure of 9.3% (1998 to 2015) if UK terrorist offenders are included who previously committed an "extremism-related offence". For Hamm, M., who looked at the very different position in US prisons, it is the "tiny infinitesimal fraction" who turn radical beliefs into terrorist action: 'The Spectacular Few', New York University Press (2013).

<sup>2</sup> It was suggested to me by counter-terrorism official that it was easier to manage the risk posed by a Subject of Interest overseas than in prison in England and Wales.

- 1.3. The attack at HMP Whitemoor in January 2020, plus the string of domestic<sup>3</sup> and European<sup>4</sup> cases in which terrorism offences appeared linked to associations formed or ideologies adopted in prison, provided the immediate impetus for this review. The last 4 completed terrorist attacks in Great Britain have been carried out by prisoners serving their sentences in custody (HMP Whitemoor) or on licence in the community (Fishmongers' Hall, Streatham, Reading). In the course of my annual reviews into the Terrorism Acts, I was alerted to the paradox that individuals subject to strong civil counter-terrorism orders such as Terrorism Prevention and Investigation Measures in the community might find it easier to radicalise others if they were imprisoned for breaching their orders, as many of them are.<sup>5</sup>
- 1.4. This review was conducted against a backdrop of very substantial, if belated, organisational change and investment by HMPPS to tackle the terrorist threat in prisons, under the heading 'CT Step Up'.<sup>6</sup> Over the past decade the Ministry of Justice has published a series of reports which directly or indirectly address the growing terrorist threat in prisons, most notably the studies by Liebling et al. (2011)<sup>7</sup>, Acheson (2016)<sup>8</sup> and Powis et al. (2019).<sup>9</sup> The issue was a subject of

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<sup>3</sup> By way of examples: Richard Reid (<https://www.ict.org.il/images/Richard%20Reid%20-%20His%20Radicalization%20Explained.pdf>), Muktar Ibrahim (<https://www.theguardian.com/uk/2005/jul/28/july7.politics>), Michael Coe/Mikaeel Ibrahim (<https://www.bbc.co.uk/news/uk-27357208>; <https://www.bbc.co.uk/news/uk-england-london-37176216>; <https://www.standard.co.uk/news/crime/muslim-patrol-enforcer-told-he-will-not-have-ps9-000-returned-a3645871.html>), Suhayb Abu (<https://www.independent.co.uk/news/uk/crime/terror-plots-isis-uk-sahayb-abu-prison-b1802562.html>, <https://www.theguardian.com/uk-news/2021/mar/12/london-isis-supporter-sahayb-abu-guilty-plotting-terror-attack>).

<sup>4</sup> Basra, R., and Neumann, P.R., 'Prisons and Terrorism: Extremist Offender Management in 10 European Countries', ICSR (2020), which found that since 2015 there have been 22 prison-related plots in the 10 European countries surveyed.

<sup>5</sup> See for example, Terrorism Acts in 2019 at 8.71 et seq.

<sup>6</sup> See for example, HL Deb, 21 September 2020, col 1649, Baroness Williams of Trafford.

<sup>7</sup> Liebling, A. et al, 'An exploration of staff –prisoner relationships at HMP Whitemoor: 12 years on' (MOJ, London, 2011),

<sup>8</sup> Acheson, I., 'Summary of the main findings of the review of Islamist extremism in prisons, probation and youth justice' (MOJ, London, 2016). To be distinguished from the earlier Acheson report, the 1996 report of Sir Donald Acheson, then Chief Medical Officer, into the effects on the health of prisoners in the Special Secure Units at Full Sutton, Whitemoor and Belmarsh prisons, summarised in Owen, T., and MacDonald, A, *Prison Law* (5<sup>th</sup> Ed, Oxford, 2015).

<sup>9</sup> Powis, B., et al, 'Exploring the Nature of Muslim Groups and Related Gang activity in Three High Security Prisons: Findings from Qualitative Research' (MOJ, London, 2019). The fieldwork was done in 2014.

concern for the Intelligence and Security Committee in 2018.<sup>10</sup> Terrorism in prison is now a matter of international concern.<sup>11</sup>

- 1.5. It is also a timely point to look at how terrorism legislation operates in prison. Firstly, individuals convicted of serious terrorism offences in the early 2000s, such as Usman Khan, are now being released or becoming eligible for release. Terrorist risk behaviour by these individuals in prison needs to be identified and acted on. Secondly, new terrorist offenders face substantially longer periods in custody with, in some cases, no possibility of early release.<sup>12</sup> Prisons must not be allowed to become a second opportunity for committed terrorists whose attack plans are thwarted in the community.
- 1.6. More fundamentally, public confidence in the criminal justice system is shaken if terrorism occurs in prison or if people enter prison only to come out more dangerous; and the ability of prisons to function is gravely degraded if prison officers fear imminent terrorist attack.
- 1.7. It is important to be realistic about the scale of the task. Terrorism legislation and counter-terrorism policing are not designed with prisons in mind. Prisons are often understaffed, prison officers cannot be everywhere and prisoners, some of whom will be profoundly hostile to wider society, have time on their hands. Some prisoners pose profoundly difficult problems based on their personal characteristics and dynamics over which HMPPS has no control: for example, a terrorist risk prisoner who is serving a short sentence of imprisonment and who must be, somehow, prepared for release.
- 1.8. It is therefore simplistic and unfair to view every sign of terrorist risk in prisons as a catastrophic failure by the authorities; but it is equally inexcusable to ignore terrorist risk, or overlook certain prison behaviours simply because they have been a feature of prison life for more than a decade.

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<sup>10</sup> 'The 2017 Attacks: what needs to change?' HC 1694, 2018.

<sup>11</sup> Handbook on the Management of Violence Extremist Prisoners and the Prevention of Radicalisation to Violence in Prisons (2016): [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_VEPs.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf).

<sup>12</sup> Counter-Terrorism and Sentencing Act 2021, Parts 1 and 2.



- 1.9. This review was undertaken between January and September 2021 in my capacity as Independent Reviewer of Terrorism Legislation. I was given exceptionally open access to official documents and information by HMPPS and the Ministry of Justice ('MoJ'). I carried out over 100 interviews or panel sessions with officials in HMPPS and MoJ, Counter-Terrorism Police, MI5 officers, academics and others, both remotely and in person. In April 2021 I sent an interim summary report of my conclusions to the Secretary of State for Justice, and met with him and the Prisons Minister in July 2021.
- 1.10. The review covers male prisons in England and Wales only and therefore does not include women's prisons, the juvenile establishment or secure psychiatric settings<sup>13</sup> or prisons in Scotland (where the issue has not materialised) and Northern Ireland (where the nature of the threat and the role of prisons is very different). I did not consider the differences between convicted and remand prisoners.
- 1.11. In this report, as in my MAPPA report of May 2020, Terrorist Risk Offender refers to any offender, convicted of any offence, who is assessed to present a risk of committing an act of terrorism. It therefore includes TACT offenders as well as offenders who are convicted of non-terrorist offences. The latter category is important: not only does it include those who have developed a terrorist ideology in prison, but those whose terrorist activity in the community was disrupted by early intervention resulting in, in some cases, convictions for matters entirely unrelated to terrorism.
- 1.12. Terrorism legislation is rightly threat neutral, so it applies equally to Islamist Terrorism, Right Wing Terrorism, Northern-Ireland Related Terrorism, Left, Anarchist and Single Issue Terrorism, and is capable of applying to emerging violent ideologies, such as incelism, where they motivate acts of serious violence. The ability to respond to the terrorist threat in prison must exist for all types of terrorism.

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<sup>13</sup> Secure psychiatric settings are considered in some detail in Annex A to my report on Multi-Agency Public Protection Arrangements and Terrorist Risk Offenders (May 2020): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/913983/supervision-terrorism-and-terrorism-risk-offenders-review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913983/supervision-terrorism-and-terrorism-risk-offenders-review.pdf).

- 1.13. The current terrorist threat in prisons in England and Wales is Islamist terrorism. There is no other comparable threat. That said:
- The Right Wing terrorist offender population is increasing<sup>14</sup> and there is no reason why gang-type behaviour should not in due course pivot towards different ideologies that are conducive to terrorism.<sup>15</sup>
  - If lessons are learned about how the Islamist threat has been allowed to grow within the prison estate, and how to respond to it, the authorities will be better able to deal with the next threat.
  - Conversely, failing to address the power of Islamist groups may encourage different prisoners with different ideologies to adopt similar mechanisms, potentially as a form of reaction on the part of discontented non-Islamist prisoners.

## Acronyms

- 1.14. I have tried to minimise their use but some acronyms are unavoidable. The most common ones in this report are:

HMPPS: Her Majesty's Prisons and Probation Service

HMP: Her Majesty's Prison as in HMP Whitemoor

CT: Counterterrorism, as in CT Police

MOJ: Ministry of Justice

LTHSE: Long Term High Security Estate

TACT offender: person convicted of an offence under the Terrorism Acts or an offence found to be terrorism-connected under the Counter-Terrorism Act 2008.

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<sup>14</sup> Statistics on the operation of police powers under the Terrorism Act 2000 and subsequent legislation Year to June 2021: Annual data tables, P.01.

<sup>15</sup> In the United States, white nationalism and neo-Nazism are the dominant pro-terrorist ideologies in prison, although US terrorism legislation is geared towards foreign terrorist organisations rather than domestic violent extremism.

## 2. Islamist groups in prison

2.1 In this Chapter I draw attention to the importance to terrorist risk of structured or loose groups of prisoners who have adopted Islamist language, mannerisms and ideology. Chapter 3 contains a more detailed analysis of the types of behaviour that prisoners in these groups typically exhibit, including the means by which these groups attempt to dominate other prisoners and staff.

### The problem

2.2 For the last decade and a half<sup>16</sup> groups of prisoners in the Prison Estate have adopted an anti-State<sup>17</sup> Islamist stance that condones or encourages violence towards non-Muslim prisoners, prison officers and the general public. In two studies of high-security prisons based on fieldwork in 2009-10 and 2014-15,<sup>18</sup> Liebling et al. and Powis et al. identified how these groups, operating in an environment of high levels of fear amongst staff and prisoners, enabled “heavy players” and “extremist prisoners” to exercise significant power and influence within the prison. Acheson referred to “Muslim gang culture”<sup>19</sup> and there is some evidence of some highly structured Islamist gangs operating within the prison estate.<sup>20</sup>

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<sup>16</sup> Allen, C., *Boyz-n-the-Hood*, Muslim Youth Foundation, [http://www.mywf.org.uk/uploads/projects/borderlines/Articles/Boyz\\_n\\_the\\_Hood.pdf](http://www.mywf.org.uk/uploads/projects/borderlines/Articles/Boyz_n_the_Hood.pdf) is a short article which encapsulates a common narrative amongst CT practitioners about the initial influx of the “Muslim Boys” into the prison estate.

<sup>17</sup> In his influential study, Mark Hamm considered that there is a tendency for Islam to be seen (at least in US prisons) as the religion of the underdog and rebellion against the status quo, amounting to an ideology of resistance which is readily adopted by aggrieved prisoners: *op. cit.* at p128. The “Manchester document” shows that Al Qaeda viewed prisons as good recruiting grounds: [https://www.justice.gov/sites/default/files/ag/legacy/2002/10/08/manualpart1\\_1.pdf](https://www.justice.gov/sites/default/files/ag/legacy/2002/10/08/manualpart1_1.pdf).

<sup>18</sup> *Op. cit.* (ft.7 and 9 above).

<sup>19</sup> *Op. cit.*

<sup>20</sup> Gooch, K., Treadwell, J. ‘It doesn’t stop at the Prison Gate: Understanding Organised Crime in Prison’ [2021] 252 *Prison Service Journal* 15, refers to a small number of “Muslim gangs” within the Long Term High Security Estate. There have been examples of highly structured Muslim Councils seeking to operate Sharia law within prisons.

## Underappreciation

2.3 The impact of Islamist groups has been underappreciated for too long by the authorities.<sup>21</sup> There are a number of plausible and related explanations for this failure:

- Gangs and hierarchies are seen as an inevitability of prison life, described to me as like a “massive squash ladder” where individuals join gangs or groups for reasons of “safety, fear and protection, and power”,<sup>22</sup> for the criminal opportunities they open up such as prison drug-dealing, and a sense of identity whilst serving a long sentence.<sup>23</sup> Viewed in this way, Islamist group behaviour has come to be seen as part of the prison landscape.<sup>24</sup>
- Counter-terrorism practitioners within HMPPS, police and MI5 tend to study the risk presented by individuals or identified networks rather than groups or cultures in prison. For example, the multi-agency Pathfinder process grades individuals (not prisons or wings or loose groups of prisoners) on the basis of their assessed terrorist risk. Since it is often difficult to attribute behaviour to individuals (for example, the possession of terrorist literature in shared cells), there is the further risk that unattributable behaviours are ignored.
- Too much attention is given by counter-terrorism practitioners to determining the motivations of prisoners who engage in Islamist group behaviour and whether it is driven by prison factors or ideological factors. This risks underplaying the harm caused by that behaviour, as does the language of vulnerability.<sup>25</sup> Terrorist

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<sup>21</sup> In the words of one official, they had taken their eye off the ball.

<sup>22</sup> Powis, B. et al, op. cit., p.13. “Push” and “pull” factors are listed by Pyrooz, D., and Decker, S., ‘Competing for Control: Gangs and the Social Order of Prisons’ (Cambridge UP, 2019), p187. Ruschenko, J., ‘Terrorist recruitment and prison radicalisation: Assessing the UK experiment of ‘separation centres’, European Journal of Criminology, Vol 16 issue 3, pages 295-314 refers to particular “push” and “pull” factors relating to Islamist gangs.

<sup>23</sup> Particularly for young black men convicted of gun and knife violence investigated under Operation Trident, facing very lengthy sentences and effectively a lifetime in prison. The nature of prison life includes feelings of loneliness, uncertainty and unhappiness, Brandon J. ‘Unlocking Al-Qaeda. Islamist Extremism in British Prisons’, 15.11.09, Quilliam Foundation p87.

<sup>24</sup> Cf. the related dismissal of some prisoners’ faith as “Prislam” (i.e. Prison-Islam).

<sup>25</sup> Prisoners are described as “vulnerable to radicalisation” even where their own behaviour increases terrorist risk.

offences are not always committed by ideological experts or strong-minded individuals.

- There is a tendency to view Islamist group behaviour purely through the lens of good order and discipline,<sup>26</sup> noting that Islamist gang-type behaviour can sometimes provide a degree of calm and stability which means it is not necessarily perceived as a problem. I was told that prison officers sometime appeal to the wing ‘emir’<sup>27</sup> for their assistance in maintaining good order.
- There is worry about focusing on a particular flavour of gang-type behaviour because of the understandable fear of discriminating against Muslim prisoners generally. At front-line level, there has been a tendency to regard Islam as a “no-go area” leading both to a reluctance to focus on Islamist group behaviour, and an overloading of responsibility onto prison Imams who are felt to be better equipped to distinguish between acceptable and unacceptable behaviours related to faith.
- Prison culture is sometimes discounted as an active player in theoretical analysis which sees prison life in State versus Individual terms. On this basis, if state-responsible factors resulting in grievances are removed, the problem will disappear. This underplays the fact that prisoners can and do choose to create powerful cultures of their own for reasons personal to them.<sup>28</sup>

## Detail

2.4 Faith-based self-segregation by prisoners provides a fertile base for violent Islamist activity. In their 2011 Report, Liebling et al. noted that staff and prisoners referred to a Muslim “brotherhood” at each of the three high-security prisons visited, whose members were able to surround themselves with like-minded individuals with whom they had a common interest and focus.<sup>29</sup> But it is also the case that this faith identity is open to exploitation as a highly effective marker of prisoner power; these groups

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<sup>26</sup> For example, viewing forced conversions as no more than bullying.

<sup>27</sup> The Arabic word for commander that is generally used about the dominant Muslim prisoner on a wing.

<sup>28</sup> For example, the psychological need to adjust to a very long sentence: see Crewe, B., Hulley, S., Wright, S., ‘Life Imprisonment from Young Adulthood: Adaptation, Identity and Time’ (Palgrave Macmillan, 2020).

<sup>29</sup> Op. cit. at para 4.1.

were found to have “dominated the prisons in numbers and influence”<sup>30</sup> and engaged in collective defence against non-Muslim prisoners.<sup>31</sup>

- 2.5 In a fearful environment, where violence is increasing,<sup>32</sup> and where staff numbers have diminished over time, the opportunities to take power from prison staff and from other prisoners are manifold. Some of the privileges that prisons extend to Muslims and other faith groups, such as separate food, separate places of prayer, and a recognition of special prayer times, help establish further boundaries between Muslim and non-Muslim prisoners,<sup>33</sup> and Muslim prisoners and non-Muslim staff – boundaries that reinforce the collective and increasingly ‘oppositional’ identity adopted by Muslim prisoners.<sup>34</sup>
- 2.6 Offenders who have been convicted of serious Islamist terrorist offences tend to occupy positions of influence within these groupings. Officials I spoke to across HMPPS, police and MI5 were near unanimous that Islamist TACT offenders were sought out and promoted. Liebling et al noted “a certain new type of gang culture that glorified terrorist behaviour and motives” at HMP Whitemoor.<sup>35</sup> In 2021, HMP Whitemoor’s head of counterterrorism testified to the Fishmongers’ Hall Inquests of the “perverse esteem” that terrorist offenders are held “within the prison subculture”.<sup>36</sup>

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<sup>30</sup> Ibid. My interviews corroborated these findings.

<sup>31</sup> Phillips, C., ‘It ain’t Nothing Like America with the Bloods and the Crips: Gang Narratives inside Two English Prisons’, *Punishment and Society* 14(1): 51-68.

<sup>32</sup> Safety in Custody quarterly: Update to December 2020, <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2020>. The number of assault incidents per 1000 prisoners rose from 146 in 2000 to 395 in 2019 (the figure for 2020 is 267, but will have been impacted by Covid restrictions on prisoner movement within prisons).

<sup>33</sup> One of the consequences of the use of Separation Centres for certain prisoners, reported by staff to Powis, B., Wilkinson, K., Bloomfield, S, Randhawa-Horne, K., ‘Separating Extremist Prisoners’, Ministry of Justice (2019) at 4.13, was improved Muslim-non-Muslim prisoner relationships.

<sup>34</sup> Liebling, A, Arnold, H (2012) ‘Social relationships between prisoners in a maximum security prison: Violence, faith, and the declining nature of trust’. *Journal of Criminal Justice* 40(5): 413–424, cited in Rushchenko, J., op. cit.

<sup>35</sup> Op. cit. (2011) at p70.

<sup>36</sup> Fishmongers’ Hall Inquests, Transcript day 12, <https://fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/04/FHI-Day-12-28-April-2021-Public-Version.pdf>, p121.

- 2.7 By way of example, Usman Khan had admitted that whilst he was in prison he tried to “gain sort of points” with the terrorist Abu Hamza by using language such as “dirty kuffar” to refer to non-Muslims to prove his extremist credentials.<sup>37</sup> HMPPS staff speak of TACT offenders having their cells cleaned out by other prisoners. It is difficult to see how an isolated TACT prisoner could exercise such influence.<sup>38</sup> Sudesh Amman, a TACT offender who went on to commit the Streatham attack, considered that he had celebrity status at HMP Belmarsh on account of his terrorist conviction.<sup>39</sup>
- 2.8 There are several possible explanations. For some prisoners terrorism offences amount to a glamorous blow against the authorities, untainted by grubby personal motives and serving a wider purpose, giving them a distinctly heroic profile.<sup>40</sup> Other prisoners are drawn to some TACT offenders by their personal charm<sup>41</sup> or, practising or attracted to Islam (as many prisoners are<sup>42</sup>), but doubting the sincerity of the Prison Imam, seek what they consider a more authoritative version of the faith. Some officials considered that TACT offenders are used to lend “credibility” to pre-existing groups. The fact that TACT offenders are welcomed, rather than ostracized like paedophiles, is striking in itself; and illustrates the scale of the task in seeking to rehabilitate TACT offenders and persuade them against further terrorist

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<sup>37</sup> Ibid, Transcript day 17, <https://fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/05/FHI-Day-17-6-May-2021-FINAL.pdf>, p148.

<sup>38</sup> Mark Hamm’s research in US prisons led him to conclude that “radicalisation is linked to prison gangs”: op. cit. at p113.

<sup>39</sup> Sudesh Amman Inquest, Transcript day 1, [https://www.sudeshammaninquest.org/wp-content/uploads/2021/08/Transcript-of-Hearing-on-2-August-2021-98070027\\_1.pdf](https://www.sudeshammaninquest.org/wp-content/uploads/2021/08/Transcript-of-Hearing-on-2-August-2021-98070027_1.pdf).

<sup>40</sup> The article by Hussein, T., ‘Prison Radicalisation: Dealing with Muslim Inmates with Terror Convictions’ (2017), <https://www.tamhussein.co.uk/2017/02/prison-radicalisation-dealing-muslim-inmates-terror-convictions/>, published on the site ‘Mena Etc’ reflects much of what I was told by practitioners and by a former prisoner.

<sup>41</sup> Hamm, M., op. cit., at 46, O’Gara, E., ‘Eradicating Prison Extremism: Understanding Islamist Hierarchies in Prisons’ (March 2021), Henry Jackson Society Research Brief, Ruschenko, J., op. cit., all refer to the important role of charismatic individuals.

<sup>42</sup> The proportion of Muslim prisoners in England and Wales has increased from 8% in 2002 to 16% in 2020. HC Library Briefing Paper CBP-04334, 3 July 2020.

activity,<sup>43</sup> when they are simultaneously enjoying a high status because of their previous offences.

- 2.9 The influence exercised by TACT offenders is not to be confused with formal leadership. Intelligence shown to me demonstrated how “noisier” non-TACT offenders competed for the role of “emir”, whilst TACT offenders, believing that they were subject to greater monitoring, were content to exercise a quieter degree of influence behind the scenes which may be only apparent from prison intelligence rather than officer observation. Other roles may be present: recruiters, foot-soldiers and notably enforcers.<sup>44</sup>
- 2.10 The risk of terrorist violence is elevated by the presence within these groups of prisoners who are already dangerously violent. In particular, there is a risk that reverence for TACT offenders will encourage violent ideological anti-State and anti-Western hostility, which may lead to terrorist offences against staff and prisoners within prison, and increase the likelihood of attack on release. By analogy, if a coherent prison grouping revered sex offenders, that would increase the risk of sexual assaults within and without the prison estate.
- 2.11 It is impossible to avoid the issue of whether increased attention to Islamist groups will lead to Muslim prisoners feeling unfairly singled out whenever they associate with other Muslims. That is clearly a possibility, and an outcome that officials will have to work hard to avoid. Officials should be curious, open-minded, prepared to challenge, listen and explain.

## Scale

- 2.12 Whilst I am sure that this problem exists within some prisons, I was unable to obtain an accurate sense of the extent of the problem across the Prison Estate. In addition

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<sup>43</sup> The government position is that more time in custody will mean more time to carry out targeted, tailored interventions with each offender. Hansard, 26 January 2021, HC, Vol 809, Col 1569, Lord Stewart <https://hansard.parliament.uk/lords/2021-01-26/debates/00D09444-0186-49EF-B6C3-E8D1F48B3A77/Counter-TerrorismAndSentencingBill>.

<sup>44</sup> Liebling, A., et al, op. cit. (2019); O’Gara, op. cit. The role of emir and enforcer within an Islamist grouping was prominent in my discussions with officials.



to a lack of focus on the issue, officials have no means of strategic oversight. No national dashboard exists that would allow a senior official within HMPPS, the police or MI5 to see where Islamist group activity occurs, or is on the rise, within England and Wales' 104 public prisons.<sup>45</sup> I was repeatedly informed that the phenomenon is more likely to exist within the Long Term and High Security Estate, and is entirely absent from sex offender prisons. The evidence of a serving prisoner at the Fishmongers' Hall inquests that terrorist offenders "...literally run every dispersal [prison] in the country"<sup>46</sup> may overstate the position, but certainly terrorist risk offenders (of every sort) are present in the majority of prisons across the estate.

- 2.13 The phenomenon has endured in prisons in England and Wales for so long that a loose comparison can be made to the activities of Al-Muhajiroun (ALM) in the United Kingdom for over two decades. Like the authorities' response to ALM, or like HMPPS's active response to racism within prisons, Islamist group behaviour in prisons calls for strategic attention and imaginative thinking.

## Context

- 2.14 The development of Islamist group activity is concurrent with a dramatic downsizing of prison staffing levels. Between 2010-2011 and 2014-15 HMPPS's resource budget was reduced by 20%, and the number of frontline operational prison staff was cut by 26% between 2010-2017.<sup>47</sup> In the words of officials, staff went from being "confident and in charge" to "fire-fighting". Relationships between staff and prisoners deteriorated and everything became "a fight".
- 2.15 HM Inspectorate of Prisons found in its 2017/2018 Annual Report<sup>48</sup> that prisoners often complained about a lack of regular staff, and about the presence of inexperienced staff. This not only affected basic prison routines but "...Too often,

<sup>45</sup> Nor is this type of behaviour addressed by the independent prison inspectorates.

<sup>46</sup> Fishmongers' Hall Inquests, Transcript day 7, <https://fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/04/FHI-Day-7-21-April-2021-amended.pdf> at p54.

<sup>47</sup> Prison Reform Trust, Bromley Briefings Prison Factfile (Winter 2021) <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Winter%202021%20Factfile%20final.pdf>.

<sup>48</sup> HC 1245.

poor behaviour from prisoners went unchallenged and staff failed to maintain suitable boundaries of behaviour. Prisoners gathered in cells, smoked on the landings, walked around partially clothed and ignored staff instruction without fear of reprimand.” Transposed onto a wing with Islamist gang-like activity, there is an obvious risk of staff being unable to observe, or unable or unwilling to intervene.<sup>49</sup> The US penitentiary experience should act as a warning.<sup>50</sup>

2.16 In 2018 the government increased funding and staffing levels rose. Staffing is now down 12% against 2010. So current numbers might be, depending on the level of absence, one senior officer, plus 11 prison officers, for 200 prisoners; or 7 prison officers for 300 prisoners; or in a high security prison 11 staff for 150 prisoners. These are not high numbers. I suspect the general public is unaware of the demands on prison officers. Moreover, the loss of experienced confident staff cannot be reversed. In 2021, 37% of staff have been in post for less than 3 years (compared to 13% in 2010).<sup>51</sup>

2.17 It would be unrealistic not to refer to staff headcount when considering what is, in effect, a power grab by certain prisoners. Gang-like activity thrives where prison staff compete for influence with prisoners. It would also be unrealistic not to recognise the fact that prison hierarchies, including Islamist hierarchies, benefit from access to the market in prison contraband.

- Illicit phones and sim cards provide means of accessing or distributing terrorist propaganda.
- Illegal use of mobile phones was considered a feature of prison life according to research conducted in 2014 on behalf of the Ministry of Justice<sup>52</sup> (9% of establishment responses “identified extremist/ terrorist activity” as being associated with illicit usage).

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<sup>49</sup> As it was put to me, “reduced to the role of passive watchman”.

<sup>50</sup> Hamm, *op. cit.*, at pages 51, 107, 160, referred to a terrorist threat primarily fuelled by the incarceration of inmates in disorderly, overcrowded maximum-security prisons, noting chronic idleness, and overcrowding which increased the number of social interactions involving uncertainty, and victimisation and predatory violence, where charismatic radicalisers were likely to take hold.

<sup>51</sup> Prison Reform Trust, *op. cit.*

<sup>52</sup> Ellison, A. et al, *op. cit.* (2018).

- The scale of illicit mobile phone use was described by government in June 2019 as “one of the most significant threats facing our prisons” (with 15,036 mobile phones and 9,345 handsets seized previous calendar year)<sup>53</sup> and is growing within the most secure Long Term and High Security Estate prisons where the majority of TACT offenders are held.<sup>54</sup>
- An independent report into HMP Woodhill in 2020 referred to “very high levels of psychoactive substance and other drug use”.<sup>55</sup>

2.18 The issues of staffing and contraband are not specific to terrorism. Action on these issues, together with increased attention to prisoner mental health and neurodiversity,<sup>56</sup> are bound to have a positive impact. But these changes do not remove the need for very specific measures to address terrorist risk.

## Recommendation

### Recommendation 1

When assessing or taking action to reduce terrorist risk, officials should pay more critical attention to the role played by Islamist groups and hierarchies.

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<sup>53</sup> Rt. Hon. Robert Buckland, written answer , 27 June 2019: <https://questions-statements.parliament.uk/written-questions/detail/2019-06-20/267270>.

<sup>54</sup> Daily Telegraph, 25 April 2021, <https://www.telegraph.co.uk/news/2021/04/25/jailed-terrorists-spreading-hate-amid-sharp-rise-illegal-phones/>.

<sup>55</sup> Annual Report Independent Monitoring Board (October 2020): [https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2020/10/IMB-Woodhill-annual-report-2019\\_20-final-for-circulation.pdf](https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2020/10/IMB-Woodhill-annual-report-2019_20-final-for-circulation.pdf).

<sup>56</sup> See for example, Criminal Justice Joint Inspection, ‘Neurodiversity in the Criminal Justice System: A review of evidence’ (15 July 2021), <https://www.justiceinspectrates.gov.uk/cjji/wp-content/uploads/sites/2/2021/07/Neurodiversity-evidence-review-web-2021.pdf>.

## 3. What is happening

- 3.1 In the course of carrying out my review I was given access to sensitive intelligence reports on the behaviour of past and serving prisoners, and conducted over 100 meetings with practitioners concerned in prison management and counter-terrorism in prisons.
- 3.2 There is a clear strand of prison behaviour that can be illustrated by referring to the prison career of Usman Khan, the Fishmongers' Hall attacker, as it emerged at the subsequent inquests.<sup>57</sup> Much but not all of it is related to Usman Khan's role in Islamist groups within the prison:
- In 2011, Khan attacked another prisoner whilst shouting Allahu Akbar, and disrupted the Armistice Day Service.
  - In 2012, after Khan's arrival in a new wing, prisoners started to wear religious dress most of the time; Khan jumped on the netting and recited a poem including the words "Cut off the kuffar's head".
  - During 2013, Khan encouraged other prisoners to take on Muslim names, wear Muslim dress and threatened those who questioned Muslim prayer; he intimidated staff and trying to convert prisoners, was noted as the Muslim leader for the wing, and was detected stockpiling material for a possible improvised explosive device.
  - In 2014 Khan was connected to a plot to kill a member of staff, was known as a Muslim enforcer and was noticed seeking to impress a high-ranking TACT prisoner.
  - During 2015 Khan headed a "bullying gang" and commented that all staff were fair game to attack. He was noted as a leadership figure in 2016.
  - During 2017 Khan was suspected of involvement in covert radicalisation, was found with newspaper clippings relating to jihadism, was known as an influential TACT prisoner and "Emir" involved in extremist bullying and religious preaching

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<sup>57</sup> Fishmongers' Hall Inquests, Transcript day 11, <https://fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/04/FHI-Day-11-27-April-2021-FINAL.pdf>

in the prison yard, sought to intimidate and organise disobedience towards members of staff, disrupted Remembrance Sunday, and sought to dictate the dietary and washing habits of non-Muslim prisoners.

- In 2018, his last year in prison, he had links to religious bullying and gang culture, was involved in preaching, closely associated with other TACT offenders (including Brusthom Ziamani who was latter responsible for the attempted murder of a prison officer at HMP Whitemoor) and sought to radicalise other Muslim prisoners.

3.3 Another recent inquest concerned Sudesh Amman, the Streatham attacker who had been serving a relatively short sentence in HMP Belmarsh for terrorism offences. It revealed that:

- In July 2018 Amman was recorded, together with a group of other prisoners (who included recent converts), crowding round another prisoner who subsequently converted. This was assessed as an attempt to convert non-Muslims on the house block.<sup>58</sup>
- In October 2018 he was reported to have openly stated a desire to kill the Queen, become a suicide bomber and join ISIS.<sup>59</sup>
- Also in July 2019 Amman was heard shouting slogans such as “This place is full of non-believers” and “everyone here will come under the black flag [of Da’esh]”.<sup>60</sup>
- In September 2019 Amman abused a female prison officer and smashed the observation panel of his cell shouting “Allahu Akbar”.<sup>61</sup>
- Reporting from November 2019 indicated that Amman held a position of influence among other prisoners, as demonstrated by him leading prayers.<sup>62</sup>

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<sup>58</sup> Sudesh Amman Inquest, Transcript day 2, <https://www.sudeshammaninquest.org/documents/>.

<sup>59</sup> Transcript day 3.

<sup>60</sup> Transcript day 2.

<sup>61</sup> Transcript day 2.

<sup>62</sup> Day 2.

- In December 2019, police were informed that handwritten notes had been found in Amman's cells, pledging allegiance to Da'esh/Islamic State and its leader.<sup>63</sup>

3.4 It is possible to place this behaviour into three categories:

- (a) Terrorist offending.<sup>64</sup> Khan's attempted construction of an IED may well have amounted to a terrorist offence.<sup>65</sup>
- (b) Terrorism-related activity, applying the statutory definition applicable to Terrorism Prevention and Investigation Measures (TPIMs).
- (c) What I refer to as 'terrorist risk behaviour'.

3.5 All three categories are ultimately about the risk of that terrorist violence will be committed within prison or on release. It is therefore unnecessary to use the ambiguous terms "extremist" or "extremism".

## Terrorist Offending

3.6 These are the principal terrorism offences that may be committed in prison.

3.7 **Proscribed organisation offences** under the Terrorism Act 2000. Although prisoners are unlikely to be recorded professing membership of a proscribed organisation (section 11), prisoners who express overt support for groups such as Da'esh and Al-Qaeda<sup>66</sup> may commit an offence contrary to section 12(1) (inviting support) or 12(1A) (reckless encouragement of support). Prisoners who display homemade Da'esh flags in their cells in circumstances arousing a reasonable

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<sup>63</sup> Transcript day 1. As the coroner reminded the jury in summing up, the handwriting evidence did not prove that the notes were written by him: the possibility remains that they were written by another prisoner on the wing "...Given the sort of people he was associating with": Transcript day 13.

<sup>64</sup> Under the Terrorism Acts or offending that is connected to terrorism under the Counter-Terrorism Act 2008.

<sup>65</sup> For example, preparation of terrorist acts contrary to s5 Terrorism Act 2006.

<sup>66</sup> Acheson found evidence of TACT offenders advocating support for Daesh.

suspicion that they are Da'esh supporters do not commit offences because the relevant offence (section 13) can only be committed in a public place.<sup>67</sup>

- 3.8 **Objects for use in terrorism or information useful to terrorists** (sections 57 and 58 Terrorism Act 2000). In 2017, the terrorist offender Mohammed Rehman was sentenced to a further 3 years imprisonment for having a step-by-step guide to making viable explosives in his cell.<sup>68</sup>
- 3.9 **Encouragement of terrorism** for example through overtly or discreetly glorifying past acts of terrorism (section 1 Terrorism Act 2006). Brusthom Ziamani, who recently attempted to behead a prison officer at HMP Whitemoor, is reported to have celebrated the terror attacks in Nice and Orlando.<sup>69</sup> Other prisoners have recently shown support for Manchester arena bombing. The circumstances in which any statement is made are relevant:<sup>70</sup> statements about jihad made by or in the presence of influential TACT offenders may be more likely to be understood as encouragement to terrorism than a quest for personal fulfilment.
- 3.10 However, there are limitations in the prison context. The encouragement offence does not apply to one-on-one encouragement at all<sup>71</sup> and the recipients of the encouragement must properly be described as members of the public.<sup>72</sup> Accepting that prisoners in general constitute a "section of the public",<sup>73</sup> it is nonetheless very doubtful that the offence applies to a conversation within a prison cell, even one

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<sup>67</sup> Section 121 Terrorism Act 2000 Act defines public place as "a place to which members of the public have or are permitted to have access, whether or not for payment". The same definition is found in section 139 Criminal Justice Act 1988 (prohibition of bladed articles), hence the need for a separate offence of having a bladed article in prison under section 40CA Prison Act 1952 (inserted by the Serious Crime Act 2015). In 2014 a Da'esh flag was found together with details of a kidnap and escape plot at HMP Parkhurst: <https://www.bbc.co.uk/news/uk-england-hampshire-29775729>.

<sup>68</sup> <https://www.cps.gov.uk/crime-info/terrorism/counter-terrorism-division-crown-prosecution-service-cps-successful-prosecutions-2016>, 2017 section.

<sup>69</sup> <https://www.independent.co.uk/news/uk/crime/prisoner-terror-attack-sharia-courts-hmp-whitemoor-brusthom-ziamani-a9279586.html>.

<sup>70</sup> Section 1(4) Terrorism Act 2006.

<sup>71</sup> The encouragement must be to members of the public (plural): ss 1(1), 1(2)(b).

<sup>72</sup> *Ibid.*

<sup>73</sup> Cf R v Lang [2008] EWCA Crim 2864.

involving multiple persons<sup>74</sup> unless, potentially, the gathering can be described as a meeting or congregation which is open to other prisoners.<sup>75</sup>

- 3.11 **Terrorist publication offences** (section 2 Terrorism Act 2006). Materials which encourage or glorify terrorism may be physically smuggled into prison, displayed on an illicit smartphone, extracted from legal case papers<sup>76</sup> or self-generated. The question of whether a publication amounts to a terrorist publication must be determined having regard to the circumstances in which the document is to be disseminated.<sup>77</sup>
- 3.12 In 2017 a violent offender at Aylesbury Young Offenders Institution was convicted for disseminating Da'esh video propaganda<sup>78</sup> from inside prison to the outside world. Following the 2020 terrorist attack at HMP Whitemoor, it was revealed that Brusthom Ziamani had used a DVD player in his cell to watch a video of a Da'esh/ISIS suicide attack.<sup>79</sup> It is highly likely that materials like these are currently being used to influence and reinforce violent views among inmates. The problem dates back over a decade. In 2007 an Al-Qaeda convict was caught making terrorist propaganda in his cell at HMP Belmarsh: when he refused to hand over his laptop Al-Qaeda prisoners fought with staff;<sup>80</sup> another terrorist offender at HMP Maghaberry in Northern Ireland was caught downloading Al-Qaeda material.<sup>81</sup> Criminal dissemination may take place in private<sup>82</sup> but despite the wide definition of publication<sup>83</sup> is unlikely to capture a private letter between prisoners.

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<sup>74</sup> According to assurances given to Parliament, the encouragement must be directed at members of the public rather than persons, and is not intended to capture private conversation: Hansard HL vol 676 col 435 (5 December 2005), Baroness Scotland.

<sup>75</sup> S20(3).

<sup>76</sup> The Crown Prosecution Service has established a Memorandum of Understanding about access to certain exhibits in legal proceedings which is designed to reduce this risk.

<sup>77</sup> Section 2(5)(b) Terrorism Act 2006.

<sup>78</sup> <https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-48718683>

<sup>79</sup> <https://www.thetimes.co.uk/article/brusthom-ziamani-terrorist-watched-isis-videos-in-jail-cell-dbpkk0tlx>.

<sup>80</sup> <https://www.theguardian.com/uk/2007/jul/15/ukcrime.prisonsandprobation>.

<sup>81</sup> <https://www.theguardian.com/world/2007/jul/08/terrorism.henrymcdonald>.

<sup>82</sup> Section 2 refers to persons, not members of the public.

<sup>83</sup> Section 2(13).



- 3.13 A distinction must be drawn between criminal encouragement or publication and the behaviour often described using the non-legal<sup>84</sup> terms “radicalising” or “grooming”. This behaviour which could<sup>85</sup> involve befriending, providing material support or protection, then introducing ideology with a view to indoctrination with and acceptance of an extremist hostile Islamist mindset, is unlikely to amount in law to a terrorist offence or terrorism-related activity.<sup>86</sup>
- 3.14 Indeed, some of it may appear positively benign: A TACT prisoner may welcome a lonely and confused prisoner to his cell; share food; and offer to help him with practical problems.<sup>87</sup> What happens in prison may simply strengthen views already formed or part-formed: for example, the defendants in the “Three Musketeers” mass-casualty terrorist plot of 2017<sup>88</sup> were already radicalised to some extent and their views “...were reinforced when the met up in prison with others charged with and/or convicted of terrorist offences”.<sup>89</sup> Again, it is unlikely that this process of reinforcement, important though it may be, would amount to an offence.
- 3.15 **Violent terrorist offending inside prison** is rare but is exemplified by the 2020 HMP Whitemoor terrorist attack committed by Brusthom Ziamani (a TACT prisoner) and Baz Hockton (a violent man apparently radicalised in prison).<sup>90</sup> Not all attacks by TACT offenders and terrorist risk offenders will be offences of or found to be connected to terrorism<sup>91</sup> but some of the reported attacks appear closely related to

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<sup>84</sup> LF v Secretary of State for the Home Department [2017] EWHC 2685 at para 225.

<sup>85</sup> It is not considered that there is single pathway to radicalisation.

<sup>86</sup> Unless it is possible to show that it is done for the benefit of a proscribed organisation such as Da’esh, in which case it amounts to an action taken for the purposes of terrorism under s1(5) Terrorism Act 2000: see QT v Secretary of State for the Home Department [2019] EWHC 2583 (Admin), see in particular paras 55 to 59.

<sup>87</sup> A detailed illustration of this approach is in Khosrokhavar, F., Radicalisation in Prison: the French Case (2013) Politics, Religion and Ideology, 14:2, 284-306.

<sup>88</sup> <https://www.bbc.co.uk/news/uk-40810970>.

<sup>89</sup> <https://www.judiciary.uk/wp-content/uploads/2017/08/sentencing-remarks-mr-justice-globe-ali-others-20170803.pdf>.

<sup>90</sup> <https://www.bbc.co.uk/news/uk-england-cambridgeshire-54462241>. They were sentenced in October 2020. The sentencing judge referred to Hockton’s “...relatively recent adherence to extremist ideology”. He entered custody no later than December 2016.

<sup>91</sup> Section 93 Counter-Terrorism Act 2008 defines an offence having terrorist connection for being sentenced under s30 as terrorism-connected if it “...is committed for the purposes of terrorism”.

terrorist ideology. In 2014, two prisoners at HMP Full Sutton seriously attacked prison guards in the wake of the terrorist murder of Fusilier Lee Rigby whilst calling for the release of terrorist offenders.<sup>92</sup> In 2020 at HMP Wakefield, the Taliban bombmaker Kalid Ali stabbed a guard with a biro whilst shouting “Allahu Akbar”.<sup>93</sup>

- 3.16 These violent attacks by terrorist prisoners take place within the context of wider prison violence. The latest Safety in Custody Statistics<sup>94</sup> show that in the calendar year 2019<sup>95</sup> there were 31,348 assault incidents in male establishments in England and Wales of which 9,423 were assaults on staff. These figures were reasonably stable (at around the 14,000 and 11,000 mark respectively) between 2005 and 2014 but doubled in the years 2015-2019.
- 3.17 In Chapter 5 I consider how to improve the investigation and prosecution of terrorism offences.
- 3.18 I have referred to the statutory limitations that apply to some terrorism offences in the prison context and in particular to in-cell displays of symbols of proscribed organisations and in-cell encouragement of terrorism. It would be possible to amend the Terrorism Acts so that such acts counted as being in public.<sup>96</sup> Sober consideration would be required of the evidential difficulties that are likely to be encountered;<sup>97</sup> there is little point in extending the reach of the criminal law if no one is ever going to be prosecuted.

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<sup>92</sup> <https://www.bbc.co.uk/news/uk-england-humber-26824405>; <https://www.bbc.co.uk/news/uk-england-humber-26824405>.

<sup>93</sup> <https://www.dailymail.co.uk/news/article-9298767/British-Taliban-bombmaker-attacked-prison-guard-frying-pan.html>.

<sup>94</sup> <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2020>.

<sup>95</sup> The figures for 2020 are lower because of Covid: 20,448 and 7,391.

<sup>96</sup> So each prisoner would be a member of the public for the purposes of s1 Terrorism Act 2006, and the cell would be in public for the purposes of s13 Terrorism Act 2000.

<sup>97</sup> E.g., proving what was said in a private meeting in a cell, or attributing a flag to a particular prisoner.

## Terrorism-Related Activity

3.19 This is behaviour that encourages or facilitates acts of terrorism<sup>98</sup> and which may be, but is not necessarily, criminal. It would therefore apply to one-to-one encouragement of terrorism in prison. However, it is not a useful term to apply in the prison context because of its relatively restrictive definition<sup>99</sup> which would not, for example, capture much of Usman Khan's behaviour. Nor would TPIMs be a sensible suggestion for serving prisoners because:

- Entirely new methods of administering them would need to be established in a custodial setting.
- It would be difficult to reconcile the dynamic control that prison governors need to exercise in their prisons with conditions on movement and behaviour imposed by the Home Secretary.
- Among other things, TPIMs work by prohibiting an individual from having unauthorised contact. However, prisoners cannot control who they are placed into a cell or van with.

## Terrorist Risk Behaviour

3.20 I refer to terrorist risk behaviour as behaviour that is neither an offence nor (applying the statutory definition) terrorism-related activity, but which fosters or legitimises terrorist violence in prison or on release. The majority of Khan and Amman's behaviour falls into this bracket as does the behaviour to which other studies have drawn attention.<sup>100</sup> Considering terrorist risk behaviour focuses on

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<sup>98</sup> See section 4(1) TPIM Act 2011.

<sup>99</sup> It does not apply to 'radicalisation': *LF v Secretary of State for the Home Department* [2017] EWHC 2685, Laing J, at para 225.

<sup>100</sup> I have corroborated the observations of Liebling et al (2012), Acheson (2016), Powis et al (2019) from my own interviews, reading of intelligence reports, and reference to reported cases such as *R (Bourgass) v Secretary of State for Justice* [2011] EWHC 286 at paras 6, 25-6; *R (Odigie) v Serco Ltd* [2013] EWHC 3795 (Admin) at para 42; *R (Syed) v Secretary of State for Justice* [2017] 4 WLR 101 at para 9. See also Maitra DR. 'If You're Down With a Gang Inside, You Can Lead a Nice Life': Prison Gangs in the Age of Austerity. *Youth Justice*. 2020;20(1-2):128-145 (interview with 'Mark').

behaviours that may engender violence in the future, not just on the individuals who may commit it.

- 3.21 Strikingly, much of this behaviour is associated with proponents of Islamist terrorist violence seeking to exercise power or control within prison wings and can be further categorised as follows.
- 3.22 **Control through leadership and recruitment:** charismatic or violent prisoners acting as self-styled 'emirs' and exerting a controlling and radicalising influence on the wider Muslim prison population (including through enforcers, whilst keeping their hands clean); recruitment (in particular of vulnerable or lonely prisoners, using guidance, sharing of food or material gifts), and conversion backed by implicit or actual violence; soliciting or accepting menial tasks (such as cell-cleaning) from lower status prisoners.
- 3.23 **Control of physical territory:** seeking to exclude staff from attendance at Friday prayers or to impose conditions on entry (such as staff removing shoes); attempts made to engineer segregation between Muslim prisoners and Non-Muslim prisoners by landing or wing, or to exclude other prisoners from kitchens or showers unless they avoid certain foods and comply with certain rules.
- 3.24 **Control of standards of behaviour:** the use of sharia courts and punishment (including flogging); undermining the prison Imam at Friday prayers<sup>101</sup> or boycotting official Friday prayers; making insincere allegations of racism and Islamophobia or mistreatment against staff to delegitimise staff authority; acting collectively to intimidate staff when their behaviour is challenged; demanding to wear certain clothes or refusing to participate in work or activities; refusing to be searched by female staff;<sup>102</sup> assaulting other prisoners for faith-based reasons.

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<sup>101</sup> Wilkinson, M., Ifran, L., Quraishi, M, Purdie, M, 'Prison as a Site of Intense Religious Change: The Example of Conversion to Islam'. Religions 12: 162 (2021) observed prisoners refusing to pray behind prison chaplains at the Midday Prayer at HMP Forth.

<sup>102</sup> Cf the type of behaviour referred to in R (Bourgass) v Secretary of State for Justice [2011] EWHC 286 at para 6.

- 3.25 **Controlling the ideology:** celebrating terrorist attacks like Nice and Manchester arena; laughing and joking during Remembrance Sunday; shouting violent Islamist slogans and using derogatory words like Kaffir in conversation with staff and other prisoners; painting military service as unacceptable (with the result that staff may warn new prisoners not to mention any military links they may have); circulation of Islamist propaganda that encourages violence, violent videos, images and nasheeds (songs);<sup>103</sup> declaring other Muslims unIslamic (Tafkir); ostentatiously destroying literature provided by prison chaplains;<sup>104</sup> unofficial prayer gatherings.
- 3.26 There are four concluding points to make.
- 3.27 **Firstly**, if and when right wing terrorist ideology is identified as a significant problem on prison wings, it will no doubt have similar features of control through leadership and recruitment; control of physical territory; control of standards of behaviour; and control of ideology.
- 3.28 **Secondly**, terrorist risk behaviour is destructive of what prisons hope to achieve for prisoners (good behaviour, rehabilitation into wider society, tolerance and dignity, positive relationships with staff, pride in educational opportunities or jobs), and unfair on individual prisoners whose limited remaining freedoms are cut down when given little choice but to conform to a dominant ideology or suffer the consequences.
- 3.29 **Thirdly**, it would be possible to treat this behaviour as simply another manifestation of gang-like activity that is endemic in prison life. However, if the authorities are serious about reducing the risk of terrorism in prisoners and from prisoners on release, as I believe they now are, this behaviour ought to be identified for the risk it presents.

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<sup>103</sup> At his trial, the Whitemoor attacker, Ziamani boasted about obtaining extremist material on an SD card in prison, which he transcribed as part of the indoctrination of his accomplice, Baz Hockton: <https://www.bbc.co.uk/news/uk-54457605>.

<sup>104</sup> Wilkinson, M. et al, op.cit., observed prisoners “aggressively trashing copies of the prison magazine for Muslims in HMP Coquet”.

3.30 **Fourthly**, HMPPS officials sometimes doubt the extent to which it is possible to distinguish terrorist risk behaviour from other behaviour. They worry about making false assumptions based on a lack of cultural familiarity with Islam or Muslims. For example, they may fear mistaking enthusiasm and generosity towards fellow members of the same faith as indications of grooming or gang-type behaviour. However,

- It is important not to take this point too far. A Muslim prisoner like any other prisoner is an individual with a set of unique behaviours based on character, habit, tradition, personal faith, family, and experience. Some of those behaviours will have been held for a long time, some adopted for the first time in prison. Prison staff are used to dealing with a wide range of prisoners and determining what behaviour is appropriate. Seeking to draw power from staff or to exercise control over other prisoners on the grounds of faith or ideology is unacceptable by any standard.
- It is now possible to draw on the experience of the last decade and a half and, as I recommend in the next chapter, training can be improved.
- Understanding risk is a dynamic process and generally depends on an accumulation of detail. Prison staff are unlikely to need for form judgments based on single observations.
- Errors are more likely to be avoided by a habit of curiosity: for example, “Why is this newly arrived prisoner cleaning out the cell of a TACT offender?”.

## Recommendations

### Recommendation 2

The government should consider whether or not to amend the Terrorism Acts so that conduct falling within section 13 Terrorism Act 2000 and section 1 Terrorism Act 2006 is capable of amounting to an offence even if committed within a prison cell and even if, in the case of encouragement of terrorism, it only involves two prisoners.

**Recommendation 3**

Officials should establish Terrorist Risk Behaviour as a recognised and codified phenomenon in the prison context. Identifying Terrorist Risk Behaviour should not depend upon being able to establish the ideological motivation of particular prisoners.

## 4. Governing governors

- 4.1 Each governing governor (or no.1 governor) is in legal<sup>105</sup> and practical control of the prisoners in their prison, and has command of the prison officers who are obliged “to assist and support the governor in their maintenance and to obey his lawful instructions”.<sup>106</sup> Governing governors are responsible under the Prison Rules 1999 for whether prisoners are moved from one wing to another, treated as of one religious denomination as opposed to another,<sup>107</sup> have their communications intercepted<sup>108</sup> or logged<sup>109</sup> or disclosed outside the prison,<sup>110</sup> searched,<sup>111</sup> have unauthorised articles confiscated,<sup>112</sup> put in segregation,<sup>113</sup> observed by means of overt CCTV<sup>114</sup> or disciplined,<sup>115</sup> and are responsible for the system of privileges and incentives in the prison.<sup>116</sup> A governor is ultimately responsible for everything that happens within a prison.<sup>117</sup> “Fiefdom” was a term frequently used to illustrate the power exercised by governing governors within their prisons.
- 4.2 No one else, such as CT Police or intelligence operatives employed centrally by HMPPS, can enter a prison or carry out covert or any other activity without their say-so. More generally prison life is about a myriad of different decisions for which the governing governor is ultimately responsible. In short, effective activity to

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<sup>105</sup> Section 13(1) Prison Act 1952, “Every prisoner shall be deemed to be in the legal custody of the governor of the prison”.

<sup>106</sup> Rule 62(1).

<sup>107</sup> Rule 13.

<sup>108</sup> Rule 35A.

<sup>109</sup> Rule 35B.

<sup>110</sup> Rule 35C.

<sup>111</sup> Rule 41.

<sup>112</sup> Rule 43. The governing governor decides what articles a prisoner is authorised to have or not: s8A Prison Act 1952.

<sup>113</sup> Rule 45.

<sup>114</sup> Rule 50A.

<sup>115</sup> Rules 53 and 55, save where dealt with by an external adjudicator.

<sup>116</sup> Rule 8.

<sup>117</sup> ‘Prison Governance’, Justice Committee report (31 October 2019), HC 191 at para 46.



counter terrorist offending or terrorist risk behaviour in individual prisons can only take place with the full consent of governing governors.

- 4.3 The commitment of governing governors to counter-terrorism varies widely across the estate. I found that there were some governors who:
- took the view that cooperation with police and partners on CT matters should simply be refused because it was likely to cause too much trouble to the good order and discipline of the prison.
  - regarded CT as a matter that was a distraction to be delegated entirely to others within the individual prison.<sup>118</sup>
  - regarded CT as entirely a matter for multi-agency bodies such as JEXU.<sup>119</sup>
  - More subtly, were willing to cooperate with police and partners but only where the CT risk could be framed in terms of good order and discipline of their prison, despite CT being a matter of national importance.
- 4.4 Important factors appear to be whether the governing governor is in charge of a prison within or outside the Long Term and High Security Estate, whether they have had any prior CT experience, and the nature of their particular prison population.
- 4.5 Governing governors have far more to deal with in their prisons than counter-terrorism; and day-to-day oversight of counter-terrorism matters is largely delegated to deputies: security governors and, in the larger prisons, CT governors. But unless governing governors are personally invested in and provide leadership in counter-terrorism, staff will not be encouraged and supported, or held accountable for their failings, joint action will be frustrated, resources will not be made available, or wasted by being misdirected,<sup>120</sup> and problem prisoners will simply be shifted from

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<sup>118</sup> Great pressure can be put on prison chaplains and imams, for example to sort between coerced and non-coerced conversions or to attempt a process of deradicalisation. I am less critical of prison imams than some commentators. The chaplaincy is only part of the response.

<sup>119</sup> See Chapter 5.

<sup>120</sup> The Local Tactical Tasking and Co-ordination Group in the current HMPPS Tasking and Co-ordination Framework document is referred to as an opportunity for governing governors and deputy governors to constructively challenge intelligence assessments and proposed actions. They can only do this from a position of knowledge.

one part of the estate to another as governors prioritise local good order and discipline over the interests of national security.

- 4.6 Because of the pressure exerted on members of prison staff by prisoners, staff need to have confidence that sound decisions on confronting terrorist risk behaviour will be backed up by the governing governor if challenged. Conversely, staff must know that the culture of turning a blind eye to behaviour that ought to invite scrutiny and challenge, will not be tolerated by the prison leadership.
- 4.7 Reducing the risk of terrorism in prison and amongst prisoners ought to be a core part of the governing governor's remit, supported by better policies, training, support and metrics. For completeness, mere compliance with the Prevent duty,<sup>121</sup> which applies to a wide range of public bodies such as education providers and health and social care providers, is not and could never be considered as sufficient. It does not reflect the dominant role that governing governors have over their prisons to the exclusion of all other counter-terrorist bodies including the police.

## **Policies for Action**

- 4.8 Current internal policy,<sup>122</sup> whilst containing some useful material, is focussed on process (intelligence reports, Pathfinder referrals) but pays insufficient attention to taking action.
- 4.9 Governing governors need explicit national policies on responding to terrorist offending and terrorist risk behaviour. Governing governors should be responsible for ensuring, through effective delegation and oversight, that these policies are being followed in their prisons. The need to identify and stop racism in prisons is

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<sup>121</sup> The duty to have "due regard to the need to prevent people from being drawn into terrorism" applies to a governor of a prison under section 26 and Schedule 6 Counter-Terrorism and Security Act 2015. Relevant guidance draws attention to prisoners who have "extremist ideas that are used to legitimise terrorism": <https://www.gov.uk/government/publications/prevent-duty-guidance/revised-prevent-duty-guidance-for-england-and-wales>.

<sup>122</sup> Managing Extremism and Terrorism Amongst Offenders in Custody and the Community – Policy Framework Detailed Guidance: Managing Extremism Amongst Offenders in Custody.

well-understood. A similar level of clarity is required to identify and reduce terrorism in prisons.

- 4.10 The point is not to create a harsh environment or to securitise the running of prisons, both of which could be counter-productive, unfair on the majority of prisoners, and difficult to sustain in the long term. Rather, the point is to ensure that terrorist risk behaviour (which is frequently repressive towards other prisoners) is nipped in the bud, and take action to ensure that Islamist groups are not the dominant source of prisoner power and that prisoners do not feel the need to adopt particular pro-terrorist identities in order to fit in.
- 4.11 A national and public playbook of straightforward actions to reduce terrorist risk would provide:
- Greater consistency across the prison estate. Reducing terrorism in the prison estate is a national endeavour and ought not to depend on local practices or attitudes.
  - Greater confidence for governing governors and staff. Many officials told me of a strong level of fear of litigation concerning decisions on terrorist prisoners, including from frontline staff who may be deterred from decision-making by a “see you in court” mentality on the part of assertive prisoners, or by the risk of becoming locked in time-consuming correspondence with solicitors.<sup>123</sup> Where controversial or challenged decisions are being taken, it helps to have the weight of clear policy.<sup>124</sup> At the same time prisoners’ interests are enhanced if they can understand the rationale for certain actions.
  - Clearer standards by which prisons can be held accountable.

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<sup>123</sup> On the question of whether greater legal support ought to be available to individual prisons, I was unable to form a view either way. Responding to threatened litigation is part and parcel of prison life, not just within the terrorism sphere. I detected that greater mutual support was available within the LTHSE. At the very least all governors should know how to apply for additional legal support.

<sup>124</sup> The recent audit of US prison chaplaincy services makes this point. Chaplains found it difficult to exclude prisoners from leading religious services; this “...hesitancy is understandable because chaplains do not have the weight of clear [Federal Bureau of Prisons] policy to support such sensitive decision-making”: Department of Justice, Office of the Inspector General, 21-091, July 2021.

- 4.12 The ground of reducing terrorist risk in prison or elsewhere should consistently be an express ground for decisions which are supported by policies. That is not currently the case. I have seen local policies on excluding prisoners from collective worship which refer to “disturbance” or “threat” but not terrorist risk. Prison Service Instruction 12/2011 which concerns possession of religious texts provides<sup>125</sup> that *“Prisoners may have additional religious artefacts or texts not detailed in this Order if they are not deemed by the Governor, relevant Chaplain or Minister to be a threat to security or good order. Governors have the discretion not to allow an artefact in possession if it constitutes a risk to health, safety, good order and discipline”* without any reference to terrorist risk; this omission is not rectified by a later reference to confiscation on grounds of national security<sup>126</sup> because national security may be a difficult ground for governing governors to invoke.
- 4.13 **Content:** I recommend that national policies should contain a combination of general principles for action, and additional concrete steps (a menu of options) that are available to governors in particular cases.<sup>127</sup>
- 4.14 General principles for action:
- (a) Governors and staff should be **alert** to terrorist risk<sup>128</sup> and **proactive** in reducing it, applying the precautionary principle which recognises that terrorist violence (within prison, or on release) is so serious that early action is justified even where the facts are uncertain. In particular governors and staff should avoid watching the problem grow and moving the problem to another jail.
  - (b) Governors and staff should question, challenge and call out potential terrorist risk behaviour using their jailcraft and taking advantage of the opportunities

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<sup>125</sup> At para 2.7.

<sup>126</sup> At para 2.19.

<sup>127</sup> In a similar manner, there is a menu of additional licence conditions that may be imposed on released terrorist offenders: <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2015/psi-12-2015-licences-conditions-licence-supervision-notice.pdf>.

<sup>128</sup> The need for alertness in relation to the terrorist threat was a point made repeatedly in a different context by the Chairman of the Manchester Arena Inquiry (Report Volume 1, e.g. para 8.13).

provided by overt management.<sup>129</sup> **Curiosity** and openness is in order. Religion and ideology are not ‘no go’ areas of which discussion is forbidden, either by staff or other prisoners.

- (c) Governors and staff should be clear in **confidently explaining** decisions which may have an adverse effect on prisoners: the goal is to reduce the risk of terrorist violence in prisons and by prisoners, not to impose harsh conditions for their own sake, or to stigmatise religion or ideology or cultural differences.
- (d) Governors and staff must **resist** collective prisoner attempts to get them to modify the performance of their functions for reasons connected with ideology or belief (for example, a group of prisoners insisting that staff are not present at collective worship, or making entry conditional on complying with certain standards such as removing shoes, or making demands about how they are searched), or any attempt to modify the behaviour of other prisoners for reasons connected with ideology or belief (for example, attempting to impose modesty standards in showers, or prevent the cooking of certain foods in certain areas). If there are reasonable adjustments that can be made to accommodate the faith or identity of an individual prisoner, that is for the individual prisoner to raise with staff, or through the chaplain, and must be not allowed to become a collective demand or form of resistance.<sup>130</sup>
- (e) Governors and staff should establish **clear boundaries** of universally unacceptable behaviour. This should include: prohibiting (and punishing<sup>131</sup>) overt hostility or mockery towards staff or other prisoners which is based on religious or ideological difference (for example, use of the derogatory term, “kaffir”); and prohibiting (and punishing<sup>132</sup>) the celebration of terrorist attacks at home or abroad. Even for long-term prisoners, disciplinary proceedings may be

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<sup>129</sup> Using the ‘five minute challenge’ and taking advantage of prisoners’ desire for progression (to a lower category, to release on parole) or need to avoid adverse consequence (higher categorisation, segregation, discipline, Separation Centres etc.)

<sup>130</sup> PSI 2016/7 (prisoner searches) Annex A paras 36 et seq provides useful guidance as to how prisons should respond when an individual male prisoner objects to being searched by a female officer on religious or cultural grounds.

<sup>131</sup> By Rule 51(19) it is an offence to be disrespectful to any officer; by Rule 51(20) it is an offence to use threatening, abusive or insulting words or behaviour.

<sup>132</sup> Ibid.

a way of marking a prisoner's card and ensuring that there is an uncontested record of an individual's behaviour.

- (f) Governors and staff should be open to the **opportunity to involve outside expertise and agencies** either for advice and assistance, or a tactical disruption.

4.15 Specific concrete steps. Policies for action should include the following specific steps that **may** be taken in order to reduce the risk of terrorist violence in prison or elsewhere:

- Prohibiting informal gatherings or access to certain parts of the prison where informal gatherings may be held.
- Prohibiting prisoners leading prayers or giving religious instruction in their cell or elsewhere.
- Removing individuals from official collective worship.<sup>133</sup>
- Requiring a particular prisoner to seek permission for having possession of any new text,<sup>134</sup> for example if a prisoner has repeatedly been found in possession of texts associated with terrorism. General volumetric controls on books were found to be unreasonable by the High Court in 2014 but the court acknowledged that this was subject to security considerations.<sup>135</sup> The MOJ is currently establishing a policy on whether particular texts should be allowed at all. This is a fraught task, full of principled and practical difficulties because different prisoners will take different things from different texts: local discretion is to be

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<sup>133</sup> Present policies are establishment-level. In *R (on the application of Bary and others) v Secretary of State for Justice and Governor of Long Lartin* [2010] EWHC 587 (Admin), the High Court accepted that considerable interference with his rights (which among other things included exclusion from ordinary Friday prayers) were justified by objectives of national and international importance. The Court noted that governing governors of high security prisons “must have a wide discretion in the operational decisions he makes in the internal organisation of his prison...This must be more so if the detainees are reasonably suspected of terrorist acts outside the UK and one or more regarded as a threat to national security”.

<sup>134</sup> With the result that possession of an unauthorised text would amount to an offence contrary to Rule 51(12) (possession of an unauthorised article), and that staff could search for unauthorised texts under s8A Prison Act 1952. It is difficult to list exhaustively the texts that encourage terrorism, as new texts are being generated.

<sup>135</sup> *R (on the application of Gordon-Jones) v Secretary of State for Justice* [2014] EWHC 3997 (Admin) at para 38.

encouraged, as is taking account of the circumstances in which suspect texts are found.<sup>136</sup>

- Clearly prohibiting the transfer of funds or property between prisoners that can be used to create exploitable dependencies.<sup>137</sup>
- interviews of prisoners, overtly recorded in writing, in which prisoners are asked to explain potential terrorist risk behaviour. For example, a TACT offender could be asked to explain for the record why a new inmate is cleaning his cell; and what the TACT offender is offering in return. He could be informed that a failure to provide an explanation may mean that the prison authorities put the worst construction on this behaviour, for example that he is the wing Emir and is seeking to establish an Islamist hierarchy on the wing.

4.16 Where prisoners disobey orders imposed specifically to reduce terrorist risk, they must be aware that this could lead to disciplinary action under the Prison Rules and governors must be prepared to use disciplinary action to reinforce clear boundaries between acceptable and unacceptable behaviour.<sup>138</sup> It must be acknowledged that it is not always possible to punish one's way out of a problem, and that unintended consequences may happen,<sup>139</sup> but clearer boundaries provide greater certainty to staff and prisoners, and disciplinary action opens a range of options – added days, loss of privilege, time on segregation – that may help destabilise prisoners seeking to establish a pro-terrorist powerbase.

4.17 On a point of minor, but potentially helpful practical detail, I was told that governors appreciate policy which carries an up-to-date name and phone number of the MOJ policy lead responsible for the policy: this enables informed discussion where a policy does not cover a difficult situation and can inform future updates.

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<sup>136</sup> For example, when considering if a text should be prohibited on terrorist risk grounds it is relevant to consider the circumstances in which it has been encountered to date (for example, in the possession of a number of TACT offenders in different parts of the estate).

<sup>137</sup> The rules on prisoner property and money are complex and require consideration of PSI 01/2012; the Incentives Policy Framework (2020); HMPPS Finance Manual; PSI 12/2011.

<sup>138</sup> Rule 51(22) makes it an offence against discipline to disobey any lawful order.

<sup>139</sup> For example, added days for determinate sentenced prisoners can lead to less time subject to licence once released.

## Training

4.18 I attended the short 'Aspects' training given to newly qualified prison officers.

4.19 In my view periodic training should be given to every governing governor and deputy governor, to all existing members of staff, and to officials within HMPPS involved in the line management of governing governors.

- Training should endorse the legitimacy of reducing the risk of terrorist violence. HMPPS's real-life encounters with terrorist ideology and violence over the past 15 years ought to make staff more confident that their goal is legitimate and not Islamophobic. It is better to focus on the risk of violence, with reference to real examples, than to become distracted by the definition of terrorism or, worse, extremism.
- Training should emphasize that reducing terrorist risk is not a licence to create a harsh environment in which religion or traditions are doubted, but that the goal is an environment which is better for all staff and prisoners.
- It should incorporate a proper understanding of risk (which is different from proof,<sup>140</sup> guilt, moral blameworthiness and vulnerability) and emphasize that if the goal is to prevent terrorist violence either in prisons or by prisoners on release, it will be necessary to take precautionary action before any harm has occurred.
- It should emphasize the importance of understanding the nature of terrorist offences committed by TACT offenders when making decisions about them,<sup>141</sup> and avoiding reliance on in-custody behaviour as the only indicator of terrorist risk.
- It should be based on concrete examples of terrorism, with emphasis on examples of Islamist terrorism (being the current principal threat within prisons)

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<sup>140</sup> The management of risk is an evaluative exercise rather than a determination of whether a particular event has occurred: *Bourgass and another v Secretary of State for Justice* [2015] UKSC 54 at para 92, Lord Reed.

<sup>141</sup> Decisions were taken about Usman Khan's access to in-prison courses with limited understanding of his index offending: *Fishmongers' Hall Inquests*, day 14, pages 48-51: <https://fishmongershallinquests.independent.gov.uk/wp-content/uploads/2021/05/FHI-Day-14-30-April-2021.pdf>.



and other concrete examples based on the risk from Right Wing Terrorism. The aim should be to indoctrinate staff in the vocabularies, mindsets and behaviours of Islamist terrorists, and the vocabularies, mindsets and behaviours of Right Wing Terrorists rather than provide a general guide to terrorism. Staff should be enabled to identify terrorist risk behaviour as it has arisen in practice and updated on warning signs.<sup>142</sup>

- Attention should be given to the risk that a less prominent prisoner will adopt terrorist violence, to the risks of conditioning and manipulation of staff by terrorist risk prisoners, the dangers of containment and appeasement, and the need to give attention to the apparently well-behaved as well as those who shout the loudest.
- Whilst identifying the specialist support available, it should emphasize that reducing the risk of terrorist violence within prisons, and by prisoners on release, is a task for every member of staff.
- Better understanding of what other external specialists and agencies can and cannot do.

## Metrics

4.20 Large amounts of data are gathered from prisons and used to evaluate performance across a wide range of responsibilities.<sup>143</sup> Improvements can be made in the way data is collected and assessed in relation to terrorist risk.

4.21 Current CT metrics are (a) geared towards process, for example the number of Intelligence Reports disseminated or attendance at Pathfinder Meetings, rather than

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<sup>142</sup> It is inevitable that terrorist risk behaviours will in time change, whether to avoid detection or through natural evolution, but there are certain patterns that have been consistent over last decade and a half; see for example Khosrokhavar, op. cit.

<sup>143</sup> This includes both quantitative and qualitative data. Qualitative data is gathered on business aims such as “Decency and Safety” through questionnaires to staff and prisoners: MQPL decency audit, <https://data.justice.gov.uk/prisons/prison-reform/mqpl-decency>; Annual Prison Performance Rating Guide 2019/20, Ministry of Justice, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/904765/Annual\\_Prison\\_Performance\\_Ratings\\_2019\\_20\\_guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904765/Annual_Prison_Performance_Ratings_2019_20_guide.pdf). Quantitative data may require interrogation before submission (for example, to prevent duplication of staff observations), and local establishments may initially require support in recognising the data.

real world indicators of risk (b) aimed towards regional (for example, the number of Intelligence Reports generated in the Yorkshire and Humberside Region) rather than establishment performance.

4.22 Better targeted collection and analysis of data can be used for:

- The identification of prisons where there is heightened terrorist risk. Ideally national HMPPS and CT police leadership, and MI5, ought to have access to a heatmap of terrorist risk within the prison estate.<sup>144</sup>
- Line management and measurement of a governing governor's performance in addressing terrorist risk.<sup>145</sup>
- Evaluation of the effectiveness of interventions.

4.23 HMPPS ought to consider the feasibility of collecting data of the following types:

- **Data relevant to identification of terrorist risk:** prisoner-on-prisoner, and prisoner-on-staff, assaults suspected to be motivated by faith or ideological grounds; suspected presence of an "emir"; wings where there is pressure to modify normal prisoner behaviour (cooking of bacon in kitchens, showering naked) on faith or ideological grounds; faith conversions which are suspected to be coerced; number of incidents of overt celebration of terrorist attacks; number of prisoners boycotting official prayers; findings of suspected terrorist propaganda;<sup>146</sup> number of prisoners wearing symbols associated with terrorism (for example, "18"<sup>147</sup>); how free, on a scale of 1-5, are prisoners to pursue their own faith or ideology unmolested by other prisoners; numbers of prisoners whose terrorist risk value is upgraded (or downgraded) on Pathfinder scoring.
- **Data on steps taken to reduce terrorist risk:** overt challenges by prison staff to prisoners in relation to terrorist risk behaviours; reduction in Incentive and Earned Privileges, disciplinary action, use of segregation, or relocation;

<sup>144</sup> Cf the national analytical tools created by CT Borders Policing, referred to in Terrorism Acts in 2019 at 6.12 to 6.13.

<sup>145</sup> Performance is determined through a series of Key Performance Indicators (KPIs).

<sup>146</sup> HMPPS has been bedevilled by the difficulty in identifying what is objectionable "extremist literature" as opposed to allowable reading material. I prefer the term "terrorist propaganda" because the important feature is terrorism not extremism.

<sup>147</sup> 1 = A(dolf); 8 = H(itler).

investigative steps taken by the prison on its own initiative to reduce terrorist risk (for example, under rule 50A Prison Rules 1999); investigative steps taken by other agencies within the prison to reduce terrorist risk; taskings given by the prison in relation to terrorist risk; percentage of staff who have received periodic CT training; witness statements given by staff for the purpose of prosecuting terrorist offending or terrorist risk offenders.

## Regional and National

- 4.24 HMPPS is a hierarchical organisation. Despite the investment in external CT resources which I consider in the next chapter, governing governors look to their own line management for assurance, challenge, assessment and leadership. It follows that
- (a) regional and national accountability for terrorist risk within the prison estate (as with all other risks) belongs within the line management of prison governors<sup>148</sup> and
  - (b) the most effective means of escalating problems (for example, where a governing governor is reluctant to permit covert activity by CT police or MI5) will often be through line management.
- 4.25 For these reasons Prison Group Directors must, like governing governors, receive CT training and recognise the reduction of terrorist risk within the prison estate as part of their core remit. Line managers should discuss CT performance with governors. Deployment of governors to prisons where there is a heightened risk of terrorism should take account of governors' CT knowledge and experience.
- 4.26 It was clear to me that governing governors within the LTHSE have better informal networks for pooling knowledge and sharing best practice. Consideration should be given to creating a forum for all governing governors where best practice and

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<sup>148</sup> In mid 2021 national responsibility for terrorist risk within all prisons (including the Long-Term High Security Estate, which had previously been considered as a separate unit) passed to a single Executive Director within HMPPS.

unusual problems can be considered, and useful contacts can be shared. This could be done remotely.

## Recommendations

### **Recommendation 4**

Governing governors should be formally accountable for reducing the risk of terrorism from prisoners in their establishments and required to take into account the potential for terrorism by these prisoners following transfer to another establishment or on release.

### **Recommendation 5**

Specific policies for governing governors should be developed on terrorist risk, comprising general principles for action, and specific steps.

### **Recommendation 6**

All staff, including governing governors and line managers, should have regular training on terrorist risk in the prison estate based on concrete examples.

### **Recommendation 7**

Data on identification and prevalence of Terrorist Risk Behaviour in individual prisons, and on steps taken to reduce terrorist risk in individual prisons, should be collected and assessed.

## 5. Joint working

- 5.1 There is a crowded field<sup>149</sup> of bodies outside the prison wall which perform an operational function with respect to terrorist risk offenders in prison:
- CT staff employed, since 2017, by the Joint Extremism Unit (JEXU) who provide specialist support to prisons regionally, or at establishment level in the case of the Long Term High Security Estate (LTHSE).
  - National HMPPS units responsible for intelligence-gathering and intelligence analysis.<sup>150</sup>
  - Staff at JEXU HQ.
  - Staff at HMPPS HQ responsible for terrorist risk.
  - National police units responsible for intelligence-gathering and analysis.
  - The CT Police Network at regional and national level.
  - MI5.
- 5.2 There are also bodies whose function may be indirectly relevant: for example, the National Crime Agency or regional police units which investigate and disrupt organised crime in prison.
- 5.3 The issue is how best to harness the capabilities of these bodies so that timely and effective decisions can be made to drive down terrorist risk on the basis of the right information.
- 5.4 Recent major investment into HMPPS's national intelligence capabilities has led to a reassessment of HMPPS's relationship with CT Police and MI5 and the creation of two new national units, described below. Fundamental questions remain about the final shape of joint working, and the impression gained was of the early stages

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<sup>149</sup> The Intelligence and Security Committee in its November 2018 Report, 'The 2017 Attacks. What needs to Change', HC 1694 expressed concern that "the number of organisations and teams working in this area makes it a crowded space", para 89.

<sup>150</sup> Not limited to CT matters.

of acquaintanceship between different agencies with numerous conversations still to be had.<sup>151</sup>

## Specialist Staff

5.5 JEXU staff add specialist overlay to the work of core prison staff:

- Outside the LTHSE, in the form of regionally based Prison Prevent Leads coordinated by a Regional Counter Terrorism Lead.
- Within the LTHSE, where the majority of TACT offenders are detained, located in CT Units in individual prisons.

5.6 CT Police have a presence either in CT Units within the LTHSE, or regionally in the person of CT Prison Intelligence Officers. There is therefore a sharp distinction between the presence of specialist CT staff at LTHSE and non-LTHSE prisons.<sup>152</sup>

5.7 The basic process for identifying offenders who present a terrorist risk, and considering remedial steps, is known as Pathfinder. The raw material on which the Pathfinder process operates are intelligence reports filed by the prison, enriched, in principle, with relevant intelligence held by national or regional bodies. Pathfinder meetings were consistently described to me as overly process-driven.

## National Joint CT Prisons and Probation Hub ('JCTPPH')

5.8 A new national body was created after the Fishmongers' Hall attack of November 2019, and became operational in April 2021 with co-located staff from CT Police, HMPPS and MI5. Its remit and working practices remain in development, and its relationship with other parts of the system, notably Pathfinder, are yet to be fully determined but will likely include:

- An audit function as to where terrorist risk offenders are located within the system.

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<sup>151</sup> For example, I encountered very different views between CT Police and HMPPS as to the ease of running Covert Human Intelligence Sources in prison.

<sup>152</sup> Save that HMP Wandsworth, uniquely outside the LTHSE, has a CTU function.

- A disclosure function or bridge, to allow sensitive intelligence to be seen and used by HMPPS in connection with prisons or probation.
- An assessment function, producing thematic intelligence products.
- A tactical delivery function, acting as a gateway or escalation point for CT intelligence requirements.
- A good practice function, intended to improve intelligence practice and procedure across HMPPS, CT Police and MI5.

5.9 As its name indicates the work of the JCTPPH is responsive to both the prisons and probations functions of HMPPS. Work on both functions should not obscure the enormous differences between intelligence collection and risk reduction in the community, and in prison.

## **National CT Assessment and Rehabilitation Centre ('CT-ARC')**

5.10 Also in development is the National CT-ARC, a national HMPPS body comprising a network of specialist psychologists, probation officers, and other staff who will focus on standards for risk assessment, risk reduction and rehabilitation.

5.11 CT-ARC is also intended to provide a mechanism for informing risk assessments with the most sensitive intelligence (i.e. that cannot be shared locally); and a national psychological resource for tactics in difficult cases.<sup>153</sup>

## **Five Objectives**

5.12 A key aspect of my review was to look across the CT landscape at all the various bodies and methodologies engaged in assessing and managing terrorist risk in prison. Carrying out a review in the teeth of a massive programme of change is difficult, but a review that simply looked back at past imperfections would soon be redundant.

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<sup>153</sup> Another (welcome) function is to improve the quality of internal and external research on terrorist risk and rehabilitation.

- 5.13 I have therefore attempted to synthesise my observations on what has recently gone wrong in the past with recommendations in the form of five objectives for joint working:
- Action
  - Ownership
  - Simplification
  - Consistency
  - Integration.
- 5.14 I conclude by looking at two discrete topics in the context of joint working: how to improve the investigation and prosecution of terrorism offences within the prison estate; and the authorisation of covert activity.

## **Action**

- 5.15 Intelligence development does not in itself reduce terrorist risk. It is a means by which the right action can be taken at the right time. Action may be overt or covert.
- 5.16 In the early stage of my review intelligence development and risk assessment were frequently presented to me as sufficient responses in themselves. Similarly, the referral into or adoption by the Pathfinder process was identified as a concrete risk reduction measure. But holding a meeting does not reduce terrorist risk. Pathfinder is a process of identifying and ranking (or banding) offenders in terms of their terrorist risk, with a view to action being taken to reduce that risk. Risk reduction comes, if at all, when action is taken.
- 5.17 Responsibility therefore rests with intelligence collectors to ensure that the right information is made available to the right people so that action can be considered and if appropriate, taken.
- 5.18 The development of intelligence can stymie effective action because intelligence development carries a significant time lag. Whilst there may be cases in which it is tactically justified to develop intelligence on an individual who is showing overt terrorist risk behaviour, there will be many cases in which the immediate and local



action can and should be taken: for example, overt challenge, reduction in incentives and earned privileges, disciplinary action, segregation, or relocation. This might be the case where a terrorist risk offender has a position of influence over other prisoners, even if more work could be done to understand his motivation.

- 5.19 A related point concerns the development of thematic intelligence products. It was not clear to me what action these thematic products were directed towards. Thematic intelligence products which are disseminated to frontline practitioners ought to include action points: for example, if a thematic document identifies common prisoner behaviours that may indicate terrorist risk it ought to cross-refer to the policies for action (see Chapter 4) that are relevant to addressing that risk.
- 5.20 In order to improve the relationship between intelligence and action:
- Actionable information needs to be shared more between HMPPS, CT Police and MI5.
  - Greater appreciation is needed by intelligence collectors of what prisons can do to reduce terrorist risk. Intelligence officials should be able to say to prison authorities: “You need to know this” or “I think it will be helpful to you to know this”.
  - Prison staff need to be better at asking for information. If they ask a specific question (for example, “Who is the wing emir?”), intelligence may be provided, or may be developed, to provide the answer. If they do not ask, intelligence opportunities may go to waste.

## Ownership

- 5.21 There is a real possibility, particularly in the context of non-LTHSE prisons who place greater reliance on regional specialists,<sup>154</sup> that external engagement will encourage the sense at establishment level that terrorist risk is best addressed elsewhere. Joint working should not be allowed to stifle local initiative. At worst, initiatives to reduce the risk of terrorism, generated by external specialists, can

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<sup>154</sup> Prison Prevent Leads, Regional Counter Terrorism Leads, CT Prison Intelligence Officers.

appear to pursue an agenda at odds with the governing governor's more familiar concerns of good order and discipline.

- 5.22 How governing governors ultimately discharge their responsibility will depend upon many factors, but joint working should not be allowed to blur individual responsibility and accountability. If terrorist risk behaviour is occurring in a prison, it is the responsibility of the governing governor to agitate for change and, if external support is not being proffered, to call for it.

## **Simplification**

- 5.23 Without strategic involvement from all agencies overlapping bodies and functions will be created leading to confusion and loss of tempo. Clear-sightedness is needed about the risk of competing remits.
- 5.24 Attention should be given to reducing intermediary bodies and avoiding duplication of roles. It must be asked whether intermediary roles are required. It is not clear:
- Whether individual governing governors will be able to contact the Hub or CT-Arc for advice on individual cases and if so, how, or whether all contact is intended to go via the Regional Counter-Terrorism Lead.
  - Whether regional Pathfinder meetings are the best fora for the sometimes complex debates about the overall public interest. CT Police may have very different views from a governing governor about the desirability of relocating a particular prisoner, and what will lead to the greatest reduction in terrorist risk. But governing governors are unlikely to be present at regional Pathfinder meetings.
  - How regional JEXU staff are meant to interact with national bodies like the Hub and CT-Arc, or what role if any the Hub and CT-Arc are meant to have in relation to specialist decision-making such as Separation Centre referrals.
  - Whether CT-Arc will provide a single psychological voice on prisons and probation, and if so how CT Police will be able to access CT-Arc's specialisms.
  - That the shortest reasonable pathways have been identified for funnelling sensitive information: it appeared to me that some sensitive information will

need to pass through multiple bodies even before it is considered by a national body like CT-Arc. It is not clear what role RCTLs play in relation to prisons in the LTHSE.

- 5.25 Although HMPPS and JEXU are to be commended for their current attention to multi-agency working, Operation Semper, CT Police's model of offender management,<sup>155</sup> appears to have been developed in parallel with greater attention needed to how the different capabilities that are now available can operate as a coordinated whole.
- 5.26 A key aspect of simplification concerns intelligence gathering. The clumsy OPT procedure, a legacy of distrust and unfamiliarity between HMPPS and the police, should be revisited. If there is a statutory basis to share intelligence under section 14 Offender Management Act 2007, a further individual authorisation process should not be required once a trusted framework has been established: for example, police should be free to ask for intelligence from HMPPS on the understanding that no evidential use will be made of, or action taken based on, that intelligence without reverting to HMPPS.<sup>156</sup> Direct engagement between HMPPS and MI5 is to be encouraged. HMPPS should not fail to recognise lawful authorisations because of lack of familiarity or insistence on using a particular process.

## Consistency

- 5.27 There are significant variations as to how prisons can tap into external support to reduce terrorist risk:
- Between LTHSE and non-LTHSE prisons. In general, LTHSE had greater confidence about engaging with external support.

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<sup>155</sup> Referred to by the Independent Office for Police Conduct here:

[https://www.policeconduct.gov.uk/sites/default/files/Documents/Investigations/Operation\\_Aragon\\_Summary\\_of\\_IOPC\\_conclusions\\_2021.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/Investigations/Operation_Aragon_Summary_of_IOPC_conclusions_2021.pdf).

<sup>156</sup> Where legislation requires governor consent to disclosure – for example, Rule 35C Prison Rules 1999 with respect to the product of lawful prison intercept – clarity is required over whether further disclosure (for example, by a national HMPPS body to the police) requires additional authorisation. PSI 04/2016 suggests that one-off consent can be given for all future dissemination (para 5.3).

- Between regions. This is because of the different configurations of regional CT Police resources. For example, some CT Police investigators can call upon Serious Organised Crime investigation resources when investigating potential terrorist risk behaviour in prisons.
- Between individual prisons, depending on the experience of the governing governor.

5.28 Inconsistency is a particular feature of current intelligence sharing. Sharing sensitive intelligence depends on trust and confidence. Far too often the willingness of CT Police and MI5 to share sensitive intelligence depends on established relationships between individuals, because in the past HMPPS as a whole was not considered a trusted partner. This meant that when practitioners moved on within the system new relationships had to be re-established. The history of intelligence sharing has also been affected by a sense of imbalance: HMPPS staff told me repeatedly that the information flow went mainly one way. I was also informed of good practice, for example CT Police Covert Human Intelligence Source (CHIS) controllers meeting directly with security governors.

5.29 Significant improvements are being made to the issue of trust and confidence, especially at the level of national bodies. Realism is required. Among other factors which may impede the exchange of information, HMPPS staff have relatively few security clearances, and HMPPS and individual prisons lack sensitive IT infrastructure. The onus is therefore on CT Police and MI5 to find effective ways of bridging the covert and the overt worlds to ensure that actionable intelligence is made available.

5.30 There is also a need for greater consistency in the process of assessing and managing terrorist risk amongst governors, HMPPS, JEXU staff, CT police, MI5, national bodies such as the Hub and CT-ARC, local forensic practitioners, and probation officers:

- Consistency is required in the language of risk. Scotland's Risk Management Authority defines risk as "the potential for an adverse event to lead to a negative outcome, and by assessing risk we seek to estimate how likely the event is to occur and the nature and seriousness of its impact" where adverse event is

offending behaviour and negative outcome is the degree and nature of harm caused.<sup>157</sup> In the context of terrorist risk, what does “harm” mean? Does it refer to terrorist violence, or further terrorist offending (including non-violent offending)<sup>158</sup> or reengagement with terrorist associates, or something else? Is “extremism” the same as harm?<sup>159</sup> Is the language of prisoners having “vulnerability” to terrorism (frequently encountered in HMPPS guidance) useful terminology? Over what timescale should terrorist risk be measured? It is important to separate out the likelihood of an event from the seriousness of its impact, and to identify the point at which serious harm becomes so unlikely that it can be discounted: at what point is this? This final consideration has great significance where resources must be husbanded and priorities identified. It is not possible to actively manage a terrorist risk, however small, for ever.

- Consistency is also required in understanding what information is relevant to risk. For example, offence paralleling is a useful consideration, well understood by prison psychologists but may not be understood by intelligence analysts. All parties need to know what to look out for.
- Consistency is needed in the manner of combining information. Common standards should be established as to what sources of information need to be considered. One of the most difficult aspects of assessing terrorist is the fact that there may be highly relevant but very sensitive intelligence that would, if properly considered, put a very different gloss on whether a prisoner poses a terrorist risk. A system for checking assessments against covert intelligence which cannot otherwise be shared is needed.<sup>160</sup> In many cases covert intelligence may be consistent with what is already known, and no adjustment will be required. If adjustment is required either a means must be found of integrating the intelligence in the document itself, for example by means of an

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<sup>157</sup> Framework for Risk Assessment, Management and Evaluation: FRAME, July 2011.

<sup>158</sup> This is pertinent in the case of s58 Terrorism Act 2000 offences (collecting information likely to be useful to a terrorist). In some cases the collection of such information is a real indicator of future terrorist violence by that individual, in other cases the position is much less clear.

<sup>159</sup> In my view it is not. Terrorist harm is ultimately manifested in the use or threat of violence. Extremism is also legally meaningless: *LF v Secretary of State for the Home Department* [2017] EWHC 2685, Laing J. [www.bailii.org/ew/cases/EWHC/Admin/2017/2685.html](http://www.bailii.org/ew/cases/EWHC/Admin/2017/2685.html)) at para 225.

<sup>160</sup> This is a role likely to be played by CT-ARC.

unclassified form of words, or the overall risk assessment itself must be held (and potentially the risk managed) by different individuals.

- 5.31 There is no equivalent single authority in England and Wales to Scotland's Risk Management Authority (RMA), a non-departmental public body established in 2005 which is responsible for setting general standards for the assessment and management of risk.<sup>161</sup> The RMA is currently considering terrorist risk. Since national security is a reserved matter, it would be odd if different standards for assessing and managing terrorist risk were adopted in the different nations of the United Kingdom. Whether or not a national standards-setting body like the RMA is created in England and Wales, a means needs to be found of ensuring consistency within England and Wales and, in principle, across the UK.

## Integration

- 5.32 It would be naive to overlook the differences between the various agencies involved in managing terrorist risk in prisons. Prisoners are under the legal control of the governing governor of each prison;<sup>162</sup> HMPPS is an agency of the Ministry of Justice; JEXU is an agency of the Home Office and the Ministry of Justice; the CT Police Network is an operationally independent collaboration of the 43 police forces in England and Wales subject to the direction of the Senior National Co-ordinator; MI5 is a government department operating under the Security Service Act 1989 and the authority of the Home Secretary. Unless all custodial intelligence and management functions in respect of terrorist risk prisoners were to be combined within a new public body, it is bound to be the case that the various bodies will have different priorities, thresholds and operating practices. This will remain the case even if HMPPS increases its own intelligence-gathering capabilities.

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<sup>161</sup> Scotland has a unique sentence called the Order for Lifelong Restriction (OLR). This sentence is based on risk and requires a solid risk assessment and risk management planning process that can withstand scrutiny and challenge in court. The RMA sets the standards for risk assessments and management in connection with OLRs but it has a wider standards-setting role. There is a statutory duty under the CJ (Scotland) Act 2003 for persons with risk assessment and risk minimisation functions to have regard to the RMA's standards and guidelines.

<sup>162</sup> Section 13(1) Prison Act 1952.

- 5.33 A key point is to maximise understanding, so far as is safe to do so, of each other's capabilities and information appetites. I was frequently informed that officials responsible for developing intelligence were lacking tasking from prisons. This may in part be explained by a lack of understanding of the intelligence capabilities that exist.
- 5.34 An early and tangible benefit of the Joint CT Prison and Probations Hub has been much improved mutual understanding of capabilities and authorisation processes in covert techniques. There is no need for MI5 to reach for its covert methods if equally effective measures can be authorised by governing governors, for example under the Prisons (Interference with Wireless Telegraphy) Act 2012, or Rule 50A Prison Rules 1999, or achieved without using covert methods at all. In many cases overt methods may be equally effective.
- 5.35 Thought needs to be given by MI5 and CT Police as to how its Intelligence Handling Model<sup>163</sup> should operate in the prisons context. The Intelligence Handling Model enables MI5 to decide whether it is appropriate to commit its resources, a decision that is also relevant to how the resources of CT Police are deployed, and whether it is lawful for MI5 to disclose its information.<sup>164</sup>
- Prisons are a unique operating environment. By way of example, a particular prison may suffer a series of apparently forced conversions: it may not be immediately clear or readily discoverable whether those conversions are being done at the behest of a wing 'emir', and it may not be clear or readily discoverable whether the motivation is terrorist radicalisation or gang indoctrination.
  - Sources of information on what prisoners did or did not do or who they associated with when at liberty (potentially many years earlier) may provide little assistance in determining whether this type of activity may lead to terrorist

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<sup>163</sup> Described by Lord Anderson QC, Independent Assessment of MI5 and Police Internal Reviews (2017) at para 1.20.

<sup>164</sup> Under section 2 Security Service Act 1989 MI5 may not disclose information except as is necessary for the proper discharge of its functions (the protection of national security and, among other things, the protection of the UK against threats from terrorism) or for the purposes the prevention or detection of serious crime, or of criminal proceedings.

violence in the short, medium or long term. The risk may arise from the TACT offender, a violent prisoner who is currently present on the wing, or from a violent prisoner who is yet to arrive.

- Experience, specifically the attacks of at Fishmongers' Hall, HMP Whitemoor and Streatham, suggests that unaddressed terrorist risk behaviour of this sort in prison may be followed by terrorist violence. It would be detrimental if the involvement of MI5's intelligence, analysis and creative thinking was limited to where there was intelligence of prison attack-planning, or activity by known Subjects of Interest. It has been emphasized to me that this is not the case.

5.36 The Hub provides an opportunity to articulate the national security interest in prison activity when the Intelligence Handling Model, and the deployment of MI5 resources is being considered. This could lead to work on individual cases, use of MI5's discovery processes,<sup>165</sup> or thematic work by MI5 for example on problem prisons.

## Investigation and disruption of offences

5.37 It is inevitable that some prison conduct will not lead to criminal prosecution even though it would be prosecuted if carried out in the community. Prosecuting a prisoner-on-prisoner assault for example may not serve the public interest, especially for offenders serving long sentences,<sup>166</sup> and could interfere with the ability of governors to deal with matters swiftly and decisively.<sup>167</sup>

5.38 Not to be obscured, however, is (a) the very high public interest in ensuring that prison conduct amounting to terrorism offending should be subject to the criminal process and (b) the fact that the investigation and prosecution of terrorist and non-terrorist criminal prison conduct (for example possession by a prisoner of a knife or phone contrary to the Prison Act 1952) may give rise to important disruptive

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<sup>165</sup> Lord Anderson QC, Implementation Stocktake (2019), para 4.1(a) and footnote 13, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807911/2017\\_terrorist\\_attacks\\_reviews\\_implementation\\_stock\\_take.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807911/2017_terrorist_attacks_reviews_implementation_stock_take.pdf).

<sup>166</sup> See generally, the Crime in Prison Referral Agreement, May 2019, between HMPPS, the CPS and the NPCC.

<sup>167</sup> For example, by immediate punishment through adjudication.



opportunities. The Sudesh Amman inquest heard that the police asked the governing governor whether Amman's release could be delayed<sup>168</sup>; an additional charge for criminal conduct leading to a remand in custody would provide one mechanism.

- 5.39 Despite their control of prisons, governing governors and their staff are not law enforcement.<sup>169</sup> Prisons must look to the police for investigative steps such as taking statements, interviewing under PACE, and conducting forensic examination of documents and seized devices; for liaison with the CPS; and for the practical (for example, getting witnesses to court) and legal (e.g. identifying undermining material) steps that are necessary for court proceedings.
- 5.40 Facilitating police involvement is disruptive to prison life but will need to be tolerated by governing governors if offending is to be brought to light and prosecuted. In order to ensure that evidence is not lost, prison staff need to be alert to the importance of gathering evidence of terrorism offending within prisons: for example, if a makeshift knife and Da'esh flag are found these should be seized with a minimum of forensic interference and with a proper and clear record of where, when and by whom it was taken, with good evidential continuity from then on, a proper record of what may have been said by the prisoner from whose cell they were seized, together with any other information that may assist on the issue of attribution.<sup>170</sup> General HMPPS guidance already exists for preserving evidence.<sup>171</sup>

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<sup>168</sup> Inquest, Summing up, Day 13, page 38.

<sup>169</sup> Despite prison officers whilst acting as such having the powers and privileges of a constable: s8 Prison Act 1952.

<sup>170</sup> Proving that a particular prisoner has knowledge and possession of a phone or knife is a particular challenge where cells are shared, or prisoners are threatened to hold contraband on behalf of other prisoners. PSI 12/2011, p10, states "It is often difficult to prove that any unauthorised article found in shared living accommodation is in the possession of any particular prisoner. Nevertheless, the discovery and confiscation of an article denies its use to the prisoner, which may be just as important as bringing the prisoner to account." The second sentence underplays the importance of accountability and deterrence. Prisoners are often pressurised or bribed to store mobile phones belonging to more dominant prisoners: 'The demand for and use of illicit phones in prison', Ellison A. et al (Ministry of Justice, 2018).

<sup>171</sup> PSI 08/2016, Dealing with Evidence.

5.41 There is a lack of consistency and clarity over the police officers responsible for investigating<sup>172</sup> relevant offending in prison:<sup>173</sup>

- If offences are committed by a TACT offender shortly after imprisonment, or shortly before release, they might be picked up by the CT Senior Investigating Officer (CT SIO).
- CT Police will also be involved if the behaviour in prison is linked to an investigation of terrorism offending outside.<sup>174</sup>
- However, in the absence of a CT SIO having the capacity to investigate, it was suggested to me that it might be a matter for the local force, although it seems unrealistic to expect local police to take on prison offending that is linked to terrorism or terrorists.
- In some regions, CT and Serious Organised Crime Units might have investigative personnel available.

5.42 In my view CT Police need greater involvement in investigating terrorist offending behind bars to prevent matters becoming lost in what was described to me as a patchwork of responsibility. This includes being clearer about the capabilities they can offer in relation to terrorist offending in prison, including when and whether they are able to act independently of MI5.<sup>175</sup> This should include:

- A leading officer within the CT Police network who has overall strategic responsibility for the police response to terrorist risk in prisons.
- Officers who are integrated into regional and national HMPPS and multi-agency structures who can identify possible criminal justice interventions and can agitate for investigative resources to be made available.

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<sup>172</sup> As distinct from developing intelligence. I formed the view that HMPPS sometimes thought if a police CT Prison Intelligence Office was aware of something, then CT Police would actively start to consider whether investigative resources should be deployed: but this is not the case.

<sup>173</sup> Although there are specialist forces dealing with railways (British Transport Police) and civil nuclear facilities (the Civil Nuclear Constabulary), and open spaces under control of the City of London Corporation (the Hampstead Heath Constabulary), there is no specialist police force for the prisons estate.

<sup>174</sup> For example, the use of prison evidence in the prosecution of Mohammed Chowdhury, <https://www.standard.co.uk/news/crime/london-man-guilty-grenade-police-station-terrorism-b919344.html>.

<sup>175</sup> Generally speaking CT Police take their cue from MI5, but retain operational independence.

- 5.43 There exists a general 2019 Crime in Prison Referral Agreement<sup>176</sup> between the Crown Prosecution Service, HMPPS and the police. Although it does refer in places to terrorist offending and offences by TACT offenders the language<sup>177</sup> and policy are difficult to follow. It does not refer to offending by non-terrorist prisoners who have been identified as presenting a terrorist risk (for example, via Pathfinder). It implies that the police should be contacted where the suspected offending is by a TACT prisoner, whereas potential terrorism offences should be referred to Regional Counter Terrorism Leads (who are JEXU staff rather than police officers).
- 5.44 I recommend that a specific terrorism in prison agreement should be drafted which:
- Requires prison staff who become aware of possible terrorist offending, or possible offending by terrorist risk offenders (including non-TACT prisoners), to refer it to CT Police.<sup>178</sup> Complex referral mechanisms should be avoided.
  - Identifies a single point of contact within each CT Police region for referrals.
  - Acknowledges that in deciding whether or not to start a police investigation an informed discussion will need to be had between CT Police, the prison, and appropriate multi-agency bodies.
  - Requires all parties to consider how to ensure that necessary police involvement does not unnecessarily distract prisons from continuing to reduce terrorist risk in real time. For example, I was informed of a seized electronic device suspected to contain terrorist images; the device was with police for over 12 months for examination and consideration of whether there was evidence of criminal offending; in the meantime the prison was unaware of the contents, and therefore could not fully understand the terrorist risk on the wing.

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<sup>176</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/800040/Crime\\_in\\_Prison\\_Referral\\_Agreement\\_-\\_7\\_May\\_19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800040/Crime_in_Prison_Referral_Agreement_-_7_May_19.pdf).

<sup>177</sup> It states that if there is “intelligence” to suggest the offending prisoner is a “TACT or TACT related nominal” then this should be considered an “aggravating factor” making referral to the police more likely.

<sup>178</sup> Where the prison is not aware that the prisoner is a terrorist risk (for example, because it is based on sensitive intelligence that cannot be shared) then referral may need to be done by the Regional Counter Terrorism Lead.

## Authorisation for covert activity

- 5.45 The final issue considered is whether governing governors or HMPPS officials or the Secretary of State for Justice ought to have the ability to authorise the exercise of covert powers on grounds of national security or for the express purpose of reducing terrorist risk.
- 5.46 By way of example, rule 50A Prison Rules 1999 enables the proportionate use of overt CCTV systems to place a prisoner under constant observation in his cell or elsewhere. The limited grounds for such surveillance are: the health and safety of any person; the prevention, detection, investigation or prosecution of crime; and the securing or maintaining prison security or good order and discipline in the prison. However, the use of an overt CCTV camera outside a gym might enable the governor to establish that unauthorised prayer meetings are taking place at which a TACT offender is taking a dominant role. It might not be clear how this objective would satisfy one of the limited grounds available which do not include the purpose of reducing terrorist risk.
- 5.47 The absence of a national security ground is paralleled in the limited grounds on which directed surveillance or the use and conduct of a CHIS can be authorised by HMPPS under the Regulation of Investigatory Powers Act 2000 (limited to the purposes of preventing or detecting crime or of preventing disorder, or in the interest of public safety<sup>179</sup>).
- 5.48 By contrast, HMPPS can authorise intrusive surveillance under section 32 RIPA for national security reasons<sup>180</sup> subject to the agreement of MI5.<sup>181</sup> HMPPS also has

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<sup>179</sup> Sections 28(3)(b) and (d) and 29(3)(b) and (d) as applied by section 30, Schedule 1 to Regulation of Investigatory Powers Act 2000, and the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010/521.

<sup>180</sup> Section 32 and 41 RIPA and Regulation of Investigatory Powers (Designation of Public Authorities for the Purposes of Intrusive Surveillance) Order 2001/1126. Although authorisation of property interference, which generally accompanies intrusive surveillance is not available to HMPPS under Part 3 Police Act 1997, this is not generally problematic since HMPPS owns the prison fabric.

<sup>181</sup> Covert Surveillance and Property Interference Revised Code of Practice (August 2018) para 6.3 and footnote 51.

available to it bespoke powers that can do the work of other covert powers. For example:

- under the Prisons (Interference with Wireless Telegraphy) Act 2012, the Secretary of State for Justice may authorise the governing governor to interfere with wireless telegraphy for the purpose of either preventing the use of transmitting devices in prisons, or detecting or investigating their use. These purposes are broad enough to encompass investigating the use of mobile phones by terrorist risk offenders and in some circumstances may be a practicable alternative to equipment interference under Part 5 of the Investigatory Powers Act 2016 (which is not available to HMPPS at all).
- Rule 50A Prison Rules (use of overt CCTV) can replicate directed surveillance to such an extent that the Investigatory Powers Commissioners Office (IPCO) observed in its 2019 Report that the decline in directed surveillance could be traced to the rise in the use of rule 50A.<sup>182</sup> Recent HMPPS policy seeks to ensure that covert use of CCTV cameras should be authorised under RIPA.<sup>183</sup>

5.49 On the one hand, there is merit in enabling a governing governor or HMPPS expressly to take covert action, in appropriate cases, to address terrorist risk in a prison. If a counter-terrorism objective is being pursued, legal certainty<sup>184</sup> is better served if national security is identified as the objective, as it is for governors in rule 35A (interception of communications in prison) and for the Secretary of State in rule 34 (restriction of communications) and rule 46A (separation centres, which I discuss in Chapter 6).

5.50 On the other hand, the taking of covert measures for national security purposes is generally tightly governed for reasons of deconfliction and consistency; so that, for example, an authorising officer in another public authority shall not authorise directed surveillance or the use or conduct of a CHIS “where the investigation or operation relates to the protection of national security and in particular the

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<sup>182</sup> ICPO Annual Report 2019 at para 15.2.

<sup>183</sup> Investigatory Powers Policy Framework, June 2021, at para 4.4.3.

<sup>184</sup> “The law should be certain, so that it can be easily enforced and so that people can know where they stand”: Lord Mance, ‘Should the law be certain?’, Oxford Shrieval Lecture, 11 October 2011.

protection against threats from terrorism” unless MI5 has agreed.<sup>185</sup> This is the principle of concurrence - the means by which MI5’s primacy in counter-terrorism is recognised, and a form of quality assurance process so that strong counter-terrorism powers are only exercised in appropriate cases.

- 5.51 The use of covert powers in prisons, as elsewhere, may disproportionately affect individual rights, whether directly or through collateral intrusion, and can give rise to issues of public confidence.<sup>186</sup> National security grounds for HMPPS could lead to unfocussed decision making; conversely, it could lead to inhibition by governors uncertain how to act in respect of unfamiliar objectives. IPCO was concerned about the quality of Covert Human Intelligence Source running by HMPPS generally:<sup>187</sup> HMPPS is aware that its covert capability is some way off the standards set by the police.
- 5.52 A pragmatic solution, if legislation is to remain unaltered, is for investigation of terrorist risk to be carried out by governors or HMPPS by reference to the harm that usually accompanies terrorist risk. For example, it might be possible to investigate the existence of an Islamist hierarchy by reference to the physical risks to safety of other prisoners (assaults) or to the threat to the good order of the prison or to the criminal offending (if not terrorism offences, then assaults or possession of illicit articles) that will often occur where such a hierarchy takes root. In the example of unauthorised prayer gatherings outside the gym, the position will be easier if the governing governor has already issued a direct instruction that such gatherings should not take place. Security or CT governors ought to be trained to recognise tactical opportunities to address terrorist risk behaviour by reference to general authorising grounds.
- 5.53 But (a) that approach is focussed on the harm that may eventuate in or to the prison, without consideration of the harm that a terrorist risk offender may cause on

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<sup>185</sup> CHIS Code of Practice, August 2018, at footnote 13; Covert Surveillance and Property Interference Code of Practice, August 2018, para 5.2.

<sup>186</sup> For example, the use of directed surveillance when Sadiq Khan MP visited Babar Ahmed: see Report by Sir Christopher Rose, Chief Surveillance Commissioner, Cm7330 (February 2008).

<sup>187</sup> 2019 Report, *supra*, at para 15.8.

release; (b) the approach may be more difficult, or at the very least require sophisticated reasoning, where a wing which has coalesced around a TACT offender is showing outward signs of good behaviour; (c) a more intrusive step is likely to be more proportionate where the harm that the HMPPS is seeking to investigate or prevent is terrorist violence than where the objective is simply the maintenance of good order and discipline.

5.54 I therefore recommend that HMPPS, CT Police and MI5 should carry out a systematic audit of covert powers to ensure that the grounds for authorising covert investigatory powers that are currently available to HMPPS are sufficient. This requires a realistic assessment of the circumstances in which covert powers, if not available to HMPPS, would be in practice be authorised for use in prisons by CT Police or MI5. It should be done by considering what the types of question that prisons and HMPPS may wish to know, for example, “Who is responsible for forced conversions on this wing, and why?”. As part of that audit, the government should consider whether it is appropriate to amend the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010/521 so as to enable HMPPS to authorise directed surveillance or the use and conduct of CHIS in the interests of national security, subject always to the agreement or concurrence of MI5.

## Recommendations

### Recommendation 8

Joint working on terrorist risk should be organised with regard to the following principles:

- Action: development of intelligence must not be an end in itself but a means to taking the right action (whether overt or covert) to reduce terrorist risk.
- Ownership: governing governors remain responsible for terrorist risk in their prisons.
- Simplification: the number of different entities should be reduced, intermediary bodies avoided where possible, and processes (for example, the OPT scheme) reviewed. There should be clarity over responsibilities, for example on which HMPPS body is responsible for commissioning intelligence.
- Consistency: sharing of intelligence by CT Police and MI5 needs to be improved throughout the prison estate, and there needs to be a consistent understanding of what is meant by terrorist risk.
- Integration: mutual understanding of different capabilities should be encouraged between different bodies, and MI5 and CT Police should consider how to apply the Intelligence Handling Model effectively in relation to conduct in prison.

### Recommendation 9

CT Police should establish senior leadership with responsibility for ensuring that potential terrorist offences in prison, and other offences committed by terrorist risk offenders, can be effectively investigated for the purposes of criminal prosecution.

### Recommendation 10

A specific crime in prison agreement between HMPPS, CT Police, and the Crown Prosecution Service should be drawn up on the subject of potential terrorist offences, and offences committed by terrorist risk offenders.

### Recommendation 11

Consideration should be given to whether HMPPS's current powers to authorise covert activity are sufficient, and in particular whether legislative changes are needed so that HMPPS can authorise directed surveillance and the use and conduct of covert human intelligence sources on grounds of national security.



## 6. Separation Centres

### The Principle

- 6.1 In his 2016 Report Ian Acheson recommended the separate detention of prisoners who, it could be determined by intelligence or as a result of custodial behaviour, posed a real and enduring threat to national security. This group would potentially include Islamist extremists, those who carried out acts of extreme violence on their behalf, and prisoners engaged in radicalisation of other prisoners.<sup>188</sup> Detention would be in specially designed prison accommodation.<sup>189</sup>
- 6.2 The result was the creation of Separation Centres.
- 6.3 The use of Separation Centres has never fully taken off. The first centre was opened in June 2017 at HMP Frankland and the second centre in March 2018 at HMP Full Sutton. A 2019 report based on interviews and fieldwork in 2017-mid 2018<sup>190</sup> found that these units had generally achieved their purpose of creating a comprehensive regime for separate centres, but that the success of achieving separation was tempered by a lack of engagement from prisoners. It also noted the lower than expected number of referrals. The Annual Report of the Independent Monitoring Board at HMP Frankland for the year ending 30 November 2019<sup>191</sup>

<sup>188</sup> To be referred to as Category 4(c) or “Subversive Threat Group” prisoners.

<sup>189</sup> The principle of separate detention of particularly troublesome prisoners is not new. The Mountbatten Inquiry in 1966 proposed one maximum security prison to house the most dangerous prisoners in the system; that was rejected in favour of the dispersal principle proposed by the criminologist Sir Leon Radzinowicz. The government returned to the charge after the escapes from HMP Parkhurst and HMP Whitemoor; the Woodcock and Learmont Reports led to the creation of High Secure Units and Special Secure Units for the most escape-prone inmates. Other special detention regimes include the Close Supervision Centre under Prison Rule 46 for the most challenging and disruptive prisoners. None of these regimes are specifically designed for the types of prisoners that Acheson had in mind.

<sup>190</sup> Powis, B., Wilkinson, K., Bloomfield, S, Randhawa-Horne, K., ‘Separating Extremist Prisoners’, Ministry of Justice (2019), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/818624/separating-extremist-prisoners.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818624/separating-extremist-prisoners.pdf).

<sup>191</sup> <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2020/12/Frankland-2018-19-annual-report-for-circulation-to-upload.pdf>.

suggested that the national use of separation centres has continued to decline. Although a third centre was opened at HMP Woodhill, only a handful of prisoners are currently held there and the centre at HMP Full Sutton has been mothballed. The total capacity of all three centres is 28 prisoners (8, 8 and 12).

- 6.4 I detected a lack of unanimity within HMPPS about those prisoners who were suitable. There was a distinction between those who considered that Separation Centres were only really intended for hardcore radicalisers, and those who considered that Separation Centres might be suitable for a wider cohort of terrorist risk offenders. There was uncertainty over whether Separation Centres were intended for short or medium term intervention or whether a terrorist risk prisoner could serve their entire sentence in a centre. There was also a perception, whether justified or not, that other agencies overstated the role and effectiveness of Separation Centres, as if putting a prisoner in a Separation Centre was both easy and a definitive solution to the risk they presented.
- 6.5 In my view, even taking account of the potential downsides,<sup>192</sup> the ability to separate prisoners specifically on grounds of terrorist risk, subject to periodic review, is an important option for certain prisoners.
- 6.6 Dispersal, in the form of moving individuals between different Category A prisons, or into and out of Segregation or Close Supervision Centres, offers a temporary solution until the individual can re-establish his status with, or influence over, a new set of associates. One prison's problem becomes another prison's problem. Separation is therefore a principled approach to protecting national security within the prison estate as a whole.
- 6.7 The risk of terrorism in prisons has special features and is sufficiently different from other risks (violence, criminality, escape) to warrant an additional option for those whose influence on other prisoners could lead to acts of terrorism within or outside the prison estate. HMPPS, CT Police and MI5 remain of the view that moving the

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<sup>192</sup> Rushchenko J. Terrorist recruitment and prison radicalization: Assessing the UK experiment of 'separation centres.' *European Journal of Criminology*. 2019;16(3):295-314 identifies these in summary as (1) elevated status (2) reinforcement of terrorist ideology (3) perception of general unfairness (4) lumping different types of terrorist risk prisoner together.

right individual to a Separation Centre can be an effective means of reducing the risk of terrorism in the form of violence or encouragement to violence.

- 6.8 I agree with this view. It is clear to me having spoken to front-line practitioners and counter-terrorism officials, and having read research, thematic reports, intelligence reports and existing caselaw, that for many years there have been prisoners whose influence on the general prison population is damaging to national security by increasing the risk of terrorist attack both inside and outside prison. The cohort will generally comprise:
- Charismatic or high-profile individuals convicted of encouraging terrorism or inviting support for proscribed groups;
  - Individuals convicted of a leading role in terrorist attacks or attack-planning;
  - Serving prisoners who have used or sought to use a crude hostile ideology to establish a dominant leadership role within a prison often accompanied by the use of violence.<sup>193</sup>
- 6.9 Candidates for separation centres will usually come from this cohort although there could be others, for example, to take a vivid example, an individual who committed a non-terrorist crime in order to have the opportunity to radicalise in prison. Subject to complying with the relevant prison rule, which I refer to below, it is important not to create hard boundaries between those who can and cannot be referred to a separation centre.
- 6.10 It was also clear to me that Separation Centres could have a wider beneficial impact on the prison population. Firstly, removing prisoners who are keen to exercise Islamist or Right Wing terrorist influence is likely to improve the custodial experience of the remaining prisoners and increase the prospects of rehabilitation. This is sometimes referred to as reducing the temperature on the wing. Secondly, the existence of a Separation Centre regime was found by Powis et al to have a

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<sup>193</sup> It is possible that Close Supervision Centres could be effective for some particularly violent radicalisers, although the threshold for referral is high, as they are designed to deal with a high risk of immediate violence.

dissuasive impact against poor behaviour.<sup>194</sup> This is important for prisoners serving very long sentences who may have little to fear from short term disciplinary measures or loss of incentives and earned privileges but may fear being transferred to a Separation Centre.

- 6.11 The objective of excluding the very possibility that certain prisoners will exercise influence is in principle a lawful one. In 2010 the High Court considered a decision concerning the “iconic” Abu Qatada. On his arrival, all the occupants of a self-contained deportation detainee unit were prevented from associating with the general population. It was lawful to make it impossible for him to exercise a malign influence on impressionable prisoners in the rest of the prison.<sup>195</sup>

## The Mechanics

- 6.12 Rule 46A Prison Rules 1999 enables the Secretary of State to order separation where it appears desirable on one or more of 4 grounds:
- i. The interests of national security.
  - ii. To prevent the commission, preparation or instigation of an act of terrorism, a terrorism offence, or an offence with a terrorist connection, whether in prison or otherwise.
  - iii. To prevent the dissemination of views or beliefs that might encourage or induce others to commit any such act or offence, whether in prison or otherwise, or to protect or safeguard others from such views or beliefs.
  - iv. To prevent any political, religious, racial or other views or beliefs being used to undermine good order and discipline in a prison.
- 6.13 There is some obvious benefit in these grounds: the reference to preventing acts of terrorism etc whether in prison *or otherwise*; and the recognition that it may be desirable to prevent the dissemination of views or beliefs that might encourage or induce terrorism even where to do so does not amount to a terrorism offence.

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<sup>194</sup> Op. cit. at para 4.14. The authors acknowledged the possibility that problematic behaviours may have become more covert.

<sup>195</sup> R (on the application of Bary and others) v SSJ, Governor of Long Lartin [2010] EWHC 587 (Admin).

- 6.14 On the other hand, there are some aspects of the rule that appear unnecessary or inappropriate.
- 6.15 Whilst I hesitate to conclude that the reference to the interests of national security is superfluous (on the basis that there may be deserving cases which are not captured by the other grounds), the fourth ground does not refer to terrorist risk at all. It is so widely phrased that it opens the use of Separation Centres for prisoners who express any number of troublesome views or beliefs well beyond the remit of potential terrorism. Indeed, it refers to “political, religious, racial or *other* views or beliefs” rather than to the “political, religious, racial or *ideological* causes” that are part of the definition of terrorism under the Terrorism Act 2000.<sup>196</sup> The safeguard against using Rule 46A for non-terrorist reasons therefore lies solely in the use of discretion. Moreover:
- The danger with a broad non-terrorist ground is that such a ground could potentially encourage weak or lazy decision-making where officials are indeed intending to reduce terrorist risk in prison but are unable to make the link between the separation of the prisoner and terrorist risk. If better training on assessing terrorist risk is established, this final ground would be unnecessary as a get-out clause.
  - By referring to good order and discipline rather than terrorist risk, the final ground falls foul of the need for greater focus on terrorist risk that I consider throughout this report.
  - As I describe below, one of the current problems with current referral policy is the implication that it is necessary to have explored all alternatives before using a Separation Centre. The rationale for changing that approach is clear when considering terrorist risk, but not clear when considering good order and discipline, in respect of which prisons have always had a range of obvious alternative mechanisms (such as discipline).
- 6.16 Finally, the third ground includes an objective to “protect or safeguard others from such views or beliefs”. Even leaving aside the question of whether ‘safeguard’ adds anything to ‘protect’, the objective is superfluous because the point of protecting

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<sup>196</sup> Section 1(1)(c).

others is presumably to avoid encouraging or inducing them to commit acts of terrorism, which is already catered for in the rule. The concept of protecting a person from views is also ambiguous. If it means preventing another prisoner from simply hearing a view, even if the other prisoner mocks and rejects it, it goes too far because there is no call for using a Separation Centre if their views are unlikely to encourage terrorism; but if it means preventing another prisoner from hearing and adopting that view, then the language of vulnerability (protect and safeguard) is confusing.

- 6.17 This type of confusion may explain why one potential referral, which I discussed with officials, appeared to be determined negatively by considering whether the prisoner was more influenced than influencer. Yet a prisoner who has been influenced (and therefore ought to have been ‘protected’ or ‘safeguarded’ within the terms of Rule 46A) can present a terrorist risk, for example by influencing others. Such a prisoner ought to be eligible for a Separation Centre, subject to consideration of all the circumstances including the net effect on terrorist risk.<sup>197</sup>
- 6.18 Rule 46A provides that a direction for transfer to a Separation Centre is not time-limited but must be reviewed every three months.<sup>198</sup> There are in principle 3 reasons why review should or may lead to removal:
- i. Where separation can no longer be justified based on any of the grounds in Rule 46A the prisoner must be returned to the mainstream population.
  - ii. As a matter of discretion, although separation could be justified based on one or more of the grounds, evidence of progress means it is appropriate to manage them within the mainstream population.
  - iii. As a matter of discretion, although separation is justified, because the overall interests of reducing terrorist risk in the prison estate is better served by returning them to the mainstream population. This could be because space needs to be freed up for more dangerous prisoners.

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<sup>197</sup> For example, by putting him with more ideologically committed terrorists.

<sup>198</sup> Rule 46A(3).

- 6.19 The review process offers a safeguard against perpetual confinement. Whilst decisions are open to challenge by way of judicial review this is generally a slow process, especially if the presence of sensitive material led to use of a Closed Material Procedure.<sup>199</sup> It was suggested to me by officials that an additional tier of decision-making by a more senior official would be helpful in reducing the possibility of stale thinking. I agree that the introduction of a fresh pair of eyes to carry out the review after a specified period, for example after 2 years, would be sensible.<sup>200</sup> I do not on balance recommend amending Rule 46A so that transfers to a Separation Centre lapse after a specified period: that would, in the context of a long prison sentence, provide a perverse incentive for prisoners to sit out their time without changing their behaviour.
- 6.20 However, Powis, Wilkson et al. noted that because of restrictions placed on prisoners within Separation Centres it may be difficult for them to show reduction in their risk. In practice, there has also been a marked reluctance of prisoners in Separation Centres to engage in risk reduction work. Whilst practice has shown that referral to a Separation Centre is not entirely a one-way ticket, in that it has proven possible for an individual to be returned to the mainstream population on grounds of risk reduction, officials are conscious that attention must be continually be given to ensuring that pathways out of Separation Centres exist and are viable.
- 6.21 Decisions on Separation Centres under Rule 46A are taken in accordance with the process established by the Separation Centre Referral Manual.<sup>201</sup>
- 6.22 The process in the Separation Centre Manual contains hurdles and unnecessary complexity<sup>202</sup> leading to poor decision-making, legal challenge, and consequential reluctance to use Separation Centres effectively. Uncertain criteria for referral to the

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<sup>199</sup> Under the Justice and Security Act 2013, discussed further below.

<sup>200</sup> Cf. the role of “review officer” when considering an extension to detention under Schedule 8 Terrorism Act 2000.

<sup>201</sup> <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2017/psi-05-2017-separation-centre-referral-manual.pdf>.

<sup>202</sup> Powis, Wilkinson et al, op.cit. (2019) noted that staff thought the process could be streamlined and made more user friendly.

ultimate decision-maker and multiple stages of prior consideration,<sup>203</sup> mean that officials struggle to identify and present all material considerations,<sup>204</sup> and then establish in legal proceedings whether the process was properly followed.

- 6.23 On the second ground (prevention of terrorist offending etc.) the Manual states that referral will be on the basis that intelligence or information indicates that the prisoner “is actively working to commission, prepare or instigate an act of terrorism or terrorist offence whilst in prison custody”. This goes beyond the requirements of Rule 46A which sets out an objective but not an evidential threshold. As with decisions on whether to segregate a prisoner, a question of whether to separate a prisoner on grounds of terrorist risk does not involve a determination of fact as to whether a particular event is occurring or has occurred but involves a judgment as to risk and how to manage it.<sup>205</sup>
- 6.24 For all grounds, the Manual specifies that it is “essential” that the risks cannot be sufficiently managed on “mainstream location”, requiring decision-makers to consider “how and why other management and existing control strategies are insufficient”. This gives rise to two difficulties:
- Firstly, it is very difficult to establish as a matter of evidence that terrorist risk can or cannot be sufficiently managed in an alternative manner.<sup>206</sup> Decisions on how to deal with terrorist risk require an evaluative judgment of matters such as the level and nature of the risk posed, the effectiveness of the means available to address it, and the acceptability or otherwise of the consequent danger, which are incapable of objectively verifiable assessment.<sup>207</sup>
  - Secondly, it implies a requirement that alternative strategies have in fact been tried even if the prisoner is considered to present an unacceptable terrorist risk the moment he enters the prison system. In practice, with some notable

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<sup>203</sup> The Separation Centre Management Committee makes two decisions (Stages 2 and 3) following establishment-level referral and then regional and national Multi-Agency meetings (Stage 1);

<sup>204</sup> The Manual elliptically states that intelligence must be “...contextualised and embedded within other sources of information”.

<sup>205</sup> Bourgass, *supra*, at para 92.

<sup>206</sup> Cf. *Beghal v Director of Public Prosecutions* [2015] UKSC 49 at para 76.

<sup>207</sup> *R (Begum) v Special Immigration Appeals Commission and other joined appeals* [2021] UKSC 7, at para 70, Lord Reed.



exceptions, the Manual has been interpreted as favouring a period of monitoring within the mainstream population, with all the harm that this entails before referral to a Separation Centre.<sup>208</sup>

6.25 I also detected that the following factors in decision-making may also explain the low referral rate:

- Undue focus on the damage that separation might cause to the individual's rehabilitation, with insufficient attention to the wider benefits of removing a radicalising individual from the wing.
- Excessive focus on ideology. As I have written elsewhere, terrorism is not just committed by ideological experts.<sup>209</sup>

6.26 One of the reasons given to Powis et al.<sup>210</sup> for low referral rates was the "low recording of extremism behaviours across the prison estate, especially as such behaviours did not always present the most immediate safety problems or were carried out covertly". I am unable to comment on whether this is still the case: in the studies presented to me of individuals who had not been referred there was plenty of overt pro-terrorist behaviour.

6.27 The current processes have not been designed to enable CT Police and MI5 to feed in relevant but sensitive information. There is a lack of confidence that sensitive material can be protected and if necessary withdrawn, for example if the information cannot be presented (gisted) in a way that enables a decision to be taken reasonably and fairly, and defended in court.<sup>211</sup>

6.28 Consideration should therefore be given to ensure that Separation Centre processes can accommodate CT Police and MI5's use of sensitive information. It is possible that there is a role for the CT Prisons and Probation Hub in considering sensitive intelligence and appropriate gists. More generally, it is appropriate to

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<sup>208</sup> Powis, Wilkinson et al (2019) at 4.16.

<sup>209</sup> Terrorism Acts in 2019 at 2.57.

<sup>210</sup> Op. cit. (2019).

<sup>211</sup> It would be open to the Secretary of State to apply for a Closed Material Procedure in respect of a judicial review of a Separation Centre decision under the Justice and Security Act 2013. Judicial review of a separation centre decision is not a "criminal cause or matter": *Belhaj and others v DPP* [2018] UKSC 33.

make use of the developing expertise of the CT Prisons and Probation Hub, and the CT Assessment and Rehabilitation Centre. These bodies should already be aware of any prisoner who is a candidate for separation. Between them, they ought to have already considered that individual's risk, opportunities for additional intelligence-gathering, and whether there existed additional tactics for reducing terrorist risk within the mainstream population.

## Comparison to Categorisation

6.29 As part of this review, I considered in detail whether categorisation offered an alternative to the Rule 46A process. The short point is that, on balance, it does not.

6.30 The legal basis for categorisation is as follows. By section 12(2) Prison Act 1952, prisoners shall be committed to such prisons as the Secretary of State may from time to time direct. Rule 7 Prison Rules 1999<sup>212</sup> provides that, subject to certain exceptions, “prisoners shall be classified, in accordance with any directions of the Secretary of State, having regard to their age, temperament and record and with a view to maintaining good order and facilitating training and, in the case of convicted prisoners, of furthering the purpose of their training and treatment”. Rule 7 contains the caveat that nothing should “require a prisoner to be deprived unduly of the society of other persons”.<sup>213</sup>

6.31 The policy for classification of Cat A prisoners is contained in a 2015 instruction<sup>214</sup> and provides that a Category A prisoner is a prisoner whose escape would be highly dangerous to the public, or the police or the security of the State, and for

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<sup>212</sup> Made under section 47 of the 1952 Act.

<sup>213</sup> The word “unduly” is important, as is the point that a prisoner does not possess any precisely defined entitlement to association; the degree of association is dependent upon a variety of factors including the number and characteristics of the prisoners held in the prison, and security concerns: *R (King) v Secretary of State for Justice* [2015] UKSC 54 at 122.

<sup>214</sup> PSI 09/2015 and PSI 08/2013.

whom the aim must be to make escape impossible. It is therefore based on the risk of what that prisoner might do if he escaped, however unlikely an escape is.<sup>215</sup>

- 6.32 For other prisoners, the policy is contained in a 2020 framework document<sup>216</sup> which requires that prisoners are given the lowest security categorisation appropriate to managing their risk of escape or abscond; harm to the public; ongoing criminality in custody; violent or other behaviour that impacts the safety of those within the prison; and control issues that disrupt the security and good order of the prison.<sup>217</sup>
- 6.33 In summary, categorisation is based on a calculation of the risk posed by the individual prisoner and enables decisions to be made on initial entry into the prison system without waiting for the risk to manifest itself during detention, as well as in response to custodial behaviour. This raises the question of whether a separate category should be created for prisoners who pose specifically terrorist risk because of their influence on others.
- 6.34 Whilst categorisation is a well-understood risk-based process that has withstood scrutiny from the courts, it would be wishful thinking to suppose that the creation of a new category would not generate points of challenge. Decisions concerning the general population are typically litigated on the basis that there should be an oral hearing in respect of a refusal to downgrade from Category A.<sup>218</sup> However, Separation Centres are far smaller than accommodation for the general prison population, and a prisoner may be held there for many months if not years. This is

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<sup>215</sup> Para 2.2. Separate arrangements exist for those who are high escape potential. Although fairness requires that prisoners have a reasonable opportunity to make representations in respect of categorisation decisions, it is inevitable that classification decisions may need to take account of sensitive information that cannot be shared with the prisoner. There is no reported case in which a successful challenge has been mounted to the withholding of sensitive information. The decision of the Supreme Court in *R (on the application of Bourgass and another) v Secretary of State for Justice* [2015] UKSC 54 on the segregation of the ricin plot terrorist Kamel Bourgass suggests that any challenge to the withholding of information would be bound to fail so long as the prisoner could be informed in more or less general terms of the reasons relied on (often known as a “gist” sufficient to enable meaningful representations to be made). In principle the same “gisting” approach is available for Separation Centre decisions.

<sup>216</sup> Security Categorisation Policy Framework, 20 February 2020.

<sup>217</sup> There is also a presumption that TACT offenders are not suitable for Category D and regional CT specialists must be consulted on classification for such prisoners.

<sup>218</sup> A recent example is *R (on the application of Smith) v Secretary of State for Justice* [2020] EWHC 2712.

likely to interfere with the prisoner's fundamental rights in a way that requires additional justification if it is to be lawful.<sup>219</sup>

- 6.35 I will however proceed on the assumption that well-reasoned decisions to categorise a prisoner as appropriate for separation would ultimately withstand challenge. Separation Centres are not unique in limiting the degree of permitted association.<sup>220</sup> The Separation Centre regime, when examined, was “considered to be comprehensive in meeting the needs of the men and ensuring individuals were not disadvantaged by being separated. Staff reported working tirelessly to provide a regime comparable to that provided in the main prison”.<sup>221</sup>
- 6.36 The fundamental objection is that if a person is categorised as a particular class of prisoner (say, Category T for terrorist risk offender) then a decision has been made that they ought in principle to be held in suitable separated accommodation. However:
- it is quite possible that though a prisoner is categorised at Category T, there are insufficient places within the Separation Centre because there are other prisoners who are more dangerous; or
  - although a prisoner is categorised at Category T, there are reasons (for example, because of links to prisoners already in the Separation Centre) why he should not be sent there.
- 6.37 This means that a categorisation decision would only be the first step – there would need to be an additional step, supported by an additional policy, to distinguish

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<sup>219</sup> In particular, under Article 8 ECHR (but sometimes Article 3, where a prisoner suffers from poor mental health). The general principle is that certain conditions go beyond the restrictions and limitations ordinarily consequent on prison life and discipline during lawful detention; where these affect a prisoner's right to respect for his personal and private life, these will need to be justified as necessary and proportionate if they are to be lawful: see, in the context of the Central Managing Challenging Behaviour Strategy Unit at HMP Woodhill, R (on the application of Syed) v Secretary of State for Justice [2017] EWHC 727. Syed was a convicted terrorist who had aimed to decapitate a member of the public with a large knife.

<sup>220</sup> For example the High Security Unit at HMP Belmarsh has a capacity of 48: Report on an unannounced inspection of HMP Belmarsh, HM Chief Inspector of Prisons (2018), <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2018/06/Belmarsh-Web-2018.pdf>.

<sup>221</sup> Powis, Wilkinson et al, op.cit (2019) at para 4.6.

between those who, having been categorised at Category T should be sent to a Separation Centre immediately, and those who should not. That additional step would not be a categorisation decision but a tactical decision based on all the circumstances, including factors such as capacity.<sup>222</sup> In other words, something akin to Rule 46A would still be required.

## Recommendations

### Recommendation 12

Rule 46A Prison Rules 1999 should be retained, but amended to remove the reference in ground (3) to protecting or safeguarding others; and to remove ground (4) in its entirety.

### Recommendation 13

The Separation Centre referral process should be redesigned so that

- decision-making is more streamlined,
- the focus is on the evaluation of terrorist risk rather than whether a particular event has occurred,
- it is clear that separation is available for prisoners as soon as they enter custody and that it may not be desirable, in the interests of reducing terrorist risk, to try other means of dealing with the prisoner before they are transferred to a Separation Centre,
- sensitive information can be taken into account with the necessary degree of protection.

### Recommendation 14

Where a periodic review under Rule 46A(3) falls to take place on the second anniversary of the initial direction, it should be carried out by a more senior official who was not directly involved in the initial referral or subsequent reviews.

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<sup>222</sup> In *Secretary of State for the Home Department v MB* [2006] EWCA Civ 1140, the Court of Appeal observed that the obligations in a control order may depend on surveillance resources, at para 63.

## 7. List of recommendations

### **Recommendation 1**

When assessing or taking action to reduce terrorist risk, officials should pay more critical attention to the role played by Islamist groups and hierarchies.

### **Recommendation 2**

The government should consider whether or not to amend the Terrorism Acts so that conduct falling within section 13 Terrorism Act 2000 and section 1 Terrorism Act 2006 is capable of amounting to an offence even if committed within a prison cell and even if, in the case of encouragement of terrorism, it only involves two prisoners.

### **Recommendation 3**

Officials should establish Terrorist Risk Behaviour as a recognised and codified phenomenon in the prison context. Identifying Terrorist Risk Behaviour should not depend upon being able to establish the ideological motivation of particular prisoners.

### **Recommendation 4**

Governing governors should be formally accountable for reducing the risk of terrorism from prisoners in their establishments and required to take into account the potential for terrorism by these prisoners following transfer to another establishment or on release.

### **Recommendation 5**

Specific policies for governing governors should be developed on terrorist risk, comprising general principles for action, and specific steps.

### **Recommendation 6**

All staff, including governing governors and line managers, should have regular training on terrorist risk in the prison estate based on concrete examples.

### **Recommendation 7**

Data on identification and prevalence of Terrorist Risk Behaviour in individual prisons, and on steps taken to reduce terrorist risk in individual prisons, should be collected and assessed.

### **Recommendation 8**

Joint working on terrorist risk should be organised with regard to the following principles:

- Action: development of intelligence must not be an end in itself but a means to taking the right action (whether overt or covert) to reduce terrorist risk.
- Ownership: governing governors remain responsible for terrorist risk in their prisons.
- Simplification: the number of different entities should be reduced, intermediary bodies avoided where possible, and processes (for example, the OPT scheme) reviewed. There should be clarity over responsibilities, for example on which HMPPS body is responsible for commissioning intelligence.
- Consistency: sharing of intelligence by CT Police and MI5 needs to be improved throughout the prison estate, and there needs to be a consistent understanding of what is meant by terrorist risk.
- Integration: mutual understanding of different capabilities should be encouraged between different bodies, and MI5 and CT Police should consider how to apply the Intelligence Handling Model effectively in relation to conduct in prison.

### **Recommendation 9**

CT Police should establish senior leadership with responsibility for ensuring that potential terrorist offences in prison, and other offences committed by terrorist risk offenders, can be effectively investigated for the purposes of criminal prosecution.

### **Recommendation 10**

A specific crime in prison agreement between HMPPS, CT Police, and the Crown Prosecution Service should be drawn up on the subject of potential terrorist offences, and offences committed by terrorist risk offenders.

### **Recommendation 11**

Consideration should be given to whether HMPPS's current powers to authorise covert activity are sufficient, and in particular whether legislative changes are needed so that HMPPS can authorise directed surveillance and the use and conduct of covert human intelligence sources on grounds of national security.

### **Recommendation 12**

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