

THE TERRORISM ACTS IN 2017

REPORT OF THE INDEPENDENT REVIEWER OF
TERRORISM LEGISLATION ON THE OPERATION OF
THE TERRORISM ACTS 2000 AND 2006, THE
TERRORISM PREVENTION AND INVESTIGATION
MEASURES ACT 2011, AND THE TERRORIST ASSET
FREEZING ETC ACT 2010.

by

MAX HILL Q.C.

Independent Reviewer of Terrorism Legislation

October 2018

THE TERRORISM ACTS IN 2017

REPORT OF THE INDEPENDENT REVIEWER OF
TERRORISM LEGISLATION ON THE OPERATION OF
THE TERRORISM ACTS 2000 AND 2006, THE
TERRORISM PREVENTION AND INVESTIGATION
MEASURES ACT 2011, AND THE TERRORIST ASSET
FREEZING ETC ACT 2010.

By

MAX HILL Q.C.

Independent Reviewer of Terrorism Legislation

OCTOBER 2018

**Presented to Parliament
pursuant to
Section 36(5) of the Terrorism Act 2006,
Section 20(5) of the Terrorism Prevention and Investigation Measures
Act 2011, and
Section 31(4) of the Terrorist Asset Freezing etc. Act 2010**

© Max Hill 2018

The text of this document (this excludes, where present, the Royal Arms and all departmental or agency logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not in a misleading context.

The material must be acknowledged as Max Hill copyright and the document title specified. Where third party material has been identified, permission from the respective copyright holder must be sought.

Any enquiries related to this publication should be sent to Direct Communications Unit, Home Office, 2 Marsham Street, London, SW1P 4DF.

This publication is available at <https://www.gov.uk/government/publications>

ISBN 978-1-5286-0811-4

CCS0918625708 10/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

CONTENTS

EXECUTIVE SUMMARY	2
1. INTRODUCTION	6
2. DEFINITION OF TERRORISM	17
3. THREAT PICTURE	18
4. MAJOR TERRORISM INVESTIGATIONS IN 2017	35
5. PROSCRIBED ORGANISATIONS, EXECUTIVE ORDERS	57
6. THE TERRORIST ASSET FREEZING ETC ACT 2010	70
7. STOP AND SEARCH	72
8. PORT AND BORDER CONTROLS	76
9. ARREST AND DETENTION	85
10. CRIMINAL PROCEEDINGS	95
11. CONCLUSIONS AND RECOMMENDATIONS	116

ANNEXES

ANNEX 1: ORGANISATIONS WHO MET THE INDEPENDENT REVIEWER DURING HIS VISIT TO BELFAST, NORTHERN IRELAND, FEBRUARY 2018	120
ANNEX 2: THE INTELLIGENCE BACKGROUND RELATING TO THE MANCHESTER ARENA AND LONDON BRIDGE TERRORISTS David Anderson QC, Attacks in London and Manchester: Independent Assessment of MI5 and Police Internal Reviews, December 2017.	121
ANNEX 3: NOTE ON THE DEFINITION OF TERRORISM UNDER THE TERRORISM ACT 2000, SECTION 1, IN THE LIGHT OF THE SALISBURY INCIDENT Guest Chapter by Professor Emeritus Clive Walker Q.C. (Hon)	129

EXECUTIVE SUMMARY

Introduction (Chapter 1)

This is my final annual report as Independent Reviewer and is on the operation of the legislation existing in 2017.

The latest developments in my area of interest are the re-launch of the Government Counter Terrorism strategy (known as CONTEST), presented by the Home Secretary on 4th June, and the new Counter-Terrorism and Border Security Bill 2018, which is making its way through Parliamentary scrutiny. In early September 2018, the Government tabled a series of amendments to the Counter Terrorism and Border Security Bill 2018.

The other event of particular note during the last year has been the passage of the Sanctions and Money Laundering Bill through Parliament, which I deal with in Chapter 6.

I have travelled across the country, including Northern Ireland, in order to meet with as many people as possible, with the sole purpose of hearing the views of all on the operation and impact of our legislation. The office of IRTL is an open channel for any person or group with relevant information or views. I add only this for the sake of clarity; engagement does not equate to endorsement.

During 2017, all four of the statutes which I review remained in force.

The Government Response to the Annual Report on the operation of the Terrorism Acts in 2016 and The Government Response to the report on the use of terrorism legislation following the Westminster Bridge terrorist attack were both published on 13th September 2018. I react to both in this chapter.

Definition of Terrorism (Chapter 2)

The question of state terrorism and its inclusion/exclusion from the section 1 TACT 2000 definition is 'work in progress', on which I shall express no opinion. However, I invited my Senior Special Adviser Clive Walker to consider the question, and to review the legal and academic research in this area. He has produced a comprehensive 'Note on the definition of terrorism under the Terrorism Act 2000, section 1, in the light of the Salisbury incident', which I have annexed to this Report (Annex 3). The content and any opinions expressed in the Note are Professor Walker's, rather than mine, but I am grateful to him for his work and hope that it may fuel debate and indeed further consideration by my successor.

Threat picture (Chapter 3)

Analysing these statistics which form the worldwide picture of terrorism in 2017, it is clear that Muslims remain the most numerous victims of terrorism, far outnumbering members of other faiths in many of the countries where terrorism-related activity is most prevalent.

The UK, in fact England, last year suffered the worst combination of terrorist attacks for many years. Since March 22nd 2017, we have all lived through the pain of witnessing murderous attacks at Westminster Bridge, Manchester Arena, and London Bridge followed by Borough Market. The attack outside Finsbury Park Mosque on 19th June marked the fourth in this short list of major terrorism events, and there was an attack at Parsons Green on 15th September.

The UK threat level was elevated from Severe to Critical twice only during 2017, namely for a period of approximately 48 hours very shortly after the Manchester Arena attack, and for a like period after the discovery of a partially-detonated explosive device on a London Underground train at Parsons Green.

Daesh continued to represent the most significant terrorist threat, but not the only threat. The threat level for Northern Ireland-related terrorism in Great Britain was raised in May 2016 to Substantial; the threat in Northern Ireland remains Severe.

The increase in police awareness of extreme and far right activity in the UK is reflected in the rise in the number of arrests this year relating to members of such groups.

Despite the terrorist attacks and other events of 2017, the UK consistently avoids long-term elevation of the national threat level to the highest category, avoids recourse to Article 15 derogation and the declaration of a national state of emergency as seen in France, and benefits from policing and intelligence work which successfully disrupts terrorism-related activity almost every time. Nonetheless the trends for the threat from terrorism here and abroad demand constant attention.

Major terrorist attacks in 2017 (Chapter 4)

For this Annual Report, I have reviewed the police investigations which followed the Manchester Arena attack (Operation Manteline) and the London Bridge & Borough Market attack (Operation Datival). I present my findings in this chapter.

Proscribed organisations & Executive Orders (Chapter 5)

There are 74 organisations proscribed under the Terrorism Act 2000. There are also 14 organisations in Northern Ireland that were originally proscribed under previous legislation.

As of 31 August 2017, there were six TPIM notices in force, five in respect of British citizens. All six subjects were relocated.

The Terrorist Asset Freezing etc Act 2010 (Chapter 6)

There are, as of April 2018, 18 individuals and 22 organisations on the consolidated list of financial sanctions targets in the UK. Of these, 20 are TAFE designations, and of these 14 support an EU-wide designation under the EU CT sanctions regime 2001/931/CFSP (the CP931 regime).

Stop and search (Chapter 7)

The Terrorism Act stop and search powers were used 767 times in Great Britain with an arrest rate of 8%. The powers were used 110 times in Northern Ireland.

Following the attack on Parsons Green in September 2017, the authorisation of the power of stop and search under s47A of TACT 2000 was used for the first time in Great Britain since the threshold for authorisation of this power was raised in 2011.

Port and border controls (Chapter 8)

The frequency of use of Schedule 7 powers to examine people at ports and airports continued to decline, with 16,349 examinations in the 2017, compared to 19,355 in 2016.

Arrest and detention (Chapter 9)

In Great Britain, there were 156 arrests in 2017 under s41 Terrorism Act 2000, compared to 37 in 2016, and 55 in 2015. There were however a total of 412 arrests for terrorism-related offences in 2017, compared to 261 in 2016 (a 58% increase). Despite a stark increase in the use of TACT arrests, the majority of arrests (62%) did not use TACT. In Northern Ireland, there were 171 arrests under s41 Terrorism Act 2000 in 2017, up from 123 in 2016, but comparable to 169 in 2015 and 222 in 2014.

In Great Britain, of the 156 persons arrested in 2017 under TA 2000 s41, 33% were held in pre-charge detention for less than 48 hours (after which time, a WOFD is required from the court). In Northern Ireland, of the 137 persons arrested in 2016/17, only 19 were detained for more than 48 hours. Once again, therefore: the TA 2000 section 41 arrest power was used

with far greater frequency in Northern Ireland than in Great Britain; but detention beyond 48 hours, common in Great Britain, is still rare in Northern Ireland.

In Great Britain, 52 (33%) out of the 156 people arrested under TA 2000 s41 were charged and 103 were released. This is down from a charge rate of 73% under TACT last year. In Northern Ireland, only 11 (6%) out of the 171 people arrested under TA 2000 s41 were charged in 2017. This has been consistently low in recent years with 11% of those arrested in 2016, 12% of those arrested in 2015 and 18% of those arrested in 2014 being charged.

Criminal proceedings (Chapter 10)

86 trials for terrorism-related offences were completed in 2017. Of these, 77 persons (90%) were convicted and 8 acquitted. Of the 77 persons convicted of terrorism-related offences in 2017, 70 persons (91%) were convicted of TACT offences (most common one being preparation for terrorist acts, contrary to section 5 of the Terrorism Act 2006) and 7 persons were convicted of non-TACT offences.

The concluded cases in 2017 are summarised in this chapter.

Conclusions and recommendations (Chapter 11)

I have summarised my initial conclusions and recommendations in this chapter.

1. INTRODUCTION

- 1.1. My remit is to review our terrorism legislation annually, essentially the Terrorism Acts (TA) 2000¹ and 2006,² together with the Terrorism Prevention and Investigation Measures (TPIM) Act 2011³ and the Terrorist Asset Freezing Act (TAFA) 2010.⁴
- 1.2. I commenced work on this Annual Report in March 2018, after publication of my previous Reports (see below). The draft of this Annual Report was provided to the Home Office in July 2018, for the necessary fact- and security-checking process to take place. In the same month, my appointment as Director of Public Prosecutions was announced. This means that I am unable to continue my work as Independent Reviewer beyond Friday 12th October 2018. Therefore, this is my final Report as Independent Reviewer, a matter of regret in the sense that I am sorry to leave without completing a full three-year term of office, and I know that there is much unfinished work. Because I must leave all of this to my successor, I have tried to include as much as possible in this final Annual Report, and to bring my own reporting up to date. It follows that this Report tries to cover an eighteen-month period, from the beginning of 2017 to mid-2018, at least so far as thematic issues are concerned (including current draft legislation ie the Counter Terrorism and Border Security Bill 2018), though it has not been practical to update statistics to mid-2018.
- 1.3. As a short reminder of the chronology of my tenure, I took up my role on 1st March 2017. My first annual report, delivered to the Home Office in November 2017,⁵ concerned the operation of the legislation in 2016. Because the Independent Reviewer has no operational role in the investigation of terrorism-related activity, which is the function of the Police, intelligence and security services, there is a necessary delay before I or my predecessors are able to produce our reports and recommendations. For the same reason, that report did not include the events of 2017 or the operation of our legislation during the period affected by the terrorist atrocities commencing with the multiple murders committed on Westminster Bridge in London on 22nd March 2017.

¹ Terrorism Act 2000. Available at: <https://www.legislation.gov.uk/ukpga/2000/11/contents>

² Terrorism Act 2006. Available at: <https://www.legislation.gov.uk/ukpga/2006/11/contents>

³ Terrorism Prevention and Investigation Measures Act 2011. Available at: <https://www.legislation.gov.uk/ukpga/2011/23/contents>

⁴ Terrorist Asset Freezing etc. Act 2010. Available at: <https://www.legislation.gov.uk/ukpga/2010/38/contents>

⁵ M. Hill, *The Terrorism Acts in 2016*, January 2018.

- 1.4. The magnitude of the terrorist atrocities in London and Manchester last year called for a review on some matters as quickly as possible. Because the Westminster Bridge attack on 22nd March 2017 did not lead to criminal proceedings (the lone terrorist having died in the attack), I sought permission from the Metropolitan Police (investigators) and HM Chief Coroner (HHJ Mark Lucraft QC, in charge of the Inquest proceedings) to inspect all relevant documents relating to the use of Terrorism Act powers during the immediate investigation which commenced on the afternoon of 22nd March 2017. The investigation was named Operation Classific. I was given unfettered access to the Metropolitan Police team and all of their records, and I duly presented my Report into Operation Classific to the Home Office in early February this year, and it was presented to Parliament at the end of March.⁶
- 1.5. The Independent Reviewer of Terrorism Legislation scrutinises the operation of the UK's counter-terrorism laws, and delivers findings and recommendations to the Home Secretary. These reports are laid before Parliament and inform public debate on key counter-terrorism issues. They are often cited in legal cases, by Parliamentarians and the media, and recommendations have been influential on Government policy and operational practice.
- 1.6. At the time of writing, the latest developments in my area of interest are the re-launch of the Government Counter Terrorism strategy (known as CONTEST), presented by the Home Secretary on 4th June, and the new Counter-Terrorism and Border Security Bill 2018, which is making its way through Parliamentary scrutiny. As to the latter, I have twice given evidence to Parliament, namely to the Joint Committee on Human Rights on 20th June⁷ and to the Bill scrutiny Committee on 26th June.⁸ Thereafter, I have provided a written submission to the Home Office in conjunction with my Senior Special Adviser Professor Clive Walker.⁹ On 17th July, I spoke at an All Party Parliamentary Group (APPG) meeting in Parliament in relation to the new Bill. It is an essential component of my work that I am available to members of Parliament in both Houses (Lords and Commons), in order to try to assist in debating relevant matters of interest. I am grateful

⁶ M. Hill, *The Westminster Bridge Terrorist Attack*, February 2018.

⁷ <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/legislative-scrutiny-counterterrorism-and-border-security-bill/oral/85927.html>

⁸ [https://hansard.parliament.uk/commons/2018-06-26/debates/a2d24560-1b1b-475c-bbb6-b7100b3e6aaa/Counter-TerrorismAndBorderSecurityBill\(SecondSitting\)](https://hansard.parliament.uk/commons/2018-06-26/debates/a2d24560-1b1b-475c-bbb6-b7100b3e6aaa/Counter-TerrorismAndBorderSecurityBill(SecondSitting))

⁹ M. Hill and C. Walker, *Counter Terrorism and Border Security Bill: Submission in relation to Clause 3*, 9 July 2018.

for the welcome afforded to me on each visit to Parliament. In early September 2018, the Government tabled a series of amendments to the Counter Terrorism and Border Security Bill 2018.¹⁰ Because scrutiny by Parliament will extend beyond my time as Independent Reviewer, I have (by the time of publication of this report) placed on my website any further suggestions and comments on the Bill as amended.¹¹

- 1.7. The other event of particular note during the last year has been the passage of the Sanctions and Money Laundering Bill through Parliament. The Government proposes that this new legislative regime will replace (by absorption) the terrorist asset-freezing regime within Part 1 of TFA 2010. The new regime will be broader than TFA, enacting sanctions in circumstances which may or may not relate to terrorism.
- 1.8. The Sanctions and Anti-Money Laundering Act 2018 received Royal Assent on 23 May 2018. The Sanctions and Money Laundering Act will come into force after Brexit takes effect (29 March 2019), for it provides a new basis instead of the existing sanctions regimes in EU law. Before that date, a series of detailed secondary regulations, covering different types of sanctions regimes covered by the Act, are expected to be drafted and issued. My remit as Reviewer for terrorism-related sanctions will remain under the new Act. This is now clear, but was opaque at the time of my evidence to the Joint Committee for Human Rights on 31st January 2018.¹²
- 1.9. On commencement of my work as Independent Reviewer, I identified the delicate balance between the Government's responsibility to provide security for all citizens, and the imperative for all of us to guard against unwarranted infringements on fundamental human rights.¹³ This balance is engaged in any consideration of CONTEST and the CT Bill, and as I have noted above it is my job to assist Parliament in every case where policy or legislative changes affect that balance. In performing my work, I am conscious that I need to understand the views of all who are charged with security, as well as those who safeguard the ordinary rights of citizens here and around the world. It is for others to judge how well or badly I perform this balancing act, but I want to acknowledge the

¹⁰ https://publications.parliament.uk/pa/bills/cbill/2017-2019/0249/amend/counter_daily_rep_0910.1-7.html

¹¹ <https://terrorismlegislationreviewer.independent.gov.uk/>

¹² See Joint Committee on Human Rights, *Legislative Scrutiny: Counter-Terrorism and Border Security Bill (2017-19 HC 1208/HL 167)*

¹³ See e.g. Max Hill QC, *Lecture to the Criminal Bar Association*, 19th September 2017

<https://terrorismlegislationreviewer.independent.gov.uk/lecture-to-the-criminal-bar-association-19th-september-2017/> and Max Hill QC, *Tom Sargant Memorial Lecture for JUSTICE*, 24th October 2017

<https://terrorismlegislationreviewer.independent.gov.uk/tom-sargant-memorial-lecture-for-justice-24th-october-2017/>.

openness and frank discussion I continue to enjoy with many organisations and individuals, from the Police and security/intelligence agencies at one end of the debate, to human rights non-governmental organisations at the other. One small demonstration of the range of dialogue which I am privileged to conduct is my evidence to the JCHR at which I thanked Liberty,¹⁴ Index on Censorship,¹⁵ Swansea University¹⁶ and Georgetown University in the US amongst my correspondents.¹⁷

1.10. The Independent Reviewer's role is to monitor UK counter-terrorism legislation for its fairness, effectiveness and proportionality. The work is underpinned by three central principles, without which it could not function. These principles, which were identified by my predecessor David Anderson QC in one of his reports, are: complete independence from Government; unrestricted access to classified documents and national security personnel; and a statutory obligation on Government to lay the Independent Reviewer's reports before Parliament.¹⁸

1.11. Commencing work on 1st March 2017, I have spent as much time as possible absorbing myself in the detail and the application of our terrorism legislation. This work has partly been undertaken at my desk in London, but I have also made my way around every relevant government department and organisation connected in whatever way to the policing and national security apparatus in the UK. My previous work as a self-employed barrister included engagement in the prosecution of terrorism cases since 2001, commencing as a junior member of the prosecution team in the criminal trial which followed the Real IRA bomb campaign which encompassed the detonation of improvised explosive devices in White City and Ealing Broadway in London, followed by Smallbrook in Birmingham.¹⁹ This work continued every year until 2016, which ended with my participation as leading prosecution counsel in the trial of Daesh-inspired terrorists involved in transferring money from UK bank accounts with the involvement of an individual named Abrini, himself connected to the Bruxelles bombings of March 2016

¹⁴ I gave evidence alongside Corey Stoughton, Advocacy Director at Liberty.

¹⁵ <https://publications.parliament.uk/pa/cm201719/cmpublic/CounterTerrorism/memo/CTB01.htm>

¹⁶ N. Lorenzo-Dus & S. Macdonald (2019). Purposive and performative persuasion: The linguistic basis for criminalising (direct and indirect) encouragement of terrorism. *Using Law to Fight Terror: Legal Approaches to Combating Violent Non-State and State Sponsored Actors*. Oxford University Press 2019.

¹⁷ D. Webber, Preparing to commit terrorist acts: A comparison of U.S. and U.K. laws, 34(1) *American University International Law Review* [...] (forthcoming September 2018).

¹⁸ D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 1.4.

¹⁹ *R v Aiden Hulme & Noel Francis Maguire* [2005] EWCA Crim 1196.

after which he earned the soubriquet 'the man in the hat', having been captured on CCTV at Zaventum Airport.²⁰

1.12. Once appointed Independent Reviewer, I have been able to build on my earlier knowledge through the open and unrestricted access afforded to me at all levels within government, policing and national security-related organisations. I record here my gratitude for the welcome I have received from all quarters and at all levels. However, the work of Independent Reviewer would be incomplete without wider engagement, beyond the apparatus of government. To that end, emulating the work of my predecessors, I have travelled across the country in order to meet with as many people as possible, with the sole purpose of hearing the views of all on the operation and impact of our legislation. This work led to the publication of a 'Building Bridges' report by Forward Thinking in July 2017,²¹. In October 2017, I was pleased to see many of those who had joined me at community roundtable discussions with Forward Thinking, when they came to London for a committee room discussion in Parliament, hosted by the RT Hon Dominic Grieve QC MP and attended by other parliamentarians including Baroness Warsi.²² This was a good opportunity to air the views and grievances of community representatives, who came to Parliament to talk about their experiences and their perception of the terrorism legislation.

1.13. Connect Futures also published a report in July 2018.²³ This was the result of a series of meetings held during my visit to Birmingham, when I was able to discuss the terrorism legislation with University academics and students, Police and other 'stakeholders' including local government and education groups, and teachers, school governors and parents in the Sparkbrook area of Birmingham.

²⁰ See http://www.cps.gov.uk/news/latest_news/two_men_jailed_for_giving_money_to_brussels_bombings_suspect/, 12 December 2016.

²¹ Forward Thinking, *Community Roundtables: A report on the aftermath of the terrorist attacks in London and Manchester*, July 2017. Available at: http://www.forward-thinking.org/?post_documents=community-roundtables-a-report-on-the-aftermath-of-the-terrorist-attacks-in-london-and-manchester-forward-by-max-hill-qc-independent-reviewer-of-terrorism-legislation.

²² http://www.forward-thinking.org/?post_documents=the-aftermath-of-the-terrorist-attacks-in-london-and-manchester-perspectives-from-british-muslim-communities-26th-october-2017

²³ ConnectFutures, *A report on an audience with Max Hill QC*, June 2018.

1.14. Key concerns highlighted by those present at the meeting included:

- i. The perception and experience of racism and stigmatization in the workings of Schedule 7 and Prevent, whether repeat stops at borders or undue focus on Islamist extremism
- ii. The trauma for families of Control Orders (now TPIMs, explained below)
- iii. The differentiated categorisations of foreign fighters and of what constitutes terrorism, and under whose definitions
- iv. The need for consultation with the community, particularly Muslim communities, and awareness of the full range of what different organisations are bringing to the field, not just the government favoured ones.
- v. The need for more finance and in-depth training on terrorism, extremism, crime and Prevent, to understand differences between violent and non-violent extremism, and the workings of the law.
- vi. Whether 'the community' has access to the Home Office or the CfCE in order to raise questions.

1.15. Most recently, in September 2018, I again conducted a number of community visits in company with Forward Thinking, repeating engagement with many who met me in 2017 and also making new acquaintances. This time I visited Leicester, Dewsbury, Bradford and Manchester, meeting a wide variety of community representatives including a Deputy Police and Crime Commissioner, imams, headteachers, community leaders, youth workers and students. Throughout, I was struck by how much we all share in our resolve to rid our country of terrorism, whilst celebrating diversity and multiculturalism. Forward Thinking will publish a report of these visits, and on my departure as Independent Reviewer, I shall pass on my list of contacts to my successor, and I expect these engagements to endure and grow over time.

1.16. I have also been pleased to make repeat visits to Northern Ireland, where I have been able to conduct roundtable consultations with The Police Service Northern Ireland (PSNI) as well as a wide variety of NGOs, community services and representatives. I include a list of those whom I met most recently, in [Annex 1](#) of this report. The fact that Northern Ireland has experienced terrorism in various forms over a long period of time means that the reflections of those who have lived through years of conflict can be particularly valuable. Equally, and notwithstanding that two decades have passed since the Good

Friday Agreement, I have been grateful for an extended opportunity to understand the various ways in which the PSNI are meeting the current threat from terrorism.

1.17. I am grateful to everyone who has taken the time to meet with me, or to write me. The office of IRTL is an open channel for any person or group with relevant information or views. The remit is not confined to those with mainstream views, otherwise the value of the office would be diminished. I add only this for the sake of clarity; engagement does not equate to endorsement. Whilst I find myself in agreement with many who speak to me at meetings within and without government, the essence of being Independent Reviewer is that I have done my best to make up my own mind on the important issues present within our terrorism legislation.

1.18. As I wrote in my first Annual Report, my first action after appointment in 2017 was to ask whether the three Special Advisers to my predecessor would be willing to stay in post in order to help me. To my great good fortune, all three accepted. They are my Senior Advisor Professor Clive Walker QC (Hon), together with practising barristers Hashi Mohamed (England & Wales) and Alyson Kilpatrick (Northern Ireland). To this exceptional trio I made one addition during 2017 through the appointment of my Legal Assistant Fatima Jichi (who remains in post at the time of writing), a Bar Professional Training Course student partially sponsored by the Kalisher Trust. To all four members of my small team, I remain heavily indebted and offer my thanks. Our working relationship throughout my 20 months as Independent Reviewer has been at once productive and efficient despite the 'particularly difficult and challenging year', to repeat the words of the Home Secretary in the Government Response to my first Annual Report, published in September 2018 (see below). The office of the Independent Reviewer has never required large premises, administrative staff, or even a large financial budget. These are the hallmarks of complete independence from Government, meaning that one lawyer, preferably a barrister in private practice, can discharge the functions of Independent Reviewer with the assistance of the right Special Advisers and one Legal Assistant. I have been truly fortunate.

1.19. However, this report remains my responsibility and any errors are mine. Any recommendations or conclusions in this report are mine alone.

Legislative change in 2017

1.20. During 2017, all four of the statutes which I review remained in force. The changes made to the legislation during the year were covered in my last Annual Report.²⁴ The changes to the sanctions regime currently represented by TAFSA 2010 are addressed below.

The Government Response to the Annual Report on the operation of the Terrorism Acts in 2016

1.21. I thank the Home Secretary for his kind words in relation to my work as IRTL during ‘what can only be described as a particularly difficult and challenging year’, namely 2017.

Threat picture. Both my predecessor Lord Anderson and I, in reports we produced independently of each other, recommended that JTAC extend its remit to include assessing the threat from domestic extremism. I am pleased that the Government has accepted this recommendation, in particular because the threat we face from extreme right wing terrorism within the UK is considerable, and in my clear view it has grown in reaction to the terrorist atrocities on Westminster Bridge, London Bridge and at Manchester Arena last year. Terrorism takes many forms. Extreme right wing ideology breeds terrorism, and must be dealt with comprehensively.

Port and Border Controls. I am pleased that prospective revision of the existing Code of Practice may introduce greater certainty and accountability in the exercise of Schedule 7 powers. However, I recommended the adoption of a universal threshold, namely ‘reasonable grounds to support’ the exercise of Schedule 7 powers by the application of the criteria within the Code of Practice. Adoption of such a test would be a step in the right direction, demonstrating the absence of either ethnicity alone or the exercise of powers in a random fashion. I am therefore disappointed that no threshold test is to be introduced. Had this recommendation been accepted, it would have created greater community confidence in the use of these exceptional powers. I hope and expect that my successor will maintain rigorous scrutiny and pressure in this area.

²⁴ M. Hill, *The Terrorism Acts in 2016*, January 2018.

Arrest and Detention. My recommendations related to pre-charge detention conditions, and the oversight of the custody regime in TACT suites. I am pleased that the Government has responded positively and constructively to all of my recommendations in this regard.

Separately, I was interested to read the Government's 'categorisation of terrorism-related arrests', set out in this section of the response. Whilst I agree that 'the decision on whether to categorise a particular arrest as terrorism-related is an operational matter for the police', it is important to note that our perception of 'what is terrorism' can be affected by year-on-year arrest statistics, and this remains an area for scrutiny and review by my successor.

Criminal Proceedings. I understand the Government's reasoning in rejecting my proposal that certain existing terrorism offences have decreasing relevance since their passage into law one or two decades ago. However, this is part of a wider conversation about the absence of a need to resort to knee-jerk legislation in response to any outbreak of terrorist activity, for which please see my evidence to Parliament concerning the Counter Terrorism and Border Security Bill 2018. Equally, it is clear to me that there is a significant overlapping of terrorism offences, where Parliament has passed successive statutes in 2000 and 2006. Further still, in many cases including the most serious terrorist activity, prosecutors rightly use offences which come from the general criminal or common law, with no need to resort to modern terrorism statutes. There remains an urgent need for my successor to continue this work.

The Government Response to the report on the use of terrorism legislation following the Westminster Bridge terrorist attack

- 1.22. My report was an attempt to introduce more information into the public domain than before, concerning a major terrorism investigation. I am grateful for the Home Secretary's recognition that my work represented a 'diligent and authoritative approach'.

Transporting TACT detainees. I am pleased to see the Government's support for the principle that careful consideration should always be given to whether it is necessary to transport detainees large distances. My own engagement with CT policing before and after the publication of my Report suggests that my recommendation has been taken seriously.

Informing detainees of their rights at the earliest opportunity. I accept that it can be difficult to predict the necessary level of police resources during a dynamic investigation. However, TACT detainees exceptionally may be detained for up to 14 days without charge, far longer than 'general crime' detainees arrested under the Police and Criminal Evidence Act. Therefore thought and preparation must be applied to the special consequences of TACT detention, where recent history has shown that most of those detained are not in fact charged with any offence after further investigation. I welcome the revelation that the new TACT detention suite at Hammersmith has been purposely co-located with a non-TACT detention suite. This should allow interoperability between TACT and non-TACT custody staff, which I recall was a feature of the now closed detention suite at Paddington Green.

Religious questions during interviews. I accept that detailed religious questions can be necessary during some police interviews of terrorism suspects, but maintain that greater religious literacy by interview officers is necessary, as demonstrated by some of the simplistic questions posed during interviews with some of the Westminster Bridge suspects, where any answer to such questions was of little or no utility to the police investigation.

Separately to the Government Response, I am happy to report that my own engagement since the publication of my Report with those in CT policing responsible for training interview officers has been positive and constructive, and I am confident that religious literacy will improve if this engagement is followed through. I invite my successor to keep this topic under scrutiny.

Reconsideration of bail before charge for TACT detainees. I am not the first to make this recommendation, nor should I be the last. Whether taken during a terrorist investigation or one relating to general crime, any decision to release a suspect on bail can only be

taken with great care. However, the exceptional statutory regime permitting pre-charge detention of up to 14 days in TACT cases, together with the 58% rise in arrests from 2016-2017, means that a wider and more diverse range of individuals are being taken into TACT custody. In maintaining the Government's rejection of this recommendation, the Home Secretary's commitment to reconsider in future is important and will I hope be followed up by my successor.

1.23. For reference, the other major reports compiled in the wake of the events of 2017 are footnoted here.²⁵

Statistics

1.24. Statistics on the operation of the Terrorism Acts can be found in three principal publications and their accompanying data tables:

- (a) The Home Office's quarterly releases, which report on the operation of police powers under TA 2000 and TA 2006 in Great Britain (England, Wales and Scotland).²⁶
- (b) The bulletin produced for the same purpose by the Northern Ireland Office;²⁷ and
- (c) The Police Recorded Security Situation Statistics, published by the Police Service of Northern Ireland (PSNI) on an annual basis, with monthly updates.²⁸

²⁵ Lord Harris, *An independent review of London's preparedness to respond to a major terrorist incident*, 2016. D Anderson, *Attacks in London and Manchester, March–June 2017: independent assessment of MI5 and police internal reviews*, (Home Office, 2017).

Lord Kerslake, *An Independent Review into the preparedness for, and emergency response to, the Manchester Arena attack on 22nd May 2017* (2018).

²⁶ See relevant to the reported period Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018.

²⁷ See Northern Ireland Office, *Northern Ireland Terrorism Legislation: Annual Statistics 2016/17, 1 November 2017*, Table 16.

²⁸ See Police Service of Northern Ireland, *Police recorded security situation statistics, 1 April 2016 to 31 March 2017*, 17 May 2017. See also PSNI, *Stop and Search Statistics, Accompanying spreadsheet for statistics covering the 2017/18 financial year (1st April 2017 to 31st March 2018)*, 30 May 2018

2. THE DEFINITION OF TERRORISM

- 2.1 To any Independent Reviewer, myself included, the statutory definition of terrorism contained within section of the Terrorism Act 2000 contains food for thought and discussion as to both the meaning and reach of the definition. Both of my predecessors, Lords Carlile and Anderson, have written on this subject. During my tenure, the opportunity to reflect on the definition of terrorism did not immediately arise, apart from possible repetition of my predecessors' reports.
- 2.2 However, it is arguable that the situation changed with events in Salisbury in March 2018 and Amesbury at the end of June. The Novichok poisonings, and the question of the perpetrators and their origin or sponsorship, have inflamed the issue of what terrorism means, and whether our statutory definition provided by Parliament in 2000 works equally for state terrorism and non-state terrorism.
- 2.3 An answer to this question may lie in the provisions of the Counter-Terrorism and Border Security Bill 2018, in which the Government proposes a separate legal regime under Part II for dealing with 'hostile activity'. Thus, many of the provisions of Schedule 7 to the Terrorism Act 2000 (the border stop powers) are repeated but re-packaged for non-terrorist 'hostile activity', providing border police (confusingly perhaps, the same counter-terrorism police officers who already exercise Schedule 7 powers) with the ability to intervene and to detain.
- 2.4 With my departure as Independent Reviewer coming in the middle of parliamentary scrutiny of the new Bill, I have decided that the question of state terrorism and its inclusion/exclusion from the section 1 TACT 2000 definition is 'work in progress', on which I shall express no opinion. However, I invited my Senior Special Adviser Clive Walker to consider the question, and to review the legal and academic research in this area. He has produced a comprehensive 'Note on the definition of terrorism under the Terrorism Act 2000, section 1, in the light of the Salisbury incident', which I have annexed to this Report. The content and any opinions expressed in the Note are Professor Walker's, rather than mine, but I am grateful to him for his work and hope that it may fuel debate and indeed further consideration by my successor.

3. THREAT PICTURE

The global picture

- 3.1. I have found it useful to approach the issue of the threat from terrorism within the UK by commencing with the worldwide picture, in common with previous Independent Reviewer Reports.
- 3.2. For the global picture in 2017, I have used data prepared by the National Consortium for the Study of Terrorism and Responses to Terrorism (START):²⁹
 - (a) There were 10,900 terrorist attacks worldwide, resulting in more than 26,400 deaths (including 8,075 perpetrator deaths).
 - (b) 2017 marks the third consecutive year of declining numbers of terrorist attacks and deaths worldwide, since terrorist violence peaked in 2014 at nearly 17,000 attacks and more than 45,000 total deaths.
 - (c) More than half of all attacks took place in Iraq (23%), Afghanistan (13%), India (9%), and Pakistan (7%) and more than half of all deaths due to terrorist attacks took place in Iraq (24%), Afghanistan (23%), and Syria (8%).
- 3.3. Analysing these statistics which form the worldwide picture of terrorism in 2017, it is clear that Muslims remain the most numerous victims of terrorism, far outnumbering members of other faiths in many of the countries where terrorism-related activity is most prevalent.
- 3.4. Turning to the picture in the European Union countries, Europol reports a total of 205 failed, foiled and completed attacks reported by nine EU Member States (up from 142

²⁹ National Consortium for the Study of Terrorism and Responses to Terrorism, *Global Terrorism in 2017*, August 2018. Available at: http://www.start.umd.edu/pubs/START_GTD_Overview2017_July2018.pdf. This database is not without its faults and critics. The definition of 'terrorism' is one controversy. The result is that it is heavily affected by conflicts in Afghanistan, Iraq and Syria, much of which is referred to as 'insurgency' by HMG and which is not akin to the kind of 'terrorism' happening in the UK. See eg Ivan Sascha Sheehan, 'Assessing and Comparing Terrorism Data Sources' in C. Lum and L. W. Kennedy (Eds.), *Evidence-Based Counterterrorism Policy* (New York, NY: Springer, 2011) and Anthony H. Cordesman, 'Key Trends in the Uncertain Metrics of Terrorism' (<https://www.csis.org/analysis/key-trends-uncertain-metrics-terrorism>, 2016).

attacks in 2016, but similar to 211 attacks in 2015).³⁰ More than half (107) of these were reported by the United Kingdom, 88 of which were acts of Northern Ireland-related terrorism (see below for the picture in Northern Ireland).³¹ France reported 54 attacks, Italy 14, Spain 16, Greece 8, Germany 2, Belgium 2 and Finland and Sweden reported 1 attack each. Europol also reports that 68 people died as a result of terrorist attacks and 844 people were injured.

- 3.5. Ethno-nationalist and separatist terrorist attacks continue to far outnumber attacks carried out by violent extremists inspired by any other ideologies or motivations (137 out of 205). The countries reporting terrorist attacks linked to separatist terrorism are the UK (88), France (42) and Spain (7).³²
- 3.6. Europol reports that the number of individuals travelling to the conflict zones in Iraq or Syria to join jihadist terrorist groups as foreign terrorist fighters has dropped significantly since 2015. The number of returnees was low in 2017.

Threat to the UK

- 3.7. In the UK, the national threat level for international terrorism is set and assessed, not by the Government but by JTAC (Joint Terrorism Analysis Centre). For the sake of balance, and because of the prevalence of the threat, I recommended in my previous annual report that JTAC in future should also consider activity including domestic extremism. This recommendation was also made by David Anderson,³³ and has since been accepted (see above, Government Response). The threat level for Northern Ireland-related terrorism in Northern Ireland, and Great Britain, is set by MI5.³⁴
- 3.8. During 2017, the overall threat level for the UK remained at Severe, meaning that an attack was highly likely. The threat level was elevated from Severe to Critical twice only during

³⁰ European Union Agency for Law Enforcement Cooperation (Europol), *EU Terrorism Situation and Trend Report (TE-SAT) 2018*. ISBN 978-92-95200-91-3.

³¹ Europol compiles its reports using its own definition of terrorism which differs from section 1 of the Terrorism Act 2000. For example, the Finsbury Park terrorist attack in the UK in 2017, although within the definition of 'terrorism' as set out in section 1, does not seem to be included in the Europol statistics.

³² Defined in the Europol TE-SAT 2017 Report [p55] as follows: 'Separatist groups seek to carve out a state for themselves from a larger country, or annex a territory from one country to that of another.'

³³ David Anderson QC, *Attacks in London and Manchester: Independent Assessment of MI5 and Police Internal Reviews*, December 2017.

³⁴ <https://www.mi5.gov.uk/threat-levels>

2017, meaning an attack was expected imminently (see below). Daesh continued to represent the most significant terrorist threat, but not the only threat. Beneath that overall headline, the threat level for Northern Ireland-related terrorism in Great Britain remained at Substantial, meaning an attack was a strong possibility, and the threat in Northern Ireland remained at Severe throughout 2017. Further, the UK faced a continuing threat of violence and terrorism from extremism, including the extreme right wing and far right. Evidence for this is provided by the proscription of the extreme right wing group National Action in December 2016,³⁵ and the terrorism-related murder of Jo Cox MP in June 2016.³⁶ The importance of this proscription was underlined in July 2018 with the conviction of Christopher Lythgoe and Matthew Hankinson.³⁷

- 3.9. The re-launch of the CONTEST Strategy in June 2018 provided a further opportunity to summarise the threat picture, as the following lines from the CONTEST 2018 document show:

“The UK faces several different terrorist threats. The threat from Islamist terrorism remains the foremost and most significant. Extreme right-wing terrorism is a growing threat, and in 2016 we proscribed an extreme right-wing terrorist group, National Action, for the first time. Northern Ireland related terrorism remains a serious threat, particularly in Northern Ireland itself.

2017 saw a shift in the nature of the terrorist threat to the UK. Between 2011 and 2016, there were four terrorist attacks in Great Britain, each targeting a single individual. The Westminster attack in March 2017 was the first to cause multiple fatalities in the UK since 2005. The five attacks in London and Manchester in 2017 killed 36 people.

The shift in threat is also demonstrated by the number of potential attacks disrupted by MI5 and Counter-Terrorism Policing. They have foiled 25 Islamist plots since June 2013,

³⁵ Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 3) Order 2016, SI 2016/1238. Since then, Scottish Dawn and NS131 (National Socialist Anti-Capitalist Action) have been banned as related groups: Proscribed Organisations (Name Change) (No. 2) Order 2017, SI 2017/944.

³⁶ Although I have seen no evidence directly linking Mair and National Action, the latter demonstrated support for Mair’s crime. This includes tweets posted by the group in 2016, in connection with the murder of Jo Cox (which the prosecutor described as a terrorist act), stating “Only 649 MPs to go” and a photo of Thomas Mair with the caption “don’t let this man’s sacrifice go in vain” and “Jo Cox would have filled Yorkshire with more subhumans!”, as well as an image condoning and celebrating the terrorist attack on the Pulse nightclub in Orlando and another depicting a police officer’s throat being slit. [Home Office, *Proscribed terrorist groups or organisations*, Updated 2 October 2017]

³⁷ <https://www.bbc.com/news/uk-politics-44873178>

12 of which have been since March 2017, and four extreme right-wing plots have been disrupted since 2017.

This figure is driven in part by investigations by the security and intelligence agencies and law enforcement in the aftermath of the five terrorist attacks in 2017. As of March 2018, they were handling over 500 live investigations, involving some 3,000 individuals. The volume of recorded intelligence leads being managed jointly between MI5 and Counter-Terrorism Policing has more than doubled over the last 12 months. The vast majority of operational effort is devoted to the risk from Islamist terrorism.

In addition, there are more than 20,000 individuals who have previously been investigated by Counter-Terrorism Policing and MI5, a small proportion of whom may at some stage present again a terrorism threat. These are known as closed subjects of interest.”

Threat from Islamist terrorism³⁸

3.10. I have previously noted that the UK threat level was elevated from Severe to Critical twice only during 2017, namely for a period of approximately 48 hours very shortly after the Manchester Arena attack, and for a like period after the discovery of a partially-detonated explosive device on a London Underground train at Parsons Green. The first was a reaction to the newly-commenced investigation led by Greater Manchester Police, and the move upwards from Severe to Critical was justified because in the earliest days of that investigation it was unknown whether the perpetrator Abedi was a lone actor - to use the current phrase - or part of a wider conspiracy. The level of sophistication of the Arena attack - an Improvised Explosive Device (IED), assembled from parts which were gathered over time and stored ready for use, which resulted in 22 deaths and 119 injuries - justified an assessment which was absent after Westminster Bridge, Finsbury Park and even London Bridge, the first two of which were lone actors, and the third albeit multi-handed was rapidly contained by the Metropolitan Police. The second elevation of the

³⁸ I have used the term Islamist because it remains in common use, including by the Government in the text of their CONTEST strategy. However, I and many other commentators including parliamentarians have preferred the use of the term 'Daesh- or AQ-inspired terrorism', because it more accurately describes the origin of the current threat from international terrorism.

threat level was for the same reason as in Manchester, as it was not known if the perpetrator of the Parsons Green attack was a lone actor, and the perpetrator was at large.

3.11. The short-term elevation of the UK national threat level from Severe to Critical is not the same as declaring a state of emergency, which, depending on the regulations invoked, might require a derogation from Article 15 of the ECHR.³⁹ During 2016, we saw such a derogation elsewhere in Europe, namely in France after the attacks in Paris in November 2015 which included the Bataclan theatre. That state of emergency remained in force without interruption for almost exactly two years, in fact until 31st October 2017 when it expired and was not renewed.⁴⁰ However, we should note that although the state of emergency in France has lifted, the national Parliament has sought to enact many of the emergency provisions, therefore ‘normalising’ what were introduced as emergency measures.⁴¹

3.12. The use of social media remains a prominent feature of terrorist convictions in 2017 (see Chapter 10). The CONTEST Strategy 2018 highlighted the challenges created by developments in technology:

“Evolving technology creates new challenges, risks and opportunities in fighting terrorism. Terrorists use new technologies, like digital communications and unmanned aerial vehicles, to plan and execute attacks, and tend to adopt them at the same pace as society as a whole. For terror groups, the internet is now firmly established as a key medium for the distribution of propaganda, radicalisation of sympathisers and preparation of attacks.

Evolving technology, including more widespread use of the internet and ever-more internet-connected devices, stronger encryption and cryptocurrencies, will continue to

³⁹ See Article 15, ECHR, paragraph 1: ‘In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.’

⁴⁰ See <http://www.gouvernement.fr/action/renforcer-la-securite-interieure-et-la-lutte-contre-le-terrorisme>.

⁴¹ Loi n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme (JORF n°0255, 31 October 2017). Available at: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=0446A22A73D3B9B9098857267D48CA60.tplgfr25s_1?cidTexte=JORFTEXT000035932811&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000035932808.

create challenges in fighting terrorism. Data will be more dispersed, localised and anonymised, and increasingly accessible from anywhere globally.”

- 3.13. Where these awful crimes are facilitated by the use of social media, we want to close down the criminals’ ability to communicate. And yet, we must recognise that policing the internet, and controlling social media comes at a very high price if it interferes with the freedom of communication which every citizen enjoys, and which is also enshrined in Article 10 of the European Convention on Human Rights. To go further, would we risk unenforceable infringements on ECHR rights, and/or would we push the current abundance of evidence proving terrorist activity online to go offline or underground, into impenetrable places within the dark web from which clear evidence rarely emerges, and where the placement of a robust counter-narrative to terrorism is hard to effect and harder to gauge?
- 3.14. This is uncertain territory. Driving material, however offensive, from open availability into underground spaces online would be counter-productive if would-be terrorists could still access it. And once this material goes underground, it is harder for law enforcement to detect and much harder for good people to argue against it, to show how wrong the radical propaganda really is.
- 3.15. Can we legislate our way out of this problem? In June 2018, days after the re-launch of CONTEST, the Government introduced the Counter-Terrorism and Border Security Bill 2018.
- 3.16. I have heard the message from the Government, about technological advances which drive the imperative to intervene as a matter of law enforcement, without which terrorism may thrive unimpeded. ‘Digital fixes’ (the words used by the Home Secretary to encapsulate what he intended by the new terrorism offence clauses in the CT Bill 2018). However, some of the Bill clauses may have unintended consequences. This has been the subject of evidence given by myself and others to JCHR and the Bill Committee during June this year.

3.17. In my Tom Sargant Memorial Lecture for JUSTICE,⁴² I provided a commentary on what the then Home Secretary foreshadowed in her Conservative Party Conference speech on 3 October 2017, namely an extension to section 58 TACT 2000 to outlaw streaming extremist material online. This extension has now become clause 3 of the CT and Border Security Bill 2018.

3.18. In response, I said this to the JCHR:

Can we define the difference between a second and a third click as to where the offence-creating line is crossed? In the Explanatory Notes to this clause—we should accord a margin of appreciation to the Government for this—the Government say that they are trying to deal with a pattern of behaviour and if, in the way that Clause 3 has been drafted, that really demonstrates a pattern of behaviour, perhaps we should have some sympathy and understanding for this clause. My question is whether that is the effect or something much less than that.

There are clearly risks for journalists and others. Index on Censorship shared its thoughts with me on this. If I just read a sentence, it expressed a concern about ‘the potential restrictive and frightening effect on researchers, students, academics and journalists amongst others, who are researching case studies, making arguments and carrying out interviews.’ Without more, there is a risk that the mesh of the net that the Government are creating with Clause 3 is far too fine and will catch far too many people.

The Government’s answer would be that subsection (3), which is unamended, remains, and there is a reasonable excuse defence. That is right. The question, however, is whether we need to rely on prosecutorial discretion not to prosecute in what many would argue are the obvious non-prosecution cases, or whether there is a risk of significant numbers of people who are taken to the trouble and even the expense of going to court in order to demonstrate or to raise the question of reasonable excuse.

My suggestion is that this new variant of the Section 58 offence will prove difficult in practice and lacks clarity on the many circumstances in which the offence is not

⁴² Max Hill QC, *Tom Sargant Memorial Lecture for JUSTICE*, 24th October 2017
<https://terrorismlegislationreviewer.independent.gov.uk/tom-sargant-memorial-lecture-for-justice-24th-october-2017/>

committed as to which—forgive me for going back to my Justice lecture—there is some relevant learning from the French experience here of the last 18 months. Twice in that period the French Parliament has attempted to legislate into this space, targeting exactly this sort of activity, and twice the constitutional court—the cour de cassation—has struck it down.

The bases on which the court has struck it down are rights based as well as certainty based. It fails both tests. That is notwithstanding that in the French experiment both at the first iteration and at the second iteration there was an expression within the terms of the new offence that it would not apply in circumstances of professional research. I am précisising. Here we do not even have an expression of that sort to give encouragement to those who are not committing the offence. This is extremely difficult.

The questions are obvious. It begs the question as to whether a week, a month or six months is too short or too long a gap between the first click and the third click. Given that it is not the same material, it will be difficult to identify a pattern of behaviour.

I am bound to extend my comments on Clause 3 to the sentence extension provisions, which I know are later in the Bill. The Government intend that somebody who falls foul of Clause 3 will be at risk of a sentence of imprisonment of up to 15 years, which is an extension of the current maximum. I find that difficult to countenance when nothing is to be done with the material. It is not passed to a third party. It is not even the commission of the current Section 57 offence in the 2000 Act, which is collection of information for a terrorist purpose. There need be no purpose here, yet there is a risk in the draft clauses of up to 15 years' imprisonment.

3.19. To the CT Bill Committee, I put it this way:

I am concerned about the very low threshold that has been set, and about the lack of precision in some respects that at the moment is written into clause 3. Trying to move, though, from a position of giving credit to the Government, who have looked at it very carefully, what I believe they are attempting—the explanatory notes give force to this—is to identify a “pattern of behaviour”. That is a phrase from the explanatory notes for clause 3. If the clause as drafted is capable of identifying a pattern of behaviour, then

although article 10 arguments do not go away, one can understand the logic behind the new variant of a section 58 offence, but I am concerned that it might not go that far—in other words, it is incapable of establishing a pattern. Why? Because the three clicks offence—forgive me for using the shorthand—may relate to different material rather than to repeated viewing of the same material, and there is no indication of the period of time over which an internet user may log on for different sessions. It is certainly no longer necessary for there to be any download or offline footprint of the material, whereas section 58 currently pretty much requires that, and of course the more general arguments are that there is no requirement that the individual either go on to prepare, or still less commit, an act of terrorism. That is a very low threshold.

The last part of my answer—forgive me for going on at a little length, but this is a headline example of the new variant offences—is that the French Parliament has attempted to legislate into exactly this space. On two occasions, the Cour de Cassation—the constitutional court in France—has struck down the French equivalent, yet the French equivalent attempts to define “reasonable excuse.” To put that another way, it exempts from prosecution—I am paraphrasing here—professional research, which may be journalistic or academic. This clause does not do that.

I have no doubt at all that the general reasonable excuse defence under section 58(3) remains, but—forgive me for repeating a phrase that I have used elsewhere—the mesh of the net that the proposed new clause would create is likely to be so fine that, although it would perhaps capture some who represent a pattern of behaviour, it would also capture others who probably do not. I hope that answers your question as to the concerns I have.

I agree, if I may put it this way, with the Home Secretary on relaunching Contest on 4 June, when he said in answer to questions that this Bill introduces a number of “digital fixes”—the Home Secretary’s words—to existing legislation. It is of course right that, even after one decade—sometimes even less, because of the way that communication technology moves on—Parliament is perfectly entitled to revisit existing offences. What that means is that a redefinition to include online activity within section 58 does not strike me as controversial.

What does strike me as difficult, though, is the suggestion that somebody who is thinking in a particular way without more—let us define that as a predisposition to extreme thinking—has crossed the line into terrorist offending, which is violent extremism. I am concerned that setting a lower threshold, which is a matter for Parliament, actually takes one across that line and ultimately we are doing nothing more by clause 3 than identifying people who may express an interest in certain types of material, but who up until now have not been at risk of prosecution for terrorist activity. They may be of interest to counter-terrorism policing and to the security and intelligence services—it is their function to take a very keen interest in even this sort of activity—but I am concerned about saying that that has crossed the threshold into criminality.

3.20. At the conclusion of the Bill Committee scrutiny in June 2018, the Security Minister indicated that further consideration would be given to Clause 3. In conjunction with Professor Clive Walker, I produced a Note on Clause 3 at the beginning of July.⁴³ In early September 2018, the Government tabled a series of amendments to the Counter Terrorism and Border Security Bill 2018 which amended Clause 3 to remove ‘on three or more occasions’. I have (by the time of publication of this report) placed on my website any further suggestions and comments on the Bill as amended.

3.21. It will be for Parliament to determine where the line should be drawn between rights and security. That decision may have been made by the time this report is published. If Clause 3 has been enacted, we must await legal challenge invoking Article 10 ECHR, and the judicial response to that challenge. The amendments to the Bill, tabled by the Government in early September 2018, come too late for a detailed response here. However, as noted above, I have (by the time of publication of this Report) placed my observations on the Independent Reviewer website.

3.22. Finally for now, it is important to consider the interface between general criminality and terrorism. There is useful research on this topic.⁴⁴ From my long experience as a

⁴³ M. Hill and C. Walker, *Counter Terrorism and Border Security Bill: Submission in relation to Clause 3*, 9 July 2018. <https://terrorismlegislationreviewer.independent.gov.uk/submission-in-relation-to-clause-3-of-the-counter-terrorism-border-security-bill-2018/>

⁴⁴ Basra, R. and Neumann, P., 'Criminal Pasts, Terrorist Futures: European Jihadists and the New Crime-Terror Nexus (2016) 10 Perspectives on Terrorism 25.

See also:

Europol, *European Union Serious and Organised Crime Threat Assessment 2017*.

prosecutor in terrorism-related criminal trials since the turn of the century, it remains a central theme of my tenure as Independent Reviewer that we should only resort to specialist terrorist legislation in the rare cases when general crime statutes and/or the common law do not provide the solutions required by the Police and by prosecutors.

Threat from Northern Ireland-related terrorism

3.23. In July 2018, the threat to Great Britain from Northern Ireland related terrorism was Moderate, which means an attack is a possible but not likely.⁴⁵

3.24. In the Secretary of State's statement covering the previous ten months, made to Parliament on 31 October 2017, it was reported that the threat from Northern Ireland Related Terrorism in Northern Ireland remains SEVERE, which means an attack is highly likely. Dissident republican terrorist groups continued to attack officers from the Police Service of Northern Ireland (PSNI), prison officers and members of the armed forces. In one attack, a police officer was shot at a busy petrol station in Belfast and sustained life changing injuries. Violent dissident republican terrorist groupings are "fluid and they change regularly for a number of reasons. Firstly, the investigative effort of PSNI and MI5 has disrupted the activity of people and groupings who want to commit acts of terror in our community. Secondly, there is a desire for power amongst the individuals involved and this leads to fallouts and fractious relationships. There will be no let-up in our efforts to pursue these small groups".⁴⁶

3.25. The PSNI has recorded that, 'Compared to the preceding ten years between 1997/98 and 2006/07, the level of security related incidents in Northern Ireland has been lower and has remained relatively consistent during the past decade. However, a significant threat still remains as evidenced by the increased number of security related deaths over

Makarenko, T. (2004). The Crime – Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism. *Global Crime* 6(1): 129–145.

Clarke, C.P., *Investigating and Preventing Cases of the Nexus between Organised Crime and Terrorism* (ICCT, The Hague, 2018).

J Windle et al (eds), *Historical Perspectives on Organised Crime and Terrorism* (Routledge, 2018)

⁴⁵ See <https://www.gov.uk/terrorism-national-emergency/terrorism-threat-levels>.

⁴⁶ James Brokenshire, Secretary of State, 23 October 2017, HCWS189.

the past 3 years, the increasing trend in the number of paramilitary style assaults since 2012/13 and the continued number of shooting and bombing incidents.⁴⁷

3.26. Between 1 January 2017 and 31 December 2017 the PSNI recorded 2 security related deaths (both civilians), compared to 6 in the year ending December 2016.⁴⁸ There were 58 shooting incidents and 29 bombing incidents;⁴⁹ 0 incendiary incidents;⁵⁰ 73 casualties as a result of paramilitary style assaults (mostly Loyalist) and 28 casualties resulting from paramilitary style shootings (almost all Republican).⁵¹

Threat from extreme right wing terrorism

3.27. The increase in police awareness of extreme and far right activity in the UK is reflected in the rise in the number of arrests this year relating to members of such groups. In 2016, this threat was brought to focus following the murder of Jo Cox MP by Thomas Mair on 16 June 2016. During the course of the murder Mair was heard by a number of witnesses to say repeatedly "Britain First", "Keep Britain independent", "Britain will always come first".⁵² Mair was charged with Murder and sentenced to Life Imprisonment. The murder undoubtedly fell within the definition of 'terrorism' as set out in section 1 Terrorism Act 2000. In December 2016 the UK proscribed the group National Action, being perhaps the most active and well organised extreme right wing group in this country, on the grounds that it was involved in promoting/encouraging terrorism (including the unlawful glorification of terrorism).⁵³

⁴⁷ PSNI, *Police Recorded Security Statistics in Northern Ireland: Historic information up to and including June 2018*, 17 May 2018.

⁴⁸ A security related death is one which is considered, at the time of the incident, to be attributed directly to terrorism

⁴⁹ A bombing incident includes where a bombing device explodes or is diffused.

⁵⁰ An incendiary incident differs from a bombing incident in that an incendiary is used to start a fire and not cause an explosion. They usually consist of a cassette, timer battery and material to cause fire (i.e. petrol, gas or other accelerant) and are usually targeted at commercial property.

⁵¹ PSNI, *Police Recorded Security Statistics in Northern Ireland: Historic information up to and including June 2018*, 17 May 2018.

⁵² See https://www.cps.gov.uk/publications/prosecution/ctd_2016.html#a18

⁵³ Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No. 3) Order 2016, SI 2016/2138.

3.28. The CONTEST Strategy 2018 assesses the threat as follows:

The threat from the extreme right wing has evolved in recent years and is growing. In the past five years, four terrorist attacks in the UK were carried out by lone actors motivated to varying degrees by extreme right-wing ideologies.

Before 2014, extreme right-wing activity was confined to small, established groups with an older membership, which promoted anti-immigration and white supremacist views but presented a very low risk to national security. The emergence of National Action in 2014 increased community tensions and the risk of disorder. In December 2016, the then Home Secretary proscribed National Action under the Terrorism Act 2000. Since then, 27 individuals have been arrested on suspicion of being a member of the group, 15 of whom have been charged with terrorism offences. Other UK-based extreme right-wing groups also advocate the use of violence.

3.29. Whilst National Action may have emerged recently, there have been regular incarnations of Extreme Right Wing (XRW) activity of which police and many prosecutors are only too well aware. This derives from the 1990s when Combat 18 were virulent, and since then we've seen waves of activity: BNP, EDL, Racial Volunteer Force, and most recently National Action. The decision of the previous Home Secretary to proscribe for the first time since 1940 an XRW group, namely National Action, is welcome as is the more regular use of the legislation for those individuals whose ideology may be different to so called Islamists but whose intentions and actions no doubt satisfy the section 1 definition of terrorism and ever more regular interventions against activity of this type have become one of the more welcome outcomes of CT policing in 2017-2018.

3.30. Alongside this, there has been a rise in xenophobic offences in the UK. Statistics collected by the Home Office show a number of sharp increases or spikes in racially or religiously aggravated offences, including Islamophobia and anti-semitism. They occurred in June 2016 (the EU Referendum result), March 2017 (Westminster Bridge attack), May 2017 (Manchester Arena attack) and June 2017 (London Bridge / Borough Market and Finsbury Park Mosque). What is troubling is that the rise in such crimes does not seem to return to the same baseline after each spike. The number of race hate crimes increased by 27 per cent (up 13,266 to 62,685 offences) between 2015/16 and 2016/17.

Over the same period, religious hate crime increased by 35 per cent (up 1,549 to 5,949 offences). In August 2017, the number of racially or religiously aggravated offences recorded by the police was just under 5,000 compared to just over 3,000 in January 2016.⁵⁴

3.31. Tell MAMA, an independent third-party hate crime reporting service for those who have experienced anti-Muslim hate incidents and crimes, documented 1,201 verified anti-Muslim crimes or incidents in 2017,⁵⁵ almost double the number in 2016 (642 crimes or incidents).⁵⁶ Tell MAMA also receives data on Islamophobic hate crimes and incidents from 18 police forces in the UK and recorded a total of 2,840 Islamophobic crimes and incidents from these police forces in 2016. The forces with the largest number of Islamophobic crimes or incidents were the Metropolitan Police Service (1,296), Greater Manchester Police (409) and the British Transport Police (230).⁵⁷

3.32. CST, the Community Security Trust protecting the Jewish community in this country, recorded 1,382 antisemitic incidents in 2017, the highest annual total CST has ever recorded and a 3% increase from the 2015 total of 1,346 antisemitic incidents. CST reported 'In 2017, CST recorded over 100 antisemitic incidents every month from January to October inclusively. This continued an unprecedented pattern of monthly totals exceeding 100 incidents for 19 consecutive months from April 2016. By comparison, in the decade before April 2016, there were only six separate months in which the total exceeded 100 incidents.'⁵⁸

Radicalisation in prisons

3.33. The CONTEST Strategy 2018 describes the threat of extremism and terrorism in prisons:

In England and Wales (separate arrangements are in place in Scotland), approximately 700 prisoners are managed at any one time who have been identified as engaged in

⁵⁴ *Hate Crime, England and Wales, 2016/2017*, Home Office Statistical Bulletin 17/17, 17 October 2017.

⁵⁵ These incidents are classified as 'offline', meaning that they occurred in-person between a victim (or property) and a perpetrator.

⁵⁶ *Tell MAMA Annual Report*, 23 July 2018. Note: It is not entirely clear if in each and every case a formal crime report has been created or whether these are reports made to the organisation.

⁵⁷ *Tell MAMA Annual Report 2017*, 02 November 2017.

⁵⁸ *Antisemitic Incidents Report 2017*, Community Security Trust, 2018. Note: It is not entirely clear if in each and every case a formal crime report has been created or whether these are reports made to the organisation.

terrorism or extremism, or about whom there are extremism concerns. This involves dealing with a wide range of offenders, from highly motivated terrorists and organised criminals convicted of extremely serious offences, to those with mental health issues or other vulnerabilities.

For those offenders that pose the most significant risk of radicalisation of other prisoners, Her Majesty's Prison and Probation Service (HMPPS) has introduced two specialist Separation Centres at HMP Frankland and HMP Full Sutton. These centres help safeguard the mainstream prison population. In addition, the National Prisons Intelligence Coordination Centre (NPICC), launched in November 2015, continues to improve our understanding of the risk terrorist offenders pose while in prison and upon release.

3.34. I have recorded elsewhere my intention to engage with anyone who may have a view on the legislation which I review. I have made good that intention so far as I have been able. There is however one area which presents greater difficulty in terms of access, and that is the prison estate. I take care to show deference to others who have primacy in terms of oversight and review, and HM Chief Inspector of Prisons is in that category. Therefore, I was very pleased by two new initiatives during 2017/18:

- (1) A planned joint inspection of Police custody suites for those detained pre-charge under the terrorism legislation (principally arrests under section 41 TACT 2000), to be conducted by HM Chief Inspector of Prisons, HM Chief Inspector of Constabulary, and a team of participants organised by the National Preventive Mechanism, to which I belong as well as the Chief Inspectors. I am pleased to be part of this evidence-gathering project, with TACT suite inspections planned for late 2018 into 2019, leading no doubt to shared learning between custody regimes in prisons and in police stations
- (2) A three-year plan to develop an understanding of the reasons why and circumstances in which serving prisoners convert to Islam in prison. This is to be called Understanding Conversion to Islam in Prison (UCPI), designed to generate the most detailed and extensive data-set to date about the nature of Muslim converts, the type of Islam they follow in prisons and the effects of their practice of

Islam on prison life. The research programme is hosted by SOAS at the University of London. I am pleased to belong to the Steering Group. It will be important to note, however that much of this work will have no connection to terrorism whatsoever. Religious conversion is not an indicator of future extremism, still less violent extremism criminalised by our terrorism legislation. That said, there are plainly some instances in which conversion to Islam is encouraged as part of radicalisation by others in prison, which is the very reason for the implementation of Separation Centres, see above. Therefore the UCPI data once developed will be of interest for many reasons. At the time of writing, I understand that this project has been cast into doubt by a decision taken by the National Research Committee not to support it. This notwithstanding that the proposed research is fully funded. It seems to me that conversions to Islam in prison – for disparate reasons as noted above – are not sufficiently understood at present, and therefore a need for independent academic research is well made.⁵⁹

Conclusion

3.35. Despite the terrorist attacks and other events of 2017, the UK consistently avoids long-term elevation of the national threat level to the highest category, avoids recourse to Article 15 derogation and the declaration of a national state of emergency as seen in France, and benefits from policing and intelligence work which successfully disrupts terrorism-related activity almost every time. Nonetheless the trends for the threat from terrorism here and abroad demand constant attention.

3.36. Finally in this regard, I want to record my thanks to all within Government, Police and Intelligence and Security circles who have welcomed me to their meetings as an observer, providing briefings whenever necessary and answering any questions I may have. To give one example, I was grateful for permission to attend a resource

⁵⁹ For research about radicalization in prisons, see:

Elizabeth Mulcahy et al, 'The Radicalisation of Prison Inmates: A Review of the Literature on Recruitment, Religion and Prisoner Vulnerability' (2013) 9 *Journal of Human Security* 4.

Andrew Silke (ed.), *Prisons, Terrorism and Extremism: Critical Issues in Management, Radicalisation and Reform* (Routledge, 2014).

Clarke R Jones, 'Are prisons really schools for terrorism? Challenging the rhetoric on prison radicalization' (2014) *Punishment & Society*.

Inspector of Custodial Services, *The Management of Radicalised Inmates in New South Wales* (2018).

Acheson, I., *Summary of Main Findings of the Review of Islamist Extremism in Prisons, Probation and Youth Justice* (Ministry of Justice, London, 2016).

prioritisation meeting at Security Service (MI5) premises this year. This regular meeting is used to drive mainland tasking and informs the resources of collective efforts in support of overseas investigations. Whilst I am unable to indicate in this public report who attends this meeting, or what was said, I was impressed by the very close attention to individual threats, and the fine balancing of resources in order to meet those threats on a daily basis.

4. MAJOR TERRORIST ATTACKS IN 2017

- 4.1. The UK, in fact England, last year suffered the worst combination of terrorist attacks for many years. Since March 22nd 2017, we have all lived through the pain of witnessing murderous attacks at Westminster Bridge, Manchester Arena, and London Bridge followed by Borough Market. The attack outside Finsbury Park Mosque on 19th June marked the fourth in this short list of major terrorism events, and there was an attack at Parsons Green on 15th September.
- 4.2. Because the Westminster Bridge attack on 22nd March 2017 did not lead to criminal proceedings, I reviewed the police investigation and duly presented my Report into Operation Classific to the Home Office in early February this year, and it was presented to Parliament at the end of March.⁶⁰ I present only a brief summary here.
- 4.3. For this Annual Report, I have reviewed the police investigations which followed the Manchester Arena attack (Operation Manteline) and the London Bridge & Borough Market attack (Operation Datival). I present my findings below.
- 4.4. In contrast with the Westminster Bridge review, which was a closed investigation at the time of review, the police have not declared their investigations formally closed in respect of either Manteline or Datival, though I understand that there is a greater prospect of criminal proceedings in respect of Manteline. In these circumstances, and in contrast to my Westminster Bridge Report, it was not appropriate to make contact with those arrested, and I have not done so. Further, it has been necessary to heavily redact my reviews set out below – Manteline in particular – in order to preserve identities and other details which are relevant to ongoing police investigations.
- 4.5. As stated in my previous Annual Report, the reason it is neither necessary nor practical for me to conduct visits to all those detained under TACT 2000 is because of the Independent Custody Visiting Association (ICVA). As with the other major police operations during 2017, so in respect of Manteline and Datival, I received daily ICVA visit reports. Having reviewed those reports, there is little if anything by way of complaint by

⁶⁰ M. Hill, *The Westminster Bridge Terrorist Attack*, February 2018.

any detainee of which I am aware. The universal impression given in all of the ICVA reports I have received was that of rights and entitlements being upheld throughout. I understand from the police teams that none of the Subjects detained in Manteline or Dativai were denied access to legal representation.

- 4.6. In all of my efforts to consider and to report on Classific, Manteline and Dativai, I should record my thanks to the police investigation teams who have donated their time freely in order to provide access to large volumes of documents, and to explain the course of these major investigations.
- 4.7. Finally but most important, it is the victims' families, and those who were injured during these terrorist attacks who can speak far more eloquently than I about the human impact of these awful events. My reviews and reports are necessarily limited to the use of the terrorism legislation during police investigations. Therefore, I cannot pretend to provide a comprehensive review of the terrorist attacks themselves.

Operation CLASSIFIC: the investigation into the Westminster Bridge terrorist attack

- 4.8. On Wednesday 22 March 2017, 52-year old British-born Khalid Masood drove a hired vehicle across Westminster Bridge in the direction of the Palace of Westminster. He mounted the pavement twice colliding with pedestrians and then a third time crashing into the east perimeter gates of the Palace of Westminster. Masood then exited the car and ran into the vehicle entrance gateway of the Palace of Westminster, Carriage Gates, where he attacked and fatally injured PC Palmer using a knife. Masood was shot at the scene by armed police protection officers who were in Parliament at the time of the attack. The whole incident lasted approximately 82 seconds. The attack resulted in 29 people injured and 5 fatalities.
- 4.9. The ensuing police investigation was named Operation Classific. I reviewed the investigation following the attack in detail in my Operation Classific report.⁶¹ I include here a brief summary only.

⁶¹ M. Hill, *The Westminster Bridge Terrorist Attack*, February 2018.

4.10. Counter-terrorism policing officers arrested and detained 12 people in the course of the investigation. All were released without charge. A summary of these individuals, in the order in which they were arrested, is as follows:

ID	Gender	Age	Relationship to Masood	Total detention time (days:hours:mins)
Subject A	Male	27	Address linked to Masood	1:19:10
Subject B	Female	26	Address linked to Masood	1:19:10
Subject C	Male	28	Address linked to Masood	1:19:20
Subject D	Female	39	Relative	0:21:54
Subject E	Male	26	Address linked to Masood	1:18:28
Subject F	Male	24	Other address linked to Masood	1:16:47
Subject G	Female	20	Other address linked to Masood	1:16:41
Subject H	Male	58	Associate	6:11:50
Subject I	Male	27	Relative	1:20:43
Subject J	Male	35	Professional relationship	0:10:51
Subject K	Female	33	Professional relationship	0:7:58
Subject L	Male	30	Associate	6:00:47

4.11. I concluded in my report that Operation Classific was fast, efficient and comprehensive. Whilst lessons can always be learned from scrutinizing the arrest and detention phase of such an investigation, I have concluded on the basis of the information and materials provided to me that there was a reasoned and proportionate use of the relevant terrorism legislation in this case. I summarised the government response to the recommendations I made following my review in Chapter 1 of this report.

Operation MANTELIN: the investigation into the Manchester Arena terrorist attack

4.12. On 22nd May 2017, whilst thousands of people – most of them teenagers and children with parents – were enjoying the Ariana Grande concert at the Manchester Arena, a lone terrorist called Salman Abedi walked into one of the entrances to the Arena and detonated a suicide bomb in a rucksack. He died in the attack, but murdered 22 people

and seriously injured 119 more.⁶² This was a horrific, planned terrorist atrocity, which it transpires Salman Abedi had been planning for some time, during which he travelled between his home in Manchester and Libya. The intelligence background into Abedi was considered by my predecessor David Anderson QC (as he then was) in his Report on the Operational Improvement Review.⁶³ This covers the intelligence leading up to the attack only.

4.13. The criminal investigation which ensued was impressive in scale and is still ongoing at the time of writing. Although criminal proceedings may yet follow, I sought permission to review the early phases of the investigation, because they involved intensive use of our terrorism legislation. What follows is a summary of that period of time, mindful of the fact that the Police investigation has continued ever since. At the time of writing, an application had been made for the extradition from Libya of Salman Abedi's brother, Hashem Abedi. To avoid the risk of any prejudice to those proceedings I do not comment on his alleged involvement nor any evidence that may form part of that investigation.

4.14. There was no existing police operation relating to Abedi at the time of the attack, so the police had no information to go by at the start of their work on 22nd May. The ensuing investigation was dynamic and developed including information from arrests as they were carried out.

4.15. A brief overview of each detained person, the reason for their arrest and release is given below, in the order in which individuals were arrested. Counter-terrorism policing officers arrested and detained 23 people in the course of the investigation. All were released without charge.

4.16. In order to appreciate the scale of the police investigation, I understand that 905 devices (ie phones, laptops etc) were seized. Police analysts therefore faced the task of sifting through approximately 16 terabytes of data for examination. Whilst this is not the only reason for the length of detention without charge in every case set out below, it did form

⁶² The police have stated that this figure increases to up to 250 if psychological trauma is taken in account. See the independent Kerslake report, referenced above: 'The bomb killed twenty-two people including many children. Over one hundred were physically injured and many more suffered psychological and emotional trauma.'

⁶³ David Anderson QC, Attacks in London and Manchester: Independent Assessment of MI5 and Police Internal Reviews, December 2017.

some of the reasoning put forward at Warrant of Further Detention hearings which led to some detainees being held for close to the maximum fourteen days.

4.17. All arrests made were under s41 Terrorism Act 2000 and premises were searched under Schedule 5 Terrorism Act 2000, unless otherwise stated. When it was anticipated that the person sought was within an address a warrant was also obtained under Section 42 Terrorism act 2000 to gain entry to arrest.

4.18. A particular feature of this investigation was the use of statutory powers to erect cordons around premises, dictated at least in part by the urgency of the situation in which it was not known whether the bomber Abedi had been assisted by accomplices who may have still been at large in Manchester.

4.19. In this situation, the police carried out searches of a number of premises using cordon powers under s33 TACT 2000. This allows a police officer (Superintendent) to designate a cordoned area “if considered expedient for the purposes of a terrorist investigation.” Once an area has been designated, Schedule 5 para 3 applies, which allows a constable (a) to enter the premises specified in the authority, (b) to search the premises and any person found there, and (c) to seize and retain any relevant material which is found on a search. This is the power relied on in Manteline.

4.20. In addition, Schedule 5 provides for urgent cases as follows:

Urgent Cases

15(1)A police officer of at least the rank of superintendent may by a written order signed by him give to any constable the authority which may be given by a search warrant under paragraph 1 or 11

(2)An order shall not be made under this paragraph unless the officer has reasonable grounds for believing—

(a)that the case is one of great emergency, and

(b)that immediate action is necessary.

(3)Where an order is made under this paragraph particulars of the case shall be notified as soon as is reasonably practicable to the Secretary of State.

4.21. In this case, I have noted the use of statutory cordon powers, using the above provisions. The statutory wording specifies ‘if considered expedient for the purposes of a terrorist investigation’. It is not clear to me whether that confines the use of cordon powers to ‘urgent cases’ (the language of Schedule 5 at 15(1)). This is perhaps a matter for my successor to review, particularly as I note from the Manteline papers provided to me that the investigation team also applied for Schedule 5 search warrants thereafter, to give a measure of judicial oversight to the exercise. Very sensible in my view, though begging the question as to whether that was necessary in light of the prior use of the cordon power itself.

4.22. First day of the investigation: 23/05/2017

Subject A: He was reported by a member of the public to have taken a rucksack from the back of his vehicle and ran with it to the Manchester Arena. No connection was found with ABEDI.

Subject B: He is a relative of ABEDI. His home address was searched. Warrants of Further Detention were granted in this case, as can be seen from the total detention time in excess of thirteen days.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
A	Male	38	0022	0	0	0:08:45
B	Male	24	1030	25	12:37	13:11:01

The last known address of ABEDI was searched.

4.23. Second day of the investigation: 24/05/2017

Three further relatives of ABEDI (**Subject C**, **Subject D** and **Subject E**) were arrested, in relation to the construction of the device ABEDI used in the attack and associated financial transactions.

Subject F: He was an acquaintance of ABEDI. He was in telephone contact with ABEDI on the day of the attack and was suspected to have been involved in his plans as he was also located close to the Manchester Arena.

Subject G: She was resident at the address next door to a significant address in the investigation. It was established that she was not involved or had any knowledge of the activities there. Her home address was searched.

Having sought further information in relation to Subject G, I understand that she has received compensation following the arrest, because the police accepted the arrest was in effect collateral damage: she was at the wrong place, at the wrong time. This was a dynamic and urgent investigation involving multiple premises. There were legitimate public safety issues, JTAC had increased the national threat level to Critical in the days after the attack. However, it is important to avoid the collateral damage Subject G experienced, and this has been accepted as a learning outcome for SIOs (Senior Investigating Officers) and police teams in future.

Subject H: He was a recent contact of Subject F at relevant times. His home address and work address were searched.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
C	Male	25	0130	11	09:46	6:17:58
D	Male	21	0130	9	14:18	6:16:20
E	Male	19	0545	13	10:51	13:16:44
F	Male	34	1538	11	10:10	13:04:30
G	Female	35	1850	1	00:36	0:07:40
H	Male	22	2109	7	07:20	6:22:01

The last address ABEDI was known to have visited before the attack was searched.

The flat which ABEDI rented between February and March 2017 (related to Subject I, below) was searched.

4.24. Third day of the investigation: 25/05/2017

Subject I: He was linked to a significant address suspected to have been associated with the construction of the device used by ABEDI.

Subject J: His address was suspected to have been associated with the purchase of ingredients relevant to the construction of the device used by ABEDI. The address was searched. He was released when his identity was established.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
I	Male	38	0241	7	08:32	5:16:12
J	Male	16	0508	0	0	0:08:52

The home address of Subject F was searched.

An empty property which had previously been used by ABEDI was searched. The location was assessed to be ideal for the construction of the device he used in the attack as it was an empty property to which ABEDI had access.

4.25. Fourth day of the investigation: 26/05/2017

Subject K: He was in telephone contact with ABEDI on 22 May 2017 and therefore suspected to have knowledge of his movements. He was also suspected to be in the area in which the chemicals were purchased at relevant times. His home address was searched.

Subject L: He was in significant contact on 22 May 2017 with ABEDI and was also in Manchester on 22 May.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
K	Male	31	0230	10	14:34	13:15:40
L	Male	45	1850	13	11:20	12:22:56

The place of work of Subject I was searched.

The work address of Subject E was searched.

4.26. Fifth day of the investigation: 27/05/2017

Two individuals (**Subject M** and **Subject N**) were arrested as they were suspected to be involved in purchase of chemicals and they were associates of ABEDI.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
M	Male	21	0250	10	07:07	10:14:35
N	Male	23	0255	9	07:12	10:19:58

Four addresses linked to Subject L were searched.

4.27. Sixth day of the investigation: 28/05/2017

Subject O: He was a close associate and regular contact of ABEDI who was involved in the purchase of a significant vehicle concerned in the preparation of the device used by ABEDI.

Subject P: He was suspected to be involved in the purchase of chemicals.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
O	Male	26	1425	13	08:40	13:21:50
P	Male	20	1942	13	15:25	12:17:38

The home address of Subject P was searched.

4.28. Seventh day of the investigation: 29/05/2017

Subject Q: He was suspected of being part of a financial support network for ABEDI.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
Q	Male	24	04:34	18	13:22	6:09:12

A further two addresses related to Subject P were searched.

The home address of Subject O was searched.

An address where ABEDI was seen visiting prior to the attack was searched.

4.29. Eleventh day of the investigation: 02/06/2017

Subject R: He was suspected of being directly involved in arrangements to store a significant vehicle concerned in the preparation of the device used by ABEDI. He was further investigated for a non-terrorism crime related matter.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
R	Male	25	20:15	4	03:51	5:23:23

4.30. Twelfth day of the investigation: 03/06/2017

Subject S: He was also suspected of being involved in arrangements to store the vehicle referred to above. He was further investigated for a non-terrorism crime related matter.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
S	Male	21	2131	5	06:16	4:22:29

The home address of Subject R was searched.

4.31. Fifteenth day of the investigation: 06/06/2017

Subject T: He had control of a significant address in relation to the delivery or receipt of chemicals suspected to be used in the device used by ABEDI. He was arrested on his return to the UK.

Subject U: He was involved in the rapid purchase and sale of a significant vehicle concerned in the preparation of the device used by ABEDI.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
T	Male	39	1834	3	04:04	2:01:51
U	Male	21	2310	4	00:44	1:18:32

4.32. Sixteenth day of the investigation: 07/06/2017

Subject V: He was also involved in the rapid purchase and sale of the vehicle with Subject U.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
V	Male	32	1855	2	02:00	0:22:04

4.33. Seventeenth day of the investigation: 08/06/2017

An address associated with Subject O was searched.

4.34. A month later: 07/07/2017

Subject W: He was suspected to be involved in the purchase of chemicals. He was arrested upon his return to the UK. His home address was searched.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
W	Male	19	1510	8	06:09	6:00:05

Conclusion

4.35. I have restricted my examination to the seventeen days of the investigation referred to above, as explained in my introduction to this section. Few terrorist investigations reach the scale of Operation Manteline. I visited the Police operations room at the heart of the investigation in Manchester within the first month of the investigation, and noted the complexity required to analyse the number of suspects - and in many cases the connections between them – caught by the investigation.

4.36. Manteline was in my view a good example of interoperability on the part of CT Policing. The operations room in Manchester included a rolling staff of officers who were deployed to Manchester whenever needed, resulting from effective and flexible arrangements between the Chief Officer and Senior Investigating Officer of GMP, and the CT Command in London. CPS lawyers were embedded in the investigation, allowing decisions to be made more quickly.

4.37. This investigation is unusual for the total detention time in respect of three of the early suspects, each held in excess of thirteen days. This is significant, because even with the availability of Warrants of Further Detention which I have explained in Chapter 9, the maximum permissible total pre-charge detention under TACT is fourteen days. As can be seen above, three of the suspects were released within hours of the maximum time permitted.

4.38. I reflected upon this in my Annual Report for 2016,⁶⁴ noting the circumstances in which the Home Secretary may invoke 28 days' pre-charge detention. We can see how close this came to a reality in Manteline, coupled with the unique circumstances of an ongoing investigation of this magnitude during the General Election.

⁶⁴ M. Hill, *Annual Report 2016*, January 2018.

- 4.39. In the event, the circumstances did not become so exceptional as to warrant extension of pre-charge detention.⁶⁵ This is fortunate. I would not welcome any extension beyond the current fourteen days. That said, this case permits me to **recommend** that lessons are learned from Manteline, with a view to considering resilience and resources in circumstances where there may be multiple ongoing serious terrorism investigations. Physical and financial resource is not a matter for me, but learned experience always helps to reveal whether statutory powers are sufficient for current times. In my strong view, the maximum fourteen days pre-charge detention remains long enough. Any move to reconsider or to amend these provisions would call for wide scrutiny and debate.
- 4.40. As to the use of the legislation for the purposes of arrest and search in this case, I have found nothing to suggest impropriety. On the contrary, the Police are to be commended for the thoroughness and rigour of an investigation which commenced as a possible man-hunt, to the extent that some considered the complexity and duration of Abedi's preparations to be beyond the capacity of a lone individual. The fact that my enquiries have revealed that one subject was paid compensation is notable but does not undermine the good faith and diligence with which the Police pursued this investigation.
- 4.41. I do however make one further **recommendation**, which is that the Police should consider and reflect upon the community impact of a large-scale investigation, centring as it did on particular areas of Manchester with a large Muslim population. I have reflected community views in the Forward Thinking Building Bridges Report published in July 2017.⁶⁶ Good community policing, as well as good counter-terrorism policing, demands that real efforts are made to work within and with local communities, where many blameless residents will have been inconvenienced if not traumatised by the regular appearance of Police search and arrest teams on their street or in their home. I would like to see the outcome of Police reflections on this aspect of Manteline. My most recent visit to Manchester, in early September, will lead to a further Forward Thinking report which may provide further assistance. My observations in this paragraph should be linked to a **review** of Manteline so far as it involved collateral damage so as to necessitate the payment of compensation to one arrested person, namely Subject G.

⁶⁵ Hansard (HC) vol 254 col 210 (1/3/11)

⁶⁶ Forward Thinking, *Community Roundtables: A report on the aftermath of the terrorist attacks in London and Manchester*, July 2017.

4.42. Finally in respect of Manteline, I repeat that my published Report has been heavily edited in deference to the ongoing police investigation into the Manchester Arena attack. At times, therefore, the published reasons for detaining some of the Subjects referred to above are lacking in very much by way of detail, perhaps in comparison to my Westminster Bridge report published earlier this year. I repeat, this is because Westminster Bridge is a closed police investigation, whereas Manteline is ongoing. Mindful of these restrictions, it has been my intention to provide the best chronological treatment possible of the early days of the investigation, always staying within my remit which is limited to the use of terrorism legislation.

Operation DATIVAL: the investigation into the London Bridge terrorist attack

4.43. On Sunday 3rd June 2017, at 10pm, three men in a rented van drove south across London Bridge, towards Borough Market. They abandoned the vehicle, leaving armed with knives and wearing mock bomb-vests. Making their way on foot into Borough Market, full at the time with customers from all corners of the world enjoying a summer evening, they conducted a murderous rampage which culminated in the death of 8 people and injuries sustained by 48 people. To the eternal credit of brave individuals both amongst the general public and the emergency services including unarmed Police officers, the terrorists were intercepted and killed. A Police investigation commenced immediately.

4.44. No criminal prosecution has resulted from the investigation, primarily because the perpetrators were killed at the scene. The Inquests into the innocent civilians who lost their lives are not concluded, but I have sought the permission of HM Chief Coroner HHJ Mark Lucreft QC to include a digest of the relevant parts of the Police investigation which touch on the use of the terrorism legislation.

4.45. Initial information available to the SIO identified BUTT and REDOUANE as two of the attackers, with a third unidentified subject. The decision was made to arrest everyone present at the last known address of BUTT and REDOUANE to 'identify other parties involved and recover outstanding evidence in connection with the terrorist attack'.

4.46. A brief overview of each detained person, the reason for their arrest and release is given below, in the order in which individuals were arrested. All arrests made were under s41 Terrorism Act 2000 and premises were searched under Schedule 5 Terrorism Act 2000, unless otherwise stated.

4.47. First day of the investigation: 04/06/2017

Entry was forced under s17 PACE 1984 into the home address of BUTT due to an emergency call from a family member who suspected BUTT was involved in the attack. This led to the arrest of 11 subjects. The flat was cleared and a search took place after a Schedule 5 TACT 2000 warrant was obtained. There was also a warrant issued under section 46 Firearms Act 1968.

Entry was also forced into the address of REDOUANE under s17 PACE 1984. This led to the arrest of one subject. A Schedule 5 warrant was obtained for the search. There was also a warrant issued under section 46 Firearms Act 1968.

Subject A: Family member of BUTT, he denied in interview any knowledge of the attack and stated he was at the address after receiving a call that morning asking them to come over. He believed the call concerned a family member who was ill. He stated he did not associate with BUTT.

Subject B: Family member of REDOUANE, she gave a full account in interview and denied any involvement or knowledge of the attack.

Subject C: Family member of BUTT, she gave a no comment interview.

Subject D: Family member of BUTT, he gave a full account in interview and denied any involvement or knowledge of the attack.

Subject E: Family member of BUTT, he gave a no comment interview, except for two opening questions.

Subject F: Family member of BUTT, he denied any knowledge of the attack and stated he would have reported him to the authorities otherwise. He said he had concerns about BUTT regarding his extreme views and the company he was keeping.

Subject G: Family member of BUTT, he made a no comment interview and later provided a statement denying any knowledge of the attack. He further stated that BUTT had brought dishonour to the family.

Subject H: Family member of BUTT, she answered all questions posed during safety interview. She gave a prepared statement during interview and answered limited questions via an interpreter.

Subject I: Family member of BUTT, she answered all questions posed during safety interview. In interview, she denied any involvement or knowledge of the attack.

Subject J: Family member of BUTT, she answered all questions during safety interview. During interview, she gave a prepared statement denying any knowledge of the attack and made no comment to all further questions.

Subject K: Family member of BUTT, she answered all questions during safety interview. During interview, she gave a prepared statement denying any knowledge of the attack.

Subject L: Family member of BUTT, she answered all questions during safety interview. During interview, stated she would talk to the police if she wasn't under arrest. She made no comment to further questions.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
A	Male	55	0732	1	01:20	0:12:43
B	Female	38	0815	1	00:54	1:09:32
C	Female	60	0835	1	01:04	1:09:45
D	Male	28	0947	2	01:57	1:11:22
E	Male	52	0950	1	01:49	1:10:07
F	Male	55	1010	2	02:37	1:10:35

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
G	Male	27	1035	2	01:21	1:10:21
H	Female	54	1126	1	00:46	1:05:19
I	Female	27	1215	2	00:46	1:05:35
J	Female	19	1225	1	00:34	1:05:07
K	Female	49	1239	1	00:38	1:04:24
L	Female	24	1615	1	00:46	1:03:50

The previous address of REDOUANE was also searched because a dental card found on REDOUANE's body showed this as his home address. Firearms officers entered the flat and a number of people were present. The residents were detained on the scene while checks into their backgrounds were made. It was decided that there was no necessity to arrest the individuals as they had no connection to REDOUANE, these premises being multi-occupancy and the police having been able to identify and to isolate the room occupied by REDOUANE. This distinguishes the procedure here, compared to that followed at BUTT's address, above.

4.48. Second day of the investigation: 05/06/2017

A vehicle registered to BUTT was searched.

A multi-occupancy house was searched as it was ZAGHBA's last known address. A previous address related to ZAGHBA was also searched to 'assist in confirming his identity and provide further locations for investigative enquiries'.

The home address of Subjects D, F, G, J and K, all relatives of BUTT who were arrested at his address, was searched 'to process the prisoners in custody and to establish any link to the preparation of the attack'. A transit van parked on their driveway was also searched.

The home address of subject E was also searched. The home address of subjects C and I was also searched.

The vehicle registered to REDOUANE was searched. This is the vehicle the attackers used to travel to collect the hire van.

The vehicle of Subject D was searched.

4.49. Third day of the investigation: 06/06/2017

Subject M: Associate of BUTT who completed a money transfer for BUTT days before the attack. He was arrested after he approached officers on the cordon to offer this information. A warrant for the search of his flat was obtained and his flat was searched. In interview, he provided a detailed account stating that BUTT had asked him to transfer money into his account in exchange for cash as he didn't have enough money in there and wanted to rent a van. He stated that BUTT did not tell him what the van was for.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews (hours:mins)	Total detention time (days:hours:mins)
M	Male	27	0805	2	01:54	4:11:25

An address linked to ZAGHBA, believed to be his previous address, was searched.

4.50. Fourth day of the investigation: 07/06/2017

Subject N: An associate of BUTT who had been in phone contact with BUTT and REDOUANE. He stated in interview that he knew BUTT from school but stopped talking to him because of his views around women. He denied any knowledge of the attack. His home address and three vehicles linked to him were searched.

Subject O: Links to BUTT, he denied any knowledge of the three attackers and any contact with them.

Subject P: Links to BUTT, he was arrested in a car belonging to Subject Q and in possession of Class A drugs. In interview, he denied any knowledge of the attack and stated he knew BUTT and REDOUANE from the gym. He referred to the attackers as 'scum'.

Subject Q: This was a collateral arrest, of a person in the car with Subject P for being in possession of Class A Drugs. Arrested under PACE. He provided a prepared statement in interview then made no comment to further questions. His car was searched under section 23 Misuse of Drugs Act.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews	Total detention time (days:hours:mins)
N	Male	30	0131	4	04:23	6:13:54
O	Male	29	2215	3	02:10	6:23:55
P	Male	27	2236	2	01:49	6:15:30
Q	Male	33	2236	1	00:41	0:23:39 Released on bail

4.51. Fifth day of the investigation: 08/06/2017

The work place of Subject N was searched ‘to establish if any intelligence or evidence or information pointing to knowledge of the attack is contained within’.

The house of Subjects O and P was searched due to their connection with BUTT.

The house of Subject Q was searched under s18 PACE 1984.

The house of an associate of BUTT and REDOUANE was searched.

The house of Subject R was searched. His vehicle was also searched.

A gym where all three attackers were seen prior to the attack was searched.

4.52. Sixth day of the investigation: 09/06/2017

Subject R: Linked to BUTT and Subject N, he answered all questions during safety interview. During interview, he provided a prepared statement and gave limited answers to questions. He denied being a terrorist or having knowledge of the attack.

Subject S: He was already on bail for a different offence, due to links to BUTT he was further arrested for the original offences. His home was searched.

Subject T: Linked to BUTT, he provided a prepared statement stating he knew BUTT but not the other two terrorists and made no comment to all further questions. His home and the home of his parent were searched. His vehicle was searched.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews	Total detention time (days:hours:mins)
R	Male	29	0129	4	07:22	6:14:41
S	Male	33	0731	1	01:16	0:16:36 Released on bail
T	Male	27	1803	6	06:13	6:23:45

The address of an associate of ZAGHBA was searched.

4.53. Seventh day of the investigation: 10/06/2017

Subject U: He was arrested because of phone contact with BUTT and REDOUANE. In interview he stated he knew both from the Mosque. His home was searched and a male present there was arrested for immigration offences.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews	Total detention time (days:hours:mins)
U	Male	28	0205	8	10:04	6:19:15

4.54. Eighth day of the investigation: 11/06/2017

Subject V: Associated with all three attackers. He stated in interview that he was in phone communication with BUTT and sent his phone abroad when he realised BUTT was involved in the attack. He stated Subject U did a similar thing. His home address was searched.

Subject	Gender	Age	Time of arrest	Number of interviews	Total length of interviews	Total detention time (days:hours:mins)
V	Male	19	2151	6	08:55	4:21:02

Conclusion

4.55. This was a rapid and comprehensive investigation, necessitated by multiple terrorist murders in the heart of London. As I noted in relation to the Westminster Bridge attack investigation,⁶⁷ the Police demonstrated speed and flexibility in the use of their arrest and search powers, combining the provisions of TACT and PACE. This phase of the investigation culminated in the arrest of 22 people, and their detention ranged from twelve hours to more than six days (in relation to six of the detainees). None of those arrested were charged in relation to the London Bridge attack.

4.56. It must be remembered that any arrest requires reasonable grounds to suspect in relation to an individual, rather than a general scenario presented to officers on entry to premises. In the context of s41, there can be no arrest without reasonable grounds to suspect each individual of terrorism related activity.⁶⁸ It is, therefore, difficult to justify the arrests of 11 individuals at the same premises on the first day of this investigation, but there were multiple considerations here, including the unknown risk of a further attack in the aftermath of London Bridge, the question of whether any of those arrested may have had prior knowledge of the principal attack, and the extent of communication between individuals during the early hours immediately after the attack.

4.57. The observation above is a companion piece to the use of PACE search powers in Datal (section 17 PACE) and Westminster Bridge (section 32 PACE). With the benefit of hindsight, it is important to reflect upon those statutory powers which entitle the police to act upon a general suspicion (ie of terrorism related activity, which permits section 41 TACT arrest), and those which require grounds to suspect of an identified, individual offence (PACE, both as to search and arrest).

⁶⁷ M. Hill, *The Westminster Bridge Terrorist Attack*, February 2018.

⁶⁸ Walker, C.P., *The Anti-Terrorism Legislation* (Third edition, Oxford University Press, Oxford, 2014), para5.07.

- 4.58. Combining the above two paragraphs, I **recommend** that the police should review and where necessary improve their understanding of arrest and search provisions, a review which is facilitated by the complex and dynamic investigations into the terrorist attacks of 2017.
- 4.59. As with the other major investigations during 2017 including Westminster Bridge, Datival provides an opportunity for the Police to learn lessons about the efficiency of their processes post-arrest (where the above paragraphs were concerned with pre-arrest), and to reflect on the necessity of detention without charge for over 48 hours, and in the context of this case, up to six days. Detention of such length always requires a Warrant of Further Detention, the mechanism for which I have explained elsewhere. This is a court hearing, usually conducted by the Senior District Judge sitting at Westminster Magistrates Court, during which the Police must justify their application. It follows that in every such case within this investigation, WoFDs were granted rather than denied.
- 4.60. One important consequence of an investigation of this magnitude is that it places a strain on the resilience and capacity of pre-charge detention facilities, namely TACT suites in London or elsewhere. To my knowledge, the London TACT facility was full at times during this investigation, resulting in the necessity to transfer detainees to another TACT suite outside London. This was efficiently handled, as I have established through inspection and enquiry in particular with the London TACT suite manager and staff. To my knowledge, a new facility is being created in London. As noted above, the Government Response to my Westminster Bridge report recently clarified that the new TACT suite facility in Hammersmith has been purposely co-located with a non-TACT detention suite. This will assist when and if capacity becomes an issue in the future. Meanwhile, I maintain my earlier observation that counter-terrorism police should always reflect on those circumstances in which it is really necessary to move a detainee long distances from their place of arrest; I therefore repeat and refer back to my **recommendation** in the *Classific Report*.⁶⁹

⁶⁹ I **recommend** that greater thought and clarity be given to the question whether and when it is necessary to transport a detainee sometimes hundreds of miles from their place of arrest. I anticipate that this recommendation will include consideration of TACT custody suite capacity, the availability and deployment of police interview teams, an assessment of the significance of individual Subjects to the investigation as a whole, and perhaps other factors. M. Hill, *The Westminster Bridge Terrorist Attack*, February 2018.

5. PROSCRIBED ORGANISATIONS & EXECUTIVE ORDERS

Proscribed Organisations

- 5.1. I have been able to follow the work of the Proscription Review Group (PRG), which sits within the Home Office but includes engagement with other relevant departments. During 2017, I have attended PRG meetings when able.
- 5.2. There are 74 organisations proscribed under the Terrorism Act 2000. There are also 14 organisations in Northern Ireland that were originally proscribed under previous legislation. A list of these organisations has been provided by the Home Office.⁷⁰
- 5.3. Four organisations were proscribed in December 2017:
 - (a) al-Ashtar Brigades including Saraya al-Ashtar, Wa'ad Allah Brigades, Islamic Allah Brigades, Imam al-Mahdi Brigades and al-Haydariyah Brigades Jamaah Anshurut Daulah (JAD).
 - (b) al-Mukhtar Brigades including Saraya al-Mukhtar.
 - (c) Hasam including Harakat Sawa'd Misr, Harakat Hasm and Hasm.
 - (d) Liwa al-Thawra.⁷¹
- 5.4. Hezb-e Islami Gulbuddin (HIG) was removed from the list of proscribed groups in December 2017 following receipt of an application to deproscribe the organisation.⁷²
- 5.5. The Government laid Orders, in July 2013 December 2016 and May 2017, which provided that the "al-Nusrah Front (ANF)", "Jabhat al-Nusrah li-ahl al Sham", "Jabhat Fatah alSham" and "Hay'at Tahrir al-Sham" should be treated as alternative names for the organisation which is already proscribed under the name Al Qa'ida.⁷³ The Government laid an Order in September 2017 which provides that "Scottish Dawn" and "NS131 (National Socialist Anti-Capitalist Action)" should be treated as alternative names for the organisation which is already proscribed as National Action.⁷⁴

⁷⁰ Home Office, *Proscribed terrorist groups or organisations*, Updated 22 December 2017.

⁷¹ Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2017, SI 2017/1325

⁷² *Ibid.* For more on deproscription, please see Professor Walker's Annex to my previous Annual Report 2016.

⁷³ Proscribed Organisations (Name Change) Order 2017, SI 2017/615.

⁷⁴ Proscribed Organisations (Name Change) Order 2017, SI 2017/944.

Deproscription

5.6. Previous calls for a deproscription regime, in the vein of a sunset clause similar to that present in the equivalent legislation in Australia, should be repeated here.⁷⁵ One of the difficulties with the current regime is highlighted by Clause 6 of the Counter Terrorism and Border Security Bill 2018 which seeks to grant extra-territorial jurisdiction to a number of offences, including the offence of wearing or displaying a uniform associated with a proscribed organisation (s13 TA 2000). This country takes a robust and appropriate approach to proscription, which may be different from that taken by other countries. I suggest that Clause 5, at the very least, needs reconsideration as to whether extraterritorial jurisdiction concerning section 13 should be limited to UK citizens, who are deemed to know how we deal with proscription here, as opposed to foreign nationals.

Executive Orders (TPIMs)

5.7. My predecessor David Anderson QC in his letter as outgoing Independent Reviewer, to the Home Secretary, dated 30 January 2017, proposed 'a discretionary thematic review of the operation of executive orders in the field of counter-terrorism (terrorism prevention and investigation measures under TPIMA 2011; terrorist asset freezing under TAFE 2010; temporary exclusion orders and police passport removal powers under CTSA 2015).'⁷⁶

5.8. As of 31 August 2017, there were six TPIM notices in force, five in respect of British citizens. All six subjects were relocated.⁷⁷ As promised in my previous Annual Report, I now turn to a thematic review of TPIMs under TPIMA 2011, in particular because the use of this legislation has been thrown into relief during 2017 with the prospect of returnees from so-called Islamic State after the fall of Mosul and Raqqa, in Iraq and Syria respectively.

⁷⁵ I refer here to the detailed recommendations of David Anderson, as rehearsed in Walker, C., "They haven't gone away you know." The Persistence of Proscription and the Problems of Deproscription' (2018) 30 *Terrorism & Political Violence* 236-258.

⁷⁶ Counter-Terrorism and Security Act (CTSA) 2015.

⁷⁷ Home Office, *Memorandum to the Home Affairs Committee about the Terrorism Prevention and Investigation Measures Act 2011*, October 2016, Cm 9348.

5.9. In preparation for this report, I have attended the majority of TPIM Review Group meetings (TRGs) throughout 2017. To be precise, I attended one such meeting in March 2017, 6 days after taking up my role as Independent Reviewer. I then attended three TRGs in May 2017, one in June, two in September and one in November. This year, I have attended two TRGs in March 2018, and two in June.

5.10. TRGs are chaired by the Home Office, and comprise relevant representatives from the Security Service, the Home Office, the Counter Terrorism Command of the Metropolitan Police and officers from the Counter-Terrorism Unit (CTU) in the area selected for the TPIM subject to reside (a consequence of the relocation measure introduced to TPIMs in 2015).⁷⁸ For each TPIM, the TRG meets at three-monthly intervals (sometimes less), when very careful consideration is given to every aspect of the TPIM in force, including:

- the necessity of maintaining and - where necessary - extending the TPIM
- any representations made on behalf of the TPIM subject (who is always legally represented during TPIM hearings in the High Court, both in Open and Closed sessions)
- the individual measures, each in turn
- the exit strategy, in other words timely preparation for returning the TPIM subject to his home life at the end of the TPIM.

5.11. The outcome of a TRG is not a foregone conclusion, on my observation. There is always robust discussion on all of the aspects identified above. I shall expand upon this below, but its importance is underlined because of the following observation made by Nicol J at paragraph 30 of his Open Judgment in *LG, IM and JM [2017] EWHC 1529 Admin*, handed down on 30th June 2017, in which this senior judge referred to the TRG Minutes ie the record of TRG discussions which is routinely contained within the Closed case papers, meaning those which are available for scrutiny by the Judge and by Special Advocates (instructed via the Special Advocates Support Office to represent the interests of TPIM subjects in closed session), but not by the Open representatives of the TPIM subject:

⁷⁸ Part 2 of the Counter-Terrorism and Security Act 2015.

'although described as Minutes, they are in reality a composite of summaries prepared in advance of the meeting and a record of discussions at the meeting. Next, not all of the documents referred to may have been available at the time of the meeting'

5.12. In the same judgment, Nicol J went on to add *'it is not my task to review the practices of the Home Office or the TRG'*. In light of those words, it clearly falls within my remit to review those practices. I make the following observations:

- Each TRG includes representatives from the Home Office, the Security Service, SO15 ie the Counter terrorism Command of the Metropolitan Police Service, and the local Police Service in every relocation case (currently all extant TPIMs).
- Each TRG lasts 60 minutes, sometimes slightly longer. The draft Minutes are circulated to all participants in advance, though they tend to reach me on arrival at the TRG, because secure document transfer is easier for permanent participants than for someone like me who remains at arms length from the process.
- There is a particular focus on the proportionality of each TPIM measure. This is not limited to the impact upon the TPIM subject, but includes any impact upon his/her family and dependants including any children.
- The review of TPIM measures is focussed upon each measure individually, and includes a review of variations and permissions granted or refused during the previous three months ie since the last TRG. Refusals of variations are challenged eg relevant Police officers or Home office personnel are required to explain and to justify each refusal.
- There is a particular focus on the impact of Intervention Providers (IPs) in relation to the TPIM subject. The frequency of IP contact varies from monthly to weekly across current TPIMs. The success or perceived limitations of such interaction is also varied. This has a relevance to exit strategy, referred to above, though it is not determinative of the same on its own.
- The paper (as printed for the meetings) format of TRG Minutes includes spaces for comment, questions or other input, and the draft Minutes are always amended after the meeting.

5.13. Whilst of course I cannot discuss issues within individually identified TPIM cases, I offer the following brief summary of some of the thematic issues which I have observed from the TRGs which I have attended thus far:

- TPIMs, which have a maximum duration of 24 months, are variable in their outcome when measured on a scale from 'successful' to 'unsuccessful'. In some cases, the maintenance of a TPIM for one or two years (the maximum permitted by statute) demonstrates that the subject is moving away from a former violent extremist mindset. In these cases, a combination of removal from previous circles of influence and the personal support afforded by the package of TPIM measures produces positive results. In other cases however, there is evidence of the TPIM subject merely 'biding time', awaiting what they know to be the maximum duration of the TPIM, their pre-existing violent extremist mindset undimmed.
- Some recent or current TPIMs have been imposed after criminal prosecution (whether leading to conviction or acquittal), others where there has been no criminal prosecution.
- There is a genuine flexibility in the authorities' response to variation requests. In my view, genuine effort is taken to facilitate 'normal life' within the confines of a TPIM. For example, energy is expended to facilitate religious observance by the TPIM subject, keeping families together whenever possible, affording contact between parents and children, the ability (both for TPIM subjects and dependant children) to undertake education and classes leading to new academic or vocational qualifications, assistance in gaining employment, and medical services wherever necessary.
- IP sessions are variable as to their success, as noted above. There are good examples of TPIM subjects embracing this service, and actively pursuing more frequent contact.

5.14. One ever-present feature of TRGs is careful consideration of the absconsion risk posed by a TPIM subject. This is obviously of fundamental importance to all concerned in the operation of the statutory regime. Abscond risk is assessed on a scale from ELEVATED to MODERATE and then LOW. Based upon my observation of a dozen or so TRGs over a 15-month period, I suggest there is appropriately flexible thinking here, but an inclination to maintain risk assessment at ELEVATED in the absence of specific information that the subject is not going to abscond. Thus, there is high test before any change is likely. I am aware of one case in which the abscond risk moved from ELEVATED to LOW during the two-year lifespan of the TPIM.

5.15. Absconcion risk is a matter of interest, set against the context of TPIMs, each of which represent very considerable interference with the ordinary life and rights of the subject, some of whom have not been prosecuted or convicted of terrorism offences. The consequence of an ELEVATED risk is obvious, ie a more restrictive attitude towards variation or removal of individual measures during the 2-year period of the TPIM. I therefore **recommend** a review of the test for relaxation of abscond risk. Given the presence of multiple ongoing TPIM measures, is it necessary for absconcion risk to remain as originally set (at the outset of the TPIM) unless and until there is specific information as to lack of /reducing risk? Should a more flexible approach be taken?

5.16. For those unaware of the range of TPIM measures which are available, the list includes the following (and most of the cases I have observed include the application of all/almost all of the below):

- Overnight residence requirement
- Travel restriction
- Exclusion areas (often tightly drawn, street by street)
- Movement restrictions
- Financial services measure
- Property measure ie limitations on items permitted to be in the possession of the TPIM subject
- Weapons/explosives prohibition (clearly necessary in every case)
- Electronic communications device restriction
- Association measure ie a list of persons whom the TPIM subject is forbidden from meeting or contacting in any way
- Work and study allowances or restriction
- Reporting measure ie to physically present oneself at a nominated police station on a frequency up to seven days a week
- Requirement to attend appointments when notified
- Requirement to submit to new photographs of the TPIM subject eg to monitor and protect against risk of absconcion
- Monitoring, to include the continual wearing of a GPS tag, usually an ankle tag

- 5.17. The power to require physical relocation up to 200 miles distant from the TPIMs subject's ordinary home address is not included in the list above, because it is in use in every TPIM which I have reviewed. Neither this measure nor any of the fourteen listed above is mandatory, however. I **recommend** a review of the necessity to relocate in every TPIM case henceforward. The degree of restriction and therefore cover (so far as the authorities are concerned) afforded by some or all of the fourteen listed measures brings into question the necessity of going to the effort and expense of relocation in every case.
- 5.18. Pausing here, it is worth reflecting upon the extension of a TPIM from one year (the period initially authorised by the Home Secretary in every case, in accordance with his statutory powers) to two. I do so upon the basis that TPIM subjects almost always use their statutory right of challenge under TPIMA. This is known as 'section 9 review hearing', presided over by a High Court Judge sitting in the Administrative Division, and involving intensive scrutiny on all sides ie evidence and submissions to the Judge by counsel instructed by the Secretary of State for the Home Department (SSHJ, ie the Home Secretary), Open representatives for the TPIM subject instructed by solicitors, and Closed Special Advocates representing the TPIM subjects interests and instructed by SASO (Special Advocates Support Office).
- 5.19. After a section 9 review, which occurs in almost every case, and which in every case to date has resulted in the upholding of the TPIM authorisation, there is no automatic extension for a second year, but the necessity for an extension process which affords a second right of review.
- 5.20. The extension decision is taken in light of an XRM (Extension Review Meeting), which is separate to TRGs described above, and which I have also attended from time to time. The same participants are present as at TRGs. An XRM then considers the following:
- The necessity of extension. This will include consideration of an update on intelligence-led information.
 - Representations made on behalf of the TPIM subject (via his/her legal team).
 - The prepared package of measures, which may not be the same as those in use during the first year of the TPIM.

- Community impact (especially in relocation cases ie all current TPIMs), and the requirement for an anonymity order (ie the maintenance of anonymity to protect the TPIM subject from unwanted attention).
- Exit strategy ie any alternative to extension, and/or an appreciation that the TPIM has to come to an end either now or in one year's time, and planning for that event must be made in advance.

5.21. The application of multiple measures, including those listed above, means that superintending Police teams need to consider the occurrence of - and the degree of tolerance to be shown for – breach of one or more of those measures. In turn, this is a frequent subject for discussion and review and TRGs. Because it is the Counter Terrorism Division of the Crown Prosecution Service who make charging decisions and implement prosecution of breach proceedings, I have sought a clearer understanding of this area.

5.22. Breach of a TPIM measure is governed by section 23 of TPIMA 2011. An individual is guilty of an offence if a TPIM notice is in force in relation to the individual, and the individual contravenes, without reasonable excuse, any measure specified in the TPIM notice. A conviction under section 23 exposes the subject to imprisonment for a maximum term of 5 years.

5.23. On investigation, I find that very close scrutiny is given to the question of possible breach proceedings under section 23. This is of course necessary. In many cases, a TPIM subject will already have been convicted and served a term of imprisonment for TACT offences, then being placed under a TPIM on release from prison. The prospect of further criminal proceedings and possible imprisonment after a breach conviction under section 23 is not to be taken lightly, by anyone.

5.24. A Memorandum of Understanding (MOU) between the CPS, Police, Home Office and Security Service has been in existence since 2010, and it sets out the roles, responsibilities and procedure in relation to TPIM breaches and criminal investigations under section 10 of the TPIM Act. I understand that the MOU is reviewed annually.

5.25. The issuing of warning letters to a TPIM subject in relation to perceived breaches is within the discretion of the Police in liaison with the CPS. Some of the cases reviewed by me

reveal instances of multiple breaches of individual measures, resulting in multiple warning letters during a period when successive individual breaches are subject to charging consideration by the CPS. The consequence in such a case might be a perception of tolerance of early breaches, and therefore a testing of the regime by the TPIM subject. This is obviously counter-productive, as well as consuming time, effort and expense on the part of Police teams in particular. Having sought specific assurance, I understand and accept that any consideration of TPIM breaches is always conducted by following the CPS Code for Prosecutors, meaning that each breach has to be considered on its own particular facts. If the breach passes the evidential stage the CPS considers whether it is in the public interest to prosecute in each particular case. In these circumstances, it is only necessary for me to observe, charging decisions in relation to breaches must be taken with as much speed as possible.

5.26. Separately, I have participated in discussions at TRGs which concern the need for guidance to Police teams on the robustness of any evidential package which may be required in the event of breach proceedings. For clarity, TPIM breach proceedings (unlike section 9 review proceedings, which are held in the High Court as set out above) take place in the Crown Court and are subject to the criminal burden and standard of proof ie the Prosecution must prove breach beyond reasonable doubt (or so that the Court is sure).

5.27. It follows that the evidential package must be sufficient to meet the criminal standard. From my discussions at TRGs, some further guidance may be needed. For example, the question arises whether proof of the TPIM subjects' personal awareness of a variation refusal may be sufficiently demonstrated by service of a refusal letter on the TPIM subject's solicitor. In my view, solicitors who provide a valuable service in representing subjects throughout the potential two-year life of a TPIM should not be drawn in to the evidential chain in respect of any breach proceedings. Therefore, I **recommend** that any existing guidance is clarified in terms that personal service upon the TPIM subject him/herself will always be required where knowledge of any TPIM measure or other relevant fact is germane to breach proceedings in the Crown Court.

5.28. There is currently no disclosure to local authorities (by which I mean Social Services, usually, in the area to which the subject has been relocated) of the fact of a TPIM. However, the involvement of local authorities is a natural consequence of some TPIMs,

for example where there are dependant children who may need assistance in the provision of suitable education or other services.

- 5.29. This is an important consideration. There may be mixed consequences of a reference to local authority services in any individual case. On one hand, it might be said to unnecessarily extend the 'circle of confidence' which must surround any TPIM and in particular those (all of the extant cases) in which anonymity is a prerequisite. On the other hand, if local authority services are required, surely they should be aware of the fact of a TPIM? The latter could be achieved on a strict 'need to know' basis, and with conditions that such knowledge is not be used to the detriment of TPIM subjects and/or their families, but should be restricted to use in areas directly touching upon individual measures where they intersect with whatever local authority service is engaged.
- 5.30. This topic leads inexorably to CONTEST, the Government's overarching policy for combating terrorism, which was relaunched by the Home Secretary on 4th June 2018, and which now includes pilot areas in which a multi agency approach (commonly known as MAPPA, and sensibly imported from other general crime areas such as sexual exploitation or anti-social behaviour) will be adopted. In turn, this is an outcome from the recommendations of the Operational Improvement Review (OIR), resulting from the multiple terrorism atrocities in London and Manchester last year.
- 5.31. Mindful of the above, I **recommend** that local authorities including their Social Services departments should be appropriately briefed on TPIMs wherever relevant and necessary, with suitable limitations upon the use of any information provided.
- 5.32. I have touched upon the obvious and considerable interference upon the ordinary life of a TPIM subject by the application of a package of measures typical in the current small number of extant cases. Where there is such interference, the justification is always premised upon 'national security' grounds, in other words the interference is necessary to prevent engagement in TRA (terrorism-related activity). Where necessary as aforesaid, the package of measures must always be proportionate, with the guarantee that the High Court will review both necessity and proportionality during section 9 review proceedings.
- 5.33. Thus, interference in the ordinary rights of TPIM subjects (and by extension, their immediate family members) requires careful scrutiny (the courts habitually refer to

'anxious' scrutiny, for obvious and understandable reasons). TRGs provide interim scrutiny, subject to the overarching supervision provided by the High Court as I have indicated.

5.34. Commentators may be surprised to learn that TRG discussion in this area includes a clear focus on assisting TPIM subjects to lead a 'normal' and productive life, including work and family considerations, notwithstanding the TPIM. On my observation, a balanced approach is taken, despite the strictures of the National Security case and intelligence updates.

5.35. As evidence of the above, a new template for TRG Minutes has been implemented during my time attending such meetings. This includes, for example a reminder to consider the mental and physical health of the TPIM subject, within the proportionality section of the template. Further, the template includes the following instruction:

'Each stakeholder to complete this section. Anything that the stakeholder has seen this quarter that has had an effect on the TPIM subject's mental and/or physical health. Detailed comments to include what the issues have been, what has been done, what to look out for in the next quarter. Positive events, interaction or interventions must also be commented upon'

5.36. The same form of words appears in the TRG template in relation to impact upon the family of the TPIM subject.

5.37. Finally in this section, I have noted the emergence of the Desistance and Disengagement Programme. This is a voluntary programme, which affords access to theological intervention, psychological support and mentoring. I am cautious as to any blurring of the line between the mandatory imposition of a TPIM and voluntary participation in other strands of CONTEST including Prevent, and therefore I offer no further comment.

5.38. I have conducted my thematic review of any and all features of the TPIM regime, as above, against the background of considering the senior judicial output in this important area, namely through the Judgments of those High Court Judges authorised to conduct section 9 review proceedings.

5.39. Judgments in TPIM proceedings come in three different forms, within the framework provided by the Civil Procedure Rules (CPR), as follows:

- 1) Open judgments, available for all to see, under CPR 39.2(1)
- 2) In Camera judgments, following part-proceedings in the presence of Special Advocates and open representatives, but from which the public have been excluded under CPR 39.2(3) and CPR 80.18
- 3) Closed judgments, available only to Closed representatives ie the Special Advocates. Commonly, the High Court Judge will conclude TPIM review proceedings by issuing both an Open Judgment and a Closed Judgment.

5.40. I have been able to access and to consider all three forms of Judgments handed down within the last 18 months ie approximating to my term of office to date.

5.41. I am unable to refer to Closed or In Camera judgments, for obvious reasons. However, I confirm that I have considered recent Open Judgments including the following:

LG [2016] check citation, Hickinbottom J

EC,EG [2017] EWHC 795 Admin, Collins J, handed down 11/4/17

LG, IM, JM [2017] EWHC 1529 Admin, Nicol J, 30/6/17

XY [2017] EWHC 3314 Admin, Holroyde J, 15/12/17

5.42. These Judgments are publicly available. I therefore restrict myself to the following brief references:

[paragraph 113, LG, Hickinbottom J] *'ORM (relocation) is necessary and included, as a fundamental plank, the disruption of that leadership including the long term disruption by degrading the ALM brand. The approach was, broadly, to prosecute those against whom charges could properly be brought, that would lead to substantial prison sentences for those found guilty, and the imposition of appropriate TPIM on those not imprisoned'*

[paragraph 136 of the same Judgment] *'a substantial degree of disruption to family life as a result of the TPIM is inevitable, necessary and proportionate'*

[paragraph 148, LG, IM, JM, Nicol J] *'taken as whole the measures are burdensome, but the SSHD was entitled to regard them as nonetheless necessary and proportionate for purposes connected with protecting the public from a risk of TRA and a risk of terrorism'*

5.43. The TPIM regime, although controversial when introduced, continues to survive robust scrutiny as to the necessity and proportionality of the many interferences with the rights of TPIM subjects which go hand in hand with every measure made. TPIMs are therefore here to stay. Indeed, it seems to me that a modest expansion on the use of these powers may be on the cards in the near future. I suggest this for two reasons:

1. When being briefed in the course of my work, and when attending the resource prioritisation meeting at MI5 to which I have already referred, I note the use of executive powers is on the rise, for example the imposition of Temporary Exclusion Orders (TEOs), in circumstances including when the government becomes aware of the imminent return to this country of a person suspected of being a Foreign Terrorist Fighter [see Professor Walkers annex to the 2015 Annual Report for his treatment of this matter].⁷⁹ One of the perceived benefits of TEOs is to provide UK authorities with the time to consider the best course of action when the subject of the TEO does indeed return to these shores. There is a range of options.⁸⁰ One of the most important options, in the event that there is insufficient evidence to prosecute the individual for terrorist offences in a criminal court, is the imposition of a TPIM.
2. I have noted above that in all current TPIMs [at the time of writing], almost all of the available measures are in use, including relocation. However, in future that need not be the case every time. TPIMs can be imposed without relocation, where appropriate.

5.44. Therefore, TPIMs are here to stay for the foreseeable future, and I **recommend** ever more flexible use of the available measures, specifically including the comparatively low-cost option of a non-relocation TPIM.

⁷⁹ The latest figure for TEOs issued in 2017 is 9 (Transparency Report for 2017, p.26).

⁸⁰ "There are a range of measures already in existence which can be brought to bear, starting with Deprivation of UK citizenship for those with dual nationals, moving through Temporary Exclusion Orders for those who are intending to return and whose return can be delayed whilst the authorities prepare, moving then through the very effective triage system of Schedule 7 port stops which are going to be important in future, and then moving through to a decision as to whether to prosecute or to divert individuals away from prosecution."

<https://terrorismlegislationreviewer.independent.gov.uk/my-interview-on-the-today-programme-on-thursday-19th-october/>

6. THE TERRORIST ASSET FREEZING ETC ACT 2010

- 6.1. The government publishes a list of those who are currently subject to financial sanctions for believed involvement in terrorist activity. There are, as of April 2018, 18 individuals and 22 organisations on the consolidated list of financial sanctions targets in the UK.⁸¹ Of these, 20 are Tafa designations, and of these 14 support an EU-wide designation under the EU CT sanctions regime 2001/931/CFSP (the CP931 regime).
- 6.2. The Sanctions and Anti-Money Laundering Act 2018 will help ensure that UK counterterrorist sanctions powers remain a useful tool for law enforcement and intelligence agencies to consider utilising, while also meeting the UK's international obligations.
- 6.3. Under the Act, a designation could be made where there are reasonable grounds to suspect that the person or group is or has been involved in a defined terrorist activity and that designation is appropriate. This approach is in line with the UK's current approach under UN and EU sanctions and would be balanced by procedural protections such as the ability of designated persons to challenge the Government in court.
- 6.4. When asked during my evidence to the JCHR if I thought that the safeguards in the Sanctions Bill, as it was drafted at the time, are sufficient, I responded:

My answer to that would be to draw focus, which I hope is at least part of what you intend, on to humanitarian and peacekeeping work, and exemptions and licensing, which form an important part of this area. I know, following my predecessor's recommendation in his own reports on the Terrorist Asset-Freezing etc. Act, that there is a working group, I think under the superintendence of the Home Office, in which many of the lead NGOs in this area are directly engaged. They are meeting with a view to finding solutions so that the new sanctions regime does not operate against what we can all agree is necessary and continuing humanitarian and peacekeeping activity. Quite how those solutions will be found is clearly a matter of detail. When I have met leading charities and NGOs, which I have recently, they have pointed to their own input at the Bill stage.⁸² They have expressed

⁸¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/708112/Annex_2_-_WMS_Q4_2017.pdf

⁸² Oxfam, Save the Children, Muslim Charities Forum, Islamic Relief Worldwide, Christian Aid, Bond and Charity Finance Group, and Conciliation Resources.

the need, which I entirely understand and endorse, if I may say so, for safeguards for their work. I think they are anxious at the moment lest any support seems to be ex post facto or piecemeal. We can all understand that a humanitarian project may involve any number of ventures and more than one jurisdiction and associating with multiple state actors, here and abroad. Unless, in advance, there is some general licence that can be provided and assurance provided for those NGOs, the valuable work, resource and input into these projects could fall at a late hurdle, and that would be counterproductive. [Beyond that I cannot go because I simply do not know the level of detail but knowing, as I do, that David's reports into the asset freezing Act were fuelled by his own personal experience, being invited to visit NGOs carrying out humanitarian projects, I volunteered immediately to do the same and I look forward to being able to do that]. I hope that their expressions of this need for exceptions and licences specifically for humanitarian and peacekeeping work are not forgotten. I am sure the Government will not forget but this is something that needs to be worked through.

7. STOP AND SEARCH

Summary

- 7.1. Stop and search powers exist under the following sections of the Terrorism Act 2000:
- (a) s43 in respect of the search of a person an officer reasonably suspects to be a terrorist,
 - (b) s43A in respect of the search of a vehicle an officer reasonably suspects is being used for the purposes of terrorism, and
 - (c) s47A in respect of searches in specified areas or places where an officer reasonably suspects that an act of terrorism will take place.
- 7.2. All have been subsequently amended by the Protection of Freedoms Act 2012. There is a Code of Practice (one for England, Wales and Scotland, another for Northern Ireland) for the Exercise of Stop and Search Powers (SI 2012 No.1794), brought into force on 10th July 2012.

Section 43/43A

- 7.3. Figures for the use of s43 are published in Great Britain only for the Metropolitan Police Service (MPS) area. My predecessor recommended that other forces publish figures as well and the Home Secretary in her response agreed.⁸³ No such data are available for 2017.

London

- 7.4. 767 searches were conducted by the MPS in 2017, a 59% increase from the total of 483 in 2016. This is the highest number of searches in a calendar year since the year ending 31 December 2011. The arrest rate in 2016 was 8%, comparable to the previous year, though with 61 resultant arrests, it was the highest number of arrests in a calendar year since data collection began in 2011.⁸⁴

⁸³ M. Hill, *Annual Report 2016*, January 2018.

⁸⁴ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table S.01. Historic data provided by Home Office Statistics.

Year	Searches (MPS)	Arrests
2010	995	n/a
2011	1052	32 (3%)
2012	614	35 (6%)
2013	491	34 (7%)
2014	394	25 (6%)
2015	521	57 (11%)
2016	483	44 (9%)
2017	767	61 (8%)

7.5. The self-defined ethnicity of persons stopped under s43 in London is as follows:⁸⁵

Year	White	Asian	Black	Chinese /Other	Mixed /not stated	Total
2010	43%	30%	11%	7%	9%	999
2011	35%	37%	9%	8%	11%	1052
2012	39%	31%	12%	7%	11%	614
2013	34%	32%	14%	9%	10%	491
2014	41%	22%	12%	9%	16%	394
2015	30%	27%	13%	10%	21%	521
2016	28%	27%	11%	12%	22%	483
2017	30%	27%	14%	7%	22%	767

7.6. The number of resultant arrests in 2017 following a s43 stop, broken down by self-defined ethnicity, has not been published. The results for 2016 are as follows:⁸⁶

⁸⁵ *Ibid.*, table S.02.

⁸⁶ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2016: data tables*, 9 March 2017, table S.01

Self-defined ethnicity	Searches	Resultant arrests
White	136	10 (7%)
Asian	132	11 (8%)
Black	55	8 (15%)
Chinese/Other	56	-
Mixed	17	1 (6%)
Not stated	87	14 (16%)
Total	483	44 (9%)

7.7. 17% of those stopped in 2017 refused to state their ethnicity. In 2016, this group produced a high resultant arrest rate of 16%.

Northern Ireland

7.8. In Northern Ireland in 2017:⁸⁷

- (a) 65 people were stopped and searched under s43, down from 91 in the previous year.
- (b) A further 3 were stopped under s43A, down from 11 in the previous year.
- (c) 31 people were stopped under ss 43 and 43A (down from 92 in 2016), and 11 under ss 43 and/or 43A in combination with other powers (Justice and Security (Northern Ireland) Act 2007 s21 and s24, Justice and Security (Northern Ireland) Act 2007 s24 and Misuse of Drugs Act s23, PACE, Firearms Order s53 and other legislative powers).⁸⁸

Section 47A

7.9. The circumstances where s47A can be used to authorise stop and search powers are specified in the relevant part of the section. These are where a senior officer -

- a) reasonably suspects that an act of terrorism will take place, and

⁸⁷PSNI, *Stop and Search Statistics, Accompanying spreadsheet for statistics covering the 2017/18 financial year (1st April 2017 to 31st March 2018)*, 30 May 2018, Section 1 Table 1.

⁸⁸ There is extensive commentary on the JSA powers in the reports from David Seymour CB, Independent Reviewer of the exercised powers under the Justice and Security (Northern Ireland) Act 2007.

- b) reasonably considers that -
 - i. the authorisation is necessary to prevent such an act:
 - ii. the specified area or place is no greater than is necessary to prevent such an act , and
 - iii. the duration of the authorisation is no longer than necessary to prevent such an act.

7.10. No authorisations were issued in Northern Ireland during 2017 for the use of this stop and search power under s47A of the TA 2000.

7.11. Following the attack on Parsons Green in September 2017, the authorisation of the power of stop and search under s47A of TACT 2000 was used for the first time in Great Britain since the threshold for authorisation of this power was raised in 2011. Four forces authorised the use of the power:

- a) British Transport Police conducted 126 stops, resulting in 4 arrests
- b) North Yorkshire Police conducted 1 stop, resulting in 0 arrests
- c) West Yorkshire Police conducted 1 stop, resulting in 0 arrests
- d) City of London Police conducted 0 stops, resulting in 0 arrests.⁸⁹

⁸⁹ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017*, 8 March 2018.

8. PORT AND BORDER CONTROLS

Introduction

8.1. The exercise of the powers contained within Schedule 7 to the Terrorism Act 2000 remains a preoccupation for many, including the individuals and organisations with whom I have engaged during my travels around the UK. Schedule 7 has also been, in the words of my predecessor, ‘a centrepiece of each of my five previous reports on the operation of the Terrorism Acts’.⁹⁰ In this Chapter, I have updated all of the statistics from my previous Annual Report, and have again reflected on the major themes engaged in the use of these powers. I have very recently (Thursday 13th September 2018) received the Government Response to my 2016 Report, and have reflected that Response in my Introduction, above. The terms of the Response render Schedule 7 an important feature for ongoing review by my successor.

8.2. I endorse earlier scrutiny of these powers. In my last report I wrote:

*The Government has maintained its refusal to accept my predecessor’s recommendation for the introduction of a suspicion threshold for the exercise of Schedule 7 powers.⁹¹ I do not depart from the forceful logic behind my predecessor’s recommendation. However, rather than simply re-stating the recommendation, bringing the likelihood of another rejection by Government, we should strive to make some progress, particularly given the current form of the Code of Practice, cited above. No officer may conduct a random examination or detention of a person under Schedule 7. No officer may use ethnicity alone for the exercise of such powers. Every officer is bound by the terms of the Code of Practice, which require that one or more of the ‘selection criteria’ is present before any examination/detention can take place. The logic behind this should be the subject of further discussion and testing. Therefore, in the absence for the time being of a reasonable suspicion threshold, I recommend that these advances in the Code of Practice be **at least enshrined in the adoption of a universal threshold, namely ‘reasonable grounds to support’ the exercise of Schedule 7 powers by the application of the criteria within the Code of Practice.** Adoption of such a test would*

⁹⁰ D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 7.2.

⁹¹ See e.g. D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 7.26.

not satisfy all, but it would be a step in the right direction, demonstrating the absence of either examination/detention based on ethnicity alone or the exercise of powers in a random fashion.⁹² There would be some practical ramifications for making the change I have recommended, including the question of how officers would or should demonstrate adherence both to the Code and to the test I have proposed, and including the consequences of non-compliance. My point, for the purposes of this report, is that however useful and effective Schedule 7 powers may be, selection for examination must not be arbitrary. It is in the interests of those who exercise these powers in thousands of cases each year to demonstrate their non-arbitrary use. My predecessor's recommendation sought to underline this fundamental issue, and my recommendation shares that aim.

8.3. The exercise of Schedule 7 powers brings at least three immediate consequences for travellers who are temporarily stopped at our ports and borders:

- The obligation to answer questions
- The taking of biometric data, and
- The temporary removal and downloading of the contents of digital devices, mostly mobile phones.

8.4. These consequences lead in turn to the following, in particular:

- Resentment amongst certain groups of citizens, particularly Muslims, leading to
- Allegations of discrimination on the grounds of ethnicity, and
- Demands to change the exercise of current powers by adding a requirement to demonstrate suspicion as an initial reason for stopping and questioning individuals.

8.5. Against this background however, two notable facts emerge when we look back over recent years:

⁹² I recognise that this proposal carries consequences, stemming from the fact that the Code of Practice is not enshrined in primary legislation, unlike the Sch 7 powers themselves. The current legal impacts of the code under para.6 are: (2) The failure by an officer to observe a provision of a code shall not of itself make him liable to criminal or civil proceedings. (3) A code - (a) shall be admissible in evidence in criminal and civil proceedings, and (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

- (a) The quality of manifest data for passengers on some but not all modes of transport at borders has improved,⁹³ and
- (b) The use of Schedule 7 powers has actually sharply declined year on year, to the extent that this is demonstrated by the numbers of passengers affected each year. That said, serious questions remain as to the effectiveness of the powers, and to answer the question ‘what is the right number of Schedule 7 stops, and what number is too many?’

8.6. During my time in post as Independent Reviewer, I have engaged with Ports and Border teams at the National Ports Conference - held in Birmingham during May 2017 - as well as at the Counter Terrorism Borders Operations Centre (part of the Counter Terrorism Police Operations Centre, CTPOC). I conducted an inspection visit at Newcastle International Airport in June 2018. I am grateful to the entire CTP Schedule 7 duty team, who made me welcome and discussed every aspect of their work. Some of my **recommendations**, below, crystallised during this visit.

1. I note, in conversation with officers, the desirability of further training and capacity building on the use of software permitting rapid download of digital devices.
2. Having discussed police training on the use of screening questions, which are not an exercise under Schedule 7, there may be merit in considering the extent and number of permissible screening questions, where they do not lead to the use of Schedule 7 detention. At the moment, the fact of screening questions is not routinely recorded, therefore statistics do not exist. However, there is an argument that careful screening questions reduce traveller interference overall, because of the lower use of detention powers. This requires careful consideration, which I commend to my successor.
3. Following an earlier successful recommendation that TACT Suite detention time should be suspended where a person requires medical assistance at hospital, the

⁹³ See *The Government Response to the Annual Report 2015*, July 2017, p7: ‘On the quality of manifest data at seaports and on the international rail network, since Exit Checks were introduced in April 2015, on-departure data is received for all passengers from international rail and maritime carriers operating scheduled commercial routes from the UK (other than those routes within the Common Travel Area). For international rail passengers travelling to the UK, 100% of those passengers must present to a juxtaposed immigration control in Belgium or France where they are subject to counter-terrorism watchlisting. Similarly 59% of all maritime passengers must present to a juxtaposed immigration control in France and be subject to checks before they arrive in the UK. Only 5% of all international maritime passengers arrive in the UK without any pre-arrival notification or examination.’

same should happen in relation to Schedule 7 detention. I am pleased to note this has been addressed in the Counter Terrorism and Border Security Bill.

4. As a matter of training, there should be clarity around the importance and relevance of using Schedule 7 for domestic flights/travel as well as international flights/travel.

Frequency of use in Great Britain

- 8.7. Five years ago, in 2012 there were more than 60,000 port stops. The number was half of that by 2015 three years later, down to 28,000. In 2016, a further reduction, down to 20,000. A further substantial reduction by in 2017, down to 16,349.⁹⁴ This is a remarkable trend, caused no doubt by multiple factors, which must include better capture of passenger manifest data across the UK, and better use of targeting techniques, even though reasonable suspicion is still not required for a stop.⁹⁵

Length of examination and result	Year of examination					
	2012	2013	2014	2015	2016	2017
Number of examinations	60,127	46,184	35,004	27,530	19,355	16,349
of which: Under the hour	57,822	44,330	33,013	25,690	17,857	14,703
Over the hour	2,305	1,854	1,991	1,840	1,498	1,646
Number of resultant detentions	614	549	1,043	1,828	1,539	1,700

- 8.8. The seizure of biometric data has hovered in the several hundreds of cases, but less than a thousand a year; 769 in 2010, 462 in 2014 and 511 in 2015.⁹⁶ There are no new statistics published since 2015. However, the Biometrics Commissioner, Professor Paul Wiles, provides oversight in this area, and I defer to his recent report.⁹⁷

⁹⁴ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table S.03.

⁹⁵ See D. Anderson, *The Terrorism Acts in 2015*, December 2016 recommendation, paragraph 10.11. See also para 1.10(f) above for Home Secretary response, June 2017.

⁹⁶ D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 7.9.

⁹⁷ Commissioner for the Retention and Use of Biometric Material, *Annual Report 2016*, September 2017.

- 8.9. But looking at the figures for ‘resultant detentions’ above, we see the reverse of the shared decline in the total number of examinations. So, in 2012 there were 60,127 examinations but only 614 resultant detentions. In 2017, we see 16,349 examinations but 1,700 resultant detentions, almost a threefold increase over five years.
- 8.10. This is not a particularly worrying pattern, indeed it may go to prove what I mentioned earlier, namely the rising efficiency both in terms of passenger data capture and the use of targeting techniques, so we are seeing that there is reason for resultant detention in an increasing though still small number of cases relative to the overall picture of port and border stops.⁹⁸
- 8.11. Nonetheless, important questions remain, including the ongoing issue of satisfactory rules governing the retention of both biometric data taken from individuals and electronic data downloaded from their devices.⁹⁹ To these we must add the legal challenges to Schedule 7, the *Miranda* and *Beghal* cases. I shall return to *Beghal* in particular, below.

Examinations by ethnicity

- 8.12. The figures in Great Britain show that recent proportions are roughly equal between total examinations for white and Asian persons; 29% and 27% respectively.¹⁰⁰ However, the overall proportions can be misleading. The Asian population of the UK is a small minority of the overall UK population, therefore the number of Asians examined under Schedule 7 is disproportionately high when compared to white persons and when expressed as a proportion of persons sharing the same ethnicity.¹⁰¹

⁹⁸ Note the impact of the Anti-Social Behaviour, Crime and Policing Act 2014 on Sch 7 statistics: this requires that any examination which extends beyond one hour must become a formal detention, and has likely contributed to the increase in detentions.

⁹⁹ Commissioner for the Retention and Use of Biometric Material, *Annual Report 2016*, September 2017.

¹⁰⁰ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table S.03.

¹⁰¹ For comparison, see the Civil Aviation Authority Passenger Survey Report 2016 data: Asian 5.2%, Black 2.2%, Chinese 1.5%, Mixed 1.5%, White 87.9%, and Other 1.7%. CAA Passenger Survey Report 2016: A survey of passengers at Birmingham, East Midlands, Gatwick, Heathrow, Liverpool, London City, Luton, Manchester and Stansted Airports, Tables 12.1–12.9. Data from the airports were combined to calculate the estimates.

Ethnicity	Year of examination					
	2012	2013	2014	2015	2016	2017
Total examinations						
White	39%	41%	37%	27%	28%	29%
Mixed	3%	5%	6%	5%	3%	4%
Black or Black British	9%	8%	8%	8%	7%	7%
Asian or Asian British	24%	21%	23%	30%	28%	27%
Chinese or Other	18%	17%	19%	23%	22%	19%
Not stated	7%	8%	8%	7%	11%	14%

8.13. In contrast to the statistics for Schedule 7 examinations, when those cases develop into Schedule 7 detentions we see that 28% are Asian persons, whereas the proportion of white persons drops to 12%.¹⁰² Is this evidence for the proposition that port and border stops are conducted by ethnicity without more? Some of those whom I have met in my travels around the country, see below, believe this to be the case. However, I suggest it is not as simple as that.

Ethnicity	Year of examination					
	2012	2013	2014	2015	2016	2017
Detentions						
White	10%	11%	10%	12%	12%	12%
Mixed	2%	6%	6%	6%	7%	7%
Black or Black British	24%	15%	13%	9%	9%	11%
Asian or Asian British	32%	32%	35%	37%	33%	28%
Chinese or Other	18%	26%	27%	26%	22%	25%
Not stated	13%	9%	9%	10%	17%	17%

¹⁰² Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table S.03.

8.14. Following the *Beghal* case, the Code of Practice was amended.¹⁰³ The following is of particular relevance:

“Selection Criteria

Although the selection of a person for examination is not conditional upon the examining officer having grounds to suspect that person of being concerned in terrorism, the decision to select a person for examination must not be arbitrary. An examining officer’s decision to select a person for examination must be informed by the threat from terrorism to the United Kingdom and its interests posed by the various terrorist groups, networks and individuals active in, and outside the United Kingdom.

Considerations that relate to the threat of terrorism, include factors such as, but not exclusively:

- *known and suspected sources of terrorism*
- *individuals or groups whose current or past involvement in acts or threats of terrorism is known or suspected, and supporters or sponsors of such activity who are known or suspected*
- *any information on the origins and/or location of terrorist groups*
- *possible current, emerging and future terrorist activity*
- *the means of travel (and documentation) that a group or individuals involved in terrorist activity could use*
- *emerging local trends or patterns of travel through specific ports or in the wider vicinity that may be linked to terrorist activity*
- *observation of an individual’s behaviour*

It is only appropriate for race, ethnic background, religion and/or other “protected characteristics”¹⁰⁴ (whether separately or together) to be used as criteria for selection if present in association with factors which show a connection with the threat from terrorism.¹⁰⁵

¹⁰³ *Examining officers and review officers under Schedule 7 to TA 2000: Code of Practice*, March 2015. Amended by: Home Office, *Circular 001/2016: schedule 7 to the Terrorism Act 2000*, 15 March 2016.

¹⁰⁴ Protected characteristics as defined in the Equalities Act 2010 and set out in para 4 of the Code of Practice.

¹⁰⁵ Paragraph 19 of the Code of Practice. See Home Office, *Circular 001/2016: schedule 7 to the Terrorism Act 2000*, 15 March 2016.

Northern Ireland

8.15. In 2016/2017, there were 3,491 examinations at ports and airports in Northern Ireland. None of the examinations resulted in a detention under TACT.¹⁰⁶

8.16. PSNI report that an individual subjected to an examination under Schedule 7 of the Terrorism Act 2000 may have been subsequently detained under other legislation.

8.17. In his final report (December 2016) David Anderson QC noted that of the 34,500 Schedule 7 examinations at ports across the United Kingdom in 2014/15, more than 10% (3,496) were in Northern Ireland. Of the 34,500 persons examined in 2014/15, there were 1,821 persons detained but none of the detentions were in Northern Ireland ports. Likewise, in 2013/14 nobody was detained in Northern Ireland. David Anderson QC commented that this was 'remarkable' and while he had in the past reviewed Schedule 7 operations in Northern Ireland, he believed it worth investigating further with port officers.¹⁰⁷

8.18. PSNI has advised the Northern Ireland Policing Board that PSNI ports officers do not encounter the same level of difficulties as at some other UK ports regarding language barriers due to the lack of international carriers. Therefore most examinations of persons at ports are completed within one hour, negating the requirement for a detention. PSNI highlighted that while none of the 3,496 persons examined under Schedule 7 in 2014/15 were detained beyond an hour, this did not mean that all 3,496 were released within one hour as some were wanted or of interest to other enforcement agencies such as HMRC or Immigration. Where this occurred, as soon as it transpired that they were wanted or of interest to another agency, use of schedule 7 immediately ceased and the person was handed over. This factor, however, has led to adverse comment by some of the NGOs with whom I have engaged on my trips to Northern Ireland, where the view expressed is that police use of Schedule 7 powers must always be restricted to terrorism policing, and never used for general immigration purposes.

¹⁰⁶ Northern Ireland Office, *Northern Ireland Terrorism Legislation: Annual Statistics 2016/17*, 1 November 2017, Table 16.

¹⁰⁷ D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 7.13.

Convictions

8.19. During 2017 there was one conviction for wilfully failing to comply with a duty imposed by Schedule 7 of the Terrorism Act 2000.¹⁰⁸ Three individuals were charged and later convicted following a detention under Schedule 7 (see Chapter 10 on Criminal Proceedings).¹⁰⁹

¹⁰⁸ R v Robert Clark

¹⁰⁹ R v Noamaan Ejaz; R v Syed Hoque and Mashoud Miah

See below for the Schedule 7 background in relation to some of the concluded criminal prosecutions during this period.

9. ARREST AND DETENTION

Introduction

9.1. Section 41 of the Terrorism Act 2000 empowers a police officer to arrest without warrant a person whom he or she reasonably suspects to be a terrorist. A 'terrorist' is defined as a person who has committed specified terrorist offences or a person who "is or has been concerned in the commission, preparation or instigation of acts of terrorism". Therefore, suspicion of the commission of relevant acts of terrorism need not be demonstrated at the time a section 41 arrest is made. Rather, what is required is a reasonable suspicion that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism. A person arrested under section 41, may be detained without charge for up to 48 hours without judicial intervention. If detention is to extend beyond 48 hours it must be extended by a Judge, who grants a Warrant of Further Detention (WOFD). The extension may be for up to but no more than a *total* of 14 days. Section 41 is therefore different from other arrest powers, in particular because it permits arrest without suspicion of a particular offence, and because a person may be detained without the possibility of bail pending charge, for up to 14 days.

9.2. The Terrorism Act (TACT) regime differs from the wider and more general regime under the Police and Criminal Evidence Act 1984 (PACE), which I need not set out in detail here as it is well known. Of interest however is the interrelationship between the PACE and TACT regimes. Arrest in relation to terrorism-related activity does not have to be effected by using the TACT regime, and in practice the police often use PACE arrest powers

Arrests in 2017

9.3. In **Great Britain**, there were 156 arrests in 2017 under s41 Terrorism Act 2000, compared to 37 in 2016, and 55 in 2015.¹¹⁰

¹¹⁰ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table A.01.

- 9.4. There were however a total of 412 arrests for terrorism-related offences in 2017, compared to 261 in 2016 (a 58% increase). Despite a stark increase in the use of TACT arrests, the majority of arrests (62%) did not use TACT. It follows that PACE arrest powers were used in these cases.¹¹¹
- 9.5. In **Northern Ireland**, there were 171 arrests under s41 Terrorism Act 2000 in 2017, up from 123 in 2016, but comparable to 169 in 2015 and 222 in 2014.¹¹²

Periods of detention in 2017

- 9.6. In **Great Britain**, of the 156 persons arrested in 2017 under TA 2000 s41:
- (i) 33% were held in pre-charge detention for less than 48 hours (after which time, a WOFD is required from the court).
 - (ii) 78% were held for less than a week.
 - (iii) 34 people were held beyond a week, eight of those were released only on the last day of the 14-day maximum period. This compares to 16 people held beyond a week in 2016 and just four people in 2015.¹¹³
- 9.7. It is worth reflecting on maximum periods of pre-charge detention in greater detail, to note how this has changed over the years. The current regime, as explained above, means that those arrested on suspicion of terrorism-related activity pursuant to section 41 of the Terrorism Act 2000 can be lawfully detained for up to 14 days. However, Parliament has recognised the possibility of an extension up to 28 days, but only in very particular circumstances. I shall explain below. First though, it is to be remembered that the maximum period of detention stood at 7 days, in fact throughout the period from 1974 until the passing of the Criminal Justice Act 2003, when it was doubled to 14 days. A further doubling to 28 days was permitted by section 23 of the Terrorism Act 2006. This was the state of the law until 25th January 2011, when the maximum period reduced to 14 days.¹¹⁴

¹¹¹ *Ibid.*

¹¹² PSNI, *Security Situation Statistics*, 17 May 2018.

¹¹³ Home Office, *Operation of police powers under the Terrorism Act 2000*, quarterly update to December 2017: data tables, 8 March 2018, table A.02.

¹¹⁴ Protection of Freedoms Act 2012, s 57, Sch 10, Pt 4.

The full history of section 41 is explained in Walker, C.P., *The Anti-Terrorism Legislation* (Third edition, Oxford University Press, Oxford, 2014) chap.5.

- 9.8. Those under section 41 arrest can therefore be lawfully detained by the police for up to the first 48 hours. (section 41(3)). Thereafter, detention can be extended only by a judge, who may issue a warrant of further detention up to 14 days from arrest (Schedule 8, section 41(5) and (6)). The 14 day maximum can theoretically be extended, only by a High Court Judge (section 23 TA 2006), to 28 days.
- 9.9. 28-day detention, the longest technically permissible by law, is currently dependent upon an order-making power vested in the Home Secretary which when used permits longer detention in any terrorism detention case, but the power is subject to cases within a maximum period of three months. The power lies in a Draft Detention of Terrorist Suspects (Temporary Extension) Bill, which is the current receptacle for the extra detention power enabled by the TA 2006 since.¹¹⁵ The Home Secretary has not to date invoked the Draft Bill. Were that ever to happen, we would find ourselves in what the former Home Secretary, now the Prime Minister, described as 'exceptional circumstances' (Hansard (HC) vol 254 col 210 (1/3/11)) in which the ordinary maximum period of 14 days is said to be inadequate.¹¹⁶
- 9.10. The maximum period of detention under TA 2000 stood at seven days until January 2004, 14 days until July 2006 and 28 days until 25 January 2011.¹¹⁷ Attempts by the last Government in 2005 and 2008 to extend pre-charge detention limits further, first to 90 days and then to 42 days, were withdrawn after defeats in Parliament. Since 25 January 2011, the maximum period of detention has stood at 14 days. This compares to a maximum detention period of 96 hours under other legislation in England, Wales and Northern Ireland. In contrast to the position under PACE, there is no power to release on police bail.
- 9.11. I make no recommendation for a pre-charge detention regime in terrorism cases longer than 14 days. It is worth remembering that at the time of the passage of the 2011-12

¹¹⁵ Home Office, Draft Detention of Terrorist Suspects (Temporary Extension) Bills (Cm 8018, London, 2011).

¹¹⁶ Walker, C., 'The governance of emergency arrangements' (2014) 18 International Journal of Human Rights 211-227.

¹¹⁷ D. Anderson, *The Terrorism Acts in 2011*, June 2012.

legislation, the Government mentioned extension beyond 14 days only in the case of 'multiple complex and simultaneous investigations'.¹¹⁸

9.12. Separately to all of the above, it is to be noted that there are circumstances where it is reasonable and necessary to pause the detention clock, namely when detainees are admitted to hospital, with the obvious consequence that aspects of pre-charge activity temporarily cease (including, importantly, the availability of the detainee for police interview). The Home Secretary has announced her intention to accept a recommendation by my predecessor to this effect.¹¹⁹

9.13. In **Northern Ireland**, of the 137 persons arrested in 2016/17, only 19 were detained for more than 48 hours. Persons detained were detained for a minimum of 2-4 hours and a maximum of 6-7 days. No-one was held for more than a week.¹²⁰ Once again, therefore: the TA 2000 section 41 arrest power was used with far greater frequency in Northern Ireland than in Great Britain; but detention beyond 48 hours, common in Great Britain, is still rare in Northern Ireland.¹²¹

Numbers charged in 2017

9.14. In **Great Britain**, 52 (33%) out of the 156 people arrested under TA 2000 s41 were charged and 103 were released. This is down from a charge rate of 73% under TACT last year.¹²²

9.15. Of the 412 people arrested for terrorism-related offences in 2017, 110 (27%) were charged with terrorism-related offences.¹²³ The charging rate for those subject to 'terrorism-related arrests' between 2001 and 2015 was an average of 89 charges per

¹¹⁸ Government Response (Cm 8220, London, 2011) p 6

¹¹⁹ *The Government Response to the Annual Report 2015*, July 2017, page 7. See also para 1.10(g) above.

¹²⁰ Northern Ireland Office, *Northern Ireland Terrorism Legislation: Annual Statistics 2016/17*, November 2017, Table 5.

¹²¹ Walker, C.P., *The Anti-Terrorism Legislation* (Third edition, Oxford University Press, Oxford, 2014) chap.5.

¹²² Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table A.02.

¹²³ *Ibid.*, table A.03. As a number of cases were still incomplete at time the statistics were calculated (15 January 2018), these proportions are likely to have changed as cases progressed.

year. In total, 39% of those arrested for terrorism-related offences were charged (1,250 out of 3,167).¹²⁴

9.16. Of the 110 charged with terrorism-related offences in 2017, 78 were charged under the Terrorism Acts and 3 under other terrorism legislation.¹²⁵ Principal offences for which persons were charged under the Terrorism Acts included membership offences (8 persons), fundraising offences (4 persons), collection of information useful for an act of terrorism (15 persons), encouragement of terrorism (9 persons), dissemination of terrorist publications (13 persons), preparation for terrorist acts (28 persons) and provision of information related to a terrorist organisation (1 person). 1 person was charged for using or threatening to use noxious substances to cause harm under Anti-terrorism, Crime and Security Act 2001 and 2 persons were charged for contravening a control order under Terrorism Prevention and Investigation Measures Act 2011.¹²⁶

9.17. In **Northern Ireland**, only 11 (6%) out of the 171 people arrested under TA 2000 s41 were charged in 2017. This has been consistently low in recent years with 11% of those arrested in 2016, 12% of those arrested in 2015 and 18% of those arrested in 2014 being charged.¹²⁷

9.18. In addition, amongst the small proportion of persons arrested under section 41 in Northern Ireland who are subsequently charged, even fewer are charged with an offence under the Terrorism Act 2000. In 2016/2017, we know that of 137 persons detained under section 41, 19 (14%) were charged. Those 19 people were charged with 41 offences including four charges of murder, eight charges of attempted murder, four for explosives offences and eight for firearms offences. In 2016/17, five persons detained under section 41 of the Terrorism Act 2000 were charged with a total of nine charges under the same legislation. Four of these charges related to membership, three related to dressing as a member of a proscribed organisation, and one to weapons training. In the relevant period, there were five persons convicted of an offence under the Terrorism Act 2000, the Terrorism Act 2006 or the Counter-Terrorism Act 2008. The latest figures as at 20 June 2017 show that, of the nineteen persons charged after being detained in Northern

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*, table A.05a.

¹²⁷ PSNI, *Security Situation Statistics*, 17 May 2018.

Ireland in 2016/17 under section 41 of the Terrorism Act 2000, one had been convicted.¹²⁸

9.19. David Anderson QC, in his final report as the Independent Reviewer of Terrorism Legislation, published in December 2016, commented, 'The very low charge rate in Northern Ireland is disappointing. I have previously and repeatedly emphasised the need for reasonable suspicion in relation to each person arrested under s41, and suggested that the low charge rate may be an indicator that the arrest power is overused in Northern Ireland.'¹²⁹ He welcomed the review carried out by PSNI further to the recommendation in the Northern Ireland Policing Board's Human Rights Annual Report and noted that in the cases reviewed, while the officers did anticipate charging under TA 2000 at the time of arrest, the intelligence indicating the TACT charge was often not converted into evidence sufficient to charge. He commented 'the conversion of intelligence into evidence is a challenge in many terrorism-related investigations but appears to be particularly difficult in Northern Ireland. Factors are sometimes said to include suspects who can operate locally, leaving little online trace; the need to protect sources of intelligence; and fear of retaliation on the part of witnesses (a feature of small tight-knit communities). Those factors may also explain some failures to proceed post charge.'¹³⁰

Gender, age, ethnicity and nationality

9.20. These data are only available in Great Britain.

- (a) Women comprised 15% of those arrested for terrorism-related offences in 2017, 13% of those charged and 17% of those convicted.¹³¹
- (b) 17% of those arrested, 19% of those charged and 17% of those convicted of terrorism-related offences in 2017 were aged under 20.¹³²

¹²⁸ *Northern Ireland Terrorism Legislation: Annual Statistics 2016/17*, Northern Ireland Office, November 2017, Tables 9-11 and 15.

¹²⁹ D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 8.16.

¹³⁰ *Ibid.* para. 8.20.

¹³¹ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table A.09.

¹³² *Ibid.*, table A.10.

2017	Under 18	18-20	21-24	25-29	30 and over
% terrorism-related arrests	7%	10%	18%	18%	48%
% terrorism-related charges	10%	9%	26%	16%	38%
% terrorism-related convictions	10%	7%	31%	10%	41%

9.21. The ethnic appearance (based on officer-defined data) of those arrested, charged and convicted of terrorism-related offences in 2017 is as follows:¹³³

2017	White	Black	Asian	Other	N/K
% terrorism-related arrests	35%	9%	41%	14%	0%
% terrorism-related charges	40%	9%	45%	5%	0%
% terrorism-related convictions	34%	10%	52%	3%	0%

9.22. These figures suggest an increase in the proportion of White persons arrested, charged and convicted of terrorism-related offences in 2017 compared to figures presented by my predecessor for the period 2005-2012, also based on police perceptions:¹³⁴

2005-2012	White	Black	Asian	Other	N/K
% terrorism-related arrests	25%	14%	44%	16%	2%
% terrorism-related charges	24%	17%	46%	11%	2%
% terrorism-related convictions	25%	16%	48%	8%	3%

9.23. As to self-defined nationality, British citizens comprised 67% of those arrested for terrorism-related offences, 76% of those charged with and 76% of those convicted of such offences in 2017.¹³⁵

¹³³ *Ibid.*, table A.11

¹³⁴ D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 8.25.

¹³⁵ Home Office, *Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables*, 8 March 2018, table A.12a-c.

9.24. Of the 716 persons convicted of terrorism-related offences in Great Britain between September 2001 – December 2017, the largest numbers of foreign nationals have come from Algeria (31), Albania (17), Pakistan (18), Somalia (14) and Ireland (10).¹³⁶

Conditions of detention

9.25. Since March last year, I have engaged with many who supply important services in this area. they include the Independent Custody Visiting Association (ICVA), the National Preventive Mechanism (NPM), Force Medical Examiners (FMEs, qualified doctors who attend upon detained persons in police custody suites), and the National Appropriate Adult Network (NAAN).

9.26. Since January last year, the IRTL became a member of the National Preventive Mechanism, a group of some 20 plus entities including the Chief Inspectors of Prisons and Police, charged to keep the conditions in which detained persons are held under close scrutiny as required by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).¹³⁷ What that means to me is that I see the pre-charge terrorism custody environment in all its aspects. As noted above, unlike ordinary police detention under PACE, the Terrorism Act regime entails holding individuals in bespoke facilities, entirely separate from normal custody suites and in conditions of solitary confinement for up to 14 days.

9.27. I continued to rely heavily on the work of the Independent Custody Visiting Association, the ICVA. They train and run hundreds of volunteers throughout the UK, who conduct daily visits to Police custody suites; and they run a cadre of specially trained Terrorism Act volunteers who hold security clearance and who go to see Terrorism Act detainees every day. Since the end of March 2017, I receive daily updates and report forms from each of the terrorism custody suites which happen to be open, and I also receive notifications of every Terrorism Act arrest, Warrant of Further Detention and/or charging

¹³⁶ *Ibid.*, table A.12c.

¹³⁷ See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>. Ratified by the UK in March 2009.

decision or release without charge; remembering that the Terrorism Act custody powers do not include bail before charge, in contrast to the PACE regime.¹³⁸

9.28. In amongst all of those cases, what happens within Terrorism Act custody suites can be pivotal to the case in hand. One example from my own experience is the case of Ibrahim and others, recently before the ECtHR, but previously in the Court of Appeal and of course a six-month trial in London, because Ibrahim was the leader of the so-called 21/7 plot to detonate bombs on public transport in central London two weeks after 7/7.¹³⁹ Urgent public safety interviews were conducted with Ibrahim and two of his co-accused, at Paddington Green police station during the early hours of their TACT detention there.¹⁴⁰ And, as permitted by the provisions of the current legislation, namely sections 76 and 78 of PACE which govern the circumstances in which police interviews may be ruled inadmissible, the answers given by Ibrahim and the others in those public safety interviews were capable of being used in court, which is why the interviews were conducted under formal caution (see my chapter in *Investigating Terrorism: Current Political, Legal and Psychological Issues*, John Pearse, 2015). So those early hours in a TACT suite can and do involve important procedures, the product of which can end up in court. For a full discussion of the legal provisions and their practical ramifications, see my chapter in *Investigating Terrorism*.

9.29. I am pleased to say that the picture from all of the custody visit reports I have received since March 2017 has been generally positive, in the sense that, so far, I have seen very little if any complaint from detainees about the conditions in which they are held. On the contrary, I see what appear to be flexible and dedicated efforts to provide personal essentials to detainees, including clothing, literature and other items designed to make their time in custody as comfortable and bearable as possible.¹⁴¹

9.30. As I noted in my previous Annual Report, notwithstanding the general picture, there are examples of cases where there is room for improvement within the TACT custody regime, taking my lead from the content of some of the ICVA reports I have received.

¹³⁸ Max Hill QC, Lecture to the Criminal Bar Association, 19th September 2017. Available at: <https://terrorismlegislationreviewer.independent.gov.uk/lecture-to-the-criminal-bar-association-19th-september-2017/>

¹³⁹ Ibrahim v United Kingdom, App no.50541/08, 13 September 2016.

¹⁴⁰ The power to conduct urgent public safety interviews are found in Schedule 8 TA 2000 and PACE Code H, paragraphs 6.7 and 11.2.

¹⁴¹ Max Hill QC, *ICVA TACT Conference Speech*, 21 August 2017.

9.31. I noted in my last report that there appears to be a reluctance by detainees to give consent to ICVA visits within the TACT custody facility in Northern Ireland. This appears to be a local problem. I **recommended** that greater efforts are made to ensure that TACT detainees in Northern Ireland are encouraged to the view that ICVA volunteers are entirely independent of the police and should be seen as promoting the welfare of all detained persons. I have been working with solicitors, custody staff and ICVAs to ensure that TACT detainees in Northern Ireland are encouraged to the view that ICVA volunteers should be seen as promoting the welfare of all detained persons. This has led to a change in policy where ICVA volunteers will self-introduce to detainees to encourage greater participation. The Government Response to my last report accept my recommendation, the Home Secretary stating 'I agree that steps should be taken to address any reluctance of TACT detained in Northern Ireland to consent to ICV visits, and to promote understanding of the organisation's independence of the police and the criminal justice system'.

Right not to be held incommunicado and to access a solicitor

9.32. In Northern Ireland, all 30 requests to have someone informed of detention under section 41 (Schedule 8, paragraph 6) of the Terrorism Act 2000 in 2016/17 were granted immediately. All 137 requests by persons detained in Northern Ireland for access to a solicitor under section 41 (Schedule 8, paragraph 7) of the Terrorism Act 2000 were allowed immediately.¹⁴²

9.33. There are no published statistics on the question of how many TACT detainees in Great Britain during 2017 may have had access to a solicitor delayed.

¹⁴² Northern Ireland Office, Northern Ireland Terrorism Legislation: Annual Statistics 2016/17, 1 November 2017, Tables 7-8.

10. CRIMINAL PROCEEDINGS

Statistics – Great Britain

Trials in 2017

10.1. 86 trials for terrorism-related offences were completed in 2017. Of these, 77 persons (90%) were convicted and 8 acquitted.¹⁴³ Of the 77 persons convicted of terrorism-related offences in 2017, 70 persons (91%) were convicted of TACT offences (most common one being preparation for terrorist acts, contrary to section 5 of the Terrorism Act 2006)¹⁴⁴ and 7 persons were convicted of non-TACT offences.¹⁴⁵

Sentences in 2017

10.2. Of the 77 persons convicted of terrorism-related offences in 2017:¹⁴⁶

- (a) 6 received life sentences.
- (b) 7 received sentences of between 10 and 20 years.
- (c) 32 received sentences of between 4 and 10 years.
- (d) 23 received sentences of between 1 and 4 years.
- (e) 3 received sentences of less than a year.
- (f) 6 received non-custodial sentences.

Prison in 2017

10.3. At the end of 2017, 224 persons were in custody for terrorism-related offences (up from 181 in December 2016, 147 in December 2015 and 136 in December 2014).¹⁴⁷ Of these:

- (a) 190 declared themselves to be Muslim, 16 Christian, 11 No religion, 4 Other, 1 Buddhist, 1 Jewish and 1 Sikh.¹⁴⁸

¹⁴³ Home Office, Operation of police powers under the Terrorism Act 2000, quarterly update to December 2017: data tables, 8 March 2018, table C.01.

¹⁴⁴ Based on the principal offence.

¹⁴⁵ *Ibid.*, table C.03.

¹⁴⁶ *Ibid.*, table C.04.

¹⁴⁷ *Ibid.*, table P.01.

¹⁴⁸ *Ibid.*, table P.04.

- (b) 127 defined their ethnicity as Asian or Asian British, 47 as White, 31 as Black or Black British, 10 as Mixed and 8 as Other ethnic group. 1 person was unrecorded.¹⁴⁹
- (c) 192 were classified as Islamic Extremists, 21 as Far Right and 11 as Other.¹⁵⁰

Subject matter of prosecutions

10.4. The Counter Terrorism Division of the Crown Prosecution Service (CTD-CPS) recorded 36 cases that were concluded in 2017.¹⁵¹ A brief summary of each case is attempted below.

(a) Commission or preparation of terrorist acts:

R v Ghulam Hussain

On 6 October 2016 Mr Hussain met with an undercover police officer named “IMY”. He discussed with IMY his intention to travel to Syria to join Daesh and fight for them and described the actions he had taken to prepare for that trip. He provided the undercover officer with advice regarding his own trip and £160 cash to assist him to meet the cost of the trip to turkey. Mr Hussain was arrested in November 2017 and searches of his home recovered evidence of his purchase of tickets to travel to Turkey via Pakistan. Banking evidence confirmed the frauds he had committed. Evidence from Mr Hussain’s employers and examination of his phone demonstrated that he had taken multiple steps to establish alibis for his trip.

Mr Hussain pleaded guilty to two offences of preparation of terrorist acts (s5 TA 06); one in relation to his own plans to travel to join Daesh and the other in relation to the assistance he provided to the undercover police officer to do the same. He was sentenced to six years’ imprisonment with a one year extended licence period. He also received a 15 year Notification Order.

¹⁴⁹ *Ibid.*, table P.02.

¹⁵⁰ *Ibid.*, table P.01.

¹⁵¹ See CPS-CTD Concluded Cases 2017 <https://www.cps.gov.uk/counter-terrorism-division-crown-prosecution-service-cps-successful-prosecutions-end-2006>.

R v Ciaran Maxwell

Ciaran Maxwell, a serving Royal Marine, researched the manufacture and construction of explosives, acquired the items he needed to make explosive devices and constructed the devices. He stored the items he needed to make the devices, the devices themselves, ammunition, weapons, tools and resources in hides across England and Northern Ireland. He also engaged in research to create of a library of maps, plans and lists of potential targets for a terrorist attack and engaged in discussions regarding targets and deployments of devices with a convicted dissident republican terrorist. In addition, Mr Maxwell had a significant cannabis production at one site in England from which he intended to produce cannabis for onward sale. Further, Mr Maxwell took images of other people's bank cards and identity documents when he had access to them whilst they were on operations. He did so with the intention of using them in online fraud.

He pleaded guilty to preparation of terrorist acts (s5 TA 2006), possession of a controlled drug with intent to supply (ss 5(3) and (4) Misuse of Drugs Act 1971) and possession of articles for use in fraud (s6 Fraud Act 2006). Maxwell received an extended 23-year sentence composed of 18 years' imprisonment and a five-year licence period in relation to the terrorist offence. He received concurrent sentences of 18 months' and two years' imprisonment in relation to the drugs and fraud offences respectively. A Notification Order was imposed, materials seized were subject to forfeiture and destruction and a confiscation order was made in relation to his available funds.

There is a pending appeal by the defence, in relation to the sentence imposed in this case.

R v Nadeem Muhammed

Mr Muhammed was stopped by security officers at Manchester International Airport ("MIA") attempting to take a Ryanair flight to Bergamo (Milan) in Italy. His luggage was searched and a viable improvised explosive device or "IED" was found in the base of the case under the lining. The police were unable to obtain any evidence to identify a motive for possession of the device on the part of Mr Muhammed. Mr Muhammed maintained that he was unaware of the device which must have been planted on him by a third party.

Muhammed was convicted of possession of an explosive substance with intent to endanger life or cause serious injury to property (s3(1)(b) Explosive Substances Act 1883). In returning a guilty verdict the jury were satisfied that Mr Muhammed was in possession of the device with intent to detonate it within the confined space of the aeroplane with the intention endangering the lives of the other passengers on board and/or causing serious damage to the aeroplane. Mr Muhammed was sentenced to an extended sentence of 23 years comprising a custodial term of 18 years and an extension period of five years. In doing so the Judge considered, pursuant to section 30 of the Counter-Terrorism Act 2000, whether or not the offence was committed for a terrorist purpose but was not satisfied that such a motive had been proved.

The sentence in this case has been referred as unduly lenient by the Attorney General to the Court of Appeal. A hearing of that application is pending.

R v Khalil Maher

Khalil Maher was arrested at Heathrow airport whilst waiting to board a flight to Turkey with an intention to travel onwards to Syria to join two friends who had already made the journey in March 2016, who were known to be fighting against the Assad regime. He had extensive mindset material which dated back to August 2014, primarily contained within deleted notes on his mobile phone.

He was convicted of preparation of terrorist acts (s5 TA 2006). The mitigating features included family circumstances, including the impact of his incarceration on his mother and siblings, two of whom had significant health issues. Khalil Maher was sentenced to a period of five years four months' imprisonment; Extended Licence one year [S236A Criminal Justice Act 2003], Forfeiture Order (£499.80 cash and mobile phones) and a Notification Order for 15 years.

R v Naweed Ali, Khobaib Hussain, Mohibur Rahman and Tahir Aziz

Mr Ali and his friend Mr Hussain were the subject of an ongoing undercover police operation. Undercover law enforcement officers and officers from the Security Service, found a JD Sports draw string bag stuffed under the front seat of a car. The content of the bag included a firearm, ammunition and a meat cleaver with the word 'Kafir' carved on to the blade.

As a result of what was found in the car, they and Mr Rahman and Mr Aziz were arrested. All four were found to have extremist material in their possession, either in hard copy (Mr

Rahman) or on media devices. All four males were convicted of preparation of terrorist acts (s5 TA 2006). The acts in preparation included chatting on social media about wanting to 'do something' and not 'just talking', holding an overnight meeting during which computer searches were carried out for a video about the Liquid Bomb plot, Mr Aziz's possession of a samurai sword and Mr Aziz's downloading of the Telegram account 'Inspire'. All four were sentenced to life imprisonment. The minimum terms were specified to be 20 years in the case of each of the first three, and 15 years in the case of Mr Aziz.

All four defendants are appealing their conviction, and Mr Aziz is appealing his sentence.

R v Samata Ullah

Samata Ullah had produced and uploaded voice modulated instructional videos on how to secure sensitive data and remain anonymous online using encryption programmes. When arrested he had a pair of USB cufflinks with an operating system loaded on to them to conceal a hoard of extremist data, including a blog. He also admitted having a book entitled Guided Missiles Fundamentals AFM 52-31 and an electronic version of Advances in Missile Guidance, Control and Estimation for terrorist purposes. The material found at Ullah's home address included, but was not limited to, a number of Islamic State propaganda videos including one video which showed the execution of a large number of Christians in orange suits by the sea in Libya. Evidence was provided to the court detailing Ullah's desire to copy his blog on to a platform in a format that meant it could not be closed down or deleted by the authorities.

Samata Ullah pleaded guilty to five terrorist offences, namely professing to be a member of a proscribed organisation, terrorist training, engaging in conduct in preparation of terrorist acts and two counts of possessing an article for terrorist purposes. He was sentenced to an extended sentence of 13 years comprising an eight-year custodial term and a five-year extended licence.

This case awaits notification from the Court of Appeal as to whether leave will be granted for an appeal against sentence.

R v Patrick Kabele

Mr Kabele was stopped by port officers at Gatwick Airport and prevented from boarding a flight to Istanbul, Turkey. His luggage was searched and £3000 in cash was seized along with a mobile telephone which contained hundreds of notes saved into the Outlook

calendar, including intentions: 'to fight on the frontline where there's the heaviest gunfire/thickest action, I got a death wish but not by my own hand'. He continued: 'I will fulfil my duty and fight even if I might disagree with some of the tactics used (it's as simple as that)'.

Patrick Kabele was convicted of engaging in conduct in preparation of terrorist acts (s5 TA 2006). He was sentenced to six years' imprisonment with an extended licence of four years.

R v Benjamin Stimson

On 8 August 2015 Mr Stimson travelled from Manchester to Brussels and then from Brussels to Moscow, whereupon it is believed he entered illegally into Eastern Ukraine. On 19 October the BBC published an online report and video interview concerning the involvement of British fighters in the conflict in Ukraine. The North West Counter Terrorism Unit launched an investigation when information was given to them that one of the individuals on camera was Benjamin Stimson. On Monday 23 November 2015 Mr Stimson returned to the UK at Manchester Airport. He was arrested and in his possession was a mobile telephone and a rucksack found to contain military clothing and other items, including papers in Russian which indicated Mr Stimson had received treatment in a military hospital in Donetsk, Eastern Ukraine.

He pleaded guilty to assisting others by becoming a member of the militia opposing the legitimate Ukrainian Government and serving as a soldier within that militia (s5 TA 2006). He was sentenced for five years' four months' imprisonment under section 236A of the Criminal Justice Act 2003 with the additional year on licence and 15 years notification under the CJA 2008.

R v Martin Panton

Mr Panton was arrested following a report he had made numerous precursor chemical purchases. A total of 45 digital exhibits were seized from Mr Panton's address and 79 chemical exhibits. At least 27 chemical and bomb making manuals and similar videos were found on three of the digital devices, which included the Anarchy Cookbook (2000) and the Mujahideen's Explosive Handbook. Many chemicals required to make both primary and secondary high explosives as well as low explosives were found in the home address of Mr Panton. Handwritten notes in a notebook relating to instructions for the manufacture of such explosives were also recovered.

Martin Panton pleaded guilty to one offence of making an explosive substance (s4 Explosive Substance Act (ESA) 1883), three offences of having an explosive substance (s4 ESA 1883) and 12 offences of possessing a document useful to terrorists (s58 TA 2000). He said he develops fads which started about five months prior to his arrest and that he enjoyed chemistry. He was sentenced to 30 months' imprisonment concurrent on the four ESA offences and to 18 months concurrent for six section 58 TA offences, totalling four years. The remaining section 58 offences were left to lie on the file.

R v Jabed Hussain

Mr Hussain made preparations and travelled to Turkey; his intention was to travel to Syria and join and fight for Daesh. He was intercepted by Turkish authorities and deported to the United Kingdom. Following his return to the United Kingdom, he continued to make preparations with the intention of travelling to Syria to join and fight for Daesh and he sought the assistance of others he believed might be able to help him. An undercover police officer made contact with Mr Hussain and all their conversations were recorded. These recordings, together with other material seized from Mr Hussain, revealed his avowed intent to take part in terrorist atrocities.

Mr Hussain pleaded guilty to two offences of preparation of terrorist acts (s5 TA 2006). He was sentenced to nine years' imprisonment on one charge relating to travelling to Turkey with intention to join Daesh and seven years concurrent on the other charge relating to engaging with Farooq to arrange travel to Syria to join Daesh and made subject to notification requirement for a period of 15 years.

R v Mohammed Abdallah

Mohammed Abdallah travelled from Manchester to Syria, via Libya. Both Mohammed Abdallah and his brother Abdalraouf Abdallah had fought in Libya against the Ghaddafi regime in 2011, and Abdalraouf was left paralysed from the waist down. (In May 2016, Abdalraouf Abdallah and Stephen Gray were convicted of sending funds to Mohammed Abdallah to be used for terrorism purposes, amongst other terrorism offences.) Mohammed Abdallah was on a database of Daesh/Islamic State fighters stolen from Raqqa by an IS defector and provided to Sky News before being obtained by the police.

On 16 September 2016, Mohammed Abdallah returned to the UK and was arrested at Heathrow Airport. He was convicted of three offences: possession of article (a weapon)

for terrorist purposes (s57 TA 2000), receiving money (£2000) for the purposes of terrorism (s15 TA 2000) and membership of a proscribed organisation (ISIS) (s11 TA 2000). Mrs Justice McGowan stated that Mohammed Abdallh was committed to the terrorist enterprise and found him to be dangerous. He received a custodial sentence of ten years with an extension period of five years, and was made subject to notification requirements for a period of 30 years.

R v Haroon Syed

Haroon Syed was in communication with an online role player using a secure application. It was apparent that he wanted to carry out a terrorist attack. He initially had a professed intention to become a suicide bomber that crystallised into a plan to kill as many 'Kuffar' (unbelievers) as possible with a nail bomb. The evidence showed him searching for potential civilian or military targets in London. He requested assistance in trying to source machine guns, hand guns; suicide vests and bombs. This led to him meeting an undercover role player on two occasions. Haroon Syed was arrested and his password on his phone that the police seized was 'ISIS'.

Haroon Syed was convicted of preparing to commit acts of terrorism (s5 TA 2006). The court rejected argument that Haroon Syed was entrapped into committing the offence. He pleaded guilty and was sentenced to life imprisonment with a minimum term to serve of 15 years.

R v Shamin Ahmed

Mr Ahmed first came to the attention of the police in January 2015 when he was arrested for making online and telephone threats against staff at a book shop in London which at the time was stocking the Charlie Hebdo magazine.

He travelled in November 2015, and upon his return was subject to an examination under Schedule 7 of the Terrorism Act 2000. His phone was downloaded and it contained a number of photographs of Daesh fighters, images of beheadings and videos containing Daesh propaganda. In January 2016 Mr Ahmed was subject to an examination contrary to Schedule 7 Terrorism Act 2000 as he went to board his flight to Turkey. When questioned Mr Ahmed informed the officer that Istanbul was his final destination. After the questioning was concluded Mr Ahmed was allowed to board the flight. Mr Ahmed was subsequently detained at Oncupinar Border Crossing and put onto a plane by the

Turkish Authorities to return to the United Kingdom. Mr Ahmed was arrested upon his return.

Mr Ahmed was charged with one offence contrary to section 5 of the Terrorism Act 2006. He pleaded guilty and was sentenced to six years' imprisonment, one year licence and 15 years notification order.

R v Damon Smith

Damon Joseph Smith abandoned a black Adidas rucksack in a carriage on a Jubilee Line tube train which was found by two members of the public. This led to the train and platform being evacuated at North Greenwich Underground Station. The rucksack contained a suspect viable device which was rendered safe by cutting a wire. The device was examined by the Forensic Explosives Laboratory (FEL) who confirmed that it was a viable improvised explosive device. Thankfully the initiator failed. Damon Smith was identified from CCTV footage and his fingerprints were recovered from five component parts of the device. His DNA was also positively identified on nine areas of the device and rucksack. In interview he admitted making the device and leaving it on the tube train. He said that he did not intend to harm anybody and that it was meant to be a prank.

He was charged with one offence contrary to section 3 (1) (b) of the Explosives Substances Act 1883. He pleaded not guilty. He suffers from Asperger's and expert evidence was called in respect of this. He was convicted after trial and he was sentenced to 15 years' imprisonment.

He is currently appealing the length of sentence.

R v Ummariyat Mirza, Zainub Mirza and Madihah Taheer

Ummariyat Mirza and Zainub Mirza, who are brother and sister, were travelling by car together and were stopped by armed police. Mobile telephones found in the car, as well as others seized during subsequent searches, were examined and a significant quantity of relevant mind-set material found on them. Messages obtained demonstrated, for example, that they shared extremist material and praised killings carried out by Islamic State.

Ummariyat Mirza bought a plastic knife and trained by using it on a dummy, which was seized at the address where he and wife lived. He also bought a steel knife using his wife's credit card with her knowledge and agreement after they had discussed the purchase over a period of some days. Searches conducted on Ummariyat Mirza's

devices also revealed that he had researched potential targets for an attack in the UK including a military base in Birmingham and Jewish areas of the country.

Ummariyat Mirza was charged with an offence contrary to section 5 Terrorism Act 2006 and Zainub with five offences of disseminating terrorist publications contrary to section 2 Terrorism Act 2006. Madihah Taheer was charged with an offence contrary to section 5 Terrorism Act 2006.

Ummariyat Mirza and his sister Zainub Mirza both pleaded guilty. Madihah Taheer was convicted after trial. Ummariyat Mirza received an extended sentence of 21 years' imprisonment, Zainub Mirza was sentenced to 30 months' imprisonment and Madihah Taheer to 11 years' imprisonment.

(b) Possessing information likely to be of use to a person preparing or committing an act of terrorism:¹⁵²

R v Jade Jasmin Campbell

Jade Campbell downloaded a publication onto her mobile phone which contained three articles of a kind likely to be useful to a person committing or preparing an act of terrorism. Less than an hour after downloading this she undertook relevant web searches, including searches relating to ISIS, women in ISIS and travel.

She was charged with possessing a publication likely to be useful to a person preparing for or committing an act of terrorism (s58 TA 2000) and a passport offence (s36 Criminal Justice Act 1925). She pleaded guilty on the basis that she had downloaded the publication out of curiosity. HHJ Kinch QC found that she had not downloaded it out of curiosity and Campbell was sentenced to 12 months' imprisonment for the section 58 offence and six months' imprisonment consecutive for the passport offence; Notification Order 10 years and Forfeiture Order for the relevant devices seized. Mitigating features included her age, pleaded guilty (discount 25%); borderline personality disorder and self-harm/suicidal tendencies; degree of usefulness of the publication; the likelihood of it reaching others and remorse.

¹⁵² Section 58 of the Terrorism Act 2000.

R v Aabid Ali, aka Darren Glennon

Mr Ali's digital media was seized following an incident involving his estranged wife. The police found pro-Daesh material on the devices which include detailed bomb making instructions of various types. Mr Ali had also viewed numerous YouTube videos and posted comments attributable to him using the Google account registered to him. In interview Mr Ali praised the work of extremist preachers and said the military were justifiable targets.

Ali pleaded guilty to two offences of possessing a document containing information useful for terrorist purposes (s58 TA 2000) and one offence of encouraging terrorism contrary to (s1 TA 2006). He was sentenced at Manchester Crown Court to a total of five years and four months' imprisonment, with a 15 year notification period.

R v Mohammed Rehman

Mohammed Rehman was serving a life imprisonment sentence (with a minimum term of 27 years) after being convicted of preparing to commit acts of terrorism contrary to section 5 of the Terrorism Act 2006 and being in possession of an article for a purpose connected with a person preparing to commit an act of terrorism contrary to section 57 of the Terrorism Act 2000. Whilst serving his prison sentence, his prison cell was subject to a routine search. A document containing a step by step guide of the list of chemicals to make an explosive was recovered. In interview he admitted he had retained the document from his earlier trial and placed it in an area where he knew it would be searched so he could try and be segregated from other prisoners.

He pleaded guilty to the offence of possession of a record of information likely to be useful to a person committing or preparing to commit an act of terrorism (s58 TA 2000). He was sentenced to three years' imprisonment.

R v Nathan Saunders

At Gatwick Airport he was prevented from travelling to Turkey. He was detained and questioned under Schedule 7 of the Terrorism Act 2000. Following the Schedule 7 examination his passport was seized pursuant to Schedule 1 of the Counter-Terrorism and Security Act 2015 and was later revoked pursuant to the Royal Prerogative.

Six months later, Nathan Saunders was arrested pursuant to section 41 of the Terrorism Act 2000 by officers from the North East Counter-Terrorism Unit. At the time of his arrest he was in possession of the same iPhone 6 that was seized during his Schedule 7

examination. The phone was examined and found to contain copies of the Daesh publications and a copy of The Anarchist Cookbook. The web browser contained bookmarks for websites selling hunting knives, a website hosting Daesh beheading videos, a link to a Daesh publication and a link to a recipe for petroleum jelly.

Nathan Saunders pleaded guilty to five offences concerning the collecting of information of a kind likely to be useful to a person committing or preparing an act of terrorism (s58 TA 2000) and was sentenced to 28 months' imprisonment.

(c) Terrorist funding:¹⁵³

R v Syed Hoque and Mashoud Miah

Syed Hoque was stopped in accordance with Schedule 7 of the Terrorism Act 2000 at London Heathrow having returned from Bangladesh. His phone was found to contain messages between him, Abu Esa/Isa (believed to be Mashoud Miah) and Mohammed Choudhury who was believed to be fighting for Jabhat Al-Nusra in Syria. In short, the messages suggested that Syed Hoque and Abu Issa/Esa had become concerned in an arrangement with others whereby money and other property was made available and was to be made available to Mr Choudhury and others who were involved in terrorist activity.

When Miah returned to the UK he was arrested. Both Hoque and Miah were convicted of being concerned in an arrangement with others whereby money and other property was made available and was to be made available to those involved in terrorist activity (s17 TA 2000). Hoque received five years and six months' imprisonment and Miah received two years and six months' imprisonment.

(d) Encouraging support:¹⁵⁴

R v Akeem Samuels

Samuels was a prolific user of Instagram and he posted, on almost a daily basis, threatening pro-Daesh imagery and rhetoric, speeches by Caliph Al-Baghdadi and fatwas encouraging terrorism. Many of the images he had doctored or enhanced to improve their visual appearance. He also posted imagery and comment that was

¹⁵³ Sections 15-19 of the Terrorism Act 2000.

¹⁵⁴ Section 1 of the Terrorism Act 2006.

threatening and intending to stir up religious hatred, and hatred on the grounds of sexual orientation, including one message which encouraged violence towards Shia Muslims and a further message which mocked the Orlando shooting massacre.

Samuels was charged with nine sample offences: seven of encouraging terrorism (s1 TA 06) and of publishing material intending to stir up hatred on the grounds of religion and sexual orientation (s29C Public Order Act 1986). He pleaded guilty to all offences and was sentenced to four years' imprisonment, receiving a full discount for early guilty pleas.

R v Saer Hussain

Saer Shaker posted on his open Facebook account a video produced by Daesh's official media outlet as well as still images from another Daesh video of four males who were interviewed in the video prior to them completing suicide missions. The caption posted stated, "The striking hour of carrying out a martyrdom operation." Thereafter Saer Shaker engaged in an online dialogue with an audience who evidently approved of his message. Further mindset material was located on Saer Shaker's phone and Telegram account. He pleaded guilty to one offence of encouraging terrorism (s1 TA 2006) and one offence of disseminating a terrorist publication (s2 TA 2006). He was sentenced to a period of two years' imprisonment per count to run concurrently; Notification Order 10 years and Forfeiture Order [phone].

Mitigating features included that support of Islamic State stemmed from the killings of his father and brother in law by a rival militant group in Syria.

(e) Failing to comply with Schedule 7:¹⁵⁵

R v Robert Clark

Mr Clark came to the attention of West of England Counter Terrorism Unit in July 2016 when he had disclosed that he was considering travelling to Syria to fight for the Kurds. Officers met with Mr Clark on four separate occasions during August and September 2016 and advised against travel to the region. On 13 September 2016 Mr Clarke was detained at Heathrow Airport by Metropolitan Police officers under Schedule 7 of the Terrorism Act 2000. When stopped, he was asked to pass the officers his phone and he

¹⁵⁵ Paragraph 18 (c) of Schedule 7.

refused to do so. An officer managed to get hold of the phone and took it away from Mr Clarke. Mr Clarke was then detained and taken to an examination room.

Once in the examination room Mr Clark had his duties under Schedule 7 Terrorism Act 2000 explained to him. Mr Clark requested that the duty solicitor was called and asked to represent him in the examination. The duty solicitor attended and the examination began. Mr Clark confirmed that he understood his duties under Schedule 7 Terrorism Act 2000. When asked by the officers to unlock his phone, he did not assist them and the interview ended.

Mr Clark pleaded guilty to failing to comply with a duty imposed under Schedule 7 Terrorism Act 2000. He was sentenced and he received a one year community order and a one year foreign travel prohibition.

(f) Disseminating information:¹⁵⁶

R v Fatimah Peer-Mohd

Peer-Mohd acted as an administrator for a webpage and created notes of a number of talks, in particular a talk which encouraged the listener to engage in acts of terrorism. Peer-Mohd pleaded guilty to an offence of disseminating a terrorist publication (s2 TA 06) on the basis that in providing a service which enabled people to access this talk she acted recklessly with regards to whether anyone would be encouraged to commit and act of terrorism as a consequence. The Judge found that her conduct was aggravated by her personal support for Daesh and the role she played as an administrator for the website. She received credit for her guilty plea, her young age, her previous good character and some evidence of emotional manipulation by Shaikh Faisal. She was sentenced to 20 months' imprisonment and a Notification Order for a period of 10 years.

R v Sabbir Miah

A warrant was executed at the home address of Mr Miah and a mobile telephone was seized from his bedroom. Following a detailed review of the material, Mr Miah was arrested on suspicion of dissemination of a terrorist publication (s2 TA 2006) as three videos and a number of images of concern were found on his Facebook page. He was charged with three offences of disseminating a terrorist publication and released on

¹⁵⁶ Section 2 of the Terrorism Act 2006.

conditional bail. Mr Miah was later arrested at Forest Gate Police Station for breach of his bail conditions. His mobile telephone was found to contain Instagram and Whatsapp accounts on which he posted videos promoting hijrah in breach of s.2 Terrorism Act. He was charged with a further two offences.

Sabbir Miah pleaded guilty to three charges on the basis of recklessness and two charges on the basis of intentional behaviour. HHJ Kramer, QC said that posting of material on the internet of a terrorist nature is of national concern, and that Mr Miah's offending was aggravated by the sustained period of offending, the accessibility of the material through Instagram and Facebook and the continued course of action despite the warning shot of arrest and charge. He was sentenced to 18 months' imprisonment on the first three charges (concurrent on each) and 22 months' imprisonment on the other two charges (concurrent to each other but consecutive to the first three) making a total of 40 months' imprisonment.

R v Mohammed Addulkadir Osman Mayow and Mohammed Jasim

Mayow and Jasim were stopped by immigration control while travelling on a Eurolines coach from London Victoria to The Hague. Both were arrested due to their suspicious behaviour and various media devices reviewed. Because significant material was found in Dutch and Arabic both men were bailed pending a full examination and translation of the media devices, which revealed that Mayow had been publishing online tweets that glorified Daesh and encouraging others to do the same. Jasim had also sent a series of tweets glorifying Daesh military positions.

Both pleaded guilty to the offence of dissemination of terrorist publications (s2 TA 06) on the basis that they acted recklessly. The Judge found that Mayow acted intentionally. Mayow was sentenced to five years and two months' imprisonment concurrent on each charge*. Jasim received two years' imprisonment.

*Mayow is currently seeking to appeal the length of his sentence

R v Noamaan Ejaz

Noamaan Ejaz, a dual UK and Dutch citizen, was stopped at Gatwick Airport in accordance with Schedule 7 of the Terrorism Act 2000. Police seized his laptop and iPhone.

High tech examination revealed WhatsApp messages where Noamaan Ejaz had disseminated nine terrorist publication videos to his uncle and one to his friend, the

majority of which were produced by professional media companies for Daesh. He pleaded guilty to ten offences of disseminating terrorist publications (s2 TA 2006) on a reckless basis and was sentenced to 34 months' imprisonment, a Notification Order for a period of 10 years and Forfeiture Order was made for his iPhone and laptop. Mitigating features included the fact he was 19-20 at the time of the offences and 21 at sentence, his previous good character, but guilty pleas were not made at the first opportunity, thus limiting his reduction in sentence to 25%.

R v Ashaivin Gohill

Mr Gohill posted parts of a speech by the Daesh leader Abu Bakr Al-Baghdadi in English on Facebook which meant that he had specifically identified parts of the speech and translated them or found the translated parts and specifically posted those on Facebook. Mr Gohill has also posted a link to the entire speech in the same posting. The material he posted in English glorified the activities of Daesh and urged Daesh fighters to continue fighting in the name of Allah. Mr Gohill also posted a web link on Twitter which would enable a reader to access a terrorist publication.

Mr Gohill pleaded guilty to two offences of dissemination of a terrorist publication (s2 TA 2006) on the basis that he was been reckless as to whether the material that he had disseminated would directly or indirectly encourage or induce others to the commission preparation or instigation of acts of terrorism. He was sentenced to 18 months' imprisonment on each charge (concurrent); 10 years notification requirements; forfeiture of his laptop, and the Victim Surcharge.

R v Taha Hussain

Over a period of 11 months Mr Hussain used social media to share files and links that when followed took the user to material that promoted violent jihad. Some of the messages were posted to Mr Mohammed Sufiyan Choudry who Mr Hussain knew shared his extreme mind-set. (Mr Choudry was found guilty of encouraging support of proscribed organisation in separate proceedings.) One message included an audio file of a lecture in which the speaker tried to justify the terrorist attacks in France. Mr Hussain said he sent the link because 'it was expressing a viewpoint and therefore potentially of interest'. Mr Hussain was found guilty of seven charges of disseminating terrorist publications (s2 TA 2006) and sentenced to four years and six months' imprisonment on two charges and three years' imprisonment on the remaining five to run concurrently. Mr Hussain will be

subject to notification requirements when he is released from custody for a period of 10 years.

R v Mijanul Haque

When Mr Haque was arrested examination of his digital devices revealed that he posted a number of messages providing links to mainstream news articles about Islamic State (IS) activity, including the Charlie Hebdo attack in France and IS activity in Syria. Mr Haque had also posted messages which included links to speeches made by prominent Islamic preachers, including Anwar al-Awlaki and Sheik Faisal. The posts indicated that Mr Haque was clearly very religious and gives opinion and instruction to those recipients in various chat groups of which he was a member. Links to various fatwahs were also posted.

He was convicted of the charge contrary to section 1 of the Terrorism Act and one of the offences contrary to section 2 of the terrorism Act 2006 and acquitted in respect of the third charge 2, which related to the dissemination under section 2 of the Terrorism Act 2006 of a terrorist publication. He was sentenced to a total of three years' imprisonment and made the subject of a terrorist notification order for a period of 10 years.

R v Mary Kaya

Mary Kaya was arrested as part of a wider investigation. Analysis of her media devices showed she re-tweeted an audio message from the leader of Daesh Abu Bakr Al Husseini al-Baghdadi. The content of the speech as a whole was clearly aimed at encouraging its listeners/readers to participate in terrorist activities by using quotes from religious scriptures to seek to persuade those reading or listening that there is an obligation upon Muslims to engage in violent Jihad. A significant amount of extremist material was found on media devices attributed to her that gave context to the posting of that re-tweet. This included further re-tweets from terrorist publications. It was also discovered that Mary Kaya had installed software that hid her online activity with privacy and anonymity so that the exact reach of her online activity could not be ascertained.

She was convicted of an offence contrary to section 2 of the Terrorism Act 2006 and was sentenced to 12 months' imprisonment suspended for two years and a notification period of 10 years.

R v Ataz Khan

Mr Khan re-tweeted a link to a 20 minute video English language video produced by Al Hayat Media Centre (the media/propaganda arm of ISIS). The central theme of the film was the continuity of violent jihad amongst Islamists traced through the Balkan states and the conflicts in that region in the 1990s to the current day conflicts in Syria and Iraq. He also re-tweeted a link to a video on YouTube which contained extremely graphic and violent pro-ISIS footage. He continued posting retweets in support of ISIS and violent Jihad in Syria.

Ataz Khan pleaded guilty to six counts of dissemination of a terrorist publication (s2 TA 2006) and was sentenced to 12 months' imprisonment and a 10 year notification order.

R v Sagheer Hussain

Sagheer Hussain came to the attention of the police as a result of a tweet he made giving a link to a lecture on YouTube. Research conducted by the North Eastern Counter Terrorism Digital Investigation Team into Sagheer Hussain's YouTube account identified a number of videos containing speeches in support of Islamic State. His Google Plus account also contained a number of videos similar to those he had posted on YouTube. In addition to the postings there was evidence of a large number of Google searches having been made on the laptop used by Sagheer Hussain. The searches were for such topics as 'ISIS executions', 'James Foley execution', 'Islamic state Mujahideen killing crusader Alan Henning' and 'bestgore.com'.

Sagheer Hussain was convicted of three offences of dissemination of a terrorist publication (s2 TA 2006). He was sentenced to five years' imprisonment and a 15-year notification order.

(g) Inciting racial or religious hatred:

R v Lawrence Burns

Burns, an avowed white supremacist and member of National Action, incited hatred through his Facebook account and within a speech delivered at a National Action demonstration. Burns posted over 100 comments to his open Facebook account, expressly asserting that the white race was supreme to other racial groups, and portrayed black and Jewish people as subhuman. He posted a reference to what purported to be a manual written by someone else which described ways to kill members

of one racial group. The Judge found that in posting the material to Facebook and delivering the speech Burns intended to incite racial hatred and he was convicted of two offences of inciting racial hatred (ss 18 and 19 Public Order Act 1986). He was sentenced to four years' imprisonment and a Criminal Behaviour Order was imposed for a period of six years. The devices used in the commission of the offence were forfeited.

This case awaits notification from the Court of Appeal as to whether leave will be granted for an appeal against conviction.

R v Sean Creighton

Police suspected that Sean Creighton may have been in possession of a firearm due to an image he posted on a social media platform. Upon review of Creighton's online activity, the police found that the majority of the material he posted was of a racist and hateful nature. Search warrants were executed at his home address and he was arrested. Police found a clear plastic box containing various stickers, badges and cards displaying extremist literature. On the laptop they found a document entitled 'White Resistance Manual Version 2.4' which provides extensive practical guidance on how to commit and fund terrorism and avoid detection.

He was charged with nine offences contrary to the Public Order Act 1986, four of inciting racial hatred, one of inciting hatred on the grounds of sexual orientation, two of intending to stir up religious hatred, one of possession of material intending to stir up religious hatred, two of possession of material intending to stir up racial hatred and one of collecting information likely to be of use to a terrorist, in relation to the White Resistance Manual (s58 TA 2000). He pleaded guilty to eight out of the ten offences and was sentenced to a total of five years' imprisonment with a 15-year Terrorism Act notification period.

R v Nigel Christopher Pelham

Mr Pelham was reported to the police for posting comments on Facebook that had 'shocked, angered and disgusted' the complainant. A review of his on-line activity was carried out by Sussex Constabulary and this found he was posting material of a threatening, religious and hateful nature and included the following: "look at these filthy goat fuckers in immigration street fucking burn all the muzzie filth" and "...we must burn mosques to the ground when they are full...have a burn a mosque to the ground day, kill a muzzrat day, set a muzzie on fire day..." His posts would regularly receive 'likes' or

'shares' along with comments from other users. Mr Pelham's internet history and communications data were examined and these indicated that he shared the ideology of the English Defence League and viewed Islam as an enemy.

In his interviews with police he said he was 'not a racist', he was 'a patriot who wanted his country back'. He also said, amongst other things, that he was alcohol dependant, suffered from PTSD and was on medication. He pleaded guilty to eight offences of publishing or distributing written material intended to stir up religious hatred (s29 Public Order Act 1986). He was sentenced to 20 months' imprisonment.

10.5. This brief reminder of cases concluded during 2017 perhaps serves to illustrate two principles: first, existing terrorism offences are used whenever commensurate with the criminal activity in a particular case, but second, there are existing terrorism offences which have fallen close to disuse, and there are non-terrorism statutory and common law offences which often describe the crime best and therefore should be used by prosecutors.

10.6. I have written about both of these principles during my time in post.¹⁵⁷ I am not the first so to do. My predecessor included within the Conclusion of his final annual report a section entitled 'The justification for special laws'.¹⁵⁸ In turn, this refers back to his 2012 report, in which he expressed the need for '*a root-and-branch review of the entire edifice of anti-terrorism law, based on a clear-headed assessment of why and to what extent it is operationally necessary to supplement established criminal laws and procedures*'. That said, he went on to conclude '*Despite the specific reservations I continue to express about the formulation and operation of the Terrorism Acts, the overall picture seems to me to be one of appropriately strong laws, responsibly implemented and keenly scrutinised by Parliament and by the courts*'.¹⁵⁹ I agree with these observations.

¹⁵⁷ See e.g. Max Hill QC, *Lecture to the Criminal Bar Association*, 19th September 2017 <https://terrorismlegislationreviewer.independent.gov.uk/lecture-to-the-criminal-bar-association-19th-september-2017/> and Max Hill QC, *Tom Sargant Memorial Lecture for JUSTICE*, 24th October 2017 <https://terrorismlegislationreviewer.independent.gov.uk/tom-sargant-memorial-lecture-for-justice-24th-october-2017/>.

¹⁵⁸ D. Anderson, *The Terrorism Acts in 2015*, December 2016, para 11.4 and following.

¹⁵⁹ *Ibid.*, para 11.10.

Special Advocates Support Office

- 10.7. As I have noted elsewhere (see paragraph 5.11 above), terrorism-related proceedings which involve Closed hearings require the considerable skills of security-cleared Special Advocates, all of them experienced barristers, supported by SASO which is staffed by lawyers employed by the Government Legal Department but who do not act for the Government or undertake other Civil Service work during their time at SASO.
- 10.8. It has been my privilege when acting in TPIM cases before my appointment as IRTL to come into contact with many of the SAs, supported by SASO. Their work is demanding, requiring mastery of volumes of intelligence and other secrets material which is presented in digestible form to the High Court Judges who superintend TPIMs. The SAs also perform the vital adversarial function of 'putting the defence case' to security and intelligence witnesses in Closed hearings, when the ordinary legal representatives for TPIM subjects are unable to appear.
- 10.9. I therefore give the highest commendation to SAs and SASO for oiling the wheels of justice in these complex hearings, and for rigorously upholding the twin gatekeepers to TPIM orders, namely necessity and proportionality.
- 10.10. This year, I have learned of a serious human resources issue within SASO, leaving the office literally unmanned at times and usually under-manned. This is a source of great concern to the senior SAs who brought the problem to me, and I have attempted to assist by conducting meetings within GLD to cure the blockage within SASO.
- 10.11. At the time of writing, I understand that GLD and senior SAs are involved in constructive dialogue, with a view to resolving any remaining human resources issues within SASO. I am pleased to note this progress, and leave the question of any further review in the hands of my successor.

11. CONCLUSIONS AND RECOMMENDATIONS

- 11.1. I have already set out my thanks to all who have worked with me during my time as Independent Reviewer. In this final Report, due for publication in the month that I leave my post, I have attempted to cover all of the legislation which I review, and to offer reflections or recommendations upon every issue that has occurred to me during 2017 and 2018, and in particular during the difficult times when we were all reacting to the terrorist atrocities in London and Manchester.
- 11.2. At the time of writing, no advertisement has yet appeared for the selection of my successor. This is a matter of regret, about which I have written on my website, because I would wish to facilitate a smooth transition from one Reviewer to another, which is something from which I benefitted when my predecessor stood down.¹⁶⁰
- 11.3. In the absence of an identified successor, I have attempted to include a number of suggestions – short of recommendations – for my successor to consider when he or she takes up this important role. As with my own predecessors, whoever comes next will have the full support of all who have gone before, and I wish them well in all of their work.
- 11.4. The necessary delay between presentation of these reports to the Home Office and eventual publication means that I am unlikely to be able to offer any further public comment. My last day in post is Friday 12th October 2018. Any frustration over timing has prompted me to look at the provisions for publications which are enjoyed by my nearest international equivalent, the Australian Independent National Security Legislation Monitor, Dr James Renwick SC. On enquiry, I note that the Australian statutory provisions mandate that Dr Renwick's Annual Reports must 'be presented to each House of the Parliament within 15 sitting days of that House after the day on which the relevant Minister receives the report'. I accept of course that this fifteen day limit should not operate until after the necessary fact- and security checking of my Reports which I have recognised above. However, the comparative delay before final publication in this country, when placed next to Australia, is remarkable. Perhaps my successor will feel it appropriate to press for adoption of the Australian statutory rules.

¹⁶⁰ <https://terrorismlegislationreviewer.independent.gov.uk/irtl-update/>

11.5. For ease of reference, I now provide a list of my formal recommendations, which are to be found in the body of this report.

Major terrorist attacks in 2017

- 1) I **recommend** that lessons are learned from Manteline, with a view to considering resilience and resources in circumstances where there may be multiple ongoing serious terrorism investigations. Physical and financial resource is not a matter for me, but learned experience always helps to reveal whether statutory powers are sufficient for current times. In my strong view, the maximum fourteen days pre-charge detention remains long enough. Any move to reconsider or to amend these provisions would call for wide scrutiny and debate.
- 2) The Police should consider and reflect upon the community impact of a large-scale investigation, centring as it did on particular areas of Manchester with a large Muslim population. I have reflected community views in the Forward Thinking Building Bridges Report published in July 2017.¹⁶¹ Good community policing, as well as good counter-terrorism policing, demands that real efforts are made to work within and with local communities, where many blameless residents will have been inconvenienced if not traumatised by the regular appearance of Police search and arrest teams on their street or in their home. I would like to see the outcome of Police reflections on this aspect of Manteline. My most recent visit to Manchester, in early September, will lead to a further Forward Thinking report which may provide further assistance. My observations in this paragraph should be linked to a **review** of Manteline so far as it involved collateral damage so as to necessitate the payment of compensation to one arrested person, namely Subject G.
- 3) I **recommend** that the police should review and where necessary improve their understanding of arrest and search provisions, a review which is facilitated by the complex and dynamic investigations into the terrorist attacks of 2017.

¹⁶¹ Forward Thinking, *Community Roundtables: A report on the aftermath of the terrorist attacks in London and Manchester*, July 2017.

- 4) I repeat my recommendation from my Classific Report that greater thought and clarity be given to the question whether and when it is necessary to transport a detainee sometimes hundreds of miles from their place of arrest. I anticipate that this recommendation will include consideration of TACT custody suite capacity, the availability and deployment of police interview teams, an assessment of the significance of individual Subjects to the investigation as a whole, and perhaps other factors.

Executive Orders (TPIMs)

- 5) One ever-present feature of TRGs is careful consideration of the absconsion risk posed by a TPIM subject. I **recommend** a review of the test for relaxation of abscond risk. Given the presence of multiple ongoing TPIM measures, is it necessary for absconsion risk to remain as originally set (at the outset of the TPIM) unless and until there is specific information as to lack of /reducing risk? Should a more flexible approach be taken?
- 6) I **recommend** a review of the necessity to relocate in every TPIM case henceforward.
- 7) The question arises whether proof of the TPIM subjects' personal awareness of a variation refusal may be sufficiently demonstrated by service of a refusal letter on the TPIM subject's solicitor. In my view, solicitors who provide a valuable service in representing subjects throughout the potential two-year life of a TPIM should not be drawn in to the evidential chain in respect of any breach proceedings. Therefore, I **recommend** that any existing guidance is clarified in terms that personal service upon the TPIM subject him/herself will always be required where knowledge of any TPIM measure or other relevant fact is germane to breach proceedings in the Crown Court.
- 8) I **recommend** that local authorities including their Social Services departments should be appropriately briefed on TPIMs wherever relevant and necessary, with suitable limitations upon the use of any information provided.
- 9) TPIMs are here to stay for the foreseeable future, and I **recommend** ever more flexible use of the available measures, specifically including the comparatively low-cost option of a non-relocation TPIM.

Port and border controls

- 10) In the absence for the time being of a reasonable suspicion threshold, I **recommend** that these advances in the Code of Practice be at least enshrined in the adoption of a universal threshold, namely 'reasonable grounds to support' the exercise of Schedule 7 powers by the application of the criteria within the Code of Practice.
- 11) I note, in conversation with officers, the desirability of further training and capacity building on the use of software permitting rapid download of digital devices.
- 12) Having discussed police training on the use of screening questions, which are not an exercise under Schedule 7, there may be merit in considering the extent and number of permissible screening questions, where they do not lead to the use of Schedule 7 detention. At the moment, the fact of screening questions is not routinely recorded, therefore statistics do not exist. However, there is an argument that careful screening questions reduce traveller interference overall, because of the lower use of detention powers. This requires careful consideration, which I commend to my successor.
- 13) As a matter of training, there should be clarity around the importance and relevance of using Schedule 7 for domestic flights/travel as well as international flights/travel.

**ANNEX 1: ORGANISATIONS WHO MET THE INDEPENDENT REVIEWER DURING HIS VISIT
TO BELFAST, NORTHERN IRELAND, FEBRUARY 2018**

KRW Law Solicitors

Committee on the Administration of Justice

Amnesty International NI

Belfast Islamic Centre

Community Restorative Justice Ireland

NI Alternatives

Northern Ireland Council for Ethnic Minorities

ANNEX 2: THE INTELLIGENCE BACKGROUND RELATING TO THE MANCHESTER ARENA AND LONDON BRIDGE TERRORISTS

David Anderson QC, *Attacks in London and Manchester: Independent Assessment of MI5 and Police Internal Reviews*, December 2017.¹⁶²

Salman Abedi (Manchester)

Abedi: summary

- 2.30. Like Khalid Masood (but 30 years younger), Salman Abedi was a closed SOI at the time of his attack, and so not under active investigation. MI5 nonetheless came by intelligence in the months before the attack which, had its true significance been properly understood, would have caused an investigation into him to be opened. It is unknowable whether such an investigation would have allowed Abedi's plans to be pre-empted and thwarted: MI5 assesses that it would not.
- 2.31. Salman Abedi was also identified by a separate data-washing exercise (see 2.38 below) as falling within the small number of closed SOIs who most merited further consideration. Unfortunately, the timing of that exercise was such that the meeting scheduled to consider the results of this process had not been held as of the date of the attack.

Abedi: personal life

- 2.32. Salman Abedi was born in Manchester in 1994, to parents who had been granted asylum after fleeing the Gaddafi regime in Libya. He was the second of six children, the third being his brother Hashem who is currently in detention in Libya and the subject of an extradition request.
- 2.33. Given the possibility of a trial, nothing more is said here about Hashem or about the pre-attack phase (which involved the purchase of ingredients and the manufacture of an explosive device), save to note that Salman Abedi was in Libya between 15 April and 18 May 2017, four days before the attack.

¹⁶² The text in this Annex is copied directly from the Anderson Report, December 2017. All footnotes therefore refer to the Anderson Report.

Abedi: police history

- 2.34. Salman Abedi's criminal record is limited to reprimands for theft and receiving stolen goods in 2012, and an assault on a female while at college which was dealt with by restorative justice.

Abedi: MI5 history

- 2.35. Salman Abedi was first actively investigated in January 2014, when it was thought that he might have been an individual who had been seen acting suspiciously with an SOI. Although he knew the SOI in question, he turned out not to have been the individual seen with him, and his record was closed in July 2014. He was classed as a closed SOI of low residual risk, given his limited engagement with persons of national security concern.
- 2.36. Salman Abedi was again opened as an SOI in October 2015, on the basis of his supposed contact with a Daesh figure in Libya, but he was closed as an SOI on the same day when it transpired that any contact was not direct.
- 2.37. Although he remained a closed SOI until the day of the attack, Salman Abedi continued to be referenced from time to time in intelligence gathered for other purposes. On two separate occasions in the months prior to the attack, intelligence was received by MI5 whose significance was not fully appreciated at the time. It was assessed at the time to relate not to terrorism but to possible non-nefarious activity or to criminality on the part of Salman Abedi. In retrospect, the intelligence can be seen to have been highly relevant to the planned attack.
- 2.38. Another tool promised well, but did not produce results in time. A process devised by MI5 to identify activity of renewed intelligence interest conducted by closed SOIs, using targeted data exploitation and other automated techniques, identified Salman Abedi as one of a small number of individuals, out of a total of more than 20,000 closed SOIs, who merited further examination. A meeting (arranged before the attack) was due to take place on 31 May 2017: Salman Abedi's case would have been considered, together with the others identified. The attack intervened on 22 May.

Khuram Butt (London Bridge)

Butt: summary

2.39. Khuram Butt, uniquely among the protagonists in the attacks under review, was a live SOI, under active investigation at the time of his attack. He was the principal subject of an MI5 investigation which I will refer to as Operation HAWTHORN,¹⁶³ opened in mid-2015 following information suggesting that he aspired to conduct an attack in the UK. Coverage of various kinds was put in place over a period of almost two years. Though it continued to varying degrees until the day of the attack, it did not reveal the plans of Khuram Butt and his two co-conspirators.

Butt: personal life

2.40. Khuram Butt was born in Pakistan in 1990. His family moved to England in 1998, claiming asylum based on political oppression: they were given indefinite leave to remain in 2004, and Khuram Butt was given British citizenship in 2005.

2.41. He was schooled in Forest Gate, East London, and attended a local sixth form college. Between 2012 and 2015 he worked as an office manager with a subsidiary of KFC. In 2013 he married the sister of a friend. The couple had a son born in October 2014 and a daughter born in May 2017, less than a month before the London Bridge attack.

2.42. Khuram Butt made a pilgrimage to Mecca in February 2015. He expressed frequent aspirations to travel from late 2015, including to Syria, but never again left England.

Butt: police history

2.43. Khuram Butt had no criminal convictions. He received cautions for offences in 2008 and 2010.

2.44. In January 2016, he was identified posing with a Daesh flag in the Channel 4 television documentary, "The Jihadis Next Door". The police reviewed the documentary and deemed that no criminal offences had been committed, a judgement subsequently endorsed by the Crown Prosecution Service (CPS).

¹⁶³ Not being authorised to use the real name of this operation, I follow the course taken by the ISC, in its report into the murder of Lee Rigby, of using instead the name of a tree.

- 2.45. While under investigation by MI5, Khuram Butt was arrested for fraud in October 2016 and granted bail. He had not yet been told by 3 June 2017, the date of the attack, that on 1 June the decision had been taken not to prosecute him.
- 2.46. Khuram Butt was identified as the suspect for a common assault against a member of the Quilliam organisation in July 2016. The victim was unwilling to press charges, and delays resulted in the statutory time limit for summary offences being exceeded. No judicial disposal was therefore possible.

Butt: MI5 history

- 2.47. From mid-2015 until the date of the attack, Khuram Butt was the principal subject of Operation HAWTHORN, an MI5 investigation which was opened following information suggesting that he aspired to conduct an attack in the UK. As part of the prioritisation system used for ongoing operations, HAWTHORN was graded P2H, signifying high risk extremist activity linked to attack planning.¹⁶⁴ A significant amount of coverage was put in place following the initial reporting. In September 2015, a potential lone actor triage assessment concluded that Butt represented a MEDIUM risk due to his strong intent but weak capability.¹⁶⁵
- 2.48. From late 2015 to early 2016 there was no further indication of attack-planning, and Khuram Butt appeared to be disengaging from former associates in ALM. His focus seemed to be moving towards overseas travel, including potentially to Syria to fight with Daesh or to another Arabic-speaking country to learn the language. MI5 took steps to ensure that it would be aware of an intent to travel. HAWTHORN was suspended from February to April 2016 because of resourcing constraints in the wake of the Bataclan attack in Paris.¹⁶⁶ Spring 2016 saw further aspirations to travel (to other countries in the Middle East and/or Africa) and to raise money for travel, but no

¹⁶⁴ For an explanation of the prioritisation system see 1.22 above.

¹⁶⁵ MI5 and CT Policing assess SOIs against certain criteria to establish whether the SOI poses a lone actor threat. A risk assessment (on a scale of no to high, plus unresolved which indicates that more intelligence is required) is then agreed following discussion with MI5's behavioural science team.

¹⁶⁶ In order to focus investigative resources on the highest risks, it is sometimes necessary to suspend temporarily live investigations that MI5 assesses to carry lower risk. Suspending a live investigation is a formal decision with established processes and review mechanisms. A suspended investigation is not subject to pro-active investigative steps, and there is no regular review of incoming intelligence associated with it. Accordingly, a decision to suspend an investigation for any length of time is taken in consultation with MI5 senior managers.

longer any indication that travel would be for extremist purposes. MI5 took the decision not to prevent any planned overseas travel.

- 2.49. In the second half of 2016, Khuram Butt re-engaged with ALM and was believed to be involved in bank fraud. HAWTHORN was downgraded from P2H to P2M in September.¹⁶⁷ After his arrest for fraud in October (2.45 above), Butt began a period of withdrawal from ALM and increased his operational security.
- 2.50. Early in 2017, Khuram Butt worked at the Ummah Fitness Centre, developed links with extremist associates (including his co-conspirator Rachid Redouane, as transpired after the attack) and was identified as teaching a Qur'an class to young people (involving in this work his co-conspirator Youssef Zaghba, as also transpired after the attack). Concerned that he would use that opportunity to radicalise, MI5 and police worked together to try to identify and disrupt this activity.
- 2.51. On 21 March 2017, prior to the Westminster attack on the following day, investigation of Khuram Butt was suspended. Investigation of the other SOIs investigated under the operation had been suspended the previous week, due to resourcing constraints brought on by a large number of P1 investigations. Some intelligence however continued to be gathered, and analysis performed. In April 2017, when Operation HAWTHORN was still suspended, MI5 downgraded Khuram Butt's holding code from one that indicated he was likely to pose a threat to national security to one that indicated he might pose such a threat.¹⁶⁸ MI5 noted his continued extremist rhetoric but also uncertainty about whether he posed a threat to national security.
- 2.52. On 5 May 2017 Operation HAWTHORN was re-opened, with a view to considering whether the threat needed continued investigation or whether it could be closed and resources deployed elsewhere. Though HAWTHORN was likely to close unless significant developments were identified, consideration was given to what would happen to Khuram Butt thereafter. A number of options were identified including continued active investigation as part of another operation and monitoring as a closed SOI of medium residual risk.

¹⁶⁷ The grading of priority investigations is explained at 1.22 above, and in more detail in Annex 5.

¹⁶⁸ Holding codes are briefly explained at 1.25 above.

- 2.53. A second lone actor triage assessment (see 2.47 above) was completed on 15 May 2017. It concluded that the risk posed by Khuram Butt had moved from MEDIUM to UNRESOLVED and that further investigative options should be progressed in order better to understand the threat that he posed.
- 2.54. Material relating to Khuram Butt received in the two weeks prior to the attack on 3 June added little to the intelligence picture and did not identify the activity that led up to the attack. As of 3 June, the date of the attack, HAWTHORN remained a live investigation.

Butt: post-attack intelligence

- 2.55. Post-incident investigation has revealed periods of co-location between the three conspirators, most notably from December 2016. It is assessed that the relationships between Redouane and Butt and (tentatively) Zaghba and Butt may have started at the Ummah Fitness Centre. A meeting there on 7 March, attended by both Butt and Redouane, appears significant and may have related to an attempt by Butt to acquire a firearm.
- 2.56. Khuram Butt displayed strong operational security and much remains unknown, even today, about the mindset of the three conspirators and the planning of the attack.
- 2.57. CCTV footage from Khuram Butt's home address on the evening of the attack showed footage of Butt getting into a white van, hired earlier that day, with a large red holdall. Two males accompanied him. One of them carried chairs, perhaps to support a cover story that the van was required for moving furniture.

Rachid Redouane (London Bridge)

- 2.58. The following account, which I have not independently verified against the source documents, is paraphrased from the police review.
- 2.59. Rachid Redouane first came to the notice of the UK authorities in 2009, when he sought asylum under the false identity of a Libyan national. Asylum was refused and appeal rights exhausted. He last reported to immigration officials in April 2011, after which he was considered an absconder.

- 2.60. He was stopped and arrested in June 2012, again under a Libyan name, by Police Scotland as he attempted to travel to Northern Ireland by boat. At the time removals to Libya had been suspended on humanitarian grounds, so he was released from detention in Larne with conditions to reside in Dagenham and report to immigration authorities. His details were added to the Police National Computer in line with normal absconder procedures, but he was never tracked down.
- 2.61. Rachid Redouane had no other UK police record. Post-incident checks have revealed that he was known to Moroccan police, though not linked to terrorism.
- 2.62. Between 2013 and 2015 Redouane was in Morocco. In November 2014 he was issued with an Irish visa in Casablanca, using a passport which had been issued in 2013 by the Moroccan Embassy in London in the name of Rachid Redouane. In 2015 he travelled to Dublin, moved in with his Irish wife, and applied successfully for an EEA Family Permit and EEA residence card, sponsored by his wife.
- 2.63. At the time of the attack Redouane was living legally in the UK under his Moroccan identity, though the issue of his failed asylum claim under a Libyan identity had not been resolved.
- 2.64. Rachid Redouane was not investigated by MI5 or the police prior to the London Bridge attack. Before the attack, MI5 had received a number of strands of intelligence regarding a Moroccan male named "Rashid" who was assessed by MI5 to be a peripheral and social associate of Khuram Butt. Following the attack, analysis identified "Rashid" as Rachid Redouane.

Youssef Zaghba (London Bridge)

- 2.65. Youssef Zaghba was a dual national of Morocco and Italy. Born and brought up in Morocco, his parents had divorced and his mother returned to Italy.
- 2.66. DWP records show that Zaghba had been working legally in the UK since 30 June 2015. He last entered the UK on 12 January 2017. He is believed to have been single with no dependents. He had no UK, Italian or Moroccan criminal record, and had only come to the attention of police in the UK as a witness to an assault in 2016.

- 2.67. Post-incident reporting shows that during a stop at Bologna Airport in March 2016, Youssef Zaghba had said that he was travelling to Turkey as a “*terrorist*”, but quickly changed that to “*tourist*”. Further investigation in Italy revealed that he had expressed an interest in travelling to Syria to join Daesh and practice the “*Real Islam*”.
- 2.68. On 23 March 2016, the Italian authorities placed Youssef Zaghba on the SIS II warning list,¹⁶⁹ thereby potentially bringing him to the attention of the UK authorities at the border, but under a marker which identified him as subject to checks for serious crime. A different marker, which the Italian authorities did not use, would have automatically identified him as a national security risk. The marker was deleted by the Italian authorities on 23 January 2017: in the meantime, UK Border Force staff had noted him as passing through British ports on three occasions.
- 2.69. In June 2016, MI5 received through international channels an enquiry from the Italian authorities in relation to the incident at Bologna Airport and the subsequent intelligence about Youssef Zaghba’s desire to go to Syria. The Italian authorities requested traces on Zaghba (who they said spent parts of the year working in a London restaurant), and any contacts he had in the UK with individuals linked to Islamist extremism and/or with Italy.
- 2.70. MI5 has no record of responding to this enquiry, noting by way of possible explanation that it arrived in the incorrect mailbox in MI5. It was not chased up by the Italian authorities. The story is not a happy one: but as MI5 points out, even if the request had been actioned, it would have resulted in a nil return.
- 2.71. Youssef Zaghba was not investigated by MI5 or the police prior to the attack. Post-attack analysis identified him as a user of the Ummah Fitness Centre, and as a man whom Khuram Butt had introduced in February 2017 to the class he was teaching.

¹⁶⁹ SIS II is the second-generation Schengen Information System, an EU-wide IT system which helps facilitate European cooperation in law enforcement, border control and immigration.

ANNEX 3: NOTE ON THE DEFINITION OF TERRORISM UNDER THE TERRORISM ACT 2000, SECTION 1, IN THE LIGHT OF THE SALISBURY INCIDENT

Professor Emeritus Clive Walker

1 The problem and why does it matter?

What is state terrorism? There is plentiful excellent literature on the topic,¹⁷⁰ and the leading ‘academic consensus’ formula, proffered by Schmid and Jongman, includes state terrorism within its ambit:¹⁷¹

‘Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby—in contrast to assassination—the direct targets of violence are not the main targets.’

A starting point on state terrorism itself is as follows:¹⁷²

‘... terrorism as a tactic adopted by a state is the most prevalent and devastating form of all. Notable protagonists during the last century were Hitler and Stalin, whose policies resulted in far more deaths than all revolutionary terrorism before or since.’¹⁷³ State terrorism is not just the preserve of the great dictators but is a distressingly commonplace failing of democracies. Engagement in a ‘Dirty War’ is a charge sustained against the UK government not only during its historical colonial campaigns,¹⁷⁴ but also with contemporary

¹⁷⁰ Stohl, M., and Lopez, G.A., (eds.), *The State as Terrorist: The Dynamics of Governmental Repression and Violence* (London: Aldwych, 1984); Blakeley, R., *State Terrorism and Neoliberalism: The North in the South* (Oxford: Routledge, 2009); Jackson, R., et al (eds), *Contemporary State Terrorism: Theory and Practice* (Routledge, Abingdon, 2010); Duncan, G. et al (eds) , *State Terrorism and Human Rights: International Responses since the End of the Cold War* (Routledge, Abingdon, 2013).

¹⁷¹ Schmid, A., and Jongman, A., *Political Terrorism* (North-Holland, Amsterdam, 1987) p 28. See further Schmid, A., ‘Frameworks for conceptualising terrorism’ (2004) 16 *Terrorism & Political Violence* 197.

¹⁷² Walker, C.P., *The Anti-Terrorism Legislation* (3rd ed., Oxford University Press, Oxford, 2014) para.1.08.

¹⁷³ See Conquest, R., *The Great Terror* (Oxford University Press, Oxford, 2007).

¹⁷⁴ See *Mutua v Foreign and Commonwealth Office* [2012] EWHC 2678 (QB); *Keyu v Secretary of State for Foreign & Commonwealth Affairs* [2014] EWCA Civ 312.

revelations of degrading and inhuman treatment,¹⁷⁵ policies of shoot-to-kill,¹⁷⁶ and collusion with terrorists.¹⁷⁷

As the foregoing passage illustrates, the meaning of 'state terrorism' is not straightforward, and it cannot simply be paraphrased as 'terrorism by the state' or 'terrorism for the state'. One can generally assume that directly and officially authorised or ordered applications of unlawful violence for the purposes of the furtherance of state policies would readily fall within a definition of 'state terrorism'. But many occurrences of violence by state agents are less clear-cut. Arguments thereby arise around notions of 'collusion'¹⁷⁸ and the extent to which state agents have been encouraged or allowed (through inadequate laws, guidance, or supervision) to engage in acts of violence in furtherance of actions which those agents believe are for the

¹⁷⁵ See *(Compton) Report of an Enquiry into allegations against the security forces of physical brutality in Northern Ireland arising out of arrests on the 9 August 1971* (Cmnd.4828, London, 1972); *(Parker) Report of the Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism* (Cmnd.4901, London, 1972); *(Bennett) Report of the Committee of Inquiry into Police Interrogation Procedures in Northern Ireland* (Cmnd.7497, London, 1979); *Ireland v United Kingdom* App no 5310/71, Ser A 25 (1978); Gage, Sir W., *Report of the Baha Mousa Inquiry* (2010–12 HC 1452).

¹⁷⁶ See Independent Police Complaints Commission, *Stockwell One and Stockwell Two* (London, 2007); Lord Saville, *Report of the Bloody Sunday Inquiry* (2010–12 HC 29).

¹⁷⁷ See Cory Collusion Inquiry Reports, Billy Wright (2003–04 HC 472), Pat Finucane (2003–04 HC 470), Robert Hamill (2003–04 HC 471), Rosemary Nelson (2003–04 HC 473); Police Ombudsman for Northern Ireland, *Statement by the Police Ombudsman for Northern Ireland on her investigation into the circumstances surrounding the death of Raymond McCord Jr and related matters* (Belfast, 2007); Police Ombudsman for Northern Ireland, *RUC Investigation of the alleged involvement of the late Father James Chesney in the bombing of Claudy on 31 July 1972* (Belfast, 2010); Morland, Sir M., *Rosemary Nelson Inquiry* (2010–12 HC 947); de Silva, Sir D., *Report of the Patrick Finucane Review* (2012–13 HC 802).

¹⁷⁸ See Punch, M., *State violence, collusion and the troubles* (Pluto Press, London, 2012); Cochrane, M., 'Security Force Collusion in Northern Ireland 1969–1999' (2013) 36 *Studies in Conflict & Terrorism* 77.

state's good.¹⁷⁹ Such collusive activity has been the subject of many reports in Northern Ireland¹⁸⁰ and more recently in relation to extraordinary detentions and renditions.¹⁸¹

Why does it matter? Is it of practical or legal significance that an incident or attack should be called 'state terrorism' or not? The answer is that the label can bear several important impacts as follows.

First, the depiction of an action as 'terrorism' triggers numerous special powers or other provisions. Most notable are the policing powers in Part V of the Terrorism Act 2000. An arrest of a terrorism suspect under section 41 is permitted on grounds broader than for normal policing powers, and, once applied, the arrestee becomes subject to enhanced powers of investigation such as extended detention and forensic testing. These powers might be viewed as repressive and should be limited as far as possible, including by a restrictive definition of terrorism.¹⁸² However, the powers have been upheld as consistent with the European Convention on Human Rights¹⁸³ and are just as relevant to state terrorism as to non-state terrorism. Investigations are likely to be highly complex, involving inquiries with other UK agencies and the agencies of other states. States may also enjoy access to materials and facilities, such as chemical weapons or

¹⁷⁹ This formula would exclude, for instance, Ciarán Maxwell, a serving soldier who was convicted for the supply of weapons to the Continuity IRA for purposes which he viewed as contrary to state interests: *The Times* 1 August 2017 p.5 (CCC). He was sentenced to 18 years imprisonment under the Terrorism Act 2006, s.5.

¹⁸⁰ See especially Lord Saville, *Report of the Bloody Sunday Inquiry* (2010–12 HC 29); Lord MacLean, *Billy Wright Inquiry Report* (2010–12 HC 431); Morland, Sir M., *Rosemary Nelson Inquiry* (2010–12 HC 947); de Silva, Sir D., *Report of the Patrick Finucane Review* (2012–13 HC 802); Robert Hamill Inquiry (<<http://www.roberthamillinquiry.org>>). Cadwallader, A., *Lethal Allies: British Collusion in Ireland* (Cork: Mercier Press, 2013).

¹⁸¹ See Cabinet Office, *Consolidated Guidance to Intelligence Officers and Service Personnel on the Detention and Interviewing of Detainees Overseas, and on the Passing and Receipt of Intelligence Relating to Detainees and Note of Additional Information* (London, 2010) Foreign & Commonwealth Office, *Torture and Mistreatment and Reporting Guidance* (London, 2011) and *Overseas Security and Justice Assistance Guidance* (London, 2017); Sir Peter Gibson, *The Report of the Detainee Inquiry* (Cabinet Office, London, 2013); *Belhaj v Straw and others; Rahmatullah (No 1) v Ministry of Defence* [2017] UKSC 3 and Hansard (House of Commons) vol.640 col.926 10 May 2018 (Belhaj case); Intelligence and Security Committee, *Detainee Mistreatment and Rendition: 2001–2010* (2017-19 HC 1113) and *Detainee Mistreatment and Rendition: Current Issues* (2017-19 HC 1114).

¹⁸² *R v Gul* [2013] UKSC 64, para.63.

¹⁸³ See *Brannigan and McBride v United Kingdom*, App. nos.14553/89; 14554/89, 25 May 1993; *Magee, Duffy, and Magee v United Kingdom*, App no 26289/12, 29062/12, 29891/12, 12 May 2015.

data encryption, which are more sophisticated than those of non-state terrorists, and so the police forensic investigations will have to be elongated.

Conversely, if a form of state-sponsored attack is deemed not to amount to terrorism, then the denial of these special powers might be keenly felt, giving rise to the perceived need for a parallel set of special powers to enable the authorities to counteract a state's nefarious activities. This alternative scenario lies at the heart of the proposed Part II of the Counter Terrorism and Border Security Bill 2017-19.¹⁸⁴ Thus, Part II largely reproduces existing formulae in the Terrorism Act 2000, Schedule 7. However, the powers are applied to the notion of 'hostile activity' rather than 'terrorism', a term which Part II prefers to avoid. Under Schedule 3 paragraph 1(5), 'A person is or has been engaged in hostile activity for the purposes of this Schedule if the person is or has been concerned in the commission, preparation or instigation of a hostile act that is or may be - (a) carried out for, or on behalf of, a State other than the United Kingdom, or (b) otherwise in the interests of a State other than the United Kingdom.' Under paragraph 1(6) 'An act is a "hostile act" if it - (a) threatens national security, (b) threatens the economic well-being of the United Kingdom, or (c) is an act of serious crime.' The individual and the state may be unwitting perpetrators of hostile acts, but presumably not both at the same time. 'Serious crime' is defined in paragraph 1(7) to mean an offence where a person who has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of 3 years or more or when 'the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose. No definition is given of national security or economic well-being, so the Bill's Explanatory Memorandum states that they bear their 'ordinary meaning'.¹⁸⁵ The first criticism of this terminology is its vague nature - that it lacks legality. The term, 'hostile activity' has not been used in the UK beyond war-related legislation, such as the Civil Defence Act 1939 and the Geneva Conventions Act 1957.¹⁸⁶ The Home Office *ECHR Memorandum* seeks to justify on the argument that restrictions even on the basis of mere suspicion are possible at ports where people present themselves,¹⁸⁷ though the precedent cited, *Beghal v DPP*,¹⁸⁸ was not based on 'hostile activity' which is vaguer than the terms 'terrorism' or even 'national security'. It is also true that terms such as 'national security' and 'economic well-being' are not defined in other legislation (such as the Security Service Act 1989, s.1). But the

¹⁸⁴ HC no.219.

¹⁸⁵ CT&BS Bill Explanatory Memorandum, para.132.

¹⁸⁶ But the term did appear in a narrower form in the (Australian) Crimes (Foreign Incursions and Recruitment) Act 1978 which was replaced by the Counter Terrorism Legislation Amendment (Foreign Fighters) Act 2014.

¹⁸⁷ Home Office, *ECHR Memorandum* (2018) paras.72-76.

¹⁸⁸ [2015] UKSC 49.

need for clarity grows when the terms are used for powers designed to restrict individual liberty and privacy rather than tasking arrangements for organisations. Second, the powers are disproportionate – Part II goes beyond the mischief identified by the *Impact Study* related to the Bill, which again claims that the Salisbury attack shows the need for legislation.¹⁸⁹ If that is the real mischief behind Part II, then the powers should be confined to powers to stop, question and detain without reasonable suspicion on the basis that the person has information, or is carrying materials or data, which might relate to crimes under the Official Secrets Acts 1911-89 or CBRNE crimes or proliferation. Given the broad powers to stop, question, search and rummage in the Immigration Act 1971 and the Customs and Excise Management Act 1979, as well as powers under PACE, added to the powers in Schedule 7, it is most doubtful that any extra powers are necessary. But confinement to the two purposes specified above would ensure much greater legal certainty and would better secure proportionality for the identified threat of state inspired terrorism or other criminal activity. It would also help to deliver the expectations of the Home Office *Impact Assessment* which predicts that the usage of Part II will be very low.¹⁹⁰ In this way, the broad powers are not needed in practice and might result in excessive usage, especially in the context of the Northern Ireland border.

Why then go to the trouble of passing Part II against state terrorism when it seems that Schedule 7 could already deal with it, assuming that state terrorism really is ‘terrorism’ under the Terrorism Act 2000. The explanation is not that the government has expressly denied that that the Salisbury attack amounted to a form of terrorism. Rather, ‘diversion’ is a better explanation for the rolling out of Part II of the Bill. One element of ‘diversion’ relates to the claim that the events in Salisbury mainly drove this initiative. In reality, the counter measures to the Skripal incident have already been taken well previous to the Bill. The government’s principal response consisted of diplomatic expulsions. Parliament later added sanctions based on gross violations of human rights, akin to the US Magnitsky Act.¹⁹¹ In fact, ideas around the extension of port controls arose long before the Skripal incident and can be located in the litigation around the case of *Miranda v Secretary of State for the Home Department and the Commissioner of the Police of the Metropolis*.¹⁹² The facts of the case involving David Miranda,

¹⁸⁹ Home Office, *Impact Study* (IA HO0308, 2018) para.153. The Minister of State refers to two inappropriate uses of Sched.7 but without details: Hansard (House of Commons), vol.642 col.684 11 June 2018, Ben Wallace.

¹⁹⁰ Home Office, *Impact Study* (IA HO0308, 2018) para.156.

¹⁹¹ See Hansard (House of Lords) vol.791 col.899 21 May 2018. See Moiseienko, A., ‘A UK Magnitsky Act: would it work?’ (RUSI, London, 2018).

¹⁹² [2014] EWHC 225; [2016] EWCA Civ 6. See M. Zander, ‘Schedule 7 of the Terrorism Act 2000’ (2014) 178 *Justice of the Peace* 151.

who was transporting from Berlin computer materials (including files from the Government Communications Headquarters) supplied by Edward Snowden to journalist Glenn Greenwald in Rio de Janeiro,¹⁹³ will be considered later. The materials were seized during an examination and detention under the Terrorism Act 2000, Schedule 7, of Miranda while he was transiting through Heathrow Airport in 2013. The police interception was mainly upheld by the courts,¹⁹⁴ but enough doubt was cast on the operation and whether it could truly fall under the aegis of 'terrorism' to suggest that some clarification might be required for future operations against threats to security which were not truly terrorism based.¹⁹⁵ This diversion as to cause feeds into diversion as to impact. The extremely broad powers relating to 'hostile activity' go way beyond any counteraction required by alleged Russian skulduggery. Part II is far more likely to impact on journalists, visiting protesters, and foreign dissidents than on spies not only skilled in tradecraft but also shielded by diplomatic immunity.

A second legal impact of the labelling of an incident as 'terrorism' relates to the Reinsurance (Acts of Terrorism) Act 1993.¹⁹⁶ Section 1 confers reinsurance powers on the Secretary of State, backed by public moneys, though the vehicle for implementing that policy, Pool Re, is not mentioned as such. Section 2 outlines the reinsurance arrangements to which the Act applies, namely, loss or damage (direct and consequential) to property in Great Britain resulting from acts of terrorism. The Act does not closely define 'damage' or 'property', but personal injury is not covered (since it can be the subject of claim to the Criminal Injuries Compensation Authority).¹⁹⁷ By section 2(2), 'acts of terrorism' means 'acts of persons acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of Her Majesty's government in the United Kingdom or any other government *de jure* or *de facto*'. This definition is narrower than the Terrorism Act 2000, section 1, standard since it delimits the perpetrator to an 'organisation' which, by section 2(3) includes 'any association or combination of persons'. The 1993 Act definition is also narrower in that the purpose is confined

¹⁹³ See further Greenwald, G., *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State* (Metropolitan Books, New York, 2014).

¹⁹⁴ See Walker, C., 'Investigative Journalism and Counter Terrorism Laws' (2017) 31 *Notre Dame Journal of Law, Ethics and Public Policy* 129.

¹⁹⁵ See Wright, O., 'Widen anti-terror legislation, former Met Police chief demands' *The Independent* 26 August 2013 p.1: Lord Blair calls for a review of the law: 'Most of the legislation about state secrets is in the Official Secrets Act and it only concerns an official. I think there is going to have to be a look at what happens when somebody possesses material which is secret without having authority.'

¹⁹⁶ See Bice, WB, 'British government reinsurance and acts of terrorism' (1994) 15 *University of Pennsylvania Journal of International Business Law* 441; Walker, C, 'Political violence and commercial risk' (2004) 56 *Current Legal Problems* 531.

¹⁹⁷ <https://www.gov.uk/government/organisations/criminal-injuries-compensation-authority>.

to the terrorizing of governments and not the public. In practice, the application of the definition to a given event is settled by a certificate from HM Treasury. Despite their limitations, these definitions do not explicitly rule out reinsurance for state terrorism – a state is surely an ‘organisation’. Assuming Russian state agencies were the perpetrators of the Salisbury attack, as is alleged by the UK government, were they not acting as part of an organisation and also making a political point about the consequences of treason or defection by Russian agents or even a more general political point (about their capabilities and determination to punish anti-Russian actors anywhere in the world)?

The statutory reinsurance scheme was inaugurated in order to give confidence to the commercial property insurance market which might otherwise risk catastrophic losses from terrorism damage. In practice, the costs of the Pool Re scheme make it appealing only to large commercial enterprises rather than SMEs.¹⁹⁸ However, following the Salisbury attack in March 2018, Pool Re announced that ‘The Salisbury incident is not terrorist in nature and is unlikely to be certified as a terrorist attack by the UK Government’.¹⁹⁹ No explanation or justification was given for this startling assertion, and the announcement was followed by a lengthy discussion of the Salisbury incident, even though it was said to fall outside the scheme. What makes the assertion even more wayward is the Pool Re has taken steps to extend reinsurance to CBRN coverage, while the need for coverage of losses from interruption to business not consequential on physical damage (such as because of ongoing police investigations) is also the subject of pending amendment in the Counter Terrorism and Border Security Bill 2017-19, clause 19. Pool Re had lobbied to close this gap in the light of the London Bridge incident.²⁰⁰ Yet, at the same time as it has taken action to extend the scheme, Pool Re’s attitude to the plight of businesses in Salisbury is starkly dismissive, even though eight businesses remain closed and trade is down up to 50% in central Salisbury.²⁰¹ No doubt, the situation has not improved after further traces of Novichok were stumbled upon in July 2018, resulting in the death of Dawn Sturgess and further areas and buildings being closed to public access pending investigation and decontamination.²⁰²

¹⁹⁸ Cooper, L., and O’Connor, A., ‘How one insurer prices the risk of terrorism’ <http://www.bbc.co.uk/news/business-42991396>, 12 February 2018.

¹⁹⁹ *Terrorism Frequency 2/2018*, p.12.

²⁰⁰ Pool Re, *Terrorism Threat & Mitigation Report January – July 2017* (TMR-2-17). Pool Re, *Terrorism Frequency Report 1/2018*.

²⁰¹ Pool Re, *Terrorism Frequency 2/2018*.

²⁰² See <https://www.bbc.co.uk/news/uk-44947162>; <http://www.wiltshire.gov.uk/salisbury-amesbury>. A special grant of £2.5m has been made to support businesses, boost tourism and meet unexpected costs in recognition of the exceptional response and recovery effort in Salisbury: <http://www.wiltshire.gov.uk/news/articles/government-funding-salisbury>.

A third impact of labelling as ‘terrorism’ concerns the impact on individual (non-corporate) victims. If they are treated as ‘terrorist’ victims, then some special benefits might ensue which do not apply to victims of other crimes. For instance, the Victims of Overseas Terrorism Compensation Scheme arises under the Crime and Security Act 2010, with the result that compensation can be made from UK coffers rather than at overseas country rates (if available at all). More broadly, the cross-Government Victims of Terrorism Unit was established in March 2017 to improve support to victims, witnesses, and bereaved families.²⁰³ The Home Office has published guidance on helplines and support for terrorism victims, ranging from mental health to welfare benefits.²⁰⁴ If an incident is not treated as terrorism, then these benefits are not conferred, leaving individuals to deal with, at best, *ad hoc* schemes or interventions or, at worst, no specialist help.

The legislative position on state terrorism

The next question to be tackled in this paper is whether state terrorism falls within the scope of the key definition in the Terrorism Act 2000, section 1. Section 1 states as follows:²⁰⁵

‘(1) In this Act ‘terrorism’ means the use or threat of action where

- (a) the action falls within subsection (2),
- (b) the use or threat is designed to influence the government or an international governmental organization or to intimidate the public or a section of the public, and
- (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.’

No limitation appears on the face of this text about the nature of the political objectives being pursued by terrorism or about the nature of the perpetrator. Though the historical context of the legislation was primarily drawn from the experience of non-state terrorism (both from Irish and also, increasing in threat by 2000, international sources), there is no reference within section 1 to the agency by which terrorism is to be delivered. Thus, section 1 does not specify only ‘non-state’ terrorism, nor does it exclude ‘state’ terrorism whether as sponsor or perpetrator. Incidentally, unlike some definitions, it does not place limits on organisational formations (though this aspect

²⁰³ Home Office, *CONTEST* (Cm.9608, London, 2018) para.92.

²⁰⁴ <https://victimsofterrorism.campaign.gov.uk/>.

²⁰⁵ See generally Walker, C., ‘The Legal Definition of “Terrorism” in United Kingdom Law and Beyond’ [2007] *Public Law* 331; Walker, C.P., *The Anti-Terrorism Legislation* (3rd ed., Oxford University Press, Oxford, 2014) chap.1.

does apply to proscription under Part II which refers to ‘organisations’).²⁰⁶ As a result, groups or ‘lone wolves’ can commit terrorism, except under Part II.

Turning from the text itself to the legislative history, the message was that section 1 is purposefully wider than its predecessors.²⁰⁷ The *Lloyd Report*, in the light of which the Terrorism Act 2000 was formulated, mainly talked about the up and coming threats of international and domestic terrorism. Therefore, it concluded that ‘it makes sense that the new legislation should contain a definition which covers all forms of terrorism’ and that ‘political in a broad sense’ should be covered by the legislation.²⁰⁸ The Government Response paper signalled as follows:²⁰⁹

‘... the Government has come to the conclusion that any new counter-terrorism legislation should be designed to combat serious terrorist violence of all kinds. It proposes therefore that the powers in the new legislation should be capable of being used in relation to any form of serious terrorist violence whether domestic, international or Irish.’

Parliamentary debates on the Terrorism Act 2000 touched on state terrorism at several points. Thus, the example of the Lockerbie airline bombing (alleged to be the work of Libyan state agents)²¹⁰ was cited as an example of state-sponsored terrorism. The then Home Office Minister, Charles Clarke, commented that:²¹¹

‘One of the sadder experiences of my life was to be at the memorial service in the church in Lockerbie following the awful disaster there. I can only endorse the thrust of his remarks that it is important that our legislation inhibits the ability of anyone to prosecute acts that cause such terror and disaster.’

Following Royal Assent, the section 1 definition has been subject to reviews by successive Independent Reviewers of Terrorism Legislation (Lords Carlile and Anderson) and by the courts.

²⁰⁶ By s.121, “organisation” includes any association or combination of persons’.

²⁰⁷ See *Inquiry into Legislation against Terrorism* (Cm 3420, London, 1996) (‘Lloyd Report’) para 5.22.

²⁰⁸ *Ibid.*, paras.5.21, 5.22.

²⁰⁹ Home Office and Northern Ireland Office, *Legislation against Terrorism* (Cm 4178, London, 1998) para.3.16.

²¹⁰ See *HM Advocate v Megrahi (No 4)* 2002 JC 99; *Megrahi v HM Advocate* [2008] HCJAC 58.

²¹¹ Hansard (House of Commons) Standing Committee D, col 31, 18 January 2000, Charles Clarke.

In his review of the definition of terrorism in 2007, Lord Carlile voiced no objections to the encompassing of state terrorism within section 1 but pointed to other factors as more relevant to its handling in that context.²¹²

'83. I have received several representations to the effect that the definition should make it clear that State actors are just as liable to be caught by the definition of terrorism as anyone else. Thus if the heads of government of countries perceived by some or many to be guilty of state terrorism were to enter our jurisdictions they would be liable to prosecution.

84. I can see the attraction of the argument. Nobody should be above the law, however exalted their status, be they foe or ally. However, I have concluded that this is not an issue of definition, but one of jurisdiction. Diplomatic immunity ensures that diplomats and Ministers are given safe passage and are considered not susceptible to prosecution under the host country's laws. Currently founded on the Vienna Convention on Diplomatic Relations [1961], it has a much longer history in international law. This report is not the appropriate place for recommending change to a doctrine fundamental to relations between sovereign states.

85. Diplomatic immunity as an institution has developed to allow for the maintenance of government relations, including during periods of difficulties and even armed conflict. The importance of such channels continuing even between sworn enemies and to a background of disapproval probably outweighs the morality based desire to make no difference between state and non-state actors.'

The Home Office's general response to Lord Carlile was that that the definition remains 'comprehensive and effective',²¹³ so only minor changes followed in the Counter Terrorism Act 2008. As for the specific issue of state terrorism, the governmental view was that 'Diplomatic immunity is a vital means of maintaining government relations, including in periods of difficulty and armed conflict'.²¹⁴

²¹² Lord Carlile, *The Definition of Terrorism* (Cm.7052, London, 2007).

²¹³ *The Government Reply to the Report by Lord Carlile of Berriew Q.C., Independent Reviewer of Terrorism Legislation, The Definition of Terrorism* (Cm 7058, London, 2007) para.4.

²¹⁴ Government Reply to the Report by Lord Carlile of Berriew Q.C., Independent Reviewer of Terrorism Legislation, *The Definition of Terrorism* (Cm 7058, London, 2007) para.16.

The successor IRTL, Lord David Anderson, twice considered the definition of terrorism at some length. His report on *The Terrorism Acts in 2012* was confined to self-contained changes not directly relevant to this debate.²¹⁵ Of greater relevance, his report on *The Terrorism Acts in 2013* asked, 'Can a state, or agents of the state, or state-sponsored groups, commit acts of terrorism?'²¹⁶ A wide-ranging discussion followed, but there were no recommendations on this specific point. In reply, the governmental view was that time is not right to make changes.²¹⁷ There has been no sign since that the official view has altered. While the changes recommended by Lord Anderson would still be worthwhile, this paper proceeds on the basis of section 1 as given rather than proposing any amended version. On that basis, the better view seems to be that state terrorism can fall within the legal definition of 'terrorism'.

That verdict also seems to be consistent with court interpretations in two leading domestic precedents. First, in *R v Gul*,²¹⁸ there was criticism of the breadth of the definition and the consequent need to rely on prosecutorial discretion to keep the definition under suitable restraint:

'The Crown's reliance on prosecutorial discretion is intrinsically unattractive, as it amounts to saying that the legislature, whose primary duty is to make the law, and to do so in public, has in effect delegated to an appointee of the executive, albeit a respected and independent lawyer, the decision whether an activity should be treated as criminal for the purposes of prosecution. Such a statutory device, unless deployed very rarely indeed and only when there is no alternative, risks undermining the rule of law. It involves Parliament abdicating a significant part of its legislative function to an unelected DPP, or to the Attorney General, who, though he is accountable to Parliament, does not make open, democratically accountable decisions in the same way as Parliament. Further, such a device leaves citizens unclear as to whether or not their actions or projected actions are liable to be treated by the prosecution authorities as effectively innocent or criminal - in this case seriously criminal.'

This need for restraint might affect not only to 'military attacks by a non-state armed group against state, or inter-governmental organisation, armed forces in the context of a non-international armed

²¹⁵ (2013) paras.4.14, 4.19.

²¹⁶ (2014) para.10.2.

²¹⁷ *Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation* (Cm.9032, London, 2015) p.8.

²¹⁸ [2013] UKSC 64, para.36.

conflict',²¹⁹ as applied to Gul himself, but also involvement in the activities of military forces of a State in peacetime or conflict. In practice, UK citizen service in the military of foreign states, such as the French Foreign Legion (acting in Operation Barkhane) or the Israel Defence Force (in Palestine), does not breach the Foreign Enlistment Act 1870 and has long been condoned.

Second, in *Miranda v Secretary of State for the Home Department*,²²⁰ Miranda was transporting computer materials (including files from security agencies) supplied by Edward Snowden, a former contractor with the US National Security Agency, to journalist Glenn Greenwald to assist ongoing disclosures in *The Guardian* and other publications. The materials were seized during an examination and detention of Miranda while he was transiting through Heathrow Airport. The journalists viewed their mission as one of ethical disclosure in the public interest of a vast web of governmental surveillance programmes. However, the UK Security Service (MI5) contended that Miranda was concerned in 'terrorism' (as defined in the Terrorism Act 2000, section 1) because his mission sought to influence the government by promoting a political or ideological cause. The initial view of the Security Service (MI5), which issued a 'Port Circulation Sheet' to the police Counter Terrorism Command regarding Miranda, was that Schedule 7 was 'not applicable'.²²¹ These doubts were not conveyed to the examining officers on the ground. However, a third round of deliberations by the Security Service agents determined that Miranda was concerned in terrorism because his mission sought to influence the government by promoting a political or ideological cause under the Terrorism Act 2000, section 1(1)(b) and (c).²²² The allegation was that disclosure of the data to a hostile state (Russia) or to terrorists might imperil the identities of secret agents or the methods used for electronic surveillance of terrorists. Thus, the material fell within the realms of 'terrorism'. On these grounds, Miranda was held under special detention powers relating to counter-terrorism at borders, and the computer materials were seized. Similar arguments were then used to persuade the editor of *The Guardian* to destroy other materials held in the newspaper offices. In the subsequent court review, *Miranda v Secretary of State for the Home Department*, the meaning of who is a 'terrorist' and whether the journalistic activity should be excluded from that depiction was explored. In brief, it was concluded that the politically-motivated publication of material endangering life or seriously endangering public health or safety

²¹⁹ *Ibid.*, para.24.

²²⁰ [2014] EWHC 255, [2016] EWCA Civ 6. See Walker, C., 'Investigative Journalism and Counter Terrorism Laws' (2017) 31 *Notre Dame Journal of Law, Ethics and Public Policy* 129.

²²¹ [2014] EWHC 225, paras.9, 10.

²²² *Ibid.*, para.12.

can constitute terrorism, and so journalists and those associated with them could be categorised as ‘terrorists’ within sections 1 and 40²²³ and so be subject to the powers under Schedule 7. The Independent Reviewer of Terrorism Legislation²²⁴ (David Anderson) commented that the High Court had endorsed so a wide ambit for the term ‘terrorism’ that journalists and newspapers could potentially become subject to special criminal offences, could be proscribed (banned), could be designated under terrorist asset-freezing legislation, and could be subjected to executive restraint orders.²²⁵ At the same time, these potential calamities must be seen in the context of requirements of proportionality and respect for rights to free speech. In this way, Law Justice Laws in *Miranda* made clear that ‘There is no suggestion that media reporting on terrorism ought *per se* to be considered equivalent to assisting terrorists.’²²⁶ The Court of Appeal’s decision in *Miranda* in January 2016²²⁷ included some radical departures from the High Court verdict, but without fundamentally altering the outcome. The same depiction of Miranda was accepted as before – he was primarily a terrorist threat and not a national security threat, which meant that the invocation of Schedule 7 was lawful.²²⁸ Nor was it necessarily unjustified or disproportionate to take action just because Miranda was involved in journalism.²²⁹

The outcome is again a wide definition of terrorism, though the Court of Appeal in *Miranda* later held that a mental element must, contrary to what it accepted as the literal interpretation, be met in relation to the element of action within section 1(2), meaning that intent or recklessness as to the action within section 1(2) of the Terrorism Act 2000 must be proven.²³⁰ Neither Gul nor Miranda was accused of involvement in ‘state terrorism’, though there was some implication of this link in *Miranda*, given the hosting of Snowden by the Russian authorities. Perhaps if Snowden could have been depicted as a Russian agent or at least a ‘useful idiot’, then the national security argument might have been stronger. But the nature of the threats identified in *Miranda* would

²²³ ‘40(1) In this Part “terrorist” means a person who

(a) has committed an offence under any of sections 11, 12, 15 to 18, 54 and 56 to 63, or

(b) is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(2) The reference in subsection (1)(b) to a person who has been concerned in the commission, preparation or instigation of acts of terrorism includes a reference to a person who has been, whether before or after the passing of this Act, concerned in the commission, preparation or instigation of acts of terrorism within the meaning given by section 1.’

²²⁴ See Terrorism Act 2006, s.36.

²²⁵ D. Anderson, *Report on the Operation in 2013 of the Terrorism Act 2000 and Part I of the Terrorism Act 2006* (Home Office, London, 2014) paras.4.11-4.23. The Government Response was to await the outcome of further litigation (Cm.9032, London, 2015) p.7.

²²⁶ *Miranda v Secretary of State for the Home Department* [2014] EWHC 255, para.35.

²²⁷ [2016] EWCA Civ 6.

²²⁸ *Ibid.*, para.34.

²²⁹ *Ibid.*, para.82.

²³⁰ *Ibid.*, para.55.

remain the same, so that the only consequence might be that two sets of counter powers could be applicable to the mischief – both national security and terrorism. Certainly, the alleged role of the Russian state in hosting Snowden was not viewed as a decisive factor in ruling out the categorisation of the activity as ‘terrorism’.

The final source of legal evidence concerning the meaning of ‘terrorism’ or ‘terrorist’ concerns the treatment of state agents who have been accused of what was earlier defined as ‘state terrorism’ - in other words, the commission of offences which they believed were in the interests of the state. These examples primarily arise from prosecutions of British soldiers who have been accused of the use of excessive lethal force whether in pursuit of arrest, the prevention of crime or self-defence.²³¹ If the soldiers can consequently be treated as being involved in ‘terrorism’, then the range of special powers or other provisions, including non-jury trial in Northern Ireland,²³² could be triggered. The evidence from pre-Terrorism Act 2000 cases (when the definition of ‘terrorism’ was arguably narrower) is not entirely clear because the case details are limited and also because soldiers subject to criminal investigations could be detained under military processes rather than police processes. However, the possibility of special police powers being applied was not ruled out, and non-jury trials devised for Northern Ireland paramilitary terrorists were regularly utilised.²³³ Post-Terrorism Act 2000 investigations against former soldiers also seem to have involved special powers or special criminal justice processes normally reserved for ‘terrorists. For instance, in *Re Dennis Hutchings*,²³⁴ a former British soldier accused of attempted murder in 1974 sought unsuccessfully to overturn the decision of the DPP to allocate his case to a non-jury trial. He had been detained for 84 hours and questioned at the Antrim Serious Crime suite which is designed for terrorism investigations. By contrast, in *B & 6 others v Chief Constable of Northern Ireland*,²³⁵ a court order was issued that it would be unlawful for the PSNI to arrest former soldiers involved in the events of Bloody Sunday 1972 for the purposes of their transfer to Northern Ireland for interview. The transfer would be unnecessary because they had undertaken to attend interviews in England under ‘normal’ policing arrangements.

²³¹ See *Reference under s 48A Criminal Appeal (Northern Ireland) Act 1968 (No 1 of 1975)* [1977] AC 105; *R v Clegg* [1995] 1 AC 482; *McCann v United Kingdom*, App no 18984/91, Ser A vol 324 (1995); *McCaughy v United Kingdom*, App no 43098/09, 16 July 2013; *da Silva v United Kingdom* App. no.5878/08, 30 March 2016.

²³² See Justice and Security (Northern Ireland) Act 2007.

²³³ See *R. v Jones* [1975] 2 N.I.J.B. 3; *R v Bohan and Temperley* [1979] 5 N.I.J.B. 65; *R. v. Robinson* [1984] 4 N.I.J.B. 4; *R. v. Thain* [1985] 11 N.I.J.B. 31; *R. v. McAuley* (1985) 2 NIJB 48; *R v Clegg* [1995] 1 AC 482

²³⁴ [2017] NIQB 121. See also *R v Hutchings* [2018] NICC 5.

²³⁵ [2015] EWHC 3691 (Admin).

Other legal contexts

Two further contexts can be considered, one broad and one narrow, in order to determine the status of 'state terrorism'.

Litvinenko and Salisbury

The closest precedent to the Salisbury incident was the poisoning of Alexander Litvinenko in London in 2006. The inquiry by Sir Robert Owen - *The Litvinenko Inquiry*²³⁶ - found that Litvinenko died, having suffered a cardiac arrest as a result of acute radiation syndrome, caused by ingesting polonium 210. The Russian state was determined to be the ultimate instigator:

10.15 When Mr Lugovoy poisoned Mr Litvinenko, it is probable that he did so under the direction of the FSB. I would add that I regard that as a strong probability. I have found that Mr Kovtun also took part in the poisoning. I conclude therefore that he was also acting under FSB direction, possibly indirectly through Mr Lugovoy but probably to his knowledge.

10.16 The FSB operation to kill Mr Litvinenko was probably approved by Mr Patrushev and also by President Putin.'

However, no accusation of 'state sponsored terrorism' appeared in the report. As for the statement to Parliament by the then Home Secretary, Theresa May, the attack was described as 'a blatant and unacceptable breach of the most fundamental tenets of international law and civilised behaviour.'²³⁷

The then Prime Minister, David Cameron, stated that the attack was 'state sponsored murder'.²³⁸ The lawyer for Litvinenko's widow, Ben Emmerson QC, did however label the attack as 'nuclear terrorism'.²³⁹ The CPS sought the extradition for murder of Lugovoy and Kovtun,²⁴⁰ and action was taken under section 4 of the Anti-Terrorism, Crime and Security Act 2001 to freeze their assets. The use of the 2001 Act again creates some equivocation regarding the label, 'terrorism'. Section 4 can be invoked on the basis that 'action constituting a threat to the life or property of one or more nationals of the United Kingdom or residents of the United Kingdom has been or is likely to be taken by a person or persons.'

²³⁶ (2015-16 HC 695).

²³⁷ Hansard (House of Commons) vol.604 col.1569 21 January 2016.

²³⁸ <https://www.telegraph.co.uk/news/uknews/law-and-order/12111812/Alexander-Litvinenko-Inquiry-murdered-Russian-spy-live.html>.

²³⁹ <https://www.bbc.co.uk/news/uk-35373809>.

²⁴⁰ Hansard (House of Commons) vol.460 col.74ws 22 May 2007.

One finds similar equivocation in the description of the Salisbury attacks. Aside from Pool Re, the government has not rejected the label of terrorism, and the subsequent investigation has been described by the Metropolitan Police as ‘one of the largest and most complex investigations undertaken by British counter terrorism policing’.²⁴¹ The incident is viewed as state-sponsored, and so Russian state agents have been blamed by the Prime Minister.²⁴² The Organisation for the Prevention of Chemical Weapons has confirmed the highly specialised nature of the chemicals used in the attack.²⁴³ The use of chemical weapons is an offence under the Chemical Weapons Act 1996, section 2 (with jurisdiction as amended by the Anti-Terrorism, Crime and Security Act 2001). The offence has been invoked on a couple of occasions against individuals who have been arrested, charged and convicted as terrorists.²⁴⁴

International law

Moving from the specific to the general, there remains no internationally accepted comprehensive definition of terrorism in international law.²⁴⁵ Efforts within the United Nations to devise a comprehensive definition have focused on the Ad Hoc Working Group under the Sixth Committee (legal) of the General Assembly, established by resolution 51/210 on 17 December 1996.²⁴⁶ It has concluded that the deep obstacles to progress centre upon ‘(a) the right of peoples to self-determination under international law; (b) the activities of armed forces in armed conflict; and (c) the activities of military forces of a State in peacetime, also taking into account related concerns about State terrorism’²⁴⁷. Mention of the latter underlines the general assumption that state terrorism is indeed to be counted as terrorism unless the international instrument states otherwise, which several do so.

The absence of a general convention which governs, *inter alia*, state terrorism does not, of course, mean that state terrorism has a green light. Rather, state terrorism is already subject to legal restrictions since ‘the law on the use of force, non-intervention, and State responsibility for transboundary harm by non-State actors already governs international violence by, or supported

²⁴¹ <http://news.met.police.uk/news/update-salisbury-investigation-300644>, 28 March 2018.

²⁴² Hansard (House of Commons) vol.637 col.620 12 March 2018.

²⁴³ Note by the Technical Secretariat: Summary of the report on activities carried out in support of a request for technical assistance by the United Kingdom of Great Britain and Northern Ireland (Technical Assistance Visit TAV/02/18) (S/1612/2018, 12 April 2018).

²⁴⁴ See the case of Ian Davison, who produced a chemical weapon (ricin) contrary to section 2(1)(b) of the Chemical Weapons Act 1996: *The Times* 15 May 2010 p 31 (Newcastle Crown Court).

²⁴⁵ See *R v Gul* [2013] UKSC 64, paras.44-51.

²⁴⁶ <http://legal.un.org/committees/terrorism/>

²⁴⁷ Fifteenth session (11 to 15 April 2011) (A/66/37, 2011) para.18.

by, States. Most such violence is inherently political in purpose, so it is not possible to distinguish between State *uses of force* and State *terrorism* as separate categories on the basis of political motivation alone.²⁴⁸

Conclusion

The conclusion is that state terrorism should be included as part of the concept and definition of terrorism, unless the contrary is clearly stated. That conclusion applies to the Terrorism Act 2000, section 1. It is further submitted that the equivocation around pronouncements or labelling of nefarious state action relates more to wish to retain diplomatic and legal options rather than because of legal uncertainty.

Finally, the inclusion of state terrorism within the definition of terrorism complies with the principled demands of the rule of law doctrine. The second of Dicey's formulations of the rule of law²⁴⁹ is that the state must be subject to the law, in terms of its authority, actions, and powers, and must be realistically challengeable by legal processes which can be enforced effectively.²⁵⁰ This attribute has often been hard won in the field of terrorism. Accountability for misdeeds has often been wrung out years later by court challenges or official inquiries. It would be a mistake to allow states to eschew the designation of terrorism for their own misdeeds while allowing them the freedom to apply it broadly to their enemies.

²⁴⁸ Saul, B., *Defining Terrorism in International Law* (Oxford University Press, Oxford, 2006) p.223. Methods of terrorism are forbidden for example in international humanitarian law by the Geneva Conventions III art.119 and IV, art.33 and the Protocols I art.51 and II arts.4, 13.

²⁴⁹ Dicey, A.V., *Introduction to the Study of the Law of the Constitution* (10th ed. MacMillan, London, 1959) pp.202-203.

²⁵⁰ See O'Donnell, G., 'Why the rule of law matters' (2004) 15 *Journal of Democracy* 32; Waldron, J., 'The concept and rule of law' (2008) 43 *Georgia Law Review* 1; Walker, C., 'The rule of law and terrorism' in May, C. and Winchester, A., (eds), *Handbook on the Rule of Law* (Edward Elgar, Cheltenham, 2018).

CCS0918625708
978-1-5286-0811-4