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The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2017 by the Independent Reviewer of Terrorism Legislation

April 2019



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Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

April 2019



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Home Office

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Dear Mr Hill

REVIEW OF THE OPERATION IN 2017 OF THE TERRORISM ACTS

Thank you for your final report as Independent Reviewer of Terrorism Legislation (IRTL), on the operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, the Terrorism Prevention and Investigation Measures Act 2011 and the Terrorist Asset Freezing etc Act 2011. I would also like to thank you for your work as IRTL, and the contribution you have made to the debate and oversight of the operation of terrorism legislation during your appointment.

The terrorist attacks that the UK tragically experienced in 2017 tested the Government in one of its primary duties; to protect the public. In response, the public continued with their daily lives. Such a response sends a clear message to terrorists that they have not succeeded in their aims. However, sadly, in 2017 it became all too clear that the UK was experiencing a shift in the nature of the threat, rather than a spike.

Following the attacks, on 4 June 2017, the Prime Minister announced a review of counter-terrorism powers and legislation to ensure that the police and security services have the powers they need to keep the public safe, with a view to introducing new legislation if required. As a result, the Counter-Terrorism and Border Security (CTBS) Bill was introduced in June 2018; [it received Royal Assent on 14 February 2019]. Its measures will help the police and security services to protect the public by updating our terrorism legislation for the digital age, responding to modern patterns of radicalisation and the increased threat, and by strengthening the sentencing framework for terrorism offences and the powers for managing terrorist offenders following their release from custody. Also in June 2018, the Government published its revised counter-terrorism strategy, CONTEST, which is the framework for the

Government's work to counter all forms of terrorism and aims to reduce the risk from terrorism to the UK, its citizens, and its interests overseas.

Your report provides a detailed commentary on the use of terrorism powers, particularly during the police investigations following the attacks in 2017, and it will help to shape discussions on ensuring that counter-terrorism legislation, including the most recent Act, is used in a proportionate and fair way, and remains effective against the evolving threat.

This response relates to the substantive recommendations you have made as IRTL. As you note the content and opinions in the annex to your report on the definition of terrorism under the Terrorism Act 2000 are not your own, and therefore it would not be appropriate for the Government to formally respond to the points it contains.

I look forward to working with your successor as Independent Reviewer and I am confident that they will find your work a helpful foundation on which to base their own.

Threat picture

An independent assessment of the threat picture helps to provide a better understanding of the threat to the UK. As you know, we have taken forward the recommendation you made in your 2016 annual report, on extending the remit of the independent Joint Terrorism Analysis Centre (JTAC) to include assessing the threat posed by extreme ring-wing terrorism. This change will help to provide a better understanding of the shape and size of this aspect of the threat.

For most of 2017, the UK national threat level remained at SEVERE, meaning that an attack was highly likely. It was raised to CRITICAL for four days after the Manchester arena attack on 22 May 2017, and for two days after the Parsons Green attack on 15 September 2017. Daesh continued to represent the most significant threat to the UK. In Northern Ireland, the threat from Northern Ireland Related Terrorism was assessed as SEVERE and remains at that level, meaning that an attack is highly likely, with dissident Republican groups posing the biggest threat there; in Great Britain it remained at MODERATE, meaning that an attack was possible but not likely.

The threat that the UK faced from terrorism in 2017 was multi-faceted, fast-paced and continuously evolving. As you note, there was a rise in the number of arrests in 2017 of individuals linked to extreme right-wing terror ideologies. The marked shift in the nature of extreme right-wing activity, and in the organisation of such groups and their reach, from being small groups mainly

focussed on promoting anti-immigration views and white supremacy to actual engagement in terrorist activity, has resulted in this aspect of the threat presenting a higher risk to national security than it previously has.

Technology and social media for the most part bring us closer together and help us to share knowledge and information. However, evolving technologies and increasing exploitation of social media for the purpose of spreading terrorist material and radicalising others, poses a particularly difficult challenge. As stated in the CONTEST strategy, *'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'*. In this context, the Counter Terrorism and Border Security Act 2019 has updated a number of our core terrorism offences for the digital age and for modern patterns of online radicalisation, so that the police and courts have the powers they need to respond to this evolving aspect of the terrorist threat.

I welcome your conclusion that *'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... and benefits from policing and intelligence work which successfully disrupts terrorism-related activity almost every time'*. I agree the exemplary work of the police and intelligence services is vital to ensuring that terrorist plots are disrupted and the public continues to be protected.

Major terrorist attacks in 2017

The 2017 terrorist attacks created a significant challenge for the police both in the immediate response to such serious incidents, and in the subsequent investigations. I welcome your conclusions that the police rose to that challenge and conducted swift and effective operations to identify and manage any risk to the public. Opportunities have been taken to learn lessons and reflect on resourcing and resilience during investigations, the community impact of large scale investigations, the use of arrest and search provisions and the management of detainees during police investigations. These are operational matters and the Home Office has engaged with counter-terrorism policing on them. I hope the following provides helpful clarity in response to your recommendations.

Operation CLASSIFIC:-

Your report on the Westminster Bridge terrorist attack and the use of terrorism legislation during the following police investigation, Operation CLASSIFIC, was published on 28 March 2018

<https://www.gov.uk/government/publications/the-westminster-bridge-terrorist-attack>).

The Government's response was published on 13 September 2018 and, where your report repeats its recommendations, I refer to its contents (<https://www.gov.uk/government/publications/response-to-the-report-on-the-use-of-terrorism-legislation-after-westminster-bridge>).

Operation MANTELIN:

On the use of terrorism legislation for the purposes of arrest and search during Operation MANTELIN (the investigation into the Manchester bombing), I welcome your conclusion that *'the police are to be commended on the thoroughness and rigour of an investigation which commenced as a possible manhunt, to the extent that some considered the complexity and duration of Abedi's preparations to be beyond the capacity of a lone individual'*. This provides an indication of the scale of the police investigation, and the challenges that the police faced during Operation MANTELIN.

Resilience and resourcing during investigations:-

As you note, MANTELIN was a *'good example of interoperability on the part of CT Policing'*. Various steps were taken during the investigation, including making available additional staff and embedding CPS lawyers into the investigation, which demonstrate that a flexible and careful approach is taken by the police, and indeed is required, to effectively manage resourcing and resilience issues during such large-scale investigations. Nonetheless it is right that we should reflect and learn lessons, and I welcome your scrutiny in this respect.

A review of resources and resilience was launched by Counter-Terrorism Policing following the attacks in 2017 and the investigation into the poisoning of Sergei and Yulia Skripal in Salisbury on 4 March 2018 using a military-grade nerve agent. As a result, mechanisms were introduced to better coordinate the mobilisation of Counter-Terrorism Policing resources around the Network, managed by the Counter Terrorism Policing National Operations Centre (CTPNOC). This ensures sufficient resources can be deployed to react to and better cope with instances of high demand in the future, including when multiple terrorism investigations are running concurrently or in quick succession.

As you note, three of the suspects arrested during MANTELIN were held in excess of thirteen days, but were released before the end of the fourteenth day which is the maximum period for pre-charge detention under TACT. I

agree with your finding that the fourteen-day maximum period for pre-charge detention is long enough.

In any large-scale police investigation of terrorism, the requirement to gather enough evidence to support applications for warrants of further detention places an additional burden on the system. The police review identified that a significant amount of resource is required to manage a range of post-incident issues, including the preparation of material which may be required for judicial processes around extending detention up to the maximum fourteen days, and the police have confirmed that sufficient resource will be put in place in future if necessary, subject to funding arrangements being in place.

Operational issues around resourcing and resilience will continue to be reviewed by the police on an ongoing basis.

The community impact of large scale police investigations:-

Your report raises an important point about the potential impact of large-scale police investigations on local communities. This was recognised early on during Operation MANTELINE, and a 'Consequence Management Cell' (CMC) was set up to respond to and mitigate any negative impacts on the local community. This formed a key part of the Greater Manchester Police community response following the attack and during the subsequent recovery period.

The CMC included senior officers who were well known within the local community, and who worked alongside the investigative team. In the days immediately after the attack, the CMC worked with partner agencies to respond to hate incidents and monitor any perceived community tensions. Officers were also placed on patrol in town centres, community centres, schools, places of worship and other areas with high footfall, so that there was a visible police presence and any issues could be addressed directly. Alongside this, support packages were introduced by the police and the local authority for any families that were displaced due to searches, which continued after they had returned to their homes.

The CMC worked to ensure that members of the public felt they had a voice, and provided updates on operational activity by organising meetings between community groups and senior police officers. To complement this, there was a series of local community events which residents were actively involved in and helped to develop, and which centred around unity and support.

The CMC has since become a permanent multi-agency team, and after the Manchester attack worked to identify vulnerable communities and engage

with them. This included the 'We Stand Together' campaign, which has since been recognised as a model of best practice for improving community cohesion.

It is unfortunate that Subject G was arrested as a result of being, as you describe it, '*in the wrong place at the wrong time*' on the first day of the investigation. As you note, MANTELIN was a dynamic investigation, JTAC had increased the threat level to CRITICAL, and it was not known whether Abedi was acting alone or if further attacks were planned. In these unique and exceptional circumstances, I am satisfied with the police conclusion that Subject G's arrest was regrettably unavoidable and was a lone incident rather than an example of a systemic inappropriate approach to arrests. Nonetheless it is important that, as you note, the police are treating this incident as one from which lessons should be learnt as appropriate.

Operation DATIVAL (the investigation into the London Bridge attack):-

I welcome your finding that the police '*demonstrated speed and flexibility in the use of their arrest and search powers, combining the provisions of TACT and PACE*'. Like the other investigations following attacks in 2017, Operation DATIVAL required the police to work at pace to establish whether there was any remaining risk to the public following an exceptionally serious incident, and in the context of uncertainty about the risk of further attacks.

Understanding of arrest and search provisions:-

The Counter-Terrorism Policing Organisational Development Unit (ODU) has considered your recommendation that the police should review and where necessary improve their understanding of arrest and search provisions. I am happy to confirm that, in response to the attacks in 2017, the use of arrest and search powers was reviewed, and it was concluded that the powers were used effectively and efficiently and that there was no lack of understanding in relation to them. I note that no specific concerns were raised in your report. Furthermore, oversight of the use of these powers is ongoing and continuous, including consideration of whether training continues to provide officers with the most effective understanding of the range of powers routinely used in terrorism investigations.

Transporting TACT detainees:-

You repeat the recommendation on considering the necessity of transporting detainees large distances from their place of arrest to TACT detention suites that was made in your report on Operation Classific.

I refer you to my response to that recommendation in the Government's response to that report, published on 28 March 2018 (<https://www.gov.uk/government/publications/the-westminster-bridge-terrorist-attack>).

TPIMS

Thank you for the views and the insight you have provided on the TPIM regime. I welcome your observation that TPIMs are subject to "*careful scrutiny*" by the courts which "*in every case to date has resulted in the upholding of the TPIM authorisation*". Similarly your findings that while in force each TPIM is subject to regular review by the Home Office, police and Security Service, which includes "*very careful consideration [of] every aspect of the TPIM*", "*a particular focus on the proportionality of each TPIM measure*", "*a genuine flexibility in the authorities' response to variation requests [from the TPIM subject]*" and "*genuine effort... to facilitate 'normal life' within the confines of a TPIM*".

Review of the test for relaxation of abscond risk:-

The Security Service and the police are jointly responsible for compiling an abscond risk assessment for each TPIM subject, which is reviewed regularly throughout the life of a TPIM. I welcome your conclusion that "*there is appropriately flexible thinking here*", but note your recommendation that the approach to conducting this assessment be reviewed. Accordingly, the Home Office will work with the Security Service and the police to review whether more detailed assessments of abscond risk can be prepared for consideration at TPIM Review Group meetings, taking into account the TPIM measures in place and the variations that have been made to those measures during the lifetime of the TPIM as well as the available information on the individual's intent and opportunities and any external factors which could affect the risk.

The necessity of relocation in every TPIM case and flexible use of the measures:-

The Security Service will recommend the TPIM measures that they consider it appropriate to impose on each individual, based on the national security threat they pose. Each measure must be necessary and proportionate, and I will consider this on a case by case basis, including whether it is necessary and proportionate to relocate the individual, taking into account the disruption of terrorist activity and assurance that is provided by the other measures. In keeping with this approach the Home Office, alongside partners, will continue to review the necessity of relocation for each individual subject to a TPIM. Where relocation (or any other measure) is not considered necessary

and proportionate it will not be imposed and residence measures may, like other measures, be varied or removed during the life of a TPIM notice. [As of 31 August 2018 the total number of TPIM subjects was six, of which two were not subject to the relocation measure.

Personal service of refusals of variation requests to TPIM subjects:-

I recognise that in certain circumstances it may provide benefits to TPIM subjects, and potentially in terms of the evidence available in the event of a breach prosecution, for responses to TPIM measure variation requests to be personally served on the subject by the police. This may be particularly true for complex requests where a number of permissions have been granted or refused, or where conditions have been attached to a grant of permission. However, the potential benefits must be balanced against the need to sometimes respond urgently to requests (which will often be in the subject's interests), with careful consideration given to the availability of police resources to carry out personal service at short notice. Furthermore, I note that to date there have been only two instances where a legal representative has claimed that they did not pass details of the conditions attached to a grant of permission by the Home Office to a TPIM subject.

On balance I am not persuaded that it would be appropriate to require personal service in every instance. This would not be a proportionate use of police resources. And it would not be fair on the TPIM subject for the Home Office not to grant permissions, or for permissions that had been granted not to be promptly notified, if the police did not have the resource to serve every letter that was sent to the subject's legal representatives personally on the TPIM subject. However, I recognise that personal service may be appropriate in some circumstances. Therefore the Home Office will work with the police to ensure that, when appropriate, the grant of permissions and the details of any conditions attached will be served to the subject in person.

Briefing local authorities including Social Services on TPIMs where relevant and necessary:-

I agree that there can be benefits in briefing local authorities on a particular TPIM subject in their area, and that in certain circumstances it will be appropriate to disclose confidential information to social services or other local authority services. However, as your report notes, this must take into account the need to protect sensitive information and to protect the identity of TPIM subjects. The most pertinent information is likely to be around the restrictions imposed on an individual and the impact on them and their family (e.g. where an individual may be refused permission to undertake particular types of work), rather than the fact of the individual being subject to a TPIM. Therefore,

in some circumstances, the local authority might only need to be briefed on the fact that certain restrictions are in force and not why they are in force, that is to say the existence of the TPIM itself.

I am happy to confirm that there have in fact been instances where local services have received a limited briefing on a TPIM subject. The decision to do so, where relevant, is taken on the basis of national security considerations and other relevant factors including the TPIM measures in force, any permissions granted, and the subject's family and other circumstances. This practice will continue. Similarly, there have also been instances where the chair of a Multi-Agency Public Protection Arrangements panel has been briefed, where the imposition of a TPIM has had an impact on matters within their remit.

Port and Border Controls

I am grateful for the work that you have undertaken on this very important area of our terrorism legislation. I remain convinced of the immense value of the continued operation of Schedule 7, which has been instrumental in securing evidence to support the conviction of terrorists, yielding intelligence to detect terrorist threats and supporting the disruption and deterrence of terrorist activity.

Adoption of a universal threshold for the code of practice:-

You will recall that the Government has consistently rejected the introduction of any threshold for examination, and we share the view of our operational partners that to introduce any threshold for exercise of the Schedule 7 powers would risk fundamentally undermining their utility, which derives from their current no-suspicion status.

I note you have maintained the recommendation in your 2016 annual report that the Government introduce a 'reasonable grounds to support' threshold as part of the criteria in the statutory Schedule 7 Code of Practice. I responded in full to this recommendation in the Government response to that report (<https://www.gov.uk/government/publications/response-to-the-operation-of-the-terrorism-acts-in-2016-report>) and that position remains unchanged.

Training and capacity building:-

The Home Office will, in partnership with the police, consider how best to address the points you have raised regarding police training and capacity building.

Use of screening questions:-

I note you suggest that your successor consider the use of screening questions, and I recognise that the reference in the Schedule 7 Code of Practice to screening questions has led to some confusion. During the Lords Committee stage debate on the Counter-Terrorism and Border Security Bill, the Government explained that the Code is intended to provide ports officers with clarity on the distinction between questions that can be asked by police officers in the ordinary course of their duties with a view to deciding whether to examine someone, and questions that are only permissible once an examination has commenced: that is, those questions designed to elicit information to enable the officer to determine whether the person is or has been involved in terrorism.

An important part of any police officer's duty is to speak to and engage with members of the public, and where there are officers on the ground it is reasonable to expect them to interact with the public in this way. 'Screening' is, therefore, not a prescribed process or a statutory function under Schedule 7 that officers must undertake before selecting a person for examination. Rather, it is referenced in the Code of Practice to clarify questions that can be asked, if appropriate, prior to selection for examination, as opposed to questions that can only be asked during an examination. The Government understands that there has been some confusion around this and so intends to revise the Schedule 7 Code of Practice to replace the language around 'screening' with a clearer explanation of when the ordinary course of an officer's duty ends and an examination should begin.

Training on the use of Schedule 7 for domestic flights and travel

The ability to exercise Schedule 7 powers on both domestic and international routes has been instrumental in securing evidence to convict terrorists; yielding intelligence to detect and understand the terrorist threat and disrupt and deter terrorist activity. The police can and do use these important powers on all routes, on a threat-informed and case by case basis, and the Home Office will work with the Police to ensure that any training that they might need to continue to use these powers effectively will be provided.

I will be publishing this response on the Government's website and placing copies in the Vote Office.

The Rt Hon Sajid Javid MP

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