

Terrorist Risk Offenders:

Independent Review of Statutory Multi-Agency Public Protection Arrangements

Jonathan Hall QC
May 2020

1. EXECUTIVE SUMMARY, KEY DEFINITIONS, INTRODUCTION	4
Executive Summary.....	4
Key definitions	4
Introduction	4
2. IDENTIFYING RISK.....	6
Summary	6
Risk Assessments: limitations and improvements	6
Predicting Terrorist Risk.....	9
Confusion over risk of harm	10
Polygraph testing	11
3. TOOLS.....	12
Summary	12
Identifying and using the right tool.....	13
Influencing Date of Release	13
Licence conditions	15
Post-release monitoring.....	17
Compliance checks	19
Varying licence conditions after release	21
Recall to prison, including power to arrest in urgent cases	22
Children	25
Disruption by further criminal prosecution	26
Civil Orders	26
Disclosure	27
Support Measures.....	28
Housing.....	29
Mental health	30
Education and Employment	31
Personal Interventions	32
4. IDENTIFYING MAPPA CASES	32
Terrorist Offenders: Making it Simple	32
Other Dangerous Offenders	33
Levels and Transfers.....	34
5. ACTIVE CASE MANAGEMENT.....	35
Summary	35
Getting the Right Information	35
The Core Group	36
Young Offenders	37
Functions of the Core Group	38

Getting the most out of Duty to Cooperate agencies.....	40
Exit Strategies.....	41
Sharing Information – The Need for a Simple Gateway.....	41
Application of the Data Protection Act 2018.....	42
Understanding why Information is Relevant	43
Disclosure to the Offender	44
Prison Information	45
Immigration.....	46
6. OVERSIGHT PANELS.....	47
Summary	47
Problems with current MAPPA meetings	47
Essential functions	48
Output and Minutes	49
7. OTHER MULTI-AGENCY BODIES	51
Summary	51
Pre-Release.....	51
In the Community.....	52
Annex A	53
Legislative Recommendations	53
Non-legislative Recommendations	53
Annex B	57
Summary	57
Legal Basis for MAPPA	57
Annex C: Terrorist Risk Offenders admitted to Hospital under the Mental Health Act 1983.....	60
Summary	60
Introduction	60
Restricted versus unrestricted patients	60
Decision Points.....	61
MAPPA arrangements.....	62
Interaction with other statutory powers.....	64
Released offenders on licence who are subsequently admitted to hospital.....	64
Terrorist notification.....	65
The Mental Health Tribunal.....	65

1. EXECUTIVE SUMMARY, KEY DEFINITIONS, INTRODUCTION

Executive Summary

- Clearer means of identifying Terrorist Risk Offenders are needed, so that the right offenders are referred to MAPPA at the right time
- Police need some additional powers so that management of Terrorist Risk Offenders is effective
- Resources that are available to other multi-agency bodies should also be made available for MAPPA
- Intelligence needs to be shared so that better assessments of risk can be made, and the right tools can be selected to manage risk
- MAPPA day-to-day management should move from formal periodic meetings towards active case management by a core group of professionals from police, probation and prisons. This will enable professionals to do their job better on the basis of the right information
- A list of legislative and non-legislative recommendations is set out in Annex A

Key definitions

- 1.1. **Terrorist Risk Offender** refers to any offender, convicted of any offence, who is assessed to present a risk of committing an act of terrorism. It therefore includes those convicted of Terrorism Offences and Other Dangerous Offenders (see below). This term is in preference to ‘extremist’ which is frequently encountered in the MAPPA Guidance.
- 1.2. A **Terrorist Offender** is someone convicted of an offence under terrorism legislation¹ or of an offence under non-terrorism legislation which has been found by the sentencing judge to be connected to terrorism under the Counter-Terrorism Act 2008².
- 1.3. **Other Dangerous Offender** is an offender whose terrorist risk does not derive from their offence. It would include a person convicted of fraud, who is later radicalised in custody. This category is sometimes referred to as ‘of concern’.
- 1.4. The **Guidance** is the publicly available MAPPA Guidance 2012 (version 4.5, updated July 2019). If the recommendations in this Report are accepted, the Guidance (and especially Chapter 24 which deals with Terrorist Offenders) will require adjustment.

Introduction

- 1.5. Terrorist Risk Offenders live amongst us. That is an inevitable given that most will eventually be released from prison, some from relatively short sentences. The attacks a few months apart by Usman Khan at Fishmonger’s Hall in December 2019 and Sudesh Amman in Streatham in February 2020 are a reminder of the harm that some of these Terrorist Risk Offenders are capable of.

¹ Excluding the minor offences that are not caught by Part 4 Counter-Terrorism Act 2008.

² This category is sometimes referred to as TACT-Related, but TACT-related has a different meaning in connection with official statistics, and I prefer the more accurate term terrorism-connected.

- 1.6. In terms of scale, the number of Terrorist Risk Offenders is tiny compared to the number of sexual offenders managed in the community, and tiny compared to the number of individuals who are identified by MI5 as posing a terrorist risk but who have not been convicted of any offence. The purpose of this report is to look at how Multi-Agency Public Protection Arrangements (MAPPA) can be improved for this particular set of individuals.
- 1.7. I am not an inspectorate, and I cannot comment on the relative performance of the different prison, police and probation teams who carry out MAPPA in England and Wales. This report seeks to review whether Terrorist Risk Offenders can be more effectively managed than they presently are. Since commission in late January 2020, research included visits, conversations with numerous MAPPA participants and attendance at various meetings in different parts of England and Wales in order to identify problems and good practice.
- 1.8. From time to time I refer in this report to the Joint Inspection into MAPPA carried out by HM Inspectorate of Probation and HM Inspectorate of Constabulary in 2011³ ('the 2011 MAPPA Inspection') and the follow-up Inspection carried out in 2015⁴ ('the 2015 MAPPA Inspection').
- 1.9. I have been assisted by James Robertson (a civil servant at the Office of Security and Counter-Terrorism in the Home Office), Amy Poulson, Louise Barber and Kieron Jones (officers of the National Probation Service specialising in Terrorist Risk Offenders) and Karl Laird, a barrister in my chambers and one of my Special Advisers in my role as Independent Reviewer of Terrorism Legislation. I am grateful to them all, and to those who have made suggestions or provided challenge. The views and recommendations in this report are, however, my own.
- 1.10. To avoid lengthening this Report, it sufficient to say that MAPPA were originally established for violent and sexual offenders and involve a close working relationship between police, probation and prison services⁵ to identify and manage individuals posing a serious risk of harm to the public. Their purpose is not only to foster close working between police, probation and prison services, but to involve other public bodies (including those known as the Duty to Cooperate agencies⁶) to make sure that everything that can be done is done to identify and manage risk. MAPPA do not provide extra powers⁷. All those involved remain separate bodies using their existing powers. There is no separate regime for Terrorist Risk Offenders.
- 1.11. A more detailed description of the statutory basis for MAPPA is detailed in Annex B.
- 1.12. Because MAPPA arrangements are well understood, I have avoided recommending wholesale change that would throw the baby out with the bathwater. This is also a time of flux: the probation service is being reorganised

³ <https://www.justiceinspectorates.gov.uk/hmicfrs/media/Multi-agency-public-protection-arrangements.pdf>

⁴ <https://www.justiceinspectorates.gov.uk/cjii/wp-content/uploads/sites/2/2015/10/MAPPA-follow-up-thematic-report.pdf>.

⁵ Under section 325(1) Criminal Justice Act 2003 these three agencies acting jointly are known as the (singular) 'Responsible Authority'. I have found this term confusing and so have avoided using it in this Report.

⁶ Section 325(3) Criminal Justice Act 2003.

⁷ Subject to the issue of whether section 325(4) Criminal Justice Act 2003 provides additional information-sharing powers, discussed at 5.10.

including, but not only, with respect to counter-terrorism. I have therefore tried to focus on principles that can apply whatever future staffing arrangements or national and regional structures are adopted. I have also avoided making recommendations that are based upon future technical capabilities such as IT systems, imperfect though the ViSOR system undoubtedly is.

- 1.13. The structure of this report is as follows. I consider the approach to assessing terrorist risk (Chapter 2). Unfortunately, there are no ideal systems for predicting whether a person will carry out a terrorist attack. Next I identify the tools that can be used to lower that risk (Chapter 3) with recommendations on how those tools can be improved. I consider how Terrorist Risk Offenders can be properly identified (Chapter 4) and actively managed (Chapter 5), with the right degree of oversight (Chapter 6). Finally, I look briefly at how other multi-agency bodies deal with terrorist risk (Chapter 7).
- 1.14. This report includes looking at factors that can assist the management of terrorist risk in the broadest sense, such as in connection with housing and mental health. Accordingly, it also addresses areas of policy belonging to departments outside the Home Office and Ministry of Justice.
- 1.15. The Terms of Reference were published on 24 January 2020⁸. One of the requirements was to consider whether there were suitable tools to manage mentally disordered offenders (including restricted patients) who had been radicalised. Owing to the COVID-19 pandemic, it has not proven possible to complete this section in time, and I have agreed with the Secretary of State for the Home Department and the Secretary of State for Justice that I will provide an additional report on this topic by way of a further Annex in due course. In accordance with my Terms of Reference, I have drawn the attention of officials to particular issues as the review has progressed. There is no Classified Annex, and this Report does not address the management of Terrorist Risk Offenders in Scotland or Northern Ireland.

2. IDENTIFYING RISK

Summary

- There is no certain means of predicting whether an offender will carry out a terrorist attack
- There is an overemphasis on the ERG 22+ method in MAPPA arrangements
- Terrorist risk must be determined using all information, including sensitive information
- Polygraph testing, if carefully used, is a sensible additional tool for obtaining information relevant to risk

Risk Assessments: limitations and improvements

- 2.1. Practitioners tend to refer to risk in two ways in the MAPPA context, but it is important to distinguish between the two and how they are used.

⁸ <https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-review/terms-of-reference-independent-review-of-the-statutory-multi-agency-public-protection-arrangements>.

- 2.2. The first understanding of risk consists of answering the core question: what is the likelihood of the offender carrying out an act of serious harm? For example, an offender is released from a sentence of 3 years for downloading material likely to be useful to a terrorist⁹. What is the likelihood that they will go on to carry out a violent attack on members of the public? What is the likelihood that they are merely fixated on extreme material readily available on the internet? This is a key judgement in determining the overall management of the offender. It underpins the degree of overt and covert resources used to manage their risk. It is an exercise that is unavoidable but inherently flawed, because it is impossible to predict the future. An important aspect of this is the "imminence" of the risk. There may be a material possibility that an individual will commit an act of serious terrorist harm, and with serious offenders it may be impossible to exclude that risk for decades. But the question is: what is likelihood of serious harm in the immediate future? What opportunities will there be to pick up warning signs before it is too late (the time from flash to bang)? It is sometimes expressed as the "level of risk" and indicated by 'low', 'medium', 'high' or 'very high'¹⁰.
- 2.3. The second understanding of risk is more concerned with identifying the risk factors that, if present, make serious harm more likely than if they are not present. This approach provides a view of generic factors which if present either make an act of serious harm more likely (risk factors) or less likely (protective factors), and which are used to guide the management of risk. Risk factors might include contact with extremist associates. Protective factors might include having a stable family background. A risk management plan might therefore seek to minimise contact with extremists, whilst allowing maximum family contact and support. However, the presence or absence of risk factors or protective factors does not measure the likelihood of an offender carrying out an act of serious harm. For example, a significant number of convicted terrorists have close and supportive families.
- 2.4. The primary focus of MAPPA I have observed has been the identification and management of risk factors, rather than assessing the likelihood of an offender going on to carry out an attack. On some occasions the focus has been more on the risk *to* the offender: for example, as a result of media attention.
- 2.5. One of the inherent dangers with any assessment is that judging risk may be intuitive, with evidence used to back up a pre-formed judgment. It is open to prejudice and optimism bias. This is why risk tools are heavily structured and consist of filling in boxes: this leaves less room for professional discretion. There are two principal methods used by the probation and prison services with Terrorist Risk Offenders: OASys and the ERG 22 +.
- OASys, which stands for Offender Assessment System, does contain a predictive feature called the Offender Group Reconviction Score, but users are informed that this feature does not work for Terrorist Risk Offenders. One of the reasons is the relative infrequency of terrorism offences which limits the data available to create a predictive tool. For this group of offenders, OASys therefore focuses on the nature of the offence committed and on criminogenic need.

⁹ Section 58 Terrorism Act 2000.

¹⁰ See Public Protection Manual at paragraph 2.4, <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2016/psi-18-2016-pi-17-2016-public-protection-manual.pdf>; Guidance at paragraph 11.7.

- ERG 22 +, stands for Extremism Risk Guidance. This is a form of Structured Professional Judgment which is limited to identifying the 22 risk factors and protective factors which are thought to be particularly relevant to Terrorist Risk Offenders. It is intended to work in conjunction with OASys. It is completed by a probation officer or psychologist and assesses an offender's engagement, intent and capability¹¹. The ERG 22 + is used to identify the risk factors that need to be addressed as part of the risk management plan. In other words, it may indicate how to manage risk, but does not predict risk.
- 2.6. Because of its special focus, there appeared to be considerable reliance placed on ERG 22 + in MAPPA arrangements. Reference was frequently made to the ERG 22 + carried out prior to the offender's release (generally by a prison psychologist), and to 'refreshing' the ERG 22 + periodically after release. However, there was insufficient recognition of its limitations:
- I found that some ERG 22 + seriously minimised the seriousness of terrorist offences, and accepted the offender's characterisation (and in some cases denials) of offences of which they had been convicted. It was not clear that sufficient attention was paid to the facts of the offence or the judge's sentencing remarks. A contrast can be drawn with Pre-Sentence Reports prepared by Probation Officers which are generally strong in giving proper weight to the facts of the offence, whatever the offender's attitude.
 - It was suggested to me that one possible reason was that the pre-release ERG 22 + is often completed by a prison psychologist, in a therapeutic context in which the offender's 'buy-in' to the process is deemed to be particularly important. I am unable to comment on this having only seen a snapshot of cases. It is undoubtedly the case that any form of risk assessment, especially in the less frequently encountered terrorist context, requires real skill and experience.
 - There was also a danger of placing too much emphasis on an offender's behaviour in custody. Many Terrorist Offenders commit their offences at a time when their behaviour is otherwise 'pro-social' (close family, job, no previous convictions), and it is hardly surprising that they behave well in custody: this says little about their risk on release¹². It is important to avoid losing sight of the magnitude of harm that an individual was prepared to carry out when at liberty, and therefore the risk that the individual may continue to pose either in the immediate future or in the long term¹³.
 - The assessor would not be expected to have access to sensitive information which may be highly relevant to the extremism risk posed by the offender, and whether interventions are likely to be successful in reducing that risk. For example, sensitive information about close family members who present a terrorist risk will be relevant to the likelihood of serious harm and to whether having close family ties is a protective factor or risk factor in their particular case.
 - The ERG 22 + takes significant time to complete and therefore is not useful in factoring in new information which could be very relevant to risk.

¹¹ A useful summary is given in the introduction to a 2019 study for the Ministry of Justice on Inter Rater Reliability (i.e. the consistency achieved by different users of the same model) at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839726/inter-rater-reliability-extremism-risk-guidelines.pdf.

¹² *R (on the application of X) v Ealing Youth Court (sitting at Westminster Magistrates' Court)* [2020] EWHC 800 (Admin) at paragraph 49.

¹³ Sometimes referred to as the "enduring" risk": for example, in the Scottish Risk Management Authority's Standards and Guidelines for Risk Assessment, 2013,

https://www.rma.scot/wpcontent/uploads/2018/02/Standards_and_Guidelines_for_Risk_Assessment_2006.pdf.

- The 22 factors in the ERG 22 + do not adequately recognise the impact of external events, such as the declaration of supposed Caliphate abroad or a high-profile right wing terrorist attack. Such events may heighten the risk of particular actions, such as travelling abroad to fight or copycat offending, without evidence of any change in the behaviour of the individual concerned¹⁴.

2.7. These limitations have to be recognised and cannot entirely be overcome.

- Practitioners say, and I accept, that they must be willing to share information relevant to risk with the offender for it to be discussed. This open way of working is viewed as a strength because it shows a willingness to collaborate that invites the same from the offender, potentially yielding more information.
- A move to formal risk assessments based on sensitive information that could not be shared would exclude this method of proceeding.
- Whatever its limitations, ERG 22 + does help identify relevant risk and protective factors which may be genuinely helpful to manage risk.
- However I recommend that ERG 22 + should be referred to as a risk factor assessment, rather than a risk assessment. Otherwise, it is too easy for practitioners to consider the outcome of ERG 22 + as the main means of determining terrorist risk.

Predicting Terrorist Risk

- 2.8. However difficult to achieve, making predictions about whether an individual will commit a terrorist act is at the heart of MAPPA. It would be inefficient to spend the most time and resources on managing an individual who is highly unlikely to commit or inspire an act of terrorism. I recommend that assessing risk should not be the function of one particular tool (such as OASys or ERG 22 +) but should depend on the totality of what is known, and can be inferred about the individual offender as their case progresses¹⁵. This has consequences for MAPPA as outlined in Chapter 5 (Active Case Management).
- As I set out in Chapter 5, sensitive information relevant to risk must be shared with the Core Group responsible for making decisions. The prediction of whether an individual is likely to commit an act of serious harm, however difficult, can only be done by those in possession of all relevant information. Sensitive information should be shared even if it is difficult to see immediately how the information can be acted on (because to do so would risk disclosing sensitive sources or methodology).
 - The need to look at all information is particularly relevant in the context of offenders who have not been convicted of a terrorism or terrorism-related offence, but who may be plotting to cause serious terrorist harm, for example on release from prison.

¹⁴ Risk of violent extremism, more than any other kind of harmful behaviour, is influenced by the social political cultural context in which it occurs: Logan, C. & Lloyd, M. (2018). Violent Extremism: A comparison of approaches to assessing and managing risk. *Legal and Criminological Psychology* (2018). The British Psychological Society at 4.

¹⁵ Faced with uncertainty as to what works, it has been suggested that it is better to use a "tiered system" involving a "menu of choices", and to integrate risk assessment and management so that there is a continuous feedback and adjustment of interventions: Logan & Lloyd at p4. This seems sensible.

- Sensitive information relevant to risk includes threat assessments prepared by CT Police and their intelligence partners, on both individuals¹⁶ and particular terrorist cohorts (such as returned Foreign Terrorism Fighters) or terrorist behaviour (for example the risk that individuals who have been unable to travel abroad to fight may seek to carry out attacks in the UK). I observed that detailed but sensitive profiles of individuals existed that were not provided to those responsible for MAPPA. Additionally, the Joint Terrorism Assessment Centre prepares assessments and training on behaviour that may indicate attack-planning (for example, leave-taking)¹⁷.
- I therefore recommend that there should be wider sharing with probation officers not only of specific intelligence but also of threat assessments and profiles.
- I also recommend that because intelligence is often partial and may be equivocal, probation officers involved in assessing terrorist risk should also be given some training in the principles of intelligence assessment.

Confusion over risk of harm

- 2.9. Not all Terrorist Risk Offenders are alike, and the types of harm which may be caused by Terrorist Risk Offenders are different. I recommend that those involved in MAPPA need to be more sophisticated in distinguishing between the types of harm that is risked by Terrorist Risk Offenders. Confusion over types of harm can result in all offenders being treated in the same way (particularly given the difficulties of predicting risk of harm), meaning over-management, and diverting attention away from the most risky offenders. The numbers of Terrorist Offenders coming through the system means that it is important to allocate resources and expertise to the right cases. A more sophisticated understanding of the type of harm can also assist in obtaining relevant information from clinical practitioners, making it more likely that they will decide that overall public interest favours breaking medical confidentiality.
- In the cases I have observed, there is a tendency to assume all Terrorist Offenders pose the same risk of serious harm.
 - The index offence is very important but is not always a reliable guide to future serious harm. Intelligence led policing means that the authorities will often carry out early arrests to prevent death or serious injury before plans have developed too far, and before evidence has been gathered which could be used to prove the nature of the harm intended. Terrorism convictions tend to involve precursor behaviour such as mere collection of information useful to terrorists¹⁸. A person convicted of such an offence, who will receive a relatively short sentence, may well present a risk of carrying out a lethal attack. Secondly, offenders may seek to glorify or encourage terrorism, or raise funds, without ever intended to carry out attacks themselves. The real harm comes from others who may be inspired, or enabled, to carry out attacks.
 - Care is also needed to avoid overstating the harm caused by individual Terrorist Offenders. A loner with poor mental health may develop a fixation with prohibited online materials and may commit the offence of collecting information useful to

¹⁶ Assessments of risk undertaken by counter-terrorism police or MI5 are different from those undertaken with the active engagement of the offender. Whilst they are informed by sensitive information, they will lack the benefit of direct contact. They are better described as "threat assessments": Meloy, Hart, & Hoffman, 2014, cited in Logan & Lloyd at p2.

¹⁷ Some of this type of information is publicly available: see for example guidance for public safety personnel issued by the Office of the US Director of National Intelligence, <https://www.dni.gov/nctc/jcat/index.html>.

¹⁸ Section 58 Terrorism Act 2000.

terrorists. They have committed a terrorist offence but there may be no risk of them proceeding to violence, or inspiring others to violence. To conclude that this terrorist offender necessarily presents the same degree of harm as any other terrorist offender may proceed from a perfectly understandable organisational anxiety when dealing with this cohort, but it is a flawed approach.

- Risk of committing a further terrorist offence is not the same as a risk of causing serious harm to the public¹⁹. A fixated individual may well present a risk of downloading further prohibited online materials, and therefore committing a further terrorist offence. But the key issue is whether this may result in them causing serious physical or psychological harm to members of the public, for example by carrying out an attack himself, or by disseminating the material so as to inspire others.
- Risk of serious harm is not the same as extremism or being drawn into extremism. Extremism is only relevant to MAPPA where it indicates that the individual may himself cause serious harm or inspire others to do so. There is a difference between "at risk" and being "a risk".

Polygraph testing

- 2.10. Polygraph testing is not a means of predicting whether an offender will reoffend. It is a useful means of gathering information which is relevant to the assessment of risk.
- 2.11. Polygraph testing is therefore a sensible additional tool for obtaining information relevant to risk posed by Terrorist Offenders. It has been used by the probation service for sex offenders since 2009, initially as a pilot, and since 2014 throughout England and Wales²⁰. There is detailed published guidance on how polygraph testing is actually used in practice²¹.
 - The same controlled methods that are used for sexual offenders (for example, only asking for yes/no answers, and asking about behaviour rather than subjective matters) could be usefully applied to Terrorist Offenders.
 - There are two areas in which polygraph testing is likely to elicit information relevant to managing terrorist risk. Firstly, the results are likely to assist in determining whether the offender is complying with their licence conditions. For example, an offender whose access to the internet was limited to particular purposes could be asked whether they had searched for the word 'Hitler' in the last 10 days. Secondly, they can assist police and probation to consider whether dynamic risk factors are currently present. For example, an offender whose risk of committing an act of terrorist violence was increased by their chaotic lifestyle could be asked whether they had taken cannabis in the previous month.
- 2.12. The Government has already announced that it intends to legislate to enable polygraph testing of Terrorist Offenders who have been assessed as very high or high risk of serious harm (with a residual discretion for Terrorist Offenders

¹⁹ The 2011 MAPPA Inspection at paragraph 3.15 found confusion in the use of "high risk" with regard to sexual offenders: sometimes it meant risk of reoffending, sometimes risk of harm.

²⁰ Offender Management Act 2007, sections 28-30; Polygraph Rules 2009.

²¹ <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2014/psi-36-2014-polygraph-examinations.pdf> at paragraph 1.3. The application of the pilot scheme was challenged but upheld in *R (on the application of C) v Ministry of Justice* [2009] EWHC 2671 (Admin). For further background about the pilot study and evaluation, see http://www.legislation.gov.uk/uksi/2013/1963/pdfs/uksiem_20131963_en.pdf.

who do not meet this threshold but where it is considered necessary)²². I agree with the principle of polygraph testing for Terrorist Offenders, and recommend that it is adopted.

- This excludes Other Dangerous Offenders who have been identified by the authorities as presenting a terrorist risk but have not been convicted of terrorism offences. Although polygraph testing would be a useful tool for all Terrorist Risk Offenders, it would not be justified to include non-Terrorist Offenders: polygraph testing is onerous (the process can take up to 4 hours) and intrusive, and it would be wrong to make testing compulsory on the basis of a terrorist risk assessment by the authorities. It is therefore right to confine it to Terrorist Offenders who have been convicted in the criminal courts.
- As with sexual offenders, the inclusion of a polygraph testing condition would need to be justified in each case. It is possible to foresee that it would be included in every terrorist case, whether by the Secretary of State (automatic release cases) or the Secretary of State on the direction of the Parole Board (non-automatic release cases and recalls). It is also possible that if polygraph testing is dependent upon a particular level of risk being assessed, those assessments may be distorted to enable access to this facility. Both of these possibilities will need to be addressed.
- Clarity is needed over whether the polygraph testing is mainly for those who are assessed as very high or high risk, or whether it is actually intended to see if apparently low risk offenders are fooling the system. If Terrorist Offenders have previously been assessed as high risk, then polygraph testing to see whether their risk has really reduced should not be excluded.
- Statements made while participating in the polygraph session, and any physiological reactions during the polygraph examination are currently excluded from use in criminal proceedings against that individual²³. The rationale of exclusion of admissions made during polygraph sessions from criminal cases is no doubt to avoid a form of compelled self-incrimination. The law does not address whether statements or reactions can be used for the purpose of obtaining civil orders such as Terrorism Prevention and Investigation Measures (TPIMs). Although not criminal, TPIMs can be life-changing measures, are separate from the administration of a licence, and not based on a criminal conviction. Whilst statements made during polygraph sessions may result in a recall decision, such statements are not a current source of evidence for TPIM proceedings. To admit them would have an additional effect which is not the intended purpose of this otherwise acceptable extension of polygraph testing.
- There is more generally a danger of unintended consequences, and in the absence of a pilot process for this particular set of offenders, there is the need for careful post-legislative scrutiny.

3. TOOLS

Summary

- Professionals need to be liberated to use the right tools at the right time on the basis of the right information

²²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872087/ct-factsheet.pdf.

²³ Section 30 Offender Management Act 2007.

- Better mutual knowledge of the tools available to police, probation and prisons, as well as the tools available to Duty to Cooperate Agencies, is required
- Better understanding is needed of how sensitive information can be deployed
- Some additional tools need to be made available under MAPPA

3.1. This chapter refers to tools in the broadest sense: not just statutory powers but any means of reducing terrorist risk that ought to be considered under MAPPA.

Identifying and using the right tool

3.2. Selecting the right tool is an exercise in judgment, and accessing the right tool is sometimes an exercise in persuasion.

- What might seem the most effective means of disruption, recalling an offender to prison for a potentially short period of time might be counter-productive in the long run²⁴. On the other hand, recall may be the only way to protect the public against an imminent risk of serious harm.
- The priority is to reduce the risk of terrorist harm presented by the individual. This is not the same as rewarding good behaviour and punishing bad behaviour.
- Since MAPPA do not provide a command and control structure over local and national infrastructure, the ability to use certain tools (for example, finding the right housing, or obtaining support of mental health) may depend on how effectively police, prisons, and probation are able to demonstrate its importance.
- Because of the special funding available for terrorist risk offender management, there ought to be greater opportunities than with ordinary offenders to find creative ways of managing risk.

Influencing Date of Release

3.3. The initial release of most Terrorist Risk Offenders is currently dependent upon a direction given by the Parole Board²⁵. MAPPA start 6 months prior to parole eligibility. This window provides an opportunity for the Responsible Authority to bring together information relevant to terrorist risk to put before the independent Parole Board.

- Relevant information may include sensitive information deriving from prison security, police and MI5.
- Consideration needs to be given throughout police, prisons and probation to whether that information is capable of assisting the Parole Board (for example, whether it is sufficiently reliable) and whether it can be used (for example, whether this can be done without revealing sensitive sources or methodologies). That cannot be achieved unless information is shared between prison, police and probation beforehand.
- In particular, consideration needs to be given to whether sensitive information can be summarised in a form that means it can be relied upon in ordinary Parole Board

²⁴ Owing to loss of stabilising or rehabilitative factors such as accommodation, and loss of coverage.

²⁵ Those subject to indeterminate sentences, extended determinate sentences, sentences for offenders of particular concern, and those subject to determinate sentences to which the Terrorist Offenders (Restriction of Early Release) Act 2020 applies. There are four types of indeterminate sentences which may be imposed: mandatory life sentence; life for dangerous offenders; two-strikes life; and common law life. Apart from those rare cases where the court has ordered that the offender should never be released from prison, release is dependent upon the Parole Board after expiry of the minimum custodial term set by the court.

proceedings (I also consider the special procedures for withholding sensitive information below).

- Communicating the risk presented by an individual is not always straightforward, and may not always be apparent from the index offence. The Senior Investigating Officer responsible for the investigation leading to conviction should be consulted for their perspective.
- Consideration also needs to be given as to how the information is best presented to the Parole Board. In general, the offender's probation officer (known as the prison offender manager) provides evidence and assistance to the Parole Board, supported by a report from a community probation officer. It may not always be easy for a probation officer to provide a security assessment, for example why particular behaviour on the wing demonstrates a risk of serious harm if the offender is released. I recommend that prison security officers or police officers should familiarise themselves with the Parole Board process, with a view to providing evidence and assistance to the Parole Board in appropriate cases.

3.4. How the independent Parole Board approaches parole is a matter for each of the panels determining each application. This is done in a judicial capacity in accordance with statute and the Parole Board Rules 2019. I make the following observations:

- Terrorism cases in the criminal courts are tried by specially designated panel judges. There is merit in establishing a cadre of specialist panel members for two reasons: firstly, terrorist risk is different from other types of risk and less frequently encountered; secondly, there is a real prospect of more complicated procedural issues than usual resulting from the use of sensitive information.
- The Parole Board may be asked to adjudicate on reasons for and against release that may bear no relationship to the index offence, but reflect the assessment that the offender is nonetheless a terrorist risk.
- One way of dealing with sensitive information is to present hearsay to the Parole Board and offender without providing any detail of the underlying intelligence²⁶. This is not wholly unfamiliar territory²⁷ but the weight to give to hearsay information is not straightforward. I discuss this further below.
- There is provision in the Parole Board Rules 2019 to enable information, relied on before the Parole Board, to be withheld from both the offender and their representative²⁸. The Secretary of State can apply to the Parole Board for material to be withheld from the offender and their representative where its disclosure would adversely affect national security, the prevention of disorder or crime, or the health or welfare of the offender or any other person. It is for the panel chair to decide whether to grant this application. A special advocate can be appointed by the panel chair to represent the offender's interests in the event that the Secretary of State's application succeeds.
- Depending on the procedural protocols that are put in place to deal with these cases, and particularly if those protocols mirror the heavy procedure that accompanies the consideration of TPIMs in the High Court, then it is likely that

²⁶ *R (on the application of X) v Ealing Youth Court (sitting at Westminster Magistrates' Court)* [2020] EWHC 800 is a recent case in which gisted intelligence on terrorist risk was provided to the Youth Court in relation to release, but the same principles apply.

²⁷ The Parole Board has issued recent guidance on a related issue arising out of the *Worboys* case, namely the extent to which the Parole Board may have regard to untried allegations of other offending https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/794823/Guidance_on_Allegations_for_Parole_Board_members.pdf.

²⁸ Under Rule 17, <http://www.legislation.gov.uk/uksi/2019/1038/contents/made>.

these provisions will be used only very rarely. Where they are used they will require significant prior training in order to operate them fairly and efficiently.

- It follows that in addition to specialist panel members, there is merit in ensuring that the chair of panels dealing with some or all terrorist risk cases should have prior judicial experience. In a case involving a non-Terrorist Offender (for example, a violent offender who has been radicalised in prison) the prison and probation service will need to identify at an early stage to the Parole Board that it is a case involving allegations of terrorist risk.
 - Because of the special complexities of decisions of the Parole Board in relation to Terrorist Risk Offenders, the publication of anonymised decisions or precedents is to be welcomed in order to create greater consistency and efficiency.
- 3.5. By way of example, a hearsay gist might state that the prisoner has made contact from the prison with right wing terrorists. Taking this in combination with other standard materials before the Parole Board, the authorities might wish to argue that release should be denied, or additional licence conditions should be imposed.
- In the first instance this is a means of identifying an aspect of risk which may otherwise not be apparent to the Parole Board.
 - If the authorities are inviting the Parole Board to act upon it, without disclosing the underlying intelligence, there is undoubtedly a persuasive burden on the authorities to explain what weight the gist should carry in the overall assessment.
 - As reflected in rule 24(6) Parole Board Rules 2019, hearsay has long been admitted into Parole Board proceedings subject to the demands of fairness²⁹.
 - I recommend greater sophistication in the presentation of hearsay gists. Is the hearsay gist presented by a named senior official who has seen the underlying intelligence? Can the reliability of the intelligence assessment be graded? Is the intelligence assessment carried out to national standards? Is there a routine auditing of intelligence assessments that are presented to the Parole Board? Is there a means of assuring the Parole Board that the authorities are not overlooking intelligence that points significantly the other way?

Licence conditions

- 3.6. Whether released automatically, or released by direction of the Parole Board, most Terrorist Offenders will be subject to release on licence. Setting appropriate licence conditions is an essential means of mitigating the risk posed by Terrorist Risk Offenders. Any offender who is released from custody on licence remains subject to a sentence of imprisonment³⁰. Licence conditions are therefore not imposed on individuals who are otherwise entirely at liberty. An offender has a legal duty to comply with conditions³¹.
- 3.7. Licence conditions are imposed by the Secretary of State. For automatic release prisoners, this is done formally by the prison governor on the recommendation of the probation service, with advice where needed from a separate team of officials in the Ministry of Justice known as the Public Protection Casework Section. MAPPA provide an opportunity to discuss the appropriate conditions.

²⁹ The authorities are summarised in the *Worboys* case [2018] EWHC 694 (Admin), at paragraph 152.

³⁰ *R (on the application of ZX) v Secretary of State for Justice* [2017] EWCA Civ 155, at paragraph 32.

³¹ Section 252(1) Criminal Justice Act 2003.

This requires early exchange of information, including sensitive information, between police and MI5, prisons and probation as part of MAPPA.

- 3.8. For offenders whose release is at the discretion of the Parole Board, the licence conditions are subject to the Board's direction. I recommend that:
- Consideration should be given in parole cases to how the need for particular conditions can be best communicated to the Parole Board. Since unnecessary conditions do not assist with offender management, this will sometimes involve explaining why particular conditions are not sought.
 - For example, it will occasionally be necessary to consider whether an offender who was convicted of a non-terrorism offence should be prohibited from meeting certain individuals or having unrestricted internet access.
 - Although if specialist panel members are always deployed in terrorist risk cases this may not be required: sometimes a police officer (suitably familiarised with Parole Board procedure) will be better placed than the offender manager to explain to the Parole Board the necessity for particular conditions.
 - Consideration should also be given to creating generic explanations of the utility of these conditions for the assistance of the panel. Without revealing sensitive techniques, an open explanation may provide a useful explanation for why certain conditions, such as declaring bank accounts, are needed³². In any event, offender managers will be assisted in their dealing with Terrorist Risk Offenders in being able to explain (at least some of) the rationale for the conditions imposed.
- 3.9. The kinds of licence conditions that may be imposed are set out in statutory instrument³³. They comprise standard (such as keeping in touch with the supervising officer) and additional (such as residing at a fixed place) conditions. Detailed guidance is given in Prison Instruction 12/2015³⁴ which contains template licence conditions set out in two annexes. Annex A comprises additional licence conditions generally, and Annex B comprises additional licence conditions for what are described as "extremist offenders". If none of these templates are considered to be adequate, the Public Protection Casework Section is able to authorise bespoke conditions if consistent with the statutory instrument.
- 3.10. I shared the view of some probation officers that Prison Instruction 12/2015 was unclear and unnecessarily restrictive, and I recommend that this should be addressed in future policy:
- Guidance limits the application of the Annex B conditions to "extremist offenders", a category that expressly includes those convicted of terrorism offences, those whose offending is linked to extremist organisations such Da'esh, and those radicalised in custody. It does not expressly include Other Dangerous Offenders whose terrorist risk arose prior to their imprisonment. This remains the case despite the fact that offenders in this category may present a significant known terrorist risk³⁵.

³² There is some explanation in the Advice section of the table at Annex B of PI 12/2015 that could form a useful starting point.

³³ The Criminal Justice (Sentencing) (Licence Conditions) Order 2015 SI 337 sets out the conditions that may be imposed under section 250(4) Criminal Justice Act 2003.

³⁴ <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2015/psi-12-2015-licences-conditions-supervision.pdf>.

³⁵ For example, terrorists whose attack-planning is disrupted by arrest for an unrelated non-terrorism offence.

- Nor does the definition expressly include those who have been radicalised outside a custodial setting: for example, non-Terrorist Offenders on licence who have been radicalised following their release.
- I am aware that proposed amendments to Prison Instruction 12/2015 will remove the distinction between Annex A and Annex B. Attention should be given to condition 3 of Annex B (making or maintaining contact with a person): at present it is limited to prohibiting contact with a person who the offender knows or believes to have been "charged or convicted of any extremist related offence". But it may be appropriate to prevent contact with other individuals; and offender managers, having discussed the matter with MAPPA colleagues from prison and police should not be deterred from proposing further restrictions that can be shown to be necessary and proportionate.
- The key consideration is that licence conditions can be imposed which can be shown to be necessary and proportionate for mitigating the risk of the individual offender.
- Creativity should be encouraged. A good example is a condition that offenders must preload monitoring software before they have access to the internet. But this means that those responsible for MAPPA should have ready access to advice from the Public Protection Casework Section and if necessary wider legal advice (see further, Chapter 5).
- Formulaic imposition of licences is to be avoided. Overloading Terrorist Risk Offenders with unnecessary conditions may create risk by limiting ability to reintegrate (especially by impeding employment), and inducing avoidable frustration.
- I address the inclusion of mandatory polygraph testing as a licence condition in Chapter 2.

Post-release monitoring

- 3.11. An advantage in managing the terrorist risk posed by released offenders is that most management can be done overtly. Most Terrorist Risk Offenders will know that the authorities are concerned about their behaviour. This allows more imaginative solutions than are available when terrorist risk is being investigated and managed covertly.
- 3.12. Post-release monitoring of Terrorist Risk Offenders on licence works best when the probation and police are jointly involved.
- Offenders convicted of terrorism offences who are subject to notification requirements under Part 4 Counter-Terrorism Act 2008 are already monitored by police officers to check their compliance. Offenders are required to notify the police of details such as their mobile phone, bank account, and vehicle, for a period of 10, 15 or 30 years depending on the sentence passed³⁶.
 - These police officers are known variously as Part 4 officers or police offender managers, and specialise in managing terrorism risk in the community, and are therefore also responsible for managing individuals on TPIMs and Temporary Exclusion Orders.
 - Whilst the offender is also subject to supervision on licence, probation offender managers and Part 4 officers usefully complement one another in managing the risk because (a) probation officers and police officers are likely to bring different perspectives to understanding and reducing the risk posed by the offender; (b) the

³⁶ See further *Terrorism Acts in 2018 Report* at 7.53 to 7.57.

ability to carry out joint visits or meetings reduces the personal risk to lone probation officers; and (c) the presence of police officers monitoring compliance with Part 4 requirements increases the prospect of detecting breaches of licence conditions.

- 3.13. Part 4 notification requirements should apply to a wider range of Terrorist Risk Offenders:
- The offence of breaching a TPIM under section 23 of the Terrorism Prevention and Investigation Measures Act 2011, if resulting in a sentence of imprisonment of sufficient length, should be made subject to notification requirements. Individuals are only subject to TPIMs where they have already been assessed to have committed terrorism-related acts. Offenders who are subject to these orders and go on to breach them are likely to need greater monitoring when they are released from prison and should therefore be liable to notification requirements. The inability to use Part 4 as a tool to manage these offenders is a source of legitimate frustration for police.
 - I recommend that the power of the sentencing judge to identify offences as having a terrorist connection³⁷ (and thereby importing the notification requirements of Part 4) should be extended. At present, a court may only make such a determination in respect of a limited set of offences, mainly offences of violence³⁸. If the Court is satisfied that an offence of whatever sort has a terrorist connection, and passes a sentence of imprisonment of sufficient length, it would be sensible to impose notification requirements, managed by police officers, in those cases as well³⁹.
 - The increased administrative burden that this will bring, together with the long-term impact on the individuals concerned, should not be underestimated. It is therefore unsatisfactory, as I have observed elsewhere, that there is no means of reviewing the need for notification requirements in individual cases after an appropriate period of time has elapsed⁴⁰.
- 3.14. Moreover, Part 4 obligations, and the role of Part 4 officers, do not extend to Other Dangerous Offenders. Part 4 officers currently have no role, for example, in monitoring non-Terrorist Offenders who are radicalised in custody. Yet these are amongst the most difficult cases for which probation officers are responsible and such offenders may present no less terrorist risk than is posed by Terrorist Offenders.
- 3.15. In my view effective collaboration between police and probation should not be excluded for these Other Dangerous Offenders. The lack of a police role means that the overall monitoring of terrorist risk is less effective than it might otherwise be. I therefore recommend that where a non-terrorism offender is subject to MAPPA because of their terrorist risk, the role of Part 4 officers should be replicated as far as possible.
- I do not suggest that Other Dangerous Offenders who are managed by MAPPA should be automatically subject to Part 4. It would be wrong to impose lengthy terrorist notification requirements on individuals who had not been convicted of a

³⁷ Under section 30 Counter-Terrorism Act 2008. The exercise required is for the judge to decide at a hearing whether the offence is, or takes place in the course of, an act of terrorism, or is committed for the purpose of terrorism (see section 93).

³⁸ Schedule 2 Counter Terrorism Act 2008.

³⁹ Subject to the sentence being a minimum length.

⁴⁰ *Terrorism Acts in 2018 Report* at 7.56.

terrorist offence, merely on the basis that they had been administratively assessed to present a terrorist risk.

- However, if new but limited statutory powers are conferred on police officers in relation to urgent recall and compliance search warrants, as I recommend below, then police officers will have a role in considering whether those powers should be exercised for this group of Terrorist Risk Offenders.
 - In any event, the police will need to consider whether the personal safety of probation officers meeting Terrorist Risk Offenders or visiting their homes in the course of supervision without police support is appropriate.
 - Imposing TPIMs on released offenders on licence would theoretically be an alternative means of involving police offender managers in these cases. But to impose a TPIM on an offender on licence would duplicate much of what a licence can already provide, and would be a recipe for confusion as the offender would be subject to two distinct legal regimes.
- 3.16. Very occasionally, Terrorist Risk Offenders will be released otherwise than on licence. For example, a court may pass a sentence of less than 2 years leading to a period of post-sentence supervision⁴¹, a suspended sentence, or a community order. As I recommend in Chapter 5 (Active Case Management), those responsible for MAPPA for these offenders will need to have ready access to legal advice because the means by which these different sentencing outcomes are enforced are different in each case, may not always be perfectly understood, and crucially do not include a power of administrative recall.

Compliance checks

- 3.17. Knowing whether a terrorist risk offender is complying with licence conditions depends on (a) the level of covert and overt monitoring⁴² and (b) the skill of, and extent of interactions with, the supervising probation officer (which will depend upon caseload). However, there are gaps in the ability of the authorities to monitor compliance in terrorist risk cases.
- Police have the power to search the premises of Terrorist Offenders who are subject to Part 4 notification requirements, for example to search for unnotified mobile phones. The power arises either on application to the magistrates' court for a search warrant under the Police and Criminal Evidence Act 1984 on the basis of reasonable suspicion that the individual has committed the indictable offence of breaching their notification requirements or under the Counter-Terrorism Act 2008 for the purpose of assessing the risks posed by the person to whom the warrant relates⁴³.
 - Equivalent premises search powers are not available for Other Dangerous Offenders to check whether they are complying with their licence conditions. In the course of preparing this report, it has become apparent to me that this leads to a significant gap in the ability to monitor the risk posed by such offenders. Although there is a legal duty to comply with conditions, it is not an offence to fail to do so. This means that the ability to apply for a search warrant would only be available⁴⁴ if the non-compliance was in connection with a terrorist investigation (for example, where an unauthorised phone might be related to attack planning by the offender).

⁴¹ Section 256AA Criminal Justice Act 2003.

⁴² Overt monitoring includes, for example, checking whether the individual has signed in at their Approved Premises.

⁴³ Section 56A, a new power inserted by the Counter-Terrorism and Border Security Act 2019: see *Terrorism Acts in 2018 Report* at 7.58.

⁴⁴ Under Schedule 5 Terrorism Act 2000. See *Terrorism Acts in 2018 Report* at 4.28.

- In some cases, there may be good intelligence that a Terrorist Risk Offender is failing to comply with their licence conditions at home, but no ability to carry out the thorough search required to determine whether it is the case.
 - Possession of a phone in violation of licence conditions might, if true, indicate that the offender poses a heightened risk. For example, an unauthorised phone might embolden the offender to have contact with their previous terrorist network. It may not be possible to determine whether the offender is in contact with their network, still less that they are plotting an attack, but the possession of a phone would provide them with greater opportunities for serious harm at a future point in time. Alternatively, it might indicate that the offender is probing the boundaries of their supervision, to determine what else they can get away with. That too is relevant to their risk of serious harm.
- 3.18. I therefore recommend a new power for a court to grant a search warrant in the case of any offender on licence (including Other Dangerous Offenders), to check compliance with licence conditions for the purpose of assessing the risk of terrorism posed by that offender.
- It would not be necessary to provide reasonable grounds to suspect that the individual was engaged in terrorism but the court would need to determine for itself that an assessment of terrorist risk justified permitting entry onto premises; and that there were no other reasonable measures that could be taken to do so.
 - As set out above, search warrant provisions already exist for those subject to Part 4 notification. It is a precondition for the grant of such a warrant that a constable has sought entry to search the premises on at least two occasions and has been unable to gain entry for the purpose of assessing risks.
 - Similar search warrant provisions exist for those subject to TPIMs, in order to allow the police, where appropriately authorised by a court, to search premises to monitor compliance with TPIM conditions⁴⁵.
 - It is a relatively modest extension to allow search warrants to be issued for monitoring the terrorist risk posed by Terrorist Risk Offenders on licence.
 - The possibility of this special form of search warrant would last as long as the Terrorist Risk Offender was on licence. For those who have committed more serious offences, this possibility will therefore last for longer.
 - For a court to find that a search warrant was necessary and proportionate, it would need to be satisfied that there was some basis for assessing terrorist risk. For a person who had not been convicted of a terrorism or terrorism-connected offence, this could be done, for example, establishing reasonable grounds to suspect that the individual had been radicalised during his custody at an earlier stage, and was being managed by MAPPA on account of this. The offender would have to have refused entry on at least two occasions. Ultimately it would be for the court to decide whether it was necessary and proportionate to issue a warrant.
- 3.19. It was not suggested to me during the course of my review that a power of personal search was needed, and I am reluctant to make a positive recommendation that the law is inadequate where practitioners do not themselves see a gap. However, I recommend that consideration is given to whether a power of personal search to look for weapons or harmful objects is required.

⁴⁵ Paragraph 8 of Schedule 5 to the TPIM Act 2011.

- I do so for two reasons. Firstly, because of the Usman Khan case (in which weapons and a fake suicide belt were brought by him to the scene of the attack). If an offender knows that they are liable to be searched, perhaps as an express condition of travelling to a new area, or simply as a possibility, that may be a deterrent. Secondly, because of the situation of probation offender managers having personal meetings with high risk offenders, either in probation offices or at their home addresses.
- No obligation to submit to a personal search could be imposed without specific statutory provision to that effect⁴⁶. This means that it could not be added as a licence condition under the current law. The current power to stop and search a person reasonably suspected to be a terrorist for evidence of terrorism⁴⁷ is not designed for compliance or assurance searches.
- For the reason outlined at paragraph 3.15 (first bullet point) above, it could only apply to Terrorist Offenders. Again, the liability to submit to personal search would last as long as the licence meaning there would be some correlation between the seriousness of the offence and the length of the liability.
- The exercise of such a power would have to be carefully managed in the context of establishing a relationship of trust with the terrorist offender.
- There is a power to carry out searches of individuals subject to TPIMs: a constable may (without a warrant) search any such individual for the purpose of ascertaining whether the individual is in possession of anything that could be used to threaten or harm any person⁴⁸.
- The existing search powers under section 43 Terrorism Act 2000 and, in the very rare circumstances where an authorisation is provided, under section 47A Terrorism Act 2000 are not sufficient to deal with this type of assurance check⁴⁹.

Varying licence conditions after release

- 3.20. Following release there may be a need to vary licence conditions in response to developing risk. For example, following a terrorist attack by an offender on licence it may be necessary and proportionate to impose additional conditions to prevent copycat attacks, depending on the risk posed by the offender in question.
- 3.21. Decisions to vary conditions based on sensitive information are inherently difficult, because of the risks of inadvertent disclosure: telling a terrorist risk offender that they are now prohibited from contacting a particular associate tends to reveal that the authorities have intelligence about that associate. However, creative thinking may enable the imposition of different conditions to manage that risk (for example, exclusion from a particular area) without revealing intelligence. This may sometimes be done by gisting or sanitising intelligence so that necessity and proportionality can be justified⁵⁰.

⁴⁶ *Secretary of State for the Home Department v GG* [2010] Q.B. 585.

⁴⁷ Section 43 Terrorism Act 2000.

⁴⁸ Paragraph 10 of Schedule 5 to the TPIM Act 2011.

⁴⁹ *Terrorism Acts in 2018 Report* at 4.2 and 4.10-11.

⁵⁰ Although courts are loathe to interfere with the fine judgements of those involved in managing high risk offenders (see *R (on the application of Gul) v Secretary of State for Justice and National Probation Service* [2014] EWHC 373 (Admin) at paragraph 72) a decision to vary a licence condition is subject to judicial review. It seems unlikely that a particular licence condition would be imposed purely on the basis of non-disclosable sensitive information, so the issue of how such a decision could be defended or challenged in court is unlikely to arise. In principle, it seems the non-disclosure procedures of the Justice and Security Act 2013 would be available following *In the matter of an application by Deborah McGuinness for Judicial Review* [2020] UKSC 6.

3.22. The process for doing so depends on how the licence conditions were imposed in the first place. The ability to make urgent variations, where justified, should not be impeded.

- If the Parole Board played no part in the release process of the Terrorist Risk Offender, for example for an offender who fell to be automatically released after the Parole Board concluded that they were too risky to be released on parole, then the licence conditions are a matter for the Secretary of State and can be varied by the Secretary of State on advice from the probation service. I have seen no evidence that such variations cannot be done with sufficient urgency where needed.
- On the other hand, if the individual was released by the Parole Board, then the conditions in the licence⁵¹ are a matter for the Board and can only be varied by direction or recommendation from the Board⁵².
- There are solid reasons for maintaining the Parole Board's supervision of licence conditions for which it was responsible: a decision to release will have been taken on the basis of a particular package of conditions sufficient to mitigate risk to the public, and any later alteration of that package of conditions without involvement by the Parole Board risks interfering with the nature of the original release decision. However, Terrorist Risk Offenders may be on licence for a long period of time and circumstances may change significantly and sometimes urgently.
- It is therefore important that the Parole Board has the facility to consider and, if persuaded, approve urgent variations of licence conditions in terrorist risk cases. I reiterate my suggestion that dealing with terrorist risk cases requires a degree of specialism and understanding of terrorist risk, and therefore (a) requests for variations should be directed to specialist panel members and (b) there must be an ability to make urgent contact with these panel members. If it is not possible to achieve this facility, consideration would need to be given to amending the Criminal Justice Act 2003 to permit variations to be made on an urgent basis subject to retrospective approval (or not) by the Board.
- I had considered whether it would be preferable to remove the Parole Board's control over variation all together, so that the position was the same for all Terrorist Risk Offenders (both those released automatically, and those released on parole). However, this risked interfering with the Parole Board's role to an unacceptable degree and does not appear to be necessary.

Recall to prison, including power to arrest in urgent cases

- 3.23. An offender who is released on licence may be recalled to prison to serve the remainder of their sentence, by the Secretary of State. The relevant legislative provisions⁵³ do not identify the specific circumstances in which an offender may be recalled. There is however uncertainty amongst practitioners about whether a breach of licence is needed before a terrorist risk offender can be recalled. This uncertainty may lead to probation officers failing to recommend recall where it is necessary to protect the public.
- For example, a Terrorist Risk Offender persistently visits shops where knives are on display.

⁵¹ Other than the standard conditions that must be included in all licences.

⁵² Section 250(5B) Criminal Justice Act 2003; section 31(3) Crime (Sentences) Act 1997 with respect to life prisoners.

⁵³ Section 254(1) Criminal Justice Act 2003 and section 32 Crime (Sentences) Act 1997 for offenders serving life sentences.

- This behaviour may show that their risk can no longer be managed safely in the community but may not be a breach of their licence conditions.
- If the view is taken that they cannot be recalled in these circumstances, the offender will remain at liberty notwithstanding their elevated risk.
- This is despite the fact that case law does not support such a limit on the ability to recall to prison. Had it been Parliament's intention to limit the Secretary of State's power to recall offenders to cases where there has been a breach of a licence condition, the relevant legislation could easily have provided for this; no such limit appears⁵⁴.
- There are cases where the courts have refused to interfere with decisions to recall, not so much for breaching the conditions of their licence, but because the offender exhibited a pattern of behaviour that was inconsistent with the purposes of their release on licence and was such as to indicate risk to the public of re-offending⁵⁵.
- For example, a sudden deterioration in the mental health of a terrorist offender may give rise to a significantly heightened risk of serious harm to the public, and could justify recall to prison despite the absence of any fault on the part of the offender.
- I therefore recommend that guidance on the recall of Terrorist Risk Offenders makes this clear in the context of determinate, and indeterminate or extended sentenced prisoners⁵⁶.

3.24. The decision to recall a terrorist risk offender to custody is one that can only be effectively taken in light of all information relevant to risk, including sensitive information.

- The recall process requires careful thought because where any offender is recalled to custody, they must be informed of the reasons for their recall and of their right to make representations⁵⁷. They also have the right to apply for re-release to the Parole Board⁵⁸. So those involved in managing the case will need to consider whether a decision to recall can be explained to the prisoner and justified subsequently.
- The principles of active case management (see Chapter 5) provide the best means of (a) identifying whether there is sensitive information which does suggest that recall is appropriate; (b) ensuring that there is dialogue between the CT police and probation to identify whether a gist, or non-sensitive basis for the recall, can be identified for disclosure to the offender or use before the Parole Board; and (c) obtaining access to legal guidance in real time.

⁵⁴ *R (on the application of Gulliver) v The Parole Board* [2007] EWCA Civ 1386, at paragraph 21.

⁵⁵ *R (on the application of Keiserie) Secretary of State for Justice* [2019] EWHC 2252 (Admin) at paragraph 34.

⁵⁶ Different tests apply with respect to determinate sentenced prisoners, on the one hand, and indeterminate or extended determinate sentenced prisoners, on the other. These differences are set out in the *Recall, Review and Re-Release of Recalled Prisoners* policy framework, and result from the application of Article 5(4) of the European Convention on Human Rights to the non-custodial portion of indeterminate or extended determinate sentences. This has been interpreted in those cases as meaning, broadly, that there must be a "causal link" between their present risk and the risk resulting from the index offence. Since most Terrorist Risk Offenders will be subject to such sentences in future, especially since the Terrorist Offenders (Restriction of Early Release) Act 2020 which transforms existing determinate sentences into a type of extended sentence, this is likely to be the dominant test.

⁵⁷ Section 254(2) Criminal Justice Act 2003. In preparing this report it was not suggested to me that this provision would prevent the probation service relying on sensitive information for a terrorist risk offender's recall, so long as sufficient information about the overall reason for recall was disclosed so as to enable the offender a fair opportunity to make representations to the Secretary of State and, if necessary, the Parole Board.

⁵⁸ Section 255C Criminal Justice Act 2003.

- Any recall should not be made lightly. There will be circumstances in which recall to prison will disrupt either genuine progress made in the community or interfere with existing patterns of monitoring. Recall may not be considered necessary in these circumstances, if the risk can be managed with more stringent supervision.
 - However the aim should be to avoid – unless really justified by some strong countervailing reason – a situation in which an offender remains on licence but is considered to be so risky that they require police armed surveillance to manage their risk.
- 3.25. Administrative provision exists for urgent recalls where, for example, the offender is subject to MAPPA at level 3 or is assessed to present an imminent risk of serious harm. Those arrangements mean that there should be only a very limited window between the decision by the probation service to apply for recall, to a decision being made by the Secretary of State (generally by officials at the Public Protection Casework Section of the Ministry of Justice) to recall the offender, at which point they are liable to be detained⁵⁹.
- In the context of terrorist risk, information that a Terrorist Risk Offender poses an imminent risk of serious harm may justify the use of ordinary or terrorist arrest powers, meaning that a short delay in authorising their recall may be unimportant.
 - However, I was informed that there were circumstances in which this delay could be material, requiring police to consider elaborate back-up plans.
 - For example, some high risk offenders are required as a condition of their licence to go immediately upon release to their Approved Premises accompanied by police officers. If an offender refused to do so, this would not necessarily provide grounds to suspect commission, preparation or instigation of an act of terrorism and therefore a power of arrest⁶⁰.
 - By way of further example, an offender whose licence conditions prohibit them from entering a transport hub is seen entering a railway station and queuing for a ticket. A recall to prison might well be justified, but the formal decision might not have been taken before the train had left the station.
 - In these circumstances, the police have limited options. There is no power of arrest because breaching a licence is not an offence even though the offender will be immediately liable to detention once the formal decision is taken.
- 3.26. I therefore recommend that a new statutory power of arrest is created whereby a police officer who has reasonable grounds to suspect that an offender will be recalled to custody, and where it is reasonably believed that the use of urgent arrest powers pending recall is necessary, should be able to arrest an offender without warrant.
- A comparison can be made with the power of a police officer to arrest a person released on bail where they have reasonable grounds to suspect that the person has broken the conditions of their bail or is likely to break any of the conditions of their bail⁶¹. This power can be exercised without a warrant. Bail, like being released on licence, is an alternative to custody.
 - An analogous provision empowering a constable to arrest an offender on licence, in the limited circumstances described above, is a modest but necessary additional power for police when dealing with high risk offenders.

⁵⁹ Under section 254(6) Criminal Justice Act 2003.

⁶⁰ Under section 41 Terrorism Act 2000.

⁶¹ Section 7(3)(b) Bail Act 1976.

- It will not be appropriate to use such a power if waiting for a very short period to enable the formal decision to be made and communicated would be sufficient.

Children

- 3.27. Children convicted of terrorism offences may be sentenced to long-term detention if found guilty of one of a list of certain "grave crimes" and neither a youth rehabilitation order nor a Detention and Training Order (DTO) is suitable⁶². Extended detention is available⁶³ as are life sentences for the gravest cases⁶⁴. Release and recall for these sentences operate in the same way as for adult offenders. However, as is further discussed in Chapter 5, supervision on licence is done by Youth Offending Teams, and this has practical implications for the management of MAPPA.
- 3.28. DTOs are available to Youth Courts and to the Crown Court in respect of certain offenders aged under 18 who have been convicted of an offence punishable with imprisonment in the case of an adult⁶⁵. The period of detention and training must be for one-half of the full term of the order⁶⁶ and the rest is under supervision. There are advantages and disadvantages to these orders, although the disadvantages are considerable:
- A DTO can only be imposed for a period of four, six, eight, ten, twelve, eighteen, or twenty-four months⁶⁷.
 - A Youth Court has power to delay the date when a young offender is released from the custodial part of a DTO. Release can be delayed by one month, or two months, depending upon the length of the DTO⁶⁸. Such an order should only be made in exceptional circumstances⁶⁹.
 - Supervision requirements are imposed under a Notice of Supervision⁷⁰ and managed by Youth Offending Teams. There are no restrictions on the types of requirements which provides an opportunity for imaginative solutions to managing the risk posed by these offenders⁷¹. But since most Youth Offending Teams will have no experience of dealing with Terrorist Risk Offenders, MAPPA arrangements are all the more important.
 - The Secretary of State has no power to recall an offender who has failed to comply with any supervision requirements specified in a DTO. Only a court may return a young offender to custody. This requires the issue of summons or warrant for their arrest⁷².

⁶² Section 91(3) Powers of the Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000).

⁶³ Section 226B Criminal Justice Act 2003.

⁶⁴ Detention for life under section 226 Criminal Justice Act 2003; detention at Her Majesty's pleasure in cases of murder under s. 90 PCC(S)A 2000.

⁶⁵ Sections 100 - 107 PCC(S)A 2000.

⁶⁶ Section 102(2) PCC(S)A 2000.

⁶⁷ Section 101(1) PCC(S)A 2000.

⁶⁸ Section 102(5) PCC(S)A 2000.

⁶⁹ Considered in *R (on the application of X) v Ealing Youth Court (Sitting at Westminster Magistrates' Court)* [2020] EWHC 800.

⁷⁰ Section 103(6) PCC(S)A 2000.

⁷¹ See Guidance <https://www.gov.uk/government/publications/notices-of-supervision-guidance-for-youth-justice-professionals/notices-of-supervision-guidance-for-youth-offending-teams>.

⁷² Section 104(1) and (2) PCC(S)A 2000. The court may order the offender to be detained in youth detention accommodation for a period of three months, or the remainder of the term of the order, whichever is the shorter. Alternatively, the court may impose a further period of supervision of up to three months, or the remainder of the order, whichever is the shorter, impose a fine, or it may do nothing: section 104(3) and (3A) PCC(S)A 2000.

- The limited ability to delay release for those presenting a serious risk, and in particular the inability to recall administratively to prison, means that DTOs do not enable practitioners to respond effectively to the elevated risk of terrorist harm that can be posed by some young offenders. I recommend that consideration is given to whether DTOs should continue to be available for youths convicted of terrorism offences.

Disruption by further criminal prosecution

- 3.29. Disruption is a matter for police but the sharing of information between police, probation and prisons may provide opportunities for a Terrorist Risk Offender to be arrested and prosecuted for a further offence detected either during their time in prison or following release on licence. Where an offence is committed in prison, sentencing guidance states that a consecutive sentence will ordinarily be appropriate⁷³. This need not be simply about detention as a means of removing risk from the community. In some mental health cases, securing an arrest and remand into custody may be the only way of obtaining a mental health assessment. There is a particular need to ensure that disruptive opportunities based on conduct in prison are not lost (I consider further the need to share prison information in Chapter 5).
- I heard that potential offences committed by Terrorist Risk Offenders in prison were not being investigated as criminal offences.
 - For example, the finding of weapons, radicalisation involving potential offences under the Terrorism Act 2006, and the finding of phones.
 - Some matters were dealt with as internal disciplinary matters under the Prison Rules 1999, rather than being investigated as a possible crime. Relatively recent amendments to the Prison Act 1952 make it an offence, for example, to possess a mobile phone in prison without authority⁷⁴. Investigating such a matter as an offence leading to arrest and charge may be a sensible option when a high risk terrorist offender is otherwise reaching the point of automatic release.
 - There is guidance in place that should address this because it requires, for example, unauthorised phones to be reported to the police in the case of high risk nominals⁷⁵.
 - However, investigative resources are currently limited. This may be because local police forces do not prioritise such investigations, and specialist CT police may only tend to consider a prison offence if it is potential evidence of terrorist activity.
 - I recommend that urgent consideration is given as to how, practically, these disruptive opportunities can be better investigated for the purpose of potential criminal prosecution.

Civil Orders

- 3.30. Civil orders are particularly useful at the end of a licence period. Once the licence concludes there is no statutory basis for supervision and any interventions offered to the offender are voluntary only. These are specialist orders, which may be suitable only for a minority of released offenders, and require legal advice (see further Chapter 5):

⁷³ Sentencing Council Definitive Guidelines on Offences Taken into Consideration and Totality.

⁷⁴ Section 40D(3A) inserted by the Crime and Security Act 2010.

⁷⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800040/Crime_in_Prison_Referral_Agreement - 7 May 19.pdf.

- TPIMs are imposed by the Secretary of State for the Home Department to control terrorism-related activity usually on the basis of sensitive intelligence provided by MI5⁷⁶. Whilst it is not open to any of the MAPPA authorities to make or apply for such an order, a recommendation could be made to the Home Office. The channels of communication between managing risk during and after licence expiry need to be kept open.
- Serious Crime Prevention Orders (SCPOs) are imposed by the Court in order to prevent, restrict and disrupt involvement in serious crime including terrorism on application by the Crown Prosecution Service (usually on the initiative of the police)⁷⁷. As well as addressing terrorist risk directly, SCPOs that deter other types of offending may help to mitigate terrorist risk. For example, restricting a Terrorist Risk Offender from gang-related activities may prevent them from gaining access to firearms.
- Injunctions under the Anti-Social Behaviour, Crime and Policing Act 2014. These may be made by the County Court or (for those under 18) the Youth Court on application by the Chief Officer of Police for the area or Local Authority among others. The purpose of these orders is to address anti-social behaviour rather than terrorism.
- The concerns which injunctions are designed to address do not have to relate to the index offending and therefore could be useful for a Terrorist Risk Offender who was not convicted of a terrorism or terrorism-related offence but whose involvement in anti-social behaviour is linked to their terrorist risk. Since 2014, these orders have been able to include positive obligations such as attendance at a local alcohol service.
- I was informed that understanding of injunctions is low amongst police forces, and that there is a difficulty in identifying someone to undertake the statutory role of supervising any positive requirements⁷⁸.
- In the course of preparing for this report I was informed about a Terrorist Risk Offender who was easily manipulated. Their licence was due to expire, bringing probation supervision to an end. The probation officer in question told me that they would have liked to have carried on supervising the individual if there was a statutory role to do so. I recommend that consideration is given to whether specialist probation officers could be permitted to supervise civil orders made against Terrorist Risk Offenders at the conclusion of their licence, in order to extend the period of contact with the probation service in appropriate cases.
- Breaches of these orders is a separate criminal offence and may also result in other adverse consequences such as loss of social housing⁷⁹.

Disclosure

3.31. Disclosure is an effective part of risk management but the circle of knowledge about Terrorist Offenders is surprisingly limited:

- In the course of preparing this review I was told that Borough Commanders in London, in charge of neighbourhood policing, were not always aware of the identity of Terrorist Offenders on licence in their area.

⁷⁶ See *Terrorism Acts in 2018 Report* at 8.3 to 8.32.

⁷⁷ Ibid at 8.63 to 8.70.

⁷⁸ Under section 3(1) Anti-Social Behaviour, Crime and Policing Act 2014.

⁷⁹ Section 84A Housing Act 1985 inserted by section 94 of the Anti-Social Behaviour, Crime and Policing Act 2014.

- I do not know whether this matches the position with other local forces, but the fact that an individual has been convicted of a terrorist offence, and the length of their sentence, is a matter of public record.
- Nor do I know whether this is a result of information not being circulated adequately, not easily accessible, or for some other reason.
- Local police forces ought to be well placed to spot odd behaviour, and feed relevant information back to CT police.
- Cooperation between local policing and probation in the context of serious organised crime is now well developed.
- In Northern Ireland, beat officers are briefed at a detailed level on Terrorist Offenders in their area⁸⁰.
- I recommend that consideration is given to whether local police can be more routinely briefed on released Terrorist Risk Offenders, with the expectation that this information is shared and local police told to keep an eye out for unusual patterns of behaviour.
- There is also no reason in principle why, within careful limits, information on recently released Terrorist Offenders should not be provided to trusted parts of civil society where they have a direct interest, for example vetted organisations providing security to places of worship which are potential targets of attacks from released Terrorist Risk Offenders, such as synagogues and mosques. This may enable them to look out for particular individuals or registration plates, and is consistent with the principle of warning past or future victims when dangerous offenders are released⁸¹.
- It was also suggested to me that more generic planning-type information should be shared with Duty to Cooperate Authorities such as Local Authorities. For example, if a large number of Terrorist Risk Offenders subject to MAPPA are due to be released within a short period into a particular area, each with future housing needs, it may be sensible to alert the Local Authority in advance. This should allow issues of capacity to be discussed at an early stage.

Support Measures

- 3.32. The path to rehabilitation for a terrorist risk offender is hard. Employment may be difficult to obtain and changing risks may cut off previous opportunities: for example, following the vehicle-born attacks in Europe, access to jobs as an HGV driver may have to be limited. It may be particularly difficult to obtain settled housing. All those interacting with Terrorist Risk Offenders, particularly those convicted of terrorism offences, should be aware of the danger of raising expectations that are ultimately unfulfilled, which could ultimately increase the risk posed by the offender to the public.
- 3.33. The support measures identified below are not just aimed at reducing risk through rehabilitation. Irrespective of rehabilitation, a Terrorist Risk Offender who is homeless may be present more risk than one who spends the night at a particular address. Terrorist Risk Offenders with fragile mental health, of whom there are many, may be more risky if their mental health needs are unaddressed. Lonely individuals may be less likely to spend time alone accessing violent extremist material if they have structure in their day involving trips to the probation office and other commitments.

⁸⁰ It is to be noted that the probation service in Northern Ireland do not supervise Terrorist Offenders on licence.

⁸¹ This type of disclosure would go beyond the examples given in the Guidance at paragraph 10.11.

- The key principle is that MAPPA authorities should be able to consider all options, for each Terrorist Risk Offender.
- This means that facilities that are currently only available through PREVENT, should be available for MAPPA.
- It also means that these support measures should be available to Other Dangerous Offenders as well as to Terrorist Offenders.
- I therefore recommend that support measures that are available for PREVENT arrangements should also be available to Terrorist Risk Offenders managed under MAPPA, including Other Dangerous Offenders.

Housing

- 3.34. Ensuring that a Terrorist Risk Offender is housed in stable accommodation in the right area (for example, not near terrorist associates) is a key tool to mitigating risk. Conversely, uncertainty about where an individual will be living means more contingency planning by the authorities, and a more difficult return to living in the community for the offender.
- I found that the ability to find suitable housing for Terrorist Risk Offenders following their release from prison is one of the most intractable problems faced in MAPPA. Discussion about housing dominated many of the formal periodic MAPPA meetings I attended and diverted attention from other issues. It is a major issue which undermines the ability of the authorities to manage risk.
 - Local authorities do not have large stocks of social housing which they can commandeer and social housing generally is subject to competing priorities. Instead, housing stocks are often controlled by registered social landlords (who provide access to housing based on criteria agreed with the local authority) or private registered providers of social housing (who are approved to provide social housing but generally charge higher rents).
 - The housing departments of local authorities have a duty to assess whether an individual has an emergency right of access to housing, e.g. through involuntarily homelessness. However, many Terrorist Risk Offenders will not qualify as having an emergency need, meaning that they need to 'bid' for access housing along with others in the local population who are entitled to seek access to housing at below market rent.
 - Access to social housing in a particular area is likely to be restricted to those who have lived in that area for a period of 12 weeks, but I was informed that residence at Approved Premises does not count.
 - Local housing associations, registered social landlords and private registered providers of social housing are all Duty to Cooperate agencies⁸². But the extent to which this adds anything was unclear: in particular, it was suggested to me that it is meaningless in the context of private registered providers. In practice, some local authority housing officers cooperated with MAPPA arrangements by seeking to identify and persuade housing providers (who might be reluctant to provide housing to a convicted terrorist).
 - Different local areas have different arrangements that can be used to facilitate access to housing, such as panels of registered social landlords, social housing search schemes, landlord forums and/or specialist housing officers who can offer specialist local assistance to MAPPA. There is a great deal of regional variation.
 - Even where potentially suitable housing is identified, it must then be checked by local police to see whether it is suitable, principally to see whether other terrorist

⁸² Section 325(6)(d) and (e) Criminal Justice Act 2003.

risk individuals are nearby. It was suggested to me (although I have seen no evidence) that this risks handing a veto to local forces, who may be reluctant to see a Terrorist Risk Offender residing in their area. In addition, it was clear that police were being asked to carry out checks on properties that later became unavailable.

- In some instances, it was clear that too much say was given to the wishes of the offender as to the area and type of property; housing officers were not putting in 'bids' for social housing unless the offender had agreed.
- 3.35. I recommend that immediate attention is given by central and local government working together to identifying best practice nationally for identifying suitable social housing for Terrorist Risk Offenders, and ensuring that best practice is adopted in all MAPPA. Consideration should be given to ensuring that residence at an Approved Premises counts towards qualifying periods of local residence. Consideration should also be given avoiding offender preferences unduly impeding the identification of suitable social housing.

Mental health

- 3.36. This is a priority issue because of an emerging profile of a Terrorist Risk Offender: lonely, vulnerable, self-radicalised individuals who are drawn to extreme views, usually encountered and reinforced online, many with poor mental health. These offenders are often convicted of possession of prohibited terrorist material⁸³ and it is often difficult to distinguish the extent to which this is a type of obsession or a deeper attachment to a particular cause that could lead to acts of violence. An indication that it is sometimes the former is the fact that, in preparing this report, I encountered a number of individuals whose belief system appeared to change as they alighted on a new area of obsession: on one occasion, far right terrorism, on another violent Islamist extremism. However, as other cases show, the fact that an individual's belief system appears to have shallow roots does not exclude the possibility of preparation for actual violence, perhaps as a result of exploitation.
- 3.37. Understanding mental health is likely to assist in understanding risk. An assessment of a mental health condition or learning difficulties may unlock more support mechanisms, for example by giving a higher priority in gaining access to social housing. Uncertainty over whether an individual has a mental disorder leads to uncertainty over whether other support tools are appropriate, for example, desistance and disengagement interventions. Some Terrorist Offenders may be very keen to understand their mental health difficulties.
- 3.38. The greatest difficulty concerns those without treatable mental disorders. In the course of preparing my report I was struck by the number of practitioners who referred to terrorist risk offenders who were living with known or suspected autism spectrum disorder. It is comparatively easy to say that an individual does not meet the threshold for treatment; it is far more difficult to identify routes to assessment and interventions thereafter. This is not a new difficulty for MAPPA⁸⁴. Concern about non-treatable mental health issues was the dominant feature, together with housing, of most of the MAPPA meetings I attended.

⁸³ Section 58 Terrorism Act 2000.

⁸⁴ The 2011 Inspection noted at 5.37 that a "major issue in all areas" was lack of clarity with personality disorder diagnosis which meant that mental health services were often not provided.

There was often a sense that something was clearly wrong, but nothing could be done about it.

- As I report in Chapter 7, there are resources available. But MAPPA appear to be under-resourced in this respect compared to other multi-agency bodies. For example, a reference to CHANNEL or PREVENT may, depending on local arrangements, lead to the involvement of a mental health specialist.
- The key is local availability and signposting. An example of good practice, but only available for individuals referred to PREVENT, are police-run Mental Health Hubs. Local authorities may have vulnerable adult safeguarding or learning difficulty services. Local knowledge is of paramount importance as provision varies very differently across the country. Support may be available from local charities or Local Authorities⁸⁵.
- I recommend that any mental health tools that are available to any other multi-agency body should also be available for MAPPA. This includes making specialist mental health practitioners available to advise and support those managing MAPPA. The focus needs to move from explaining why assistance is not available, to identifying what is available locally.
- I also recommend that consideration is given to whether residence rules should be adjusted. I was informed that access to some mental health services required a permanent residence in the area, and that residence at Approved Premises did not count for this purpose.
- If resources are not available locally, access to central funds should be considered. I saw good examples of CT probation officers offering to access central funds for the purpose of securing an autism assessment. It was not clear to me how widely it was understood that such funds are available, and on what basis.
- More generally, I recommend that more resources and imagination are put into urgent analysis of how this cohort of Terrorist Risk Offenders, who are likely to increase in number, are to be diverted away from violent obsessions. I formed the impression that increasing the number of interventions (for example from theological intervention providers) was in reality a way of providing lonely individuals with needed company and structure during the day. There may be other ways of achieving this.

Education and Employment

- 3.39. In the wake of the “Trojan Horse Affair”, the Department for Education has a facility for considering educational opportunities for (and risks posed by) Terrorist Risk Offenders, and links to local education providers. The department may also hold information relevant to terrorist risk. The Minister in charge of employment is a Duty to Cooperate Authority but not the Minister in charge of education⁸⁶ but I have seen no suggestion that this might lead to less cooperation with MAPPA than would otherwise be the case.
- 3.40. Securing useful employment is a key aim for longer term rehabilitation. However, the public sector employees who administer MAPPA may have limited knowledge of the local jobs market. I formed the impression when attending a Multi-Agency Centre meeting⁸⁷ that a particular Terrorist Risk Offender was being encouraged to obtain training with insufficient understanding of the local

⁸⁵ Some local authorities have senior representatives, familiar with other multi-agency settings like Channel or Prevent, who are able to offer guidance about what services their local authority are able to offer offenders.

⁸⁶ Section 325(6)(b) Criminal Justice Act 2003.

⁸⁷ See Chapter 7.

labour market. The local Job Centre Plus is a Duty to Cooperate Authority, and can provide a useful perspective on an offender's employability. Realism and practical local knowledge is required.

Personal Interventions

- 3.41. Released terrorist and terrorist-related offenders are usually required to attend some form of intervention under the Desistance and Disengagement Programme. In practice this means sessions with a practical mentor, a psychologist, or a theological mentor.
- Being able to determine the effectiveness of this programme is beyond the scope of this Report. However, as a means of increasing the amount of interaction between a Terrorist Risk Offender and the authorities, this sort of intervention may (a) provide additional information about the risk posed by the individual and (b) add structure and necessary human interaction for individuals who would otherwise spend all day online. Interventions should not be limited to Terrorist Offenders, but should be available for Other Dangerous Offenders as well. I was informed that provision of the Desistance and Disengagement Programme to Terrorist Offenders only was a serious limitation on the ability to manage other Terrorist Risk Offenders.
- Decisions over whether to offer particular interventions should be taken on the basis of all relevant information, including sensitive information. It may not be sensible to deploy a theological mentor to steer the Terrorist Risk Offender away from a particular ideology if it is known that they are routinely associating with those of an extremist mindset.
- A realistic approach must be taken to disruptive behaviour. For example, video recording a mentoring session on a mobile phone, with the prospect of it being posted to social media, may well have the effect of undermining the mentor's confidence and therefore the effectiveness of the session. This type of behaviour could be dealt with by way of an additional licence condition, to surrender any recording device before the start of the session. This requires good communication between mentor and probation officer.

4. IDENTIFYING MAPPA CASES

Summary

- Guidance on whether Terrorist Offenders should be managed under MAPPA can be simplified.
- An easier pathway needs to be identified to ensure that Other Dangerous Offenders with terrorist risk are picked up by MAPPA.

Terrorist Offenders: Making it Simple

- 4.1. I recommend that all Terrorist Offenders⁸⁸ should be subject to MAPPA upon release regardless of sentence length. The management of all Terrorist Offenders (including youth Terrorist Offenders) is likely to benefit from multi-agency risk assessment and risk management, with access to sensitive information (see further, Chapter 5).

⁸⁸ I refer to those offences that are subject to Part 4 Counter-Terrorism Act 2008 obligations; i.e. excluding the most minor offences.

- The statutory framework for MAPPA is set out in Annex A. At present it is not mandatory under the Criminal Justice Act 2003 for all Terrorist Offenders to be subject to MAPPA. Most offenders convicted under terrorism legislation are caught (through Schedule 15) but those whose offending was found to be connected to terrorism under the Counter-Terrorism Act 2008, and are serving less than one year will not be.
- I therefore recommend that section 325 be amended so that it applies to all terrorist offenders (save for those convicted of the most minor offences such as failure to comply with Schedule 7 Terrorism Act 2000) and all terrorism-connected offenders.
- It is unnecessarily complicated and potentially confusing for the Guidance to categorise Terrorist Offenders as either violent (Category 2) or other dangerous persons (Category 3)⁸⁹.
- I recommend that it is clearer to assign all Terrorist Offenders to a new Category 4. This would ensure that all Terrorist Offenders are subject to MAPPA irrespective of the nature of their sentence or other disposal.

Other Dangerous Offenders

- 4.2. Legislation does not adequately deal with offenders convicted of non-terrorist offences, but who have been identified by the authorities as posing a terrorist risk.
- This group could include individuals who have become radicalised in prison.
 - It could also include those who are arrested and prosecuted for non-terrorism offences in order to disrupt their terrorist activities.
 - These offenders may require management under MAPPA just as much as Terrorist Offenders.
 - The statutory basis for managing these offenders under the Criminal Justice Act 2003 is not certain. At present section 325(2)(b) requires that the risk of serious harm should arise "by reason of offences committed by them". But the terrorist risk presented by the individuals may have nothing to do with the offence of which they have been convicted; for example, a fraudster who is radicalised in prison.
 - I therefore recommend that section 325(2)(b) is amended so that it is sufficient that the offender (of whatever sort) is considered to be a person who may cause serious harm to the public.
 - I also recommend that Other Dangerous Offenders who require management under MAPPA should also be assigned to the new Category 4, together with Terrorist Offenders. This is to ensure that all Terrorist Risk Offenders are approached with the same degree of attention.
- 4.3. Adopting Other Dangerous Offenders who show terrorist risk under MAPPA has not always proven straightforward. During my review I encountered a case of a clearly dangerous Terrorist Risk Offender who was managed for some time by a Community Rehabilitation Company rather than by the National Probation Service under MAPPA.

⁸⁹ Intelligence-led counter-terrorism policing means that individuals are often disrupted before they can carry out an attack. A person who has been convicted of a non-violent offence such as possession of a bomb manual under section 58 Terrorism Act 2000 has not committed a violent offence, but might well have gone on to commit one if not arrested.

- Identifying Terrorist Risk Offenders in this category is likely to be prompted by intelligence held by CT police and/or MI5 and/or prison security.
- The decision on adopting a case under MAPPA therefore cannot depend on the decision of a senior 'gatekeeper' who does not have the appropriate security clearance. In practice, this results in delays whilst police and MI5 attempt to identify 'Form of Words' which can be disseminated at a lower security classification without compromising sources of intelligence. Nor should it depend upon a referral by another body such as Community Pathfinder.
- This issue will not arise if Core Groups, including security-cleared probation officers, are used in all terrorist cases (see Chapter 5). Police and/or MI5 can approach existing case managers with potential fresh cases for adoption under MAPPA. I therefore recommend that Core Groups should be responsible for deciding in the first instances whether to adopt Other Dangerous Offenders for MAPPA.
- In youth offender cases, referral cannot be dependent upon a recommendation by the Youth Offending Team who are unlikely to have access to sensitive information⁹⁰.
- The guiding principle is whether the individual "may cause serious harm to the public"⁹¹, whether themselves or through inspiring others. The difficulties of identifying whether an individual is ideologically driven or not are well-known⁹² and definitional debate over what is terrorism should therefore be avoided. There is particular difficulty with individuals who move between different patterns of dangerous behaviour, for example from gang behaviour to terrorist behaviour and back again, as well as between different ideologies⁹³.
- I anticipate that as police and MI5 develop their understanding of MAPPA, the question of whether to adopt a terrorist risk case should not prove problematic. Where agreement is not possible, the case should be subject to MAPPA until agreement can be reached. Cases which do not meet the threshold for adoption as terrorist risk cases can be subject to continuing oversight in other multi-agency settings, for example Community Pathfinder, Prevent or Channel Panel, and re-referral to MAPPA should remain open.
- Strategic Management Boards who monitor the effectiveness of MAPPA for each area⁹⁴ will need to pay particular attention to the effectiveness of decisions to refer Other Dangerous Offenders for MAPPA on grounds of terrorist risk.
- As explained in Annex A, being managed by MAPPA does not provide additional powers: it merely ensures that existing powers are used more effectively. Being managed under MAPPA arrangements ought not to affect the legal status of the individual⁹⁵.

Levels and Transfers

4.4. All terrorist MAPPA cases should be managed initially at Level 3 because formal periodic meetings will be needed for oversight and accountability purposes and

⁹⁰ See further 5.5, below.

⁹¹ Section 325(2)(b) Criminal Justice Act 2003.

⁹² See for example James Khalil, John Horgan & Martine Zeuthen (2019): The Attitudes-Behaviors Corrective (ABC) Model of Violent Extremism, Terrorism and Political Violence.

⁹³ For a vivid portrait of this issue, which matches my own experience, see the William Balder, <https://www.opendemocracy.net/en/countering-radical-right/prevent-and-terrorism-act-we-need-talk-about-kieron/>.

⁹⁴ Under section 326 Criminal Justice Act 2003.

⁹⁵ I am informed that being managed by MAPPA, which may begin 6 months before release, is not a bar to Release on Temporary Licence under the revised policy at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863600/rotl-pf.pdf

there may be a need to invite senior representatives of other authorities to such meetings (see Chapter 6).

- 4.5. I was not aware of any real difficulties in transferring MAPPA to other areas when offenders move. Although it was suggested to me that local Chief Officers might veto attempts to move offenders to their force area, I saw no evidence of this. The management of Terrorist Risk Offenders requires a national effort not based on local area.

5. ACTIVE CASE MANAGEMENT

Summary

- The decision on the right tool to use at the right time must be made on the basis of all information relevant to risk.
- Terrorist Risk Offenders should be managed on a day to day basis by a Core Group of security-cleared professionals with access to sensitive information. I refer to this as Active Case Management.
- Clearer statutory provision, and practical changes, are needed to ensure information is shared at the right time by Duty to Cooperate agencies and others.
- The flow of prison information, and information relating to immigration status, needs to be improved.

Getting the Right Information

- 5.1. Active Case Management means that sensitive information, including information from intelligence partners, must be shared⁹⁶.
- Whether a particular tool can ultimately be used on the basis of sensitive information may depend on whether to do so will betray sensitive sources. It may be that intelligence can be declassified or that a non-sensitive source of information for the same matter can be identified. There may be other ways of 'muddling through'. However, unless sensitive information is shared, the opportunities that do exist will not be identified.
 - For those who hold sensitive information, this requires a culture shift: an appreciation of the tools that are available outside traditional law enforcement. For offenders on licence, the powers of the Secretary of State for Justice to recall to prison and vary licence conditions dwarf those available to police and MI5. Sharing of intelligence must include very sensitive 'live' intelligence as well as more historic intelligence.
 - Intelligence may put a very different gloss on the risk that has been assessed using conventional risk assessment tools (see Chapter 2). For example, intelligence may show that a person assessed as presenting a moderate risk, has the intent and capability to carry out a terrorist attack. It may demonstrate that an apparently compliant individual is in contact with a terrorist network. Conversely, as I saw when preparing for this report, intelligence may show that potentially sinister behaviour has an innocent explanation.

⁹⁶ For MI5, sharing information with probation enables them to discharge their statutory functions of protecting the public from the threat of terrorism and for the purpose of preventing and detecting serious crime: Section 2(2)(a) Security Service Act 1989. For police, probation and prisons, disclosure may be made for 'offender management purposes': Section 14 Offender Management Act 2007.

- At the same time, CT police and MI5 should welcome the opportunity to assess the information available from overt offender management by the probation service.

The Core Group

- 5.2. The need to have access to sensitive information from police and MI5 in real time means that the focus of management cannot be formal periodic meetings involving representatives of Duty to Cooperate agencies.
- The need to consider sensitive information rules out the wide range of individuals involved in ordinary MAPPA meetings.
 - Professionals are already finding ways to share and make decisions on highly classified information within smaller groups of security-cleared probation and police officers. These are very much ad hoc arrangements with regional variations based on established relationships of trust built up over time that may not be easily reproduced as practitioners move roles.
 - Even leaving aside the difficulties of sharing sensitive information, the need to consider cases in real time excludes assembling representatives from Duty to Cooperate Authorities in order to make decisions. Time critical actions will include: decisions to recall to prison when it is no longer possible to manage terrorist risk in the community; deciding to vary licence conditions in response to changing risk; responding to sudden changes such as a judgement in a criminal appeal or release from immigration detention.
 - Specific guidance on MAPPA in terrorist cases continues to place the focus on formal periodic meetings⁹⁷, only briefly recognising that the composition of attendees may need to change, and identifying the use of pre-meetings. However, it was clear to me that attempting to manage terrorist cases at formal periodic meetings involving Duty to Cooperate agencies have led and will continue to lead to missed opportunities to use the tools identified in Chapter 2.
 - I recommend that the only realistic way of managing terrorist cases is to concentrate decision-making in a Core Group of security-cleared professionals, and to use wider meetings with Duty to Cooperate agencies to provide oversight and achieve outcomes that cannot be otherwise achieved through ordinary Active Case Management (see Chapter 6, Oversight Panels).
 - No change to legislation is required, because the Criminal Justice Act 2003 does not require that MAPPA are delivered through any particular form of meeting. The duty to cooperate applies just as much to cooperating with the arrangements established by a Core Group as it does with arrangements established by a formal periodic meeting⁹⁸.
- 5.3. The Core Group should comprise CT Police, a security cleared prison security manager from the offender's last prison, and one or more probation officers, all with the highest security clearance.

⁹⁷ Guidance Chapter 24.26 to 24.28.

⁹⁸ To a very limited extent, Guidance already recognises that high risk cases can be managed without the need for formal multi-agency meetings: see paragraphs 7.3 and 7.25, read together.

- At least one of the DV-cleared probation officers should be the offender manager's line manager who is of sufficient experience and seniority to chair Oversight Panels.
- The Part 4 officer responsible for the case, or their line manager, should be part of the Core Group.
- Interaction with MI5 should be the norm.
- In the case of a live investigation, the Core Group will include the Senior Investigating Officer or their deputy. In high tempo investigations, the demands of the investigation are likely to be the central consideration in deciding which tools are appropriate to manage the offender.
- I make no final recommendation on whether the Core Group should include the probation offender manager with day to day contact with the offender, assuming they are also DV-cleared. There are obvious advantages of including the offender manager in all discussions, but CT police and MI5 may consider the relationship between the offender manager and the offender could give rise to a risk of inadvertent disclosure of sensitive information. The guiding principle must be that relevant sensitive information should be shared, and it is for CT police and MI5 to decide what arrangements are needed to ensure that this takes place.
- All probation officers will continue to be acting as probation officers, and must take care that boundaries between the different roles of probation and law enforcement are not blurred.

Young Offenders

- 5.4. Core Group membership needs special attention in the case of young Terrorist Risk Offenders.
- The supervision of young offenders subject to release on licence, or post-sentence supervision, or subject to a detention and training order, or a youth rehabilitation order is a matter for the youth justice system⁹⁹.
 - Youth justice services are the responsibility of local authorities in England and Wales¹⁰⁰ and delivered by Youth Offending Teams (YOT's)¹⁰¹. These are multi-agency bodies comprising (in summary) youth offender officers, police, social workers, and health and education practitioners. Each YOT has a duty to cooperate with MAPPA made in its area¹⁰² but is not part of the Responsible Authority which remains comprised of, even in youth cases, prison, police and probation. Under current Guidance, a YOT manager should act as a consultant to a meeting chair¹⁰³.
 - YOT's are not a national service (unlike the National Probation Service). There are around 150 separate YOT's in England and Wales. There is no certainty that each of these YOTs will include a qualified probation officer. The statutory requirement is for each YOT to include either a probation officer or an officer of a provider of probation services (in practice, an employee of a Community Rehabilitation Company)¹⁰⁴. I have been informed that low resources mean that posts are often unfilled. Nor is it likely that a YOT will include any person cleared to see information at a high security classification.

⁹⁹ Section 38(4) Crime and Disorder Act 1998.

¹⁰⁰ Ibid. Section 38(1).

¹⁰¹ Ibid. Section 39(7).

¹⁰² Section 325(6)(a) Criminal Justice Act 2003.

¹⁰³ Guidance, paragraph 23.21.

¹⁰⁴ Section 39(5)(a) Crime and Disorder Act 1998.

- Because of this, YOT officers and their managers will be unable to form part of the Core Group, where exchange of sensitive information relating to terrorist risk is required. It should be clearly understood that referral for MAPPA, in the case of children convicted of non-terrorist offences but who present a terrorist risk, should not depend on a referral by the relevant YOT.
 - There is the possibility of conflict between the approach of the Core Group and approach of the YOT. The principal aim of the youth justice system is to prevent offending by children and young persons¹⁰⁵ and YOTs have had a statutory duty to discharge their functions having regard to the need to safeguard and promote the welfare of children¹⁰⁶.
- 5.5. For these reasons, in order to ensure the highest degree of coordination between the Core Group and the individual YOT responsible for offender management, I recommend that the National Probation Service employs one or more probation officers as young offender specialists, to act as a bridge between the Core Group and YOTs.
- This is to ensure that the Core Group and YOTs can speak the same language, and assist YOTs in understanding that safeguarding and promoting the welfare of the child is unlikely to be any different from minimising the terrorist risk shown by the young.
 - Consideration should be given to seconding specialist probation officers (with DV clearance) to YOTs in appropriate cases.
 - The Youth Justice Board is responsible for monitoring and advising the Secretary of State on the provision of Youth Justice Services¹⁰⁷. I recommend that the Secretary of State should work with the Youth Justice Board to put more detailed guidance in place for dealing with young Terrorist Risk Offenders.

Functions of the Core Group

- 5.6. The purpose of the Core Group is to actively manage the case by enabling each individual agency (police, probation, prisons) to use or secure the right tools on the basis of the right information at the right time. Its functions should include:
- Keeping the assessment of risk under review based on all information, including sensitive information or assessments.
 - Agreeing ways to communicate the assessment risk beyond the Core Group, for example, to Duty to Cooperate agencies in order to obtain their cooperation, without betraying sensitive information.
 - Identifying ways to justify the use of tools, for example, recall or additional conditions, without betraying sensitive information. This includes thinking about how actions can be demonstrated to the Public Protection Casework Section and the Parole Board as being necessary and proportionate.
 - Creating a risk management plan.
 - Identifying a longer term strategy including, where possible, an exit strategy (see further below).
 - Identifying Duty to Cooperate agencies or other agencies who may hold relevant information or provide access to relevant tools.

¹⁰⁵ Ibid. Section 37(1).

¹⁰⁶ Section 11(2) Children Act 2004.

¹⁰⁷ Section 41(5) Crime and Disorder Act 1998.

- Preparing for the Oversight Panel by (a) identifying whether the presence of very senior representatives from Duty to Cooperate agencies is necessary in order to unblock access to resources or information which is not otherwise forthcoming; (b) creating a summary of relevant information about the case and its management to present to senior managers and, if a Critical Public Protection Case, to Ministers; and (c) drawing up an agenda of topics to discuss relating to the particular case - for example, where the Core Group would like more senior input into whether to remove a particular licence condition in a non-time critical situation.
- 5.7. I recognise that these functions are formidable, but I am confident that performing them is within the capability of experienced probation, police and prison officers acting jointly. Support will be needed:
- Legal support is vital. The MAPPA processes are already law-heavy¹⁰⁸. Practitioners should not be held back by uncertainty over whether steps are within their power, the implications of immigration proceedings, or over whether data-sharing is lawful (see further below). There needs to be a facility for busy Core Group practitioners to obtain ready access to legal guidance, for example through access to a central hub who can answer queries or, if necessary, route enquiries to the relevant part of central government or policing. I observed at a Multi-Agency Centre how useful it was to have a civil powers lawyer present. This resource would not be a replacement for, or be designed to cut across, the individual legal advice already available to prisons, probation and police.
 - Administrative support is also vital: if, as I recommend, liaison with Duty to Cooperate Authorities should be done primarily outside formal periodic meetings, assistance with coordinating meetings and phone calls is likely to be required¹⁰⁹. At present, the focus of administrative support is towards large scale MAPPA meetings. I was impressed by collaboration software used by other multi-agency groups, particularly software that allowed individuals to request and record 'actions' taken as part of managing risk, but I do not propose that administration should be dependent on any particular type of technology.
 - Administrative assistance will also be needed to keep track of records. This is particularly important where sensitive information is being considered because it will not be possible to record CT Police and MI5 information on probation systems¹¹⁰ and even the current platform supposed to be used jointly by probation and police at a lesser security classification is widely recognised to be difficult to use¹¹¹. It is inevitable, and already occurs in practice, that working with sensitive information will require flexibility as to where information is held and what records are kept for MAPPA purposes. Recording information as being relevant to MAPPA is more important in this regard than where it is held. Experienced practitioners are well able to create elliptical notes of what needs to be done which do not require any protective marking.
 - There is a tension between this need for flexibility and to be able to 'muddle through' on the one hand, and what is known as the need to produce "defensible"

¹⁰⁸ Illustrated by Chapter 26 of the Guidance, on Mentally Disordered Offenders and MAPPA, which is effectively a long summary of the relevant legal provisions.

¹⁰⁹ It would be naïve to make the development of an alternative data sharing system a central recommendation for improving MAPPA, and I do not do so. ViSOR is never going to be a complete management tool for Terrorist Risk Offenders: even leaving aside the lack of probation staff who are trained and cleared to use ViSOR, it is clunky to use, and does not deal well with attachments.

¹¹⁰ A point that is already acknowledged in the Guidance, at paragraph 12.7.

¹¹¹ 2011 MAPPA Inspection at 8.31 to 8.36; and 2015 MAPPA Inspection at 5.42.

decisions on the other hand, meaning decisions that stand up to hindsight scrutiny if a risk management plan fails to prevent serious harm¹¹². This demands a high standard of record keeping so that in the event of a Serious Case Review¹¹³ there is a clear record of what information was considered, what was done, and why. This is an intensely practical question which will require careful work but should not be allowed to stand in the way of information sharing within the Core Group.

- I therefore recommend that the Guidance should be amended to recognise the role of the Core Group in managing Terrorist Risk Offenders, and that administrative and legal support is made available to it.

Getting the most out of Duty to Cooperate agencies

- 5.8. Interaction with Duty to Cooperate agencies should be driven by considering the tools and information needed to actively manage the risk:

- There is no reason why the Core Group should limit their contact to Duty to Cooperate Authorities identified in the Criminal Justice Act 2003. Some authorities are not subject to the duty to cooperate, but may be willing to help: for example, Ministers of the Crown exercising functions in relation to education.
- Other authorities who are subject to duty to cooperate in relation to certain of their functions may have other functions that are not listed but could prove useful. Local authorities may have the facility to scan their services for relevant information or relevant assistance¹¹⁴, or provide a link to other bodies who hold relevant powers. For example, County Councils will have established links to District Councils who may have public housing or taxi licencing functions. Local Authorities and neighbourhood police may have practical information relevant, for example, to local job opportunities or community tensions.
- If it is possible for the Core Group to obtain cooperation, including information, by phone or email, or if necessary a face-to-face meeting, then this should be done. There is no need for this to happen at a formal periodic meeting. Nor is there any need for the Core Group to assemble in order to do so. Individual members of the Core Group will quickly identify who is best placed to contact outside bodies and keep in contact with each other.
- Requests for assistance, and cooperation by Duty to Cooperate agencies, should not be tied to formal periodic meetings. Requests should not have to be made in any particular form. In most cases it should be sufficient that an individual from the Core Group explains the nature of the arrangements and why the cooperation is needed.
- It is only in those cases where the Duty to Cooperate agencies is unable otherwise to assist that attendance at an Oversight Panel by a senior representatives from the Duty to Cooperate agencies should be required. This might be because there is a genuine objection to providing the assistance sought, or a genuine lack of understanding. I discuss this more in Chapter 6.

¹¹² The concept of defensible decision making was pioneered by Professor Hazel Kemshall, see for example "Working with sex offenders in a climate of public blame and anxiety: How to make defensible decisions for risk" Journal of Sexual Aggression (November 2009), Vol. 15, No. 3, pp. 331-343]. Working with sex offenders in a climate of public blame and anxiety: How to make defensible decisions for risk" Journal of Sexual Aggression (November 2009), Vol. 15, No. 3, pp. 331-343. It is referred to inter alia in the Public Protection Manual at paragraph 4.4 <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2016/psi-18-2016-pi-17-2016-public-protection-manual.pdf>.

¹¹³ MAPPA Guidance Chapter 20.

¹¹⁴ For example, Kent County Council has a Public Protection Unit that can perform this function.

Exit Strategies

- 5.9. The management of Terrorist Risk Offenders inevitably changes over time, and part of managing risk should be anticipating the point in time at which Active Case Management either ceases to be needed, or has to change because a licence is about to expire.
- It is not feasible to manage all Terrorist Risk Offenders at the same intensity using Active Case Management and Oversight Panels.
 - In circumstances where the use of resources involved in Active Case Management by the Core Group is no longer justified by the level of risk then it will be sufficient for the offender to be managed by the relevant authorities separately¹¹⁵ with liaison as and when required.
 - Given the natural inclination to treat all terrorist cases as high priority and therefore as requiring the highest level of risk management, and the risk of diverting precious resources, Active Case Management by the Core Group should last no longer than is necessary.
 - However, I recommend that any decision to cease Active Case Management must be made at an Oversight Panel to avoid the danger of optimism bias on the part of the Core Group.
 - Where a licence is due to expire, I also recommend that the Core Group should actively consider as part of their strategy how the risk can be managed after expiry; and whether there is anything that can be done before sentence expiry to make that task easier. If the individual's case is likely to be considered by a different multi-agency group (as described in Chapter 7), then this should include a handover session so that the knowledge of the probation service is not lost when the case moves on. It may also include additional engagement with Duty to Cooperate agencies so that relationships established during MAPPA can be carried over into a different setting.
 - For example, in high risk cases, the Core Group should consider whether non-licence based tools may be appropriate, such as civil orders, and consult with relevant practitioners.

Sharing Information – The Need for a Simple Gateway

- 5.10. There is a general lack of confidence that relevant information will be shared by Duty to Cooperate agencies and is regarded as inherently difficult because of the complexity of the legislation and a lack of common standards.
- Navigating the Data Protection Act 2018 is difficult. Uncertainties about whether disclosure is permissible, and fear of adverse consequences if an unlawful disclosure decision is made, are compounded by organisations having their own differing legal advice on the proper application of the legislation.
 - The statutory provisions for MAPPA provide that cooperation by Duty to Cooperate agencies may include the exchange of information¹¹⁶. It is highly debatable, and untested by the courts, whether this does any more than provide a lawful basis to share information using the information-sharing powers that Duty to Cooperate agencies already have. In other words, this provision does not clearly provide Duty to Cooperate agencies with a general power to disclose information, and certainly

¹¹⁵ Probation, when on licence; and police, so long as subject to notification requirements under the Counter Terrorism Act 2008.

¹¹⁶ Section 325(4) Criminal Justice Act 2003.

does not apply to individuals, aside from Duty to Cooperate agencies, who may have highly relevant information, such as individual GPs.

- As a general principle, the law is unlikely to prohibit disclosure where justified in the overall public interest. But different authorities are likely to identify information-sharing powers in different statutes that are relevant to their functions. The following statutes have been identified to me as providing a basis for disclosure for the purpose of MAPPA: the Children Act 1989, the Human Rights Act 1998, the Children Act 2004, the Crime and Disorder Act 1998, the Mental Capacity Act 2005, the Health and Social Care Act 2008 and the Care Act 2014.
- It is undesirable that disclosure for the purpose of MAPPA should depend on a variety of potentially available powers. It complicates the exercise and takes focus away from what matters which is whether disclosure is justified for the purposes of managing terrorist risk¹¹⁷.
- Section 115 of the Crime and Disorder Act 1998 provides a possible path to simplifying the position. It confers a power on any person, who would not otherwise have power to do so, to share information with a wide range of listed authorities, where that disclosure is necessary or expedient for the purposes of any provision of that Act. The 1998 Act is concerned with reducing crime and disorder and antisocial behaviour.
- I recommend that consideration is given to creating an equivalent provision in the Criminal Justice Act 2003 for disclosure which is necessary or expedient for the purposes of cooperating (whether or not as a Duty to Cooperate agencies) with MAPPA. Creating a power would not create a duty, and any disclosure would need to comply with the Data Protection Act 2018 and the Human Rights Act 1998.

Application of the Data Protection Act 2018

5.11. There is continuing uncertainty about which part of the Data Protection Act 2018 applies to disclosure by Duty to Cooperate agencies to the lead authorities.

- Part 2 of the Data Protection Act 2018 applies the General Data Protection Regulation¹¹⁸ to most processing of personal data. But since the General Data Protection Regulation does not apply to processing for "law enforcement purposes", Part 3 of the Data Protection Act 2018 creates a separate regime which in effect transposes the Law Enforcement Directive¹¹⁹.
- Specifically, Part 3 applies to processing by a "competent authority"¹²⁰. A competent authority is any one of a large number of specified authorities which include traditional law enforcement bodies, courts, regulatory bodies and authorities with functions relating to offender management such as the Probation Service¹²¹. It also includes "[...] any other person if and to the extent that the person has statutory functions for any of the law enforcement purposes"¹²². The law enforcement purposes are widely defined: they are the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security¹²³.

¹¹⁷ There is also a danger that what are perceived as more generous disclosure gateways, for example concerning child safeguarding concerns, may be distorted as a means to allow disclosure.

¹¹⁸ (EU) 2016/679.

¹¹⁹ (EU) 2016/680.

¹²⁰ Section 29 Data Protection Act 2018.

¹²¹ Section 30(1)(a) and Schedule 7 to the Data Protection Act 2018.

¹²² Section 30(1)(b) Data Protection Act 2018.

¹²³ Section 31 Data Protection Act 2018.

- The unresolved issue to which my attention has been drawn is whether a Duty to Cooperate agency has a law enforcement function when providing information to lead MAPPA authorities, so that it counts as processing by a competent authority to which Part 3 rather than Part 2 Data Protection Act 2018 applies.
- I have not had the opportunity to form a view on whether it would be more practical for Duty to Cooperate agencies to be subject to Part 2 or Part 3, but given that cooperation by Duty to Cooperate agencies under the Criminal Justice Act 2003 is expressly required "to the extent that" such cooperation is compatible with the exercise of those bodies' functions¹²⁴, it is at least doubtful that cooperation with MAPPA has the effect of conferring statutory functions for any of the law enforcement purposes. The general function of NHS England for example is to "promote a comprehensive health service so as to improve the health outcomes for people in England". This function is set out in the NHS Act 2006, as amended by the Health and Social Care Act 2012.
- Clarity is required because one standard solution in this field, and in analogous areas, is the creation of an Information Sharing Agreement. It is difficult for a national model agreement to be crafted if there remains uncertainty about the applicable law. Although one option would be to amend the Data Protection Act 2018 to include a Duty to Cooperate agency acting as such as a "competent authority" within Part 3¹²⁵, a potentially easier, non-legislative, solution is public guidance that, as the law stands, Duty to Cooperate agencies are subject to Part 2. I therefore recommend that the government should work, if appropriate with the Information Commissioner, to put in place clear guidance that Duty to Cooperate agencies are subject to Part 2 of the Data Protection Act 2018.

Understanding why Information is Relevant

- 5.12. In deciding whether disclosure to the lead authorities is justified, Duty to Cooperate agencies may struggle to understand why information they hold is relevant, and how any information disclosed may be used. This may place significant barriers in the way of information sharing.
- The issue of whether to share information is particularly acute in respect of clinical information concerning physical or, more likely, mental health¹²⁶. By way of example, clinicians may doubt that florid expressions of terrorist intent by patients suffering mental illness could possibly be relevant to risk and therefore appropriate to disclose under MAPPA. Clinicians prize the therapeutic relationship, and worry that disclosure to the Responsible Authorities may lead to a breakdown in patient/clinician trust.
 - There is also concern about professional sanction if inappropriate disclosure is made, and uncertainty about what may happen to clinical information once disclosed, and whether it will be more widely shared.
- 5.13. I do not suggest here that any legal changes are needed. In particular, imposing a legal requirement on Duty to Cooperate agencies to disclose information which they would not otherwise consider appropriate would require wide consultation and has the risk of unintended consequences. There are practical improvements that can be made.

¹²⁴ Section 325(3).

¹²⁵ Specifically by amending Schedule 7.

¹²⁶ By clinical information I refer to all information obtained by clinicians, rather than information that is narrowly related to treatment.

- The starting point is that where police or probation are seeking information, greater openness on their part as to why the information, or type of information, sought is relevant will allow Duty to Cooperate agencies a better appreciation of the true public interest in disclosure. Clinicians may also not be aware that MAPPA are sometimes able to unlock access to resources that are not generally available and which are positively sought by offenders, for example, offenders suffering from a mental disorder may in fact be keen for their information to be shared if access to a mental health assessment can be obtained through MAPPA.
- It may also help if clinicians can speak to trusted colleagues within their own organisation. I am aware of a pilot project (albeit only available for offenders referred under PREVENT) in which the police have funded experienced doctors to act not only as sign-posters for local services but as sounding posts for clinicians from whom disclosures are sought.
- I recommend that a similar model should be developed under MAPPA by which general counter-terrorism briefings are made available to clinical staff who wish to receive them, in order to create areas of expertise within the professions at a regional level. Subject to consultation with professional bodies, these staff could act as liaison between police, probation and prisons and clinicians, and as a sounding board for clinicians who would like to discuss difficult disclosure issues with a fellow clinician. The purpose is to establish trusting relationships and greater awareness of the types of information that the Core Group would find relevant.
- The Secretary of State should encourage professional bodies to issue their own clear guidance on information sharing about terrorist risk. A good example of guidance in relation to a different type of risk is the General Medical Council's guidance "Confidentiality: reporting gunshot and knife wounds"¹²⁷.
- Current General Medical Council confidentiality guidance refers to sharing information in the public interest and specifically to MAPPA in the context of protecting the public from violent and sexual offenders¹²⁸. Guidance from the Royal College of Psychiatrists also refers to MAPPA¹²⁹. However none of this guidance expressly refers to terrorist risk.
- The national model information sharing agreement should encourage Duty to Cooperate agencies to discuss with the lead authorities how information may be used. For example, it may be appropriate to agree that information shared with police and probation should not be more widely shared without the express authority of the Duty to Cooperate agency.

Disclosure to the Offender

- 5.14. One consideration is whether it may become necessary to disclose information to the offender. Uncertainty about disclosure obligations has the capacity to inhibit information sharing and decision making.
- In general, providing information to the offender about the authorities' understanding of their terrorist risk is likely to be helpful in:

¹²⁷ https://www.gmc-uk.org/-/media/documents/gmc-guidance-for-doctors---confidentiality---reporting-gunshot-and-knife-wounds_pdf-70063779.pdf?la=en&hash=77149AD43FF6F9C89F3DDF2502432E73245EAA92.

¹²⁸ Disclosures for the protection of patients and others: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/disclosures-for-the-protection-of-patients-and-others>, at paragraphs 60 to 72.

¹²⁹ https://www.rcpsych.ac.uk/docs/default-source/improving-care/better-mh-policy/college-reports/college-report-cr209.pdf?sfvrsn=23858153_2 at paragraphs 103 to 105, which cross refers to *Working with MAPPA: Guidance for Psychiatrists in England and Wales* (Taylor & Yakeley, 2013), https://www.rcpsych.ac.uk/docs/default-source/members/faculties/forensic-psychiatry/forensic-fp-01--final2013.pdf?sfvrsn=a3c2ba8b_2. This latter guidance contains an excellent and user-friendly summary of MAPPA arrangements.

- explaining the consequences for that individual if they fail to comply with their licence conditions
 - establishing trusting relationships in which the offender is likely to provide information about himself and collaborate in the process of managing their risk
 - ensuring the participation by the offender in assessments; encouraging the offender to agree to mental health treatment or to engage positively with personal interventions
- Moreover, formal documents such as risk assessments will be relevant in legal proceedings, such as proceedings before the Parole Board where, save in limited circumstances, the offender has a right to see the documents relevant to their case; and where save in very exceptional circumstances, their legal representative has that right in any event.
- However, detail of intelligence and tactics which will be taken into account in MAPPA cannot be shared with a Terrorist Risk Offender without compromising the intelligence and tactics involved in their management. There may be other personal information which, if disclosed to the offender, could damage other public interests.
- The means by which an offender might seek to obtain MAPPA documents containing their personal data is through a Subject Access Request. The applicable law depends on who holds the MAPPA documents: police, prisons, probation under Part 3 Data Protection Act 2018 or Duty to Cooperate agencies under Part 2¹³⁰.
- In the same way as I have recommended clarity that Duty to Cooperate agencies operate under Part 2, I recommend that the basis upon which these authorities can grant or refuse a Subject Access Request is also made clear. This can be done by adding Duty to Cooperate agencies when acting as such to the list of authorities in Schedule 2 to the Data Protection Act 2018, which provides limitations to data rights for, among others, bodies with functions designed to protect the public¹³¹. The effect would be to retract the subject access provisions, to the extent that their application would be likely to prejudice the proper discharge of the MAPPA function.
- It is very unlikely that mere disclosure of the fact that an offender is being managed under MAPPA could lead to damage to national security, although this situation might arise where only sensitive intelligence (that could in no way be disclosed) showed that an offender, not convicted of any terrorist offence, presented a risk of serious harm to the public as a potential terrorist. In those extreme circumstances it may be necessary to avoid referring to MAPPA management in communications with the offender; alternatively that such arrangements should be managed outside of MAPPA. The key point, however, is that fears about disclosure should not inhibit police and MI5 sharing information with suitably cleared probation officers where an offender is on licence.

Prison Information

- 5.15. The flow of information from prisons to those managing risk in the community has been considered unreliable for some time¹³².

¹³⁰ Under section 45 Data Protection Act 2018 "law enforcement authorities" must provide data subject to one set of exemptions; under Article 15 General Data Protection Regulation, Duty to Cooperate agencies must provide data subject to different set of exemptions.

¹³¹ Paragraph 7 of Schedule 2 to the Data Protection Act 2018.

¹³² See for example 2011 MAPPA Inspection at paragraph 3.10.

- In preparing for this report I saw that failing to make and act on reports about potential offences in prison led to lost opportunities to mitigate risk: for example, a finding of homemade weapons, or the glorification of terrorism overheard by prison officers, which might have led to a further arrest and period of imprisonment; or formed the basis for opposing release. There have been initiatives in the past to try and increase the live flow of relevant intelligence¹³³. The current initiative is the National Prisons Intelligence Coordination Centre.
- The difficulties of managing prisoners by, perhaps, young and inexperienced staff, and the loss of more experienced staff, should not be understated. Nonetheless I recommend that effective exploitation of prison intelligence ought to be a strategic priority for MAPPA arrangements nationally.
- Information about an individual's behaviour in prison provides a significant means of enriching the assessment of risk in the community. Professionals will be alert to avoiding this assessment being skewed, on the one hand, by malicious reports from fellow prisoners, and on the other hand, by overreliance on the fact that a dangerous offender is a model prisoner. I was told of cases in which jihadi material was found in cells; whilst the possession of much jihadi material will not amount to an offence¹³⁴ it may be a useful indication of mindset.
- Prison information is particularly relevant for cases in which an individual is considered to have been radicalised in prison. Ensuring that this information reaches the authorities so that a proper assessment can be made of whether the individual should be subject to MAPPA arrangements is of central importance.
- The phenomenon of prison radicalisation to extreme violent Islamism or right wing violent extremism is a substantial one. Whilst it is right to be alert to the possibility that individuals will be wrongly identified as Terrorist Risk Offenders, it is unacceptable to ignore the danger these prisoners present either in custody or on release. As with all types of assessment, careful appreciation of the sources of information, the cogency of the intelligence, and the risks of prejudice or false assumptions, is vital.
- If Active Case Management is adopted, then the phenomenon of late, absent or unfocussed and overlong prison security reports being provided to MAPPA authorities should be avoided. Active Case Management will require members of the Core Group to be familiar with the individual's behaviour throughout their time in custody, including in different parts of the prison estate, and that will inform the approach to managing the individual before and after release.

Immigration

- 5.16. Given the substantial proportion of non-national Terrorist Risk Offenders¹³⁵, information about immigration proceedings is highly material to managing the risk from non-national offenders.
- Immigration detention for offenders subject to a deportation decision will complicate the calculation of release dates. MAPPA authorities need to be advised on the power of immigration officials or the First Tier Tribunal to release individuals otherwise subject to immigration detention; and may need to be advised on legal proceedings (such as appeals against refusal of asylum) which bear upon an individual's presence and liberty in the UK.

¹³³ For example, a pilot intelligence database was noted in the North East in the 2015 MAPPA Inspection at 5.34.

¹³⁴ Because it will not be of practical use to a terrorist and therefore fall within section 58 Terrorism Act 2000.

¹³⁵ For 2018 figures on the arrest, charge and conviction of non-nationals, see *Terrorism Acts in 2018 Report* at 5.44.

- The immigration status of other non-nationals (for example, spouses or partners) may be relevant to understanding whether an individual has a secure family life, or is likely to wish to travel.
- I am informed that officials from the special casework division of the Home Office used to attend formal periodic MAPPA meetings. Active Case Management means that physical attendance is unlikely to be necessary, but the Core Group needs to have access to specialist advice in every case where immigration status is relevant to an individual's liberty or presence in the UK.
- Officials responsible for immigration powers are already listed as Duty to Cooperate agencies¹³⁶. I recommend that a national Memorandum of Understanding should be created between the police, probation and prisons, and the immigration authorities, so that better communication and explanation of immigration decision-making can be fed into MAPPA.

6. OVERSIGHT PANELS

Summary

- Formal periodic meetings with multiple attendees are unsuited to the day to day management of Terrorist Risk Offenders.
- Meetings are required for oversight purposes, and may have a role in securing cooperation from Duty to Cooperate agencies where the Core Group has been unsuccessful.
- The written outcomes of meetings need to be more user-friendly.

Problems with current MAPPA meetings

- 6.1. Formal periodic meetings¹³⁷ involving Duty to Cooperate agencies have inherent limitations which make them unsuitable for active management of Terrorist Risk Offenders.
- They are held periodically, reflecting the difficulty of assembling large numbers of participants, and therefore cannot respond to dynamic changes in risk.
 - The need to bring a wide range of individuals up to speed with current information results in these meetings being dominated by information exchange rather than active management. This was a feature observed by HM Inspectorate in 2011¹³⁸ and something that was strongly apparent to me during the preparation of this Report. The effect was often of information being 'downloaded' without, in some cases, any focus on why the information might be relevant. The discussion tended to over-focus on the impact of the restrictions on the offender¹³⁹, rather than standing back and considering the overall risk and measures in place to mitigate that risk. Considering a single case often took more than 2 hours.
 - I found that chairing was most successful where the chair was actively involved in managing the case. The alternative is a chair who needs to be brought up to speed with the case; or worse, as I witnessed in one case, has no involvement in the case whatsoever because the case was being managed by a different probation team.

¹³⁶ See section 325(6)(j) Criminal Justice Act 2003.

¹³⁷ Multi-Agency Public Protection Meetings, covered at Chapter 13a of the Guidance.

¹³⁸ The 2011 MAPPA Inspection noted that this was the aspect requiring the most fundamental change: p3, Foreword.

¹³⁹ Whilst different professionals will have different attitudes to this, it seemed to me that this over-focus on the impact on the offender was aggravated by referring to the offender by their first name.

- Representatives of Duty to Cooperate agencies are unlikely to have high security clearance, meaning that sensitive information – which may be crucial to the management of these offenders – cannot be freely discussed.
- Large meetings of individuals representing a wide range of public authorities, each with a different function, are not congenial to decision-making about matters of detail. Either the chair drives through decisions, essentially relegating others to the role of passive observer, or decisions are decided by the overall mood in the room.
- If information is only brought together at this type of meeting that postpones the point at which action can be taken. For example, if an issue of mental health is first identified at the meeting, it is unlikely that NHS Trust, or local authority vulnerable adult services, representatives will have been invited. At best (if at all) those present will be able to signpost other authorities who may be able to assist on a subsequent occasion.
- I witnessed high degrees of formality (going beyond the legal duty to “have regard to” MAPPA guidance¹⁴⁰) resulting in formulaic practices, and unusable Risk Management Plans. At a start of a number of meetings I witnessed the chair reading out a lengthy statement on the need to respect confidentiality and the offender’s human rights from a laminated card. These important principles will (or ought to) have been familiar to all those attending, and could have been reiterated in writing beforehand.

Essential functions

- 6.2. However, formal periodic meetings do provide two essential functions which could not be achieved solely by the Active Case Management described in Chapter 5.
- 6.3. Firstly, because of the nature of terrorist risk, the authorities responsible for managing that risk need senior oversight of MAPPA. The more senior probation and police officers are unlikely to have a hands-on role in managing individual offenders and they, and through them, their senior leadership, will require periodic briefing on the assessment of risk and the mitigation of that risk.
- As identified in Chapter 2, assessing terrorist risk is particularly difficult. There is both a risk of complacency or optimism bias, and a risk that uncertainty is allowed to default to the highest risk settings. A discussion with senior officers and officials provides an opportunity to challenge the strategy implemented by the Core Group, and to identify and test assumptions. There is an opportunity for senior leaders to feed in their own insights. I witnessed good examples of this.
 - In the case of the small number of Critical Public Protection Cases, which will include some Terrorist Risk Offenders, ministerial oversight is required (in practice, a senior official from the Ministry of Justice will dial in to the meeting).
 - Even where very sensitive information is relevant to the Active Case Management of the case, it is likely that sufficient briefing and challenge at this senior level will be possible without moving to a secure environment. Where sensitive information is key to understanding the risk, for example, where there is credible but highly sensitive information that an apparently compliant offender has the intention to carry out an attack, senior oversight may need to be carried out by a smaller security cleared group.

¹⁴⁰ Section 325(8A) Criminal Justice Act 2003.

- In order to ensure that focussed information relevant to risk is presented, I have recommended in Chapter 5 that one of the responsibilities of the Core Group should be to prepare the briefing for the Oversight Panel.
- 6.4. Secondly, it remains possible that very senior representation from Duty to Cooperate agencies will be required to unblock requests for cooperation which cannot be achieved by the Core Group.
- For example, it may have proven impossible to obtain suitable public housing for a Terrorist Risk Offender who needs to be moved on from Approved Premises. Local authorities and housing providers have complicated rules and priorities for deciding which individuals and families get access to this scarce resource. Sometimes the prospect of housing a convicted terrorist seems too challenging. But a briefing to a very senior representative, who has the ability to commit their authority's resources, with a full explanation of the public interest involved, bolstered by the presence of senior officers (and in the case of Critical Public Protection Cases, senior officials), may permit that authority to resolve difficulties to understand other mitigating measures in place¹⁴¹ or, if necessary, identify reasons for departing from general policy.
 - It seemed that the practice of standing invitations led to waste. Obviously, no purpose is served by inviting representatives of local authority adult care to attend a meeting unless the offender has been identified as a person having specific care needs. But even Duty to Cooperate agencies with relevant tools or information should not require a formal meeting to understand the importance of cooperation with MAPPA.
 - I recommend that invitations are only issued to Duty to Cooperate agencies or others where there is an identified benefit from the presence of a senior representative at the meeting.
- 6.5. Since the key function of formal periodic meetings is senior oversight, such meetings are better described as Oversight Panels than, as they are in the current Guidance, MAPPA Meetings.
- To describe them as MAPPA Meetings gives the impression that the main or real business of MAPPA for Terrorist Risk Offenders should be conducted at such meetings. In preparing for this report I witnessed a reluctance to hold more informal meetings¹⁴² because of this impression.
 - Moreover, it reinforces the incorrect sense that MAPPA is a separate authority constituted by large formal meetings. No Duty to Cooperate agency should confine its cooperation to circumstances in which it has been requested 'by' a MAPPA meeting.
 - By contrast, I recommend that the proper function of formal periodic meetings is to allow senior oversight by the authorities responsible for managing risk and, where necessary, to obtain explanations and assistance from senior representatives of Duty to Cooperate agencies.

Output and Minutes

- 6.6. The written outputs of MAPPA Meetings were not practical and my experience in this respect matched earlier findings. In their 2011 MAPPA Inspection, HM

¹⁴¹ I was given the example of an arsonist, who was provided with accommodation by an initially reluctant housing association, once the level of intended support and intervention was explained.

¹⁴² These more informal meetings are described in the Guidance as 'Professionals Meetings' at paragraph 13a.37.

Inspectorate found that the minutes of formal periodic MAPPA meetings were rarely used by agencies as a working tool. They found that staff tended to develop their own recording systems¹⁴³ and that the only way of establishing whether agreed actions had been carried out was to trawl through the minutes¹⁴⁴.

- In preparing for this Report, I read many sets of minutes relating to Terrorist Risk Offenders. The large majority were long and difficult to digest, comprising around 20 pages of densely-packed text. Comparing minutes between one meeting and the next, it was difficult to see what difference the meetings were making, or what changes had been made to the Risk Management Plan in response to new information. It appeared that large chunks of text were being copied over from one set of minutes to the next.
- Sometimes the minutes were used as a form of running log - with events arising after the meeting being added to the notes before they were circulated. With the exception of the clear "MAPPA actions" section in which actions required were clearly recorded and marked off when completed, it was difficult to envisage the minutes in their current form being useful to police, probation or prisons, let alone Duty to Cooperate agencies.
- In the context of Terrorist Risk Offenders, there are limits to the value of minutes of formal periodic meetings involving Duty to Cooperate agencies. Especially where sensitive information is relevant to risk it is unlikely to be discussed in any detail at large meetings, and in any event could not be recorded on formal minutes to be circulated widely by email.

6.7. I recommend that the minutes of Oversight Panels should be clearer and more concise, whilst identifying uncertainties.

- It should be possible to identify from the minutes at a glance: (a) the key risk identified (e.g. lone actor violence, attack-planning, travel to fight overseas, recruitment); (b) the strategy being used by the Core Group to mitigate that risk and whether it requires amendment; and (c) what cooperation is required from Duty to Cooperate agencies and why.
- Uncertainties should be reflected in the minutes. For example, the strategy to mitigate the terrorist risk from an individual with clear intentions to travel to Syria may be to limit their access to travel documents, unsupervised banking facilities, and transport hubs by means of licence conditions; and the Oversight Panel may be satisfied that this is an appropriate strategy in the absence of further information concerning risk. However, the minutes should record any significant counter-argument raised at the meeting – for example by CT Police – that if frustrated from travelling to fight abroad the offender may seek to carry out an attack in the UK; and explain why that argument was discounted at that time.
- By way of further example, the strategy to mitigate the risk posed by an offender convicted of possession of certain extremist material may include taking steps to avoid them holding an HGV licence on that basis (because of the risk of vehicle-borne attacks). Even if the Oversight Panel is satisfied that this is an appropriate measure, the minutes should record any counter-argument that inhibiting their ability to hold down a job may increase their self-isolation and thereby increase their risk to the public.
- Because reading minutes is a means of preparing for the next Oversight Panel, where the offender has been convicted of a terrorism or terrorism-related offence

¹⁴³ 2011 MAPPA Inspection at p8 of 50.

¹⁴⁴ Ibid, at paragraph 8.28.

the minutes should clear-sightedly reflect the nature of the index offence. If an offender has been convicted of an offence in which they contemplated causing or risking the death or serious injury of others then this should be properly reflected. For example, an individual who sought to join Da'esh is almost certain to have contemplated that they would or might act in support of murder or torture. That is a useful way of reminding those at the meeting of behaviour that has been conclusively established, and against which at a bare minimum their current risk should be judged.

7. OTHER MULTI-AGENCY BODIES

Summary

- The purpose of this short chapter is to identify relevant non-MAPPA.
 - It is useful to see how MAPPA fit in with these other arrangements.
- 7.1. MAPPA are not the only multi-agency arrangements available in England and Wales for managing terrorist risk. In general I observed that these non-statutory arrangements captured the spirit of multi-agency cooperation and inventiveness, but were less constrained by the formality of MAPPA. Where an offender does not meet, or no longer meets, the threshold for MAPPA then these will be the principal multi-agency arrangements by which protection of the public is achieved.
- There has been a laudable attempt to ensure that cases which do not meet the MAPPA threshold do not fall through the cracks.
 - However, it was apparent to me that more could be done to ensure that information and resources available to non-MAPPA cases were available to MAPPA cases.
 - There is a great deal of regional variation.
 - I could not discount the possibility that different agencies were seeking to solve the same problems without communicating adequately with one another.
 - Not all agencies involved in managing terrorist risk are aware of what other arrangements exist.
 - Certain meetings appeared to hold a 'gatekeeper' function. For example, I saw at least one instance where the police felt that a terrorist risk offender could only be considered under MAPPA, if the case had first been considered by a Pathfinder meeting.

Pre-Release

- 7.2. Pre-release multi-agency bodies comprise:

- (a) Regional Prison Pathfinder Meetings (b) Local Prison Pathfinder Meetings (c) Pre-Release Intelligence Meetings (d) Multi-Agency Extremism Screening Meetings.
- In general, these are held at a high level of security allowing the exchange of sensitive information.
- The type of meeting ranges from individual casework to a higher-level screening of potential terrorist cases and the identification of trends.
- Decisions may be taken about what information can be released for the purposes of MAPPA. This type of gatekeeper function is inconsistent with the need for the Core Group to have access to all relevant information.

- It seemed to me that there was scope for a closer relationship between these bodies and MAPPA, particularly given that prison information is important to understanding risk but (see Chapter 5) has historically been poorly communicated.
- Understanding the behaviour of individuals in prison prior to release, and also developing a broader understanding of the environments in which terrorist risk prisoners are held (for example, the number and influence of Terrorist Risk Offenders at certain prisons) is relevant to managing risk on release.
- In addition, someone familiar with MAPPA, for example a CT probation officer, may be able to identify Other Dangerous Offenders who ought to be managed under MAPPA despite the absence of a terrorism conviction.

In the Community

7.3. Pre-release multi-agency bodies comprise:

- (a) Multi-Agency Centre or MAC (previously NMAC)¹⁴⁵ (b) Police Prevent Teams (c) Channel Panels¹⁴⁶ (d) Community Pathfinders led by the probation service.
- MAC is a police-led initiative. In one instance I saw MAC was considering an individual subject to MAPPA: it was apparent that MAC had access to additional funds for rehabilitation purposes. However no probation officer was present at the MAC meeting. This meant that the 'case' was presented by a police officer who had never met the offender. MAC also had access to special offender profiles in which forensic psychological analysis had been done on likely triggers, profiles that were not available for MAPPA purposes.
- I recommend that where an offender is subject to licence, there should be no separate MAC meeting; rather, any MAC initiatives should be made available and discussed with the Core Group under MAPPA.
- Police Prevent Teams have created sensible multi-agency initiatives that are not accessible under MAPPA. A good example are Mental Health Hubs in which experienced clinical practitioners are funded on a part-time basis to work closely in a consultancy role with police, enabling (a) better police understanding of what mental health interventions are available in the locality and (b) a communication bridge between police and treating clinicians in which relevant information is more likely to be shared.
- As I recommend at Chapter 5, these facilities should be made available for MAPPA, especially because the uncertainty over mental health is one of the major difficulties faced under MAPPA.
- Channel is a local authority-led programme under the PREVENT strategy. I observed that local authorities will have established relationships with other public bodies which could be used under MAPPA.

¹⁴⁵ Referred to by Lord Anderson QC in his Implementation Stocktake (June 2019) at Chapter 7, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807911/2017_terrorist_attacks_reviews_implementation_stock_tak.pdf.

¹⁴⁶ Under section 37(5) Counter-Terrorism and Security Act 2015. See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf.

Annex A

Legislative Recommendations

- [2.12] Statutory provision to permit the use of polygraph testing of Terrorist Offenders.
- [3.13] Amendments to the Counter-Terrorism Act 2008 to enable sentencing judges to find that a wider range of offences are connected to terrorism.
- [3.18] Statutory provision to enable judges to grant search warrants to check an offender's compliance with their licence conditions, where this is necessary for the purpose of assessing their terrorist risk.
- [3.19] Statutory provision to include a licence condition in appropriate cases, requiring an offender to submit to a person search to look for weapons or harmful objects.
- [3.26] Statutory provision enabling the arrest, in urgent cases, of released offenders who are about to be recalled to prison.
- [3.28] Removing the power to sentence young offenders convicted of terrorism offences to Detention and Training Orders.
- [3.30] Statutory provision to enable probation officers to supervise post-licence offenders subject to civil orders.
- [4.1] Amendment to section 325(2)(a) Criminal Justice Act 2003 so that all persons subject to the notification requirements of the Counter-Terrorism Act 2008 are automatically eligible for MAPPA under a new Category 4.
- [4.2] Amendment to section 325(2)(b) Criminal Justice Act 2003 so that Other Dangerous Offenders are eligible for MAPPA whether or not their risk arises from offences committed by them, again under a new Category 4.
- [5.10] Statutory provision in the Criminal Justice Act 2003 equivalent to section 115 Crime and Disorder Act 1998, providing a lawful basis for disclosure by any person or body for the purpose of MAPPA.
- [5.14] Addition of Duty to Cooperate agencies to paragraph 7 of Schedule 2 to the Data Protection Act 2018, providing a clear basis on which offender requests for subject access can be granted or refused.

Non-legislative Recommendations

- [2.7] The ERG 22 + risk assessment model should be referred to as a risk *factor* assessment to avoid confusion over its purpose.
- [2.8] Assessing risk should not be the function of one particular tool (such as OASys or ERG 22 +) but should depend on the totality of what is known, and can be inferred, about the individual offender as their case progresses.

- [2.8] There should be wider sharing with probation officers not only of specific intelligence but also of threat assessments and profiles; probation officers involved in assessing terrorist risk should be given some training in the principles of intelligence assessment.
- [2.9] Greater sophistication is needed in distinguishing between the types of harm that may be caused by Terrorist Risk Offenders.
- [2.12] Polygraph testing for Terrorist Offenders should be adopted.
- [3.3] Prisoner Security officer and police officers should familiarise themselves with the Parole Board process, with a view to providing evidence and assistance to the Parole Board in appropriate cases.
- [3.5] Where intelligence is summarised at a lower security classification for use in Parole Board proceedings, it should be presented by a named senior official who has seen the underlying intelligence, and the intelligence should be graded for reliability.
- [3.8] Consideration should be given as to how the need for particular conditions can best be communicated to the Parole Board.
- [3.10] Prison Instruction 12/2015 should be redrafted to deal more clearly with Other Dangerous Offenders.
- [3.15] The involvement of Part 4 officers (who administer the notification provisions under the Counter-Terrorism Act 2008) should be replicated as far as possible with Other Dangerous Offenders.
- [3.23] Guidance on the recall of offenders (and particularly Terrorist Risk Offenders) should make it clear that recall does not depend upon breach of a licence condition.
- [3.29] Urgent consideration should be given to how offences committed in prison by Terrorist Risk Offenders can be investigated for future prosecution.
- [3.31] Consideration be given to whether local police can be more routinely briefed on released Terrorist Offenders.
- [3.33, 3.38] Support measures that are available for PREVENT arrangements should also be available to Terrorist Risk Offenders managed under MAPPA arrangements, including Other Dangerous Offenders.
- [3.35] Urgent attention should be given by central and local government working together to identifying and adopting best practice in securing social housing for Terrorist Risk Offenders.
- [3.35, 3.38] Consideration be given to whether residence at an Approved Premises should count towards qualifying periods of local residence for social housing and access to mental health services.
- [3.38] Urgent analysis is carried out on to how isolated individuals with poor mental health can be diverted away from violent obsessions.

- [4.1] Amend section 325 of the Criminal Justice Act 2003 so that it applies to all terrorist offenders (save for the most minor offences such as failure to comply with Schedule 7 Terrorism Act 2000) and all terrorist-connected offenders.
- [4.1, 4.2] All Terrorist Risk Offenders (both Terrorist Offenders and Other Dangerous Offenders) should be assigned to a new MAPPA Category 4.
- [4.3] Core Groups should be responsible for deciding in the first instances whether to adopt Other Dangerous Offenders for MAPPA on account of their terrorist risk.
- [5.2] Decision-making should be concentrated in a Core Group of security-cleared professionals, whereas wider meetings with Duty to Cooperate agencies should be used to provide oversight and achieve outcomes that cannot be otherwise achieved through ordinary Active Case Management.
- [5.5] National Probation Service should employ one or more probation officers as young offender specialists, to act as a bridge between the Core Group and Youth Offender Teams who are responsible for managing young Terrorist Risk Offenders.
- [5.5] The Secretary of State should work with the Youth Justice Board to put more detailed guidance in place for dealing with young Terrorist Risk Offenders.
- [5.7] Administrative and comprehensive legal support should be easily accessible to members of the Core Group.
- [5.9] Any decision to cease management by the Core Group must be made at an Oversight Panel.
- [5.9] Where a licence is due to expire, the Core Group should actively consider what can be done to mitigate terrorist risk after expiry.
- [5.11] Government should work, if appropriate with the Information Commissioner, to put in place clear guidance that Duty to Cooperate agencies are subject to Part 2 of the Data Protection Act 2018.
- [5.13] General counter-terrorism briefings should be made available to clinical staff who wish to receive them, in order to create areas of expertise within the professions at a regional level.
- [5.15] Effective exploitation of prison intelligence should be a strategic priority for MAPPA nationally.
- [5.16] A national Memorandum of Understanding should be created between the police, probation and prisons, and the immigration authorities, so that better communication and explanation of immigration decision-making can be fed into MAPPA arrangements.

- [6.4] Invitations are only issued to Duty to Cooperate agencies or others to attend formal periodic meetings where there is an identified benefit from the presence of a senior representative.
- [6.5] The function of formal periodic meetings should be to allow senior oversight by the authorities responsible for managing risk and, where necessary, to obtain explanations and assistance from senior representatives of Duty to Cooperate agencies.
- [6.7] The minutes of Oversight Panels should be clearer and more concise, whilst identifying uncertainties.
- [7.3] Where an offender is subject to licence, there should be no separate MAC meeting; and any MAC initiatives should be made available and discussed with the Core Group under MAPPA.

Annex B

Summary

- MAPPA are arrangements for assessing and managing the risks posed by offenders, including Terrorist Offenders, who pose a risk of serious harm.
- They are established by police, probation and prisons and carried out using existing powers.
- They are established locally for each police force area in England and Wales but must have regard to national Guidance.
- Certain authorities have a duty to co-operate with MAPPA, which they do in accordance with their existing functions.

Legal Basis for MAPPA

1. Part 13 of the Criminal Justice Act 2003 requires the police, probation service and prison service in each area of England and Wales to establish arrangements "for the purpose of assessing and managing the risks" posed by certain offenders¹⁴⁷.
2. The types of offenders who may be subject to MAPPA are firstly "relevant sexual offenders"¹⁴⁸, comprising offenders who must register under Part 2 of the Sexual Offences Act 2003¹⁴⁹ or those who have received a threshold sentence (generally, 12 months or more¹⁵⁰) for certain specified sexual offences¹⁵¹ or have received a mental health disposal for such an offence¹⁵². Secondly, there are "relevant violent offenders"¹⁵³ who have received a threshold sentence for murder or certain specified violent offences¹⁵⁴ or have received a mental health disposal for such an offence¹⁵⁵.
3. Other offenders are treated as relevant sexual or violent offenders if they have received a threshold sentence either for offences of abduction, people trafficking or drugs where a child is involved¹⁵⁶ or "specified terrorism offences"¹⁵⁷. The specified terrorism offences include offences which are not violent in themselves¹⁵⁸ but could inspire or be instrumental in future acts of violence by the offender or others.
4. The third category of offenders who may be subject to MAPPA, referred to in this report as Other Dangerous Offenders, comprises: "[...]other persons who, by reason of offences committed by them (wherever committed), are considered by the responsible authority to be persons who may cause serious harm to the public"¹⁵⁹.

¹⁴⁷ Section 325(2). References are to the Criminal Justice Act 2003 unless otherwise specified. The prison authorities were added by Sections 67 and 68 Criminal Justice and Court Services Act 2000 [couldn't verify this on the Westlaw version I looked at].

¹⁴⁸ Section 325(2)(a).

¹⁴⁹ Section 327(2).

¹⁵⁰ Section 327(3).

¹⁵¹ Listed under Schedule 15 Part 2.

¹⁵² Section 327(4).

¹⁵³ Section 325(2)(a).

¹⁵⁴ Listed under Schedule 15 Part 1.

¹⁵⁵ Section 327(4).

¹⁵⁶ Section 327(4A).

¹⁵⁷ Listed under Schedule 15 Part 3.

¹⁵⁸ For example, dissemination of terrorist publications under section 2 Terrorism Act 2000.

¹⁵⁹ Section 325(2)(b).

5. Serious harm is not defined in Part 13 of the Criminal Justice Act 2003. However in Part 12 Chapter 5 which deals with sentencing of dangerous offenders, "serious harm" is defined as death or serious personal injury, whether physical or psychological¹⁶⁰.
6. To fall within this third category does not depend on an assessment of dangerousness by the sentencing judge. It includes offenders convicted of non-terrorist offences which have been certified as "terrorism-connected"¹⁶¹ or offenders who have been convicted of non-terrorist offences who nonetheless present a risk of serious harm because of their terrorist intentions, for example having been radicalised in custody.
7. When establishing MAPPA, the police, probation service and prison service are required to act jointly and are referred to in Part 13, collectively, as the "responsible authority"¹⁶². But being a "responsible authority" does not confer any additional powers; so the police, probation service and prison service are reliant on their existing statutory and common law powers.
8. The police is in fact the chief officer of police for the area¹⁶³. There are 42 chief officers in England and Wales, and therefore 42 possible sets of arrangements. Arrangements for terrorists will inevitably require involvement by specialist counter-terrorism officers whose response to terrorism is coordinated nationally by the Senior National Coordinator¹⁶⁴, but will also involve police officers and staff in specialised roles, such as police offender managers, who may be locally or regionally-based.
9. The Secretary of State for Justice is responsible for the probation and prison services. Powers for administering release on licence are exercised by the Secretary of State, such as setting licence conditions or ordering recall to prison; in practice probation officers work closely with the Public Protection Casework Section in the Ministry of Justice.
10. The police, the probation service and the prison service must, as the responsible authority, have regard to guidance issued by the Secretary of State¹⁶⁵. The current Guidance is published online¹⁶⁶. Chapter 24 is entitled, "Terrorists and Domestic Extremists".
11. They must also, in establishing the arrangements, act in cooperation with a number of specified public bodies¹⁶⁷.
12. These specified public bodies have a duty to cooperate, which may also include the exchange of information¹⁶⁸ but only to the extent that such cooperation is compatible with the exercise by those persons of their own functions¹⁶⁹.

¹⁶⁰ Section 224(3). The assessment of dangerous is made by the sentencing judge under section 229.

¹⁶¹ Under section 30 Counter-Terrorism Act 2008.

¹⁶² Section 325(1).

¹⁶³ Section 325(1).

¹⁶⁴ See Terrorism Acts in 2018 Report at 1.4 to 1.5.

¹⁶⁵ Section 325(8A).

¹⁶⁶ Mappa Guidance 2012, Version 4.5, updated July 2019 at <https://www.gov.uk/government/publications/multi-agency-public-protection-arrangements-mappa-2>.

¹⁶⁷ Section 325(3).

¹⁶⁸ Section 325(4).

¹⁶⁹ Section 325(3).

13. They have become known as Duty to Cooperate agencies. They comprise youth offending teams, Jobcentre Plus, local education housing and social services authorities, registered social landlords, health authorities, providers of electronic tags and the UK Border Agency¹⁷⁰. Most of these bodies will be in any event be required to have due regard in the exercise of their functions to the need to prevent people from being drawn into terrorism (the 'Prevent duty')¹⁷¹.
14. Each area is required to draw up a memorandum setting out the ways in which this cooperation is to happen¹⁷².
15. The effectiveness of MAPPA must be kept under review, in practice by a local Strategic Management Board, with a report published annually¹⁷³.

¹⁷⁰ Section 325(6).

¹⁷¹ Under section 26 and Schedule 6 Counter-Terrorism and Security Act 2015.

¹⁷² Section 325(5).

¹⁷³ Section 326(1), (5).

Annex C: Terrorist Risk Offenders admitted to Hospital under the Mental Health Act 1983

Summary

- Managing the risk posed by this group of Terrorist Risk Offenders is complicated by the fact that their treatment and detention in hospital is governed by mental health law.
- Fundamental to managing this risk is close and direct cooperation between police and responsible clinicians and, in the case of restricted patients, the Mental Health Casework Section of the Ministry of Justice.
- A unified approach to this set of offenders, bolstered by broader expertise in managing risk, is desirable.

Introduction

1. There are 4 groups of Terrorist Risk Offenders who may be admitted to hospital on account of their mental health. As defined in the Report, a Terrorist Risk Offender is any offender, convicted of any offence, who presents a risk of committing an act of terrorism. This category therefore includes Other Dangerous Offenders (for example, someone radicalised whilst in prison for an offence unconnected to terrorism), and for the purposes of this Annex includes individuals who are found to be unfit to plead or not guilty by reason of insanity. The 4 groups comprise:
 - Individuals ordered by a criminal court to be detained in hospital **subject to restriction** under sections 37 and 41 Mental Health Act 1983. For example, a mentally ill defendant who is issued with a restricted hospital order after carrying out a terrorist attack.
 - Serving prisoners who are subject to **transfer** from prison to hospital with a **restriction direction** under sections 47 and 49¹⁷⁴, or sentenced to a “hybrid order” under section 45A with a limitation direction. For example, a prisoner serving an 8-year sentence for robbery, who becomes radicalised in prison, and who is later transferred to hospital under section 47 after becoming mentally unwell.
 - Individuals ordered by a criminal court to be detained in hospital under section 37 who are **not subject to restriction**. For example, a person who is issued with an unrestricted hospital order for robbery, who was previously involved in terrorist activity overseas and continues to present a terrorist risk.
 - Offenders on licence who are subsequently detained in hospital under Part 2 (**civil orders**). For example, an offender who has been released from the custodial part of their sentence for a terrorism offence, now serving the remainder of their sentence on licence in the community, who becomes unwell and is detained.
2. I have been unable, owing to the Covid-19 pandemic, to see at first hand the management of terrorist risk offenders who have been admitted to hospital; and this Annex is therefore prepared on the basis of my analysis of MAPPA arrangements in non-mental health cases, my own research, and discussions with officials at the Ministry of Justice, the police, and clinicians.

Restricted versus unrestricted patients

¹⁷⁴ Transferred prisoners are generally subject to restriction directions under section 49. A restriction direction on a transferred prisoner under section 49 has the same effect as a restriction order under section 41: section 49(2).

3. The fact that the first two groups listed above are subject to restriction measures distinguishes their management under mental health law from the second two groups.
 - The imposition of restriction measures means that the Secretary of State, acting through the Mental Health Casework Section ('MHCS') in the Ministry of Justice¹⁷⁵, must consent to any transfer between hospital establishments, to any periods of leave of absence, and (in the case of those detained under sections 37 and 41) to discharge; and may recall a person who has been conditionally discharged from hospital¹⁷⁶.
 - This amounts to an additional layer of supervision and control in addition to the recommendations of the responsible clinician.
 - A decision by MHCS concerning leave of absence or discharge is an 'in principle' decision, leaving the timing to the judgment of the responsible clinician.
4. I am informed that processes exist so that MHCS is alerted to whether a restricted patient is considered to present a terrorist risk. Current practice is for the Joint Extremism Unit (known as 'JEXU') in the Ministry of Justice to consult with counter-terrorism police, and provide MHCS with a Form of Words summarising the nature of the risk. The purpose is to enable MHCS to take account of information relating to terrorist risk where it is relevant to the Secretary of State's statutory role in these cases.
 - However, no one in MHCS has a sufficient level of security clearance to be briefed on the most sensitive information that may be relevant to terrorist risk.
 - This means that decisions taken by the Secretary of State in relation to restricted patients are taken on the basis of more limited information than, for example, is considered by a Core Group¹⁷⁷ when deciding whether to recall a terrorist offender who has been released on licence.
 - I recommend that this is changed. It is wrong that those responsible for exercising this important statutory power on behalf of the Secretary of State are unable to consider the most sensitive information relevant to risk. A Form of Words is not always a suitable substitute for more detailed information, and may not be practical where intelligence is evolving rapidly.
 - I was informed that MHCS occasionally attend meetings under MAPPA arrangements on an ad hoc basis.
 - There appeared to me to be a lack of clarity about the point at which information relevant to sensitive information is best presented and considered. On the one hand, information relevant to terrorist risk is passed to MHCS indirectly through JEXU; on the other hand MHCS may (on occasion) participate in MAPPA arrangements where MHCS can hear directly from counter-terrorism police.
5. By contrast, MHCS has no role in relation to unrestricted patients.

Decision Points

6. There are 5 decision points at which information about terrorist risk may be relevant to protecting the public. As stated in the Report, professionals need to be able to take the right decision, on the right information, at the right time.

¹⁷⁵ A parallel can be drawn with the role of the Public Protection Casework Section (PPCS) in the Ministry of Justice, whose officials take decisions on behalf of the Secretary of State on licence conditions and recall to prison.

¹⁷⁶ Subject, in the case of discharge and recall, to the powers of the Mental Health Tribunal.

¹⁷⁷ See Report at Chapter 5.

- Decisions on the **location** (hospital, or unit within hospital) where the patient is detained. For example, it may be necessary for an individual to be transferred to a secure hospital, or at a secure unit within a hospital, if they pose a risk of terrorist violence to others.
- Decisions about the **conditions** of detention. For example, an individual with unsupervised access to the internet may be able to access Da'esh propaganda¹⁷⁸.
- Whether an individual should be permitted **leave of absence**¹⁷⁹. For example, the responsible clinician may consider that a period of leave from the hospital would assist their treatment and progress to eventual discharge; but leaving a controlled environment may provide an opportunity for committing a terrorist attack. In cases of acute terrorist risk, where arrangements are needed for surveillance, not just the fact of leave, but the date and time on which the period leave begins, will be of high importance.
- Consideration of **discharge**. The responsible clinician may conclude that the patient no longer meets the criteria for detention, leading to their release into the community. As with leave of absence, counter-terrorism Police may need to put in place arrangements for monitoring.
- Decisions **following release**. An individual's behaviour may mean that leave of absence should be curtailed, or an individual who has been conditionally discharged should be recalled to hospital.

MAPPA arrangements

7. Individuals in the groups identified above are all eligible for MAPPA arrangements¹⁸⁰.
8. It is clear that MAPPA arrangements for managing released terrorist offenders in the community are necessarily different in the mental health context:
 - Firstly, the probation service has no role in the management of terrorist risk offenders who have been issued with hospital orders by the courts (those in the first and third groups above) which means that the mental health authority is the lead agency for any MAPPA arrangements in those cases¹⁸¹. The police do have a statutory role for those subject to terrorist notification requirements, but only after they are released from hospital (see further below).
 - Secondly, even for those who have been transferred from prison or who are subsequently detained under Part 2 of the Mental Health Act following release on licence (groups two and four), their detention and treatment in hospital is governed by mental health law and the therapeutic setting¹⁸². The best interests of the patient are likely to be dynamic, meaning that (unlike a determinate prison sentence) the point of release from the hospital cannot always be predicted in advance¹⁸³.

¹⁷⁸ On access to the internet, see Mental Health Act 1983 Code of Practice, at paragraphs 8.16 to 8.22.

¹⁷⁹ Under section 17.

¹⁸⁰ Under section 327 Criminal Justice Act 2003. For individuals issued with hospital orders by the criminal courts, see section 327(3)(viii) and (4). All other offenders will be eligible either as relevant offenders (unless sentenced to less than one year's imprisonment) under section 325(2)(a) and 327(3), or as Other Dangerous Offenders under section 325(2)(b).

¹⁸¹ MAPPA Guidance paragraphs 26.51-2.

¹⁸² Strictly speaking, it is the interaction of mental health law and criminal law which determines their treatment; for example, a transferred prisoner remains subject to their criminal sentence.

¹⁸³ The opportunities for forward-planning are likely to be greater in the case of the discharge of a transferred prisoner than an offender on licence, subsequently detained under Part 2, who may be released at short notice.

- Thirdly, information concerning terrorist risk may not be relevant to the exercise of mental health powers by clinicians and MHCS, if the terrorist behaviour is not considered to be a facet of the individual's mental disorder.¹⁸⁴
 - Fourthly, for restricted patients only, there is a process of consideration that operates parallel to MAPPA arrangements, in the form of decision-making by MHCS.
9. However, in preparing this annex I was struck by the similarity of the issues faced in managing Terrorist Risk Offenders, whether in the mental health context or not.
- The risk presented by a Terrorist Risk Offender will not always be apparent from the offence of which they have been convicted. An individual may have been prosecuted for a non-terrorism offence in order to disrupt attack-planning, or the nature of their terrorist offence may only provide an incomplete picture of their risk¹⁸⁵. The individual may have been radicalised in prison, or following release on licence. Each of these individuals could end up being admitted to hospital on account of their mental health.
 - For all Terrorist Risk Offenders there is the same need to share information relevant to terrorist risk, so informed decisions can be taken that, so far as possible, minimise the risk of terrorist harm. The purpose of MAPPA arrangements is to encourage the flow of relevant information both ways. Responsible clinicians may be aware of new information relevant to terrorist risk, for example the fact that a patient is openly expressing an interest in violent extremism during their admission to hospital.
 - There is the same need for complex forward-planning where there is the possibility that a Terrorist Risk Offender may be released.
 - Responsible clinicians and, in the case of restricted patients, MHCS, face the same challenges of making legally defensible decisions as the probation service on the basis of sensitive information. These decisions may then be reviewed by independent bodies (the Mental Health Tribunal and the Parole Board respectively).
 - Terrorist Risk Offenders are statistically rare and those responsible for managing the risks may have limited if any experience with this category of offending behaviour.
 - Even in non-hospital cases, mental health considerations are increasingly prominent in managing terrorist risk.
 - MAPPA arrangements do not remove or alter the ultimate responsibility of the decision-maker to exercise their powers lawfully under the applicable law (the probation service in the context of offenders on licence; clinicians and MHCS in the case of offenders in hospital) but enable decisions to be taken on a more informed basis.
10. I therefore **recommend** that MAPPA arrangements for Terrorist Risk Offenders in hospital should be modelled as far as possible on MAPPA arrangements for non-hospitalised Terrorist Risk Offenders. In particular, I **recommend** that:
- Direct contact between responsible clinicians and counter-terrorism police should take place under MAPPA arrangements in every case¹⁸⁶, which (as I recommend in the Report) need not take the form of attendance at formal periodic meetings. Both

¹⁸⁴ Conditional Discharge Guidance for Clinical Supervisors, July 2019 at paragraph 62.

¹⁸⁵ For example, a suspected attack planner who is prosecuted under section 58 Terrorism Act 2000 following early disruptive arrest.

¹⁸⁶ The occasional practice of sending individuals to periodic formal MAPPA meetings who represent the NHS Trust but are not directly responsible for the patient means that relevant information is less likely to be shared or understood, and is not effective.

should be made aware of the importance of exchanging information concerning such patients where lawful to do so¹⁸⁷.

- Whether or not the individual is subject to licence, specialist CT probation officers should be invited to participate, to offer their experience of managing terrorist risks and making decisions based on, or informed by, sensitive information.
- In the case of restricted patients, MHCS should directly participate in MAPPA arrangements. Rather than merely receiving information solely through JEXU, a security cleared official in MHCS should be in a position to receive sensitive information in appropriate cases from counter-terrorism police.

11. However, in contrast to ordinary MAPPA arrangements, I **recommend** that MAPPA arrangements should begin at the point of admission to hospital (or when the terrorist risk becomes apparent for those already admitted) rather than, as with custodial sentences, 6 months before anticipated release. This is because the decision points at which terrorist risk should be taken into account include questions of location, conditions and leave of absence which could arise at any point during admission. Even if decision points are unlikely to arise for the foreseeable future, so that no further activity is undertaken under MAPPA arrangements for some time, arrangements need to be made to ensure that offenders do not fall through the gaps: for example, with respect to Terrorist Risk Offenders who are transferred from prison to hospital but who will eventually reach the end of their custodial sentence and fall to be released on licence. Responsible clinicians should be made aware of the 5 decision points which are likely to be relevant to counter-terrorism police in deciding how to manage terrorist risk.

Interaction with other statutory powers

Released offenders on licence who are subsequently admitted to hospital

12. Where Terrorist Risk Offenders who have been released on licence are subsequently admitted to hospital under Part 2 Mental Health Act 1983, multi-agency work is required to ensure that the individual's licence conditions remain appropriate, or whether the circumstances of admission suggest that the licence should be revoked and the individual returned to custody.

- Unlike the position under Part 4 Counter-Terrorism Act an offender who is detained in hospital remains subject to an obligation to comply with their licence¹⁸⁸.
- Close coordination is therefore needed between probation and the treating clinician to ensure that any additional terms of the licence are compatible with their continuing detention in hospital, including during periods of leave.
- I was informed that practice varied in these cases. However, it is clear that the occasional practice of treating the licence as 'suspended' is inconsistent with legislation, is potentially confusing (for example, where the individual is on temporary leave) and risks a loss of control. During such periods both the offender and the authorities are likely to be uncertain about what limits there are on their activities (for example, access to the internet, associations, and travel) leading to a gap in public protection.

¹⁸⁷ The need for legal certainty in information exchanges is addressed in the Report. I also reiterate my recommendation about the utility of developing trusted networks between clinicians and counter-terrorism police and probation.

¹⁸⁸ See section 249 Criminal Justice Act 2003 for fixed term prisoners; and section 31 Crime (Sentences) Act 1997 for life sentence prisoners.

- It should be kept in mind that a Terrorist Risk Offender may go from being an offender serving the custodial part of their sentence, to being an offender on licence, without leaving the hospital grounds. This occurs when an individual who has been transferred to hospital continues to be detained in hospital on mental health grounds, even after the conclusion of the custodial part of their sentence¹⁸⁹ at which point they are legally released from their custodial sentence on licence¹⁹⁰.
- I therefore **recommend** that clear guidance is formulated by the Ministry of Justice to address the position of Terrorist Risk Offenders on licence who are admitted to, or remain, in hospital under the Mental Health Act.

Terrorist notification

13. Offenders sentenced to more than 12 months, or a hospital order, for a terrorist or terrorism-connected offence are subject to the notification requirements of Part 4 Counter-Terrorism Act 2008. However, a person is relieved from complying with the notification requirements whilst detained in hospital¹⁹¹.

- I have been informed that there is uncertainty amongst police offender managers over whether an individual who is granted temporary leave outside the hospital is nevertheless ‘detained’. But since the exemptions in the Counter-Terrorism Act 2008 only apply where the person is “detained in a hospital”, it follows that a Terrorist Risk Offender on temporary leave must comply with the requirements by, for example, registering his home address with the police.
- As with licenced offenders, close coordination is required between responsible clinicians (and those responsible for patients on temporary leave when in the community) and counter-terrorism police to ensure that these notification requirements are explained and complied with.
- I **recommend** that clear guidance is formulated by counter-terrorism police to address the position of Terrorist Risk Offenders who are subject to notification requirements but temporarily released from hospital.

The Mental Health Tribunal

14. The Mental Health Tribunal¹⁹² is an independent judicial body which considers among other things the cases of individuals detained under the Mental Health Act. As with the Parole Board, the MAPPA agencies need to consider how to ensure that information relevant to risk, that may be relevant to the task of the Tribunal but also highly sensitive, can be communicated to it.

- The first step is to consider whether the treating clinician from whom the Tribunal will hear can be alerted to the relevant information. Counter-terrorism police may need to consider for example whether sensitive information can be gisted into a less classified form.

¹⁸⁹ These individuals are sometimes referred to as being on ‘notional hospital orders’ or ‘notional section 37s’.

¹⁹⁰ Release on licence occurs at the point of release, whether or not the offender is aware of the terms of his licence: *R (Keiserie) v Secretary of State for Justice* [2019] EWHC 2252 at paragraph 26.

¹⁹¹ Sections 47(4)(c) and 49(2)(c) Counter-Terrorism Act 2008.

¹⁹² Formally, the First Tier Tribunal (Health, Education and Social Care Chamber).

- Where the Secretary of State is a party to the proceedings, careful coordination between the Mental Health Casework Section and the police will also be required, again to see whether and if so, how information about terrorist risk that may be relevant to the Tribunal's decision can be presented.
- The current Tribunal Rules¹⁹³ permit the Tribunal to make a direction prohibiting the disclosure of a document or information to any person but this only applies where it is satisfied that such disclosure would be 'likely' to cause 'serious harm' either to that person or to some other person and that having regard to the interests of justice, it is proportionate to give such a direction¹⁹⁴. The Tribunal may nonetheless direct that the document or information is given to a person's legal representative where it would be in that individual's interests to do so and the legal representative will not disclose the document or information further without the Tribunal's consent¹⁹⁵.
- These Rules are wide enough in principle to permit the Secretary of State to communicate at least some sensitive and confidential information to the Tribunal. This could include matters of urgent importance. However, it will not always be possible to show that all information relevant to terrorist risk would be likely to cause serious harm to that or another individual.
- For example, it may be difficult to show that disclosure of covert monitoring (which indicates that the individual is planning an attack) is likely to cause serious harm to that or another person.
- In addition, the classification of the material may make disclosure to non-security cleared legal representatives impossible, even where the legal representative agrees not to disclose the material to their client¹⁹⁶.
- I therefore **recommend** that consideration should be given, following consultation with the Tribunal, to amending the Tribunal Rules to enable documents or information to be withheld on the grounds of national security. It would be for the Tribunal to decide whether it was appropriate to act on any information so withheld. If nothing else, the deployment of sensitive information might enable the Secretary of State to seek an adjournment in order to obtain, if possible, less sensitive evidence for use at the adjourned hearing.
- It is also essential that those involved in MAPPA arrangements are well briefed on appearances before the Tribunal so that contingency planning can take place in the event of a decision to discharge.

¹⁹³ The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.

¹⁹⁴ Rule 14(2).

¹⁹⁵ Rule 14(5).

¹⁹⁶ Noting, for completeness, that closed material procedures under the Justice and Security Act 2013 are not available for Tribunal proceedings: see section 6(1), (11).