



Ministry
of Justice



Home Office

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

Jonathan Hall QC

MoJ ref: 83820

9 December 2020

Dear Jonathan,

INDEPENDENT REVIEW OF THE EFFECTIVENESS OF THE MULTI-AGENCY PUBLIC PROTECTION ARRANGEMENTS (MAPPA) IN THE MANAGEMENT OF KNOWN TERRORIST AND OTHER EXTREMIST OFFENDERS

We are writing to thank you for the review which you undertook earlier this year, in response to the terrorist atrocity committed by Usman Khan at Fishmongers' Hall on 29 November 2019. The terrorist attack committed by Sudesh Amman in Streatham High Road on 3 February 2020 served to reinforce the need for the review, since both Khan and Amman had been managed under MAPPA, as we would expect all known terrorist offenders to be. As you know, we published your report on 2 September, and we are writing to provide you with a formal response to it. This was a valuable report, and implementing your recommendations will, alongside the measures we have already taken and others in the pipeline, strengthen our capability to manage those who pose a terrorist risk to this country. The recent appalling attacks in France and Austria remind us that the threat continues to evolve and so must our response.

In your report, you made a number of recommendations which would require changes to primary legislation, and we shall begin with an update on how we are progressing those changes.

You made three recommendations to give the Police new powers:

- a licence condition in appropriate cases, requiring an offender to submit to a personal search to look for weapons or harmful objects, and a power to enable police to conduct the search on those with this condition in place;
- a power to enable judges to grant search warrants to check an offender's compliance with his/her licence conditions, where this is necessary for the purpose of assessing their terrorist risk; and
- a power to enable the arrest, in urgent cases, of released offenders who are about to be recalled to prison.

Officials consulted all operational agencies, including Counter-Terrorism Police and the National Probation Service (NPS), which confirmed how useful the new powers would be and in what circumstances they might be used. Therefore, we have accepted these recommendations and we will bring forward legislation in the New Year to implement the changes.

You also recommended that there be a power to make polygraph testing mandatory for terrorist offenders on licence. As you know, polygraph testing has been a very valuable additional tool to manage the risk presented by sexual offenders. The Counter-Terrorism and Sentencing (CTS) Bill, which was introduced to Parliament in May and is currently in the House of Lords, includes provisions that will enable polygraph testing to be used as a licence condition for terrorist offenders assessed as high risk. It will also be added to the measures available for use as part of a Terrorism Prevention and Investigation Measure (TPIM).

You recommended that amendments be made to the Counter-Terrorism Act 2008, to enable sentencing judges to find that a wider range of offences can be identified as being terrorism-connected. The CTS Bill includes measures that will enable the Courts to consider if any offence for which the maximum penalty is more than two years is terrorism-connected, rather than constraining the Courts to a defined list. We are clear that this change establishes a necessary flexibility in the legislation and will ensure that no terrorism-connected offenders can fall through the cracks.

You recommended removing the power to sentence young offenders convicted of terrorism offences to Detention and Training Orders. The CTS Bill will see the creation of the new Sentence for Offenders for Particular Concern (SOPC) for those under 18 convicted for terrorism and terror-connected offences. This will mean that in all but the most minor of terrorism offences (where the maximum penalty is 2 years or below) a DTO will not be available, and a SOPC must be imposed as a minimum.

When it comes to eligibility for MAPPAs, you made two important recommendations: one to create a discrete new MAPPA category, Category 4, to ensure that all offenders convicted of terrorism offences are automatically referred to and managed under MAPPAs; the other to enable offenders who are assessed as presenting a terrorism risk to be managed under MAPPAs, even where they have not been convicted of terrorism offences. We have accepted these recommendations and will bring forward legislation in the New Year to implement the changes.

You recommended that there should be legislation to put beyond doubt Duty to Co-operate (DTC) agencies' powers to share information under MAPPAs. Even though we are clear that the powers already exist, we acknowledge that some agencies and individuals have expressed uncertainty as these powers emanate from a range of legislation. We will legislate to clarify the position by expressly granting DTC agencies the power to share information under MAPPAs. Furthermore, the legislation will clarify that those agencies and individuals who are not DTC but who contribute to the assessment and management of risk, can share information, for example GPs. We are also taking forward your recommendation on providing a clear basis on which offender requests for subject access can be granted or refused.

With respect to your recommendation that probation officers become responsible for managing terrorist offenders on civil orders, this would involve a very different area of work and responsibility for the NPS, once an offender has served the full sentence imposed by the Court. As you know, it falls to the Police to present to the Court the evidence of ongoing risk to justify the imposition of a civil order, and there is a logic in it being for the Police to monitor an offender's compliance with the order. Therefore, we will not be pursuing this recommendation, though I hope you will acknowledge that the important changes which the NPS has made with the creation of its new National Security Division – see below - represent a significant step-up in its capability in this vital area of public protection.

Aside from the recommendations which involve changes to the law, you made very helpful recommendations designed to strengthen existing statutory guidance to MAPPAs responsible authorities, build awareness of the risks presented to terrorist and other extremist offenders and improve the flow of information and intelligence between the MAPPAs agencies. The National MAPPA Team in HM Prison and Probation Service has established a steering group, to oversee the implementation of agreed changes, to a strict timetable. The same steering group will also identify changes needed to the Probation Service's Recall Policy Framework, to address the clarity which you sought in situations where an offender's risk has escalated but where no breach of a licence condition is immediately apparent.

When it comes to known terrorist offenders who are eligible for release on parole, you rightly emphasised how vital it is that all relevant information and intelligence are shared with the Parole Board. Officials have already made very good progress in this area. The NPS has established a new National Security Division (NSD), with direct responsibility for managing terrorist offenders, and staff in the NSD will have the necessary level of security clearance to view all sensitive intelligence. This will enhance the risk assessments and reports which they provide to the Parole Board and so ensure that the Board has

comprehensive information to inform its decision-making. Additionally, a new national intelligence model is being created for the NPS, to assist probation offender managers in understanding the relevance of intelligence. Of course, intelligence gathered in prisons helps to maintain order and identify criminality, but we are determined it should also now be used to inform parole outcomes and the effective management of risk in the community, and the changes we have made, augmented by the changes you recommended, will achieve this. Additionally, we have clarified that the Parole Board is able to receive a gist of evidence if HMPPS considers it is not suitable for a full account of the evidence to be disclosed to the prisoner, on security grounds.

You observed that stable accommodation can be very important for terrorist offenders, not simply for the purposes of knowing their whereabouts and managing their risk, but also as part of a plan to resettle them into the community and support them in finding a more productive life. We know that there are many pressures on social housing, and our officials are working with their counterparts in the Ministry of Housing, Communities and Local Government to address the specific recommendations which you made in this area. In the meantime, we have mandated that every offender convicted of terrorism and terrorism-related offences will spend up to 12 months upon release in an Approved Premises. This is right for public protection but it will also provide the agencies with sufficient time to identify suitable and sustainable longer-term accommodation for the offenders concerned. More generally, we are investing in improving the work with terrorism offenders before they are released to ensure that their accommodation requirements are integral to their release plan and an important part of their overall management. This will include planning for successful 'move on' into more independent accommodation, according to their level of risk and need. We are continuing to work closely with our partners, other government departments and a range of providers to expand our provision and influence the development of other accommodation opportunities in the community for offenders. HM Prison and Probation Service has published its Accommodation Framework which clearly sets out the respective responsibilities of different agencies in accommodating offenders. The Framework also sets out our commitment to joint development with other agencies. We have already hosted three workshops to increase understanding of the statutory Duty to Refer and other initiatives are under development.

You recommended that more be done to prosecute terrorism-risk offenders who commit further offences in prison. We consider that crimes committed in prison should be dealt with no differently to those committed outside of prison, and we agree that more can be done to ensure that is the case. We will strengthen the multi-agency case management arrangements for terrorism risk offenders, such that all suspected crimes are actively assessed and rigorously investigated.

Turning next to the recommendations which you made in relation to youth offenders, a new strategic board has been established, co-chaired by the Youth Justice Board and the NPS NSD, which will oversee the production of guidance which you recommended to support those managing young offenders and managing their transition to adult services, whether in custody or in the community.

You also helpfully raised concerns about access to mental health services in the community and you recommended that urgent analysis be carried out in to how isolated individuals with poor mental health can be diverted away from violent obsessions. Officials in the Department of Health and Social Care and the Ministry Justice are working closely to identify and implement improvements to the current delivery model for these individuals. We are working with NHS England & NHS Improvement to implement RECONNECT services and expand the use of Community Sentence Treatment Requirements as part of community sentences for people with mental health or substance misuse problems. This will help us to identify people in the community whose offending behaviour may be linked to mental health problems. The CSTR Programme is identifying and working with new areas to scale up across England from 2020 onwards as referenced in our White Paper, A Smarter Approach to Sentencing. RECONNECT is a care after custody service for prison leavers with vulnerabilities, who would otherwise struggle to engage with community health services. RECONNECT will engage with individuals prior to them leaving prison in order to establish need, and then provide peer support to them upon release to engage with community-based health services. In addition, the NPS will be employing *specialist* psychologists to advise on the

assessment and management of this cohort of offenders in the community (psychologists are already involved during the custodial period of offender management).

Finally, you submitted an annex to your main report, in order to address the challenge of managing terrorist and other extremist offenders with mental disorders, including when they are detained in the secure hospital system. As you know, when it comes to offenders who are detained in a psychiatric hospital for the purposes of treating a diagnosed mental disorder, they are managed as patients. However, as you rightly identified, it is still vital to assess and manage any terrorist risk they present. The lead responsibility for managing them under MAPPA must remain with their responsible clinician, as defined by the Mental Health Act 1983 (the 1983 Act), but we will make changes to ensure that the MAPPA agencies are consulted in all key decisions which have a public protection element: including where they are being considered for leave from the hospital (escorted or unescorted) and discharge. Unto that end, those officials who discharge the Secretary of State for Justice's functions under the 1983 Act will participate in MAPPA meetings where they are considering whether to permit a patient to take leave, in response to a request from the responsible clinician.

Keeping our communities safe is our first duty as Lord Chancellor and Home Secretary, and the Government has made a considerable investment in counter-terrorism. Our security services, police, prison and probation officers epitomise public duty and we hope that these new powers and ways of working will help them to further improve the tremendous, challenging work they do. May we thank you again for your comprehensive report and for your continuing work as the Government's Independent Reviewer of Terrorism Legislation which is helping us to keep this country protected.

Robert Buckland

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