

TERRORISM PREVENTION AND INVESTIGATION MEASURES IN 2013

**SECOND REPORT OF THE INDEPENDENT REVIEWER ON
THE OPERATION OF THE TERRORISM PREVENTION
AND INVESTIGATION MEASURES ACT 2011**

by

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CONTENTS

	page
EXECUTIVE SUMMARY	2
1. INTRODUCTION	6
2. LEGAL FRAMEWORK	12
3. TPIM SUBJECTS	17
4. MANAGEMENT AND ADMINISTRATIVE REVIEW	23
5. THE COURTS	37
6. CONCLUSIONS	45
7. RECOMMENDATIONS	57

ANNEXES

Annex 1:	WMS on passport withdrawal, April 2013	60
Annex 2:	Quarterly reports 2012-13	64
Annex 3:	Obligations on TPIM subjects, December 2013	69
Annex 4:	Specimen TPIM notice, 2013	71
Annex 5:	Charges for breaches of TPIMs, 2013	80
Annex 6:	Home Office costs, 2012/13	82

EXECUTIVE SUMMARY

What are TPIMs?

- Terrorism Prevention and Investigation Measures (TPIMs) are restrictions imposed, where it is considered necessary for public protection in the UK or elsewhere, on individuals whom the Home Secretary believes to have engaged in terrorism-related activity but whom it is feasible neither to prosecute nor to deport.
- They remain controversial because they are imposed on unconvicted persons (including some who have been acquitted by a jury), because their restrictions are highly intrusive and because, in order to defend them in court, the Government relies upon material that is not disclosed to the subject but only to a special advocate instructed on his behalf.
- TPIMs are however significantly less onerous than their 2005-2011 predecessors, control orders. Their imposition requires reasonable belief rather than suspicion of involvement in terrorism; TPIM notices are limited to two years; TPIM subjects cannot be “relocated” to an unfamiliar area; and restrictions (e.g. on association, electronic communication and curfew) are generally lighter.

TPIMs in 2013

- There have been 10 TPIM subjects, of whom nine were transferred from control orders in early 2012. All are men believed to have been involved in al-Qaida related terrorism, some at the highest end of seriousness (the planning of credible mass casualty attacks).¹
- No TPIM notices have been in force since 10 February 2014: the TPIMs on seven subjects had expired after reaching their two-year limit, and the other three subjects had absconded or were in prison.²
- Two TPIM subjects linked with East African terrorism absconded, in December 2012 (Ibrahim Magag) and November 2013 (Mohammed

¹ 3.7, below.

² 3.4-3.5, below.

Mohamed). These were the first absconds from control orders or TPIMs since relocation was introduced after a spate of disappearances in 2006-07.³

Assessment

- Like control orders before them, some TPIM notices are likely to have been effective in disrupting terrorist networks and preventing terrorism. Because a TPIM subject is easier and cheaper to monitor than a person who is entirely free of constraint, TPIMs have also released resources for use in relation to other pressing national security targets.⁴
- But TPIMs appear to be no more successful as investigative measures than were control orders. Intelligence on TPIM subjects is not leading to prosecution (save in respect of TPIM breaches, where the conviction rate is low).⁵
- Despite their utility in preventing terrorism, no new TPIMs have been imposed since 2012, causing Parliament's Joint Committee on Human Rights to remark in January 2014 that they appeared to be "*withering on the vine*".
- The non-use of TPIMs has positive aspects. TPIMs were considered in several dozen cases in 2012-13; the fact that they were not needed reflects a strong record of convicting and deporting terrorists over this period.⁶
- The non-use of TPIMs may however also be a consequence of:
 - The ending of relocation, which has removed a major source of resentment but also (despite an increase in the surveillance budget) made it easier for TPIM subjects to keep in touch with their local networks and may have made it easier for them to abscond.
 - The political and media fallout from absconds, leading to extra burdens on those responsible for enforcing the remaining TPIM notices.⁷
- The absconds have also contributed to a sense of powerlessness, and even to a perception in some quarters that "*those who want to abscond will*". Though exaggerated, that perception is a dangerous one.⁸

³ 4.35-4.40, below.
⁴ 6.3(a)(b), below.
⁵ 5.1-5.8 and 6.3(c), below.
⁶ 4.6 and 6.4, below.
⁷ 6.5, below.

Recommendations

- The power to impose TPIMs or some similar measure should be retained.⁹ Like any measure short of imprisonment, they will never provide a guarantee of safety. But properly deployed as a last resort (as has generally been the case to date), they are a useful means of disrupting potentially dangerous terrorists for up to two years.
- There is no need to put the clock back. The majority of the changes introduced by the TPIMs Act have civilised the control order system without making it less effective. The two-year limit is a reminder that executive constraints of this kind are no substitute for the criminal process, and no long-term solution.¹⁰
- But two significant changes are needed if TPIMs are to remain fully credible, and if they are to perform more than just a containing function.
- First, **locational constraints** on some TPIM subjects should be stronger than has been the case, in order more effectively to disrupt networks and deter or prevent absconds. Options include:
 - clarifying or extending the possibilities for imposing **exclusion zones** on TPIM subjects; and/or
 - restoring the power to **relocate** subjects to an area some two or three hours' travel from their homes, though with a significantly wider area for unrestricted travel than was the case under control orders.¹¹
- Secondly, there should be a power to **require subjects to attend meetings**, under the auspices of the National Probation Service. The contact opportunities provided by a TPIM notice should not be wasted, and need to be part of a positive strategy of engagement from the outset.¹²
- To improve further the legitimacy of the TPIM system, I have also made recommendations on:
 - The unnecessarily broad **definition of terrorism-related activity**, which allows TPIMs to be imposed (though they are not in practice

⁸ 4.50-4.51, below.

⁹ Recommendation 1, below.

¹⁰ 6.38-6.41, below.

¹¹ 4.48-4.52 and 6.19-6.27 and Recommendations 4-5, below.

¹² 4.29-4.30 and 6.28-6.33 and Recommendations 6-9, below.

imposed) upon persons whose involvement with terrorism is highly peripheral.¹³

- Requiring a court to be satisfied on the **balance of probabilities** that a TPIM subject has been involved in terrorism (rather than, as now, that the Home Secretary's belief in that involvement is reasonable).¹⁴
 - Considering how **review and appeal procedures** might be improved so as to reduce delays and maximise the effectiveness of special advocates.¹⁵
- My conclusions are set out fully in chapter 6 and my recommendations in chapter 7, below.

¹³ 6.12-6.15 and Recommendation 2, below.

¹⁴ 6.16-6.18 and Recommendation 3, below.

¹⁵ 5.26-5.33 and Recommendation 10, below.

1. INTRODUCTION

TPIMs in summary

- 1.1. Terrorism Prevention and Investigation Measures [TPIMs] are restrictions imposed on individuals by a TPIM notice. Their primary intention is to protect the public from the risk posed by persons whom the Home Secretary believes to have engaged in TRA, but whom it is feasible neither to prosecute nor to deport.
- 1.2. TPIM notices are imposed by the Home Secretary but subject to quasi-automatic review in the High Court. Those reviews are held partly in closed session, in the presence of special advocates. The TPIM subject hears the gist of the national security case against him, but not the detailed evidence.
- 1.3. Introduced by the Terrorism Prevention and Investigation Measures Act 2011 [TPIMA 2011], in force since December 2011, TPIMs replaced the stricter system of control orders under the Prevention of Terrorism Act 2005 [PTA 2005]. A total of ten persons have been subject to TPIMs.
- 1.4. TPIMA 2011 was a hard-fought compromise between different elements of the Coalition Government, and has been controversial throughout its short life for two opposing reasons.
 - (a) Some object to TPIMs, as they objected to control orders, on **civil liberties grounds**. That is because they are imposed on unconvicted persons, because their restrictions can be intrusive and because the Government relies upon closed material to defend them in the courts.
 - (b) Others regret, on **security grounds**, the loss of the significant additional powers that were available under the control order regime: in particular, the power to “relocate” a subject to a distant town or city and confine him to a particular area, and the power to renew a control order year on year without the need for fresh evidence.

It is the latter group, given voice in Parliament by the Labour opposition, that was the more prominent in 2013. It drew strength from two well-publicised absconds, which some blamed on the ending of relocation, and by the expiry of each of the TPIM notices then in force in early 2014, as they reached their maximum two-year limit.

TPIMs and the Independent Reviewer

The Independent Reviewer's task

- 1.5. As the Independent Reviewer appointed under TPIMA 2011 section 20, I report annually to the Home Secretary on the operation of that Act. She in turn is required to place my reports before Parliament "*on receipt*" – in other words, promptly.¹⁶ Similar arrangements applied in relation to the control order system which operated between 2005 and 2011, and to my other reports.¹⁷
- 1.6. What distinguishes the Independent Reviewer's function from that of other independent commentators on national security and civil liberties issues is the unfettered access that he is given to classified material.¹⁸ That material relates to such matters as the national security case against each subject, the consideration that was given to prosecuting or deporting them, the closed judgments of the courts, assessments of exit strategy, the examination of the circumstances of any absconds and the risk assessments that are made as TPIMs come to an end. I also discuss the issues with civil servants, prosecutors, intelligence officials and police, and attend and observe some of the regular meetings at which individual TPIM subjects are discussed.
- 1.7. To balance my consideration and inform myself as fully as possible, I have also talked over the year with representatives of TPIM subjects, special advocates and judges; and with academics and NGOs with an interest in the field. I spoke during the year to former control order subjects (including Abu Qatada, prior to his departure for Jordan) and to a TPIM subject. I have sought to keep abreast of similar debates in some other countries, including in particular Australia where control orders – though little used to date – remain on the statute book and have been the subject of two recent independent reports.¹⁹
- 1.8. I also bear in mind the threat from terrorism, as I understand it on the basis of my regular written and oral briefings from the Joint Terrorism Analysis Centre

¹⁶ For governmental recognition of this, see D. Anderson, *The Terrorism Acts in 2011*, June 2012, 1.23-1.25. All my reports, and evidence to parliamentary committees, are available through my website: <https://terrorismlegislationreviewer.independent.gov.uk/>.

¹⁷ The Independent Reviewer is required by statute to produce annual reports, into the operation of the Terrorism Acts and of the Terrorist Asset Freezing Act 2010. In addition, he may from time to time decide or be asked to produce one-off or "*snapshot*" reports into particular operations or subjects. Later this year I shall publish such a report into the policy of deportation with assurances.

¹⁸ As was envisaged when the post was first put on an annual footing in 1984: Hansard HL 8 March 1984 vol 449 cols 405-406.

¹⁹ The Second Annual Report of the Independent National Security Legislation Monitor recommended the abolition of control orders. The Counter-Terrorism Review Committee Report for the Council of Australian Governments recommended their retention. Both were published on 14 May 2013.

[JTAC] and other sources of information. I recommended last year that JTAC should be invited to explore the possibility of providing an authoritative open account of the threat from terrorism, in the form of a regular publicly-accessible report.²⁰ The Government has taken the view that an open report of this nature is not required at this time.²¹ However a brief official summary of the threat is contained in the Government's own periodical reports on the CONTEST strategy.²² I set out my own more detailed understanding of the recent threat, as informed by the relevant agencies and by my own reading and enquiries, in my annual Terrorism Acts report of July 2013,²³ and expect to update that picture to some extent in my Terrorism Acts report of July 2014.

Previous reports

1.9. Two of my past reports remain highly relevant to the operation of TPIMs and to the debate over their future. These are:

(a) *Control Orders in 2011* (March 2012), in which I sought to conduct a comprehensive appraisal of the control order system as it operated in its final year and (by extension) generally;²⁴ and

(b) *Terrorism Prevention and Investigation Measures in 2012* (March 2013) [**my 2013 TPIMs Report**], in which I gave a detailed account of the design of the TPIM system and all aspects of its first year of operation, as well as an open-source description of each of the TPIM subjects and the allegations against them.

Both those reports, and the Government's responses to them, are freely available via my website.

Influence on the political and public debate

1.10. I have no political affiliation, and my role is to inform the public and political debate rather than participate in it. However aspects of the TPIM regime have been the subject of sometimes polarised debate since the start of 2013. My previous reports have been referred to extensively in the House of Commons, and my views sought by select committees. In particular:

²⁰ *TPIMs in 2012*, March 2013, 1.15-1.16 and Recommendation 1.

²¹ Government Response to *TPIMs in 2012*, Cm 8614, May 2013. But a newsletter issued by the FCO in October 2013 is significant: "*Al Qaida is no more: the changing shape of Al Qaida*".

²² *Contest: The United Kingdom's strategy for countering terrorism*, annual report Cm 8583, March 2013. The next annual report should be published shortly.

²³ *The Terrorism Acts in 2012*, July 2013, 2.5-2.88.

²⁴ See, further, the annual reports on control orders produced by my predecessor, Lord Carlile, between 2006 and 2010 and available through my website.

- (a) I was questioned in detail about TPIMs by the Joint Committee on Human Rights **[JCHR]** in March 2013.²⁵ The JCHR made frequent reference to my evidence, reports and recommendations in its own report of January 2014.²⁶
- (b) I was questioned on TPIMs by the Home Affairs Select Committee **[HASC]** in November 2013 as part of its investigation into counter-terrorism.²⁷
- (c) My reports on control orders and TPIMs were referred to for a wide variety of propositions by participants in House of Commons debates in January 2013 and January 2014.²⁸
- 1.11. I am particularly pleased that the JCHR, having heard my evidence and that of others, chose to produce its own post-legislative scrutiny report on TPIMs. That report continued the JCHR's detailed work over many years on control orders, as well as giving effect to a recommendation from my 2012 control orders report.²⁹ The JCHR's various observations and recommendations have been of great value to me, as they will undoubtedly be to Parliament as a whole and, I hope, to the Government. They are referred to at various points in this report.
- 1.12. So far as the public debate is concerned I have been interviewed on TPIMs for a number of news and current affairs programmes.³⁰ In the interests of accurate reporting, I also assist journalists from time to time by pointing them towards material in my reports or other open-source material. I wrote three TPIM-themed pieces on my website during 2013,³¹ and use twitter (@terrorwatchdog) to publicise my own activities and to exchange information and opinions with others. During 2013 I addressed conferences at home and abroad, and spoke on counter-terrorism law in my own time to universities, schools and other groups.

²⁵ JCHR Minutes of Evidence, 19 March 2013, QQ1-11.

²⁶ *Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011*, 10th report of 2013-2014, HL Paper 113 HC 1014, 23 January 2014.

²⁷ Home Affairs Committee Minutes of Evidence HC 231-iii, 12 November 2013, QQ 84-109 and 127-138.

²⁸ Hansard HC 8 January 2013 cols 161-168 (urgent question); Hansard HC 21 January 2014 cols 221-263 (opposition day debate).

²⁹ D. Anderson, *Control Orders in 2011*, Recommendation 7: "*The Joint Committee on Human Rights (and if they so wish, other Parliamentary Committees) are invited to consider with the Independent Reviewer how best, in the absence of a requirement for annual renewal debates, he could inform or assist them in keeping the necessity for and the operation of TPIMA 2011 under parliamentary review.*"

³⁰ Most recently the Today Programme on BBC Radio 4, 22 January 2014: <https://audioboo.fm/boos/1871551-tpims-a-necessary-evil#t=0m3s>

³¹ <https://terrorismlegislationreviewer.independent.gov.uk>: see features dated 19 March, 16 May and 3 November 2013.

The purpose of this Report

1.13. Last year's report, published in March 2013, remains the essential reference point for my account of the TPIM system and those who have been subject to it. In particular, readers are directed to my 2013 TPIMs Report for information about:

- (a) The historical and international context of TPIMs (1.4-1.14)
- (b) The scheme of TPIMA 2011 (2.1-2.24)
- (c) Contingency plans for Enhanced TPIMs (3.1-3.24)
- (d) The TPIM subjects (4.1-4.14)
- (e) The measures imposed (5.1-5.18)
- (f) Procedure for imposing, varying and extending TPIM notices (6.4-6.17)
- (g) Alternatives to TPIMs (7.1-7.23)
- (h) Management and administrative review (8.1-8.23)
- (i) Judicial review (9.1-9.37); and
- (j) The difficulties in prosecuting for breach (10.5).

As I anticipated last year, this report is shorter and in the nature of an update followed by conclusions.

1.14. In some respects, little has changed. TPIMA 2011 has not been amended; the procedures by which it is applied are very largely the same; there was little litigation during 2013; and no new TPIM notices were imposed during the year.

1.15. The period under review was nonetheless eventful in two respects:

- (a) Two TPIM subjects absconded from London, one in December 2012 and one in November 2013. Each had been located out of London when under a control order. These were the first two persons to abscond from control orders or TPIMs since 2007.

(b) It became increasingly evident as the year went on that the great majority of TPIMs would expire in the early weeks of 2014, and that the conditions for replacement TPIMs were unlikely to be made out.³²

Both these developments had an effect on the way in which TPIMs were managed during the period under review, and prompted reflection and debate as to the system's fitness for purpose.

1.16. Whilst the statutory review period coincides with the calendar year 2013, I have had regard in this report to matters as late as 10 February 2014, which was the expiry date of the last TPIM not to have been revoked. By taking this course I have been able also to take into account the report of the Joint Committee on Human Rights, published on 23 January 2014.

1.17. My conclusions and recommendations are at chapters 6 and 7, below.

³² TPIMA 2011 section 3(3) and 3(6)(b).

2. LEGAL FRAMEWORK

TPIMA 2011

- 2.1. The provisions of TPIMA 2011 were fully summarised in my 2013 TPIMs Report, chapter 2. No changes were made to TPIM legislation during the period under review.
- 2.2. Though changes were suggested over the course of the year,³³ I have seen no indication that any attempt to amend TPIMA 2011 will be made during this Parliament. TPIMA 2011 was a hard-won political compromise, and to re-open it would be likely to spark considerable debate. It remains to be seen what position the parties will take on the subject in the run-up to the General Election scheduled for 2015.

Enhanced TPIMs

- 2.3. The Coalition Government's Counter-Terrorism Review, which recommended the replacement of control orders by a less intrusive system,³⁴ also acknowledged that there might be exceptional circumstances in which the Government would need to seek Parliamentary approval for more extensive and intrusive measures than TPIMs.
- 2.4. A Bill providing for enhanced TPIMs [**ETPIMs**] was drafted for this purpose, and subjected to pre-legislative scrutiny. If it were ever to pass into law, the Bill would reintroduce the *stricter restrictions* that were characteristic of control orders, while granting or exceeding the *enhanced safeguards* (notably, as regards maximum duration) that exist under the TPIM regime.³⁵ ETPIM notices would be subject to the same two-year limit as TPIM notices: but time served on a TPIM would not count towards time served on an ETPIM, or vice versa.
- 2.5. Illustrative examples offered by the Government of circumstances in which it might be deemed necessary to introduce the ETPIM Bill were:
 - (a) credible reporting pointing to a series of concurrent attack plots, all of which appeared imminent; or
 - (b) in the wake of a major terrorist attack, potentially with the prospect of further attacks to follow.

³³ See, e.g., 2013 TPIMs Report, 11.39-11.46 and Recommendation 7. On 12 November 2013 the Shadow Home Secretary, Yvette Cooper MP, wrote to the Home Secretary to offer her support for legislation re-introducing the power of relocation.

³⁴ *Review of Counter-Terrorism and Security Powers* Cm 8004, January 2011, §23.

³⁵ 2013 TPIMs Report, 3.8 - 3.13.

A decision to enact the ETPIM legislation was not considered likely to be triggered by a change to the overall terrorism threat, in the absence of other factors.³⁶

- 2.6. The subject of ETPIMs was addressed in detail in my 2013 TPIMs Report, chapter 3. Since the Government's response of 25 January 2013 to the report of the Joint Bill Committee, to which reference was made in that chapter, there has been no significant reference to ETPIMs. No political party or public commentator has called for the ETPIM Bill to be enacted, and I am not aware of any serious consideration being given to this possibility within Government.

Power to refuse and withdraw passports

The home and away question

- 2.7. In determining how best to deal with a terrorism suspect, the "*home and away question*" often looms large. Put simply, there are some suspects in respect of whom the preferred option is to have them leave the country,³⁷ and others (for example, persons aspiring to train for terrorism or to fight abroad) whom it may be considered necessary, or preferable, to keep under observation in the United Kingdom.

Travel measures

- 2.8. The TPIM regime, like the control order regime before it, is of assistance in managing some of those whom it is wished to keep at home. Schedule 1 to TPIMA 2011 permits "*travel measures*" to be imposed, under which travel outside Great Britain may be restricted and the surrender of travel documents required. Each of the 10 persons who has so far been subject to a TPIM notice has been subject to such a travel measure.³⁸ In respect of some of them, the inhibition of foreign travel has been one of the principal reasons for imposing a TPIM notice. It would be perfectly possible in law to impose a TPIM notice of which a travel ban was the only component.
- 2.9. Recent practice has however been less selective. Many of the early control orders were so-called light-touch, consisting in some cases of nothing more than the removal of passport and the requirement to report to a police station. After six men absconded from light-touch control orders between 2005 and 2007, the

³⁶ Government response to the Report of the Joint Bill Committee, Cm 8536, January 2013, §3.

³⁷ Including under the policy of deportation with assurances, on which I shall be reporting later in the year.

³⁸ It is also possible under Schedule 1 to restrict a subject from travelling outside the UK as a whole, or Northern Ireland. But control orders and TPIMs have never been used in respect of Northern Ireland-related terrorism: see my 2013 TPIMs Report at 4.8.

conditions became increasingly comprehensive. There have been no light-touch control orders or TPIMs since 2010,³⁹ and each of the 10 TPIM subjects to date has been subject to something approaching the full range of permitted restrictions.⁴⁰

2.10. I warned in my 2013 TPIMs Report that the possibility of abscond

“should not forever rule out the imposition of relatively light-touch TPIM notices, on the analogy of the light-touch control orders that were imposed prior to 2010 on people in respect of whom the chief danger is that they might try to travel abroad”,

and recommended that “*TPIM requirements must reflect only the risk that is posed by the individual upon whom they are imposed*”.⁴¹ In response, the Government did no more than formally acknowledge that TPIMs must be believed to be necessary and proportionate. The high media and political profile of TPIMs, and the consequent toxic fall-out that follows an abscond, may mean that the TPIM system is in practice unlikely to be used for the purposes of imposing only a travel ban.

Lord Carlile’s recommendations

2.11. My predecessor, Lord Carlile Q.C., recommended in his last report on the operation of control orders under PTA 2005 that “*for the lighter touch cases .. a system of Certificates Restricting Travel could be introduced*”, perhaps with some other elements.⁴²

2.12. This was in recognition of the fact that, as remains the case, there are some persons of interest in respect of whom the chief concern is that they will travel abroad, for the purposes of terrorist training, facilitation or participation in terrorism.

Use of the Royal Prerogative

2.13. On 25 April 2013, the Home Secretary made a Written Ministerial Statement **[WMS]** on the issuing, withdrawal or refusal of passports (Annex 1). The WMS confirmed that these decisions are at the discretion of the Home Secretary under the Royal Prerogative, set out the circumstances in which this can be done and redefined the public interest criteria to refuse or withdraw a passport. It stated:

³⁹ *TPIMs in 2012*, March 2013, 5.2 and fn 139.

⁴⁰ *Ibid.*, Annex 3; [new annex 1]

⁴¹ *Ibid.*, 8.23, 11.28-11.29 and Recommendation 4.

⁴² Lord Carlile Q.C., *Sixth Report of the Independent Reviewer pursuant to section 14(3) of the Prevention of Terrorism Act 2005*, February 2011, para 54.

“The decision to refuse or to withdraw a passport under the public interest criteria will be used only sparingly. The exercise of this criteria [sic] will be subject to careful consideration of a person’s past, present or proposed activities.

For example, passport facilities may be refused to or withdrawn from British nationals who may seek to harm the UK or its allies by travelling on a British passport to, for example, engage in TRA [terrorism-related activity] or other serious or organised criminal activity.

This may include individuals who seek to engage in fighting, extremist activity or terrorist training outside the United Kingdom, for example, and then return to the UK with enhanced capabilities they then use to conduct an attack on UK soil. The need to disrupt people who travel for these purposes has become increasingly apparent with developments in various parts of the world.”

- 2.14. The categories of persons who may be subject to refusal or withdrawal of passport facilities are however broadly drawn, including:

“a person whose past, present or proposed activities, actual or suspected, are believed by the Home Secretary to be so undesirable that the grant or continued enjoyment of passport facilities is contrary to the public interest.”

There appears therefore to be no commitment to limit the exercise of the Royal Prerogative to terrorism or even national security cases. The WMS further indicates that there could be cases in which a passport facility may be withheld even if the “*focus*” is not on preventing overseas travel.

- 2.15. It was said that the Royal Prerogative would be used “*sparingly*”: the Security Minister stated recently that it had been exercised 14 times since April 2013.⁴³ One person whose passport was withdrawn in December 2013, the ex-Guantanamo detainee and prominent campaigner Moazzam Begg, chose to publicise the fact himself. He was subsequently charged with terrorism offences and designated under asset-freezing law in March 2014. The names of the others in respect of whom the power was exercised have not been published.

- 2.16. The exercise of the Royal Prerogative is challengeable by way of judicial review. No such challenge (which might in an appropriate case require a closed material procedure pursuant to the Justice and Security Act 2013) has yet been brought. The lawfulness of the new policy and of its application in individual cases has therefore not been tested in the courts.

⁴³ James Brokenshire, oral evidence to Home Affairs Select Committee HC 231-ix, 18 March 2014, QQ 854-855.

2.17. The cancellation of a British passport under the Royal Prerogative would not prevent a dual national from travelling on his other passport. In many cases, however, the exercise of the Royal Prerogative in relation to a terrorist suspect would be similar in its effects to the imposition of a travel measure under a TPIM notice. Yet the WMS appears to assume that the Royal Prerogative can be exercised on less stringent conditions than the power to adopt travel measures under TPIMA 2011. In particular:

(a) The Royal Prerogative is stated to be exercisable on the basis merely of suspicion of undesirable activities and belief that passport facilities would be contrary to the public interest. A travel measure under TPIMA 2011 by contrast requires the Home Secretary both to have reasonable belief of involvement in terrorism-related activity **[TRA]**, and to consider it necessary that a travel measure (as well as the TPIM notice itself) be imposed for purposes connected with preventing or restricting the individual's involvement in TRA.⁴⁴

(b) There is no stated limitation on the period for which a passport may continue to be cancelled or withdrawn, whereas a TPIM notice can remain in force for only two years, unless there is evidence of involvement in new TRA during that period.

2.18. Perhaps conscious of the different safeguards applicable under the Royal Prerogative on the one hand and TPIMA 2011 on the other, the WMS states:

“There may be circumstances in which the application of legislative powers is not appropriate to the individual applicant but there is a need to restrict the ability of a person to travel abroad.”

The concept of appropriateness is not explored further in the WMS. As suggested at 2.10, above, the revival of the Royal Prerogative in this area may reflect, at least in part, the political and presentational difficulties that could attend the making of a light-touch TPIM notice limited to a travel measure. There are cases in which the exercise of the Royal Prerogative could be the functional equivalent of the Certificate Restricting Travel recommended by Lord Carlile.

2.19. It is no part of my statutory function to review the exercise of the Royal Prerogative in this area, and accordingly I have not inspected the individual files of those in respect of whom it was used during the period. I draw attention to the power, however, in view of its overlap with TPIMA 2011.

⁴⁴ TPIMA 2011, section 3.

3. TPIM SUBJECTS

Number of subjects

- 3.1. There have been a total of 10 TPIM subjects, of whom nine were transferred from control orders in early 2012 and one (DD) was served with a TPIM notice in October 2012.
- 3.2. The quarterly reports required by TPIMA 2011 were laid before Parliament in the form of written statements 12-14 days after the end of the respective reporting periods. Five quarterly reports are annexed to this Report (Annex 2): those for the quarters ending 28 February 2013, 31 May 2013, 31 August 2013, 30 November 2013 and 28 February 2014.
- 3.3. Those reports show that:
 - (a) At the end of February, May, August and November 2013, there were either eight or nine TPIM subjects.
 - (b) By the end of February 2014, there were no TPIM subjects.
 - (c) All but one of the TPIM subjects over the relevant period were British citizens.⁴⁵
- 3.4. The principal development over the period was that TPIM notices finally expired between 2 January and 10 February 2014 on all but three of the subjects. The remaining three notices (on the absconders BX and CC, and on DD who is in prison) have been revoked but since they have not yet been in force for two years, they may yet be revived in the future.
- 3.5. The position is, therefore, that since 10 February 2014 no TPIM notices have been in force.

Individual subjects

- 3.6. Each of the 10 TPIM subjects to date was believed by the Home Secretary to have been involved in al Qaida-related terrorism.⁴⁶ Nine (all except DD) were British citizens. Four (AY, BF, CF and DD) had been placed on trial for terrorism-related offences and acquitted by a jury. The other five had never been charged with terrorism offences.

⁴⁵ DD is not a British citizen.

⁴⁶ Neither TPIMs nor control orders have ever been used in Northern Ireland: some of the reasons for this are given in *TPIMs in 2012*, March 2013, 4.8.

3.7. The publicly-known information about each TPIM subject is set out in my 2013 TPIMs Report.⁴⁷ By way of summary:

- (a) The allegations against some TPIM subjects are at the highest end of seriousness, even by the standards of international terrorism. AM and AY are believed to have participated in the airline liquid bomb plot of 2006, described by the judge who presided over the trial of some participants as “*the most grave and wicked conspiracy ever proved within the jurisdiction*”,⁴⁸ whereas CC, CD and CF are each believed to be hardened terrorists involved in attack planning in the UK or abroad. The allegations against others (BF, BX), while still serious, are not of the same order.
- (b) Some TPIM subjects, (including the absconders BX (Ibrahim Magag) and CC (Mohammed Mohamed), both of whom are believed to have financed and organised travel for terrorism from the UK to East Africa, were not suspected of attack-planning in the UK; though in the case of CC he may have been involved in attack planning against western interests. It was presumably on this basis that the Secretary of State was able to say, following the abscond of BX, that:

“Magag is not considered to represent a direct threat to the British public. The TPIM notice in this case was intended primarily to prevent fundraising and overseas travel.”⁴⁹

and following the abscond of CC, that:

“The police and Security Service have confirmed that they do not believe Mohamed poses a direct threat to the public in the UK. The reason he was put on a TPIM in the first place was to prevent him from travelling to support terrorism overseas.”⁵⁰

As the media soon reported, however, the High Court had previously underlined the dangerousness of both men. Collins J had said of BX, in 2010, that it was “*too dangerous to allow him to be in London for even a short period*”,⁵¹ whereas Lloyd Jones J had come to the “*clear conclusion*” in

⁴⁷ *TPIMs in 2012*, March 2013, 7.7 – 7.17. The information was taken largely from the open judgments in their cases.

⁴⁸ Quoted by Silber J in *SSHD v AY* [2012] EWHC 2054 Admin, para 12. It was a viable plot to bring down several transatlantic airlines by suicide bombings, whose lasting legacy is the restrictions placed on carrying liquids on to an aircraft.

⁴⁹ Oral statement to Parliament, 8 January 2013.

⁵⁰ Oral statement to Parliament, 4 November 2013.

⁵¹ *BX v SSHD* [2010] EWHC 990 (Admin), para 22.

2012 that the Home Secretary had reasonable grounds for believing that CC had been involved in terrorism.⁵²

- (c) The Home Secretary's belief that the subject was involved in TRA, and her decision that a TPIM notice was necessary to protect the public, have been upheld as reasonable in each of the cases to have been reviewed to date.⁵³ In some cases (AM, AY, BM, CC, CD, CF) the judges used language suggesting that a higher test would also have been satisfied. However in no case did the allegations need to be proved, even on the balance of probabilities.

Measures imposed

- 3.8. A table of the measures imposed on each of the 10 TPIM subjects is at Annex 3 to this report. The table gives the position as at 11 December 2013 (or, in the case of TPIM notices already discharged by that date, the position as at the date of discharge). In the equivalent table last year, the subjects were accorded numbers (1, 2 etc.) rather than conventional anonymised titles. This year the Home Office has agreed at my request to end this double anonymisation, so that the table reveals the measures imposed upon AM, AY etc.
- 3.9. It may be seen from the table that even as their release dates neared, the TPIM subjects faced a wide range of restrictive measures. Not every subject was exposed to the full force of the permitted restrictions: thus, nobody was excluded from all mosques, and only one subject was required to seek permission for every website he sought to access. However each of the 10 individuals was subject to TPIMs in 11 of the 12 categories that are permitted by Schedule 1 to TPIMA 2011.⁵⁴
- 3.10. What those restrictions amount to in practice may be seen from the specimen TPIM notice at Annex 4 to this report. In incomplete summary, the subject of that notice was obliged:
- (a) to reside at a specific address;⁵⁵
 - (b) to respect an "*overnight residence requirement*" or curfew of 10 hours;

⁵² *SSHD v CC and CF* [2012] EWHC 2837 (Admin).

⁵³ Some others (e.g. BX and DD) waived their right to a review.

⁵⁴ Overnight residence measures, travel measures, exclusion measures, movement directions measures, financial services measures, property measures, electronic communication device measures, association measures, work or studies measures, photography measures and monitoring measures. Seven of the 10 were subject to a restriction in the remaining category: a daily reporting requirement to a police station.

⁵⁵ In eight cases, that was accommodation provided by the Home Office.

- (c) to surrender travel documents and not to leave Great Britain or enter international ports;
- (d) not to enter internet cafes, premises offering currency exchange or money transfer, travel agencies or phone shops;
- (e) to provide banking details to the Home Office, and to obtain Home Office permission before taking out loans, transferring money or property in excess of £50 or withdrawing more than £50 in cash in a week;
- (f) to use only one approved computer and non-internet-enabled mobile phone, and to require other people's electronic devices to be switched off and not used in his residence;
- (g) to grant the police access to electronic communications devices in the residence for the purpose of inspecting or modifying them;
- (h) not to communicate with five named persons without Home Office permission;
- (i) to notify the Home Office two days in advance of all but chance meetings outside the home, with exceptions;
- (j) to notify the Home Office of work and study arrangements and to refrain from work or studies in specified fields without Home Office permission;
- (k) to report to a specified police station every day at times notified in writing;
- (l) to permit a police officer to photograph him at specified times and places; and
- (m) to wear a GPS tag at all times, and keep it charged.

3.11. The cumulative effect of these measures is of course highly intrusive. Having inspected correspondence with the Home Office and spoken to one TPIM subject in detail about his daily life, I am in no doubt as to the pervasive impact that TPIMs have on those subject to them.

3.12. For perspective, however, it should be noted that:

- (a) More intrusive measures may exceptionally be imposed by way of bail conditions, particularly in the immigration context. For example, under bail conditions imposed by SIAC in May 2008 and again in February 2012, Abu

Qatada was subject to a 22-hour curfew and “a full package of restrictions on his ability to communicate with the outer world”.⁵⁶

- (b) Markedly more intrusive measures were commonly imposed on those subject to control orders. In particular:
- (1) Involuntary **relocation** to an unfamiliar town, usually two to three hours’ journey from the controlled person’s home, was a common feature of control orders towards the end of the regime.⁵⁷
 - (2) Within that town, controlled persons were required to stay within a particular **confined area** (though of sufficient size to contain a mosque and other vital facilities), save with the permission of the Home Office.
 - (3) The police had the **power to search** the controlled person’s premises at any time, a much-resented feature of the power.
 - (4) Pre-arranged **meetings** outside the home were subject to a requirement of permission rather than notification.
 - (5) Controlled persons could be deprived of any **computer or telephone** access, save for one fixed-line telephone.
 - (6) **Curfews** could be longer: up to 16 hours.

An idea of what such measures amounted to in practice may be seen from my report on control orders.⁵⁸ The psychological effect of these considerably more severe restrictions was further accentuated by the fact that the controlled persons and their families did not know when, if ever, their restrictions would come to an end.⁵⁹

Anonymity

- 3.13. The true identity of all TPIM subjects to date has been protected, in their own interests, by order of the High Court. For the purposes of court proceedings, each subject is given paired initials (e.g. AM, DD) which do not correspond with their actual initials. With two exceptions, those anonymity orders have remained in force, even after the TPIM notices have been revoked or lapsed.

⁵⁶ *O / Mohamed Othman*, SIAC case SC/15/2005, decisions of 8 May 2008 and 6 February 2012.
⁵⁷ Involuntary relocation was a feature of 23 control orders. In four of them, the condition was struck down by the courts: once for lack of disclosure and three times for lack of proportionality.
⁵⁸ D. Anderson, *Control Orders in 2011*, March 2012. See the table of obligations at [Annex 1](#), the sample control order at [Annex 2](#) and the section on effects on the individual (3.37-3.41).

⁵⁹ 15 persons were subject to control orders for longer than the 2-year maximum applicable to TPIMs (absent new evidence): one person was subject to a control order for 55 months, after which he transferred to a TPIM notice. See *Control Orders in 2011* (March 2012) at 3.47-3.48.

3.14. Two of the TPIM subjects can be named, because they absconded: Ibrahim Magag (BX) and Mohammed Mohamed (CC). Following each abscond, the Government applied to the High Court for their confidentiality orders to be discharged. As a consequence:

(a) Ibrahim Magag's anonymity order was lifted on 31 December 2012, five days after his abscond. The Metropolitan Police released information regarding the method of his abscond, his age, height and appearance and a photograph of him.

(b) Mohammed Mohamed's anonymity order was lifted on 2 November 2013, the day after his abscond. The Metropolitan Police released the equivalent information, together with a photograph.

The equivalent anonymity orders in the men's control order proceedings were also lifted.

3.15. There was a brief debate, in the wake of Mohammed Mohamed's abscond, about the rights and wrongs of anonymisation. In particular, it was said that had his community known of Mohamed's status as a TPIM subject, it might have been more difficult for him to enter the mosque from which he escaped dressed in a burqa. It may also be noted that not all who are subject to executive measures designed for terrorists are guaranteed anonymity: when persons are designated either by the EU or by the Treasury under the Terrorist Asset-Freezing &c. Act 2010, their names need to be published so that other people are on notice not to transfer resources to them in breach of the asset freeze.

3.16. Journalists have expressed interest in learning the names of those whose TPIM notices ended at the start of 2014. So far as I am aware, however, no applications were made to lift anonymity in respect of those persons. It would be for the courts to decide upon any such applications, giving due weight to the competing factors.

4. MANAGEMENT AND ADMINISTRATIVE REVIEW

Consideration and imposition of TPIMs

- 4.1. The procedures for imposing TPIMs were set out in my 2013 TPIMs Report at 6.4-6.10. There were no changes to those procedures during 2013.
- 4.2. No new TPIM notices were imposed during the period under review. The possibility of a TPIM notice was however considered by MI5 on several dozen occasions in 2012-13. Having discussed the subject with them at some length, I consider that MI5 have both a proper appreciation of the benefits of TPIMs and a proper reluctance to use them save as a last resort. That reluctance owes something to the considerable drain on resources that a TPIM represents, in terms both of surveillance and preparation for court, and has no doubt been reinforced by the introduction of a two-year maximum limit.
- 4.3. The current Director of MI5 said recently that “*several thousand*” people in the UK, with varying degrees of involvement, are “*active in some way in support of terrorism*”.⁶⁰ As he added, however:
- “Being on our radar does not necessarily mean being under our microscope. The reality of intelligence work in practice is that we only focus the most intense intrusive attention on a small number of cases at any one time.”⁶¹
- 4.4. From the perspective of MI5 and the other intelligence agencies, a variety of options are available for dealing with that small number of cases. In no particular order and depending on the individual, these may include:
- (a) prosecution for terrorism-related offences;
 - (b) prosecution for other offences, ranging from benefit fraud to motor vehicle offences;
 - (c) MI5 or police engagement with the subject;
 - (d) an attempt to counter extremist influences by Prevent engagement (e.g. Project Channel);
 - (e) immigration action (exclusion, withdrawal of status); and

⁶⁰ Andrew Parker, Speech to the Royal United Services Institute, 8 October 2013, paras 37-38.

⁶¹ *Ibid.*, para 40.

- (f) executive measures such as passport withdrawal, asset freeze or a TPIM notice.

A variety of reasons were given for not taking the TPIM route in the cases in which it was considered, prominent among them the adequacy of one of these alternative measures, or an insufficiently strong case to meet the statutory threshold. I was told however by MI5 that in a small handful of cases in 2012 and 2013, the principal reason for not proceeding with a TPIM was that the obligation to provide the subject with a sufficient gist of the allegations against him to enable him to give effective instructions, as required by the case of *AF (No. 3)*, could not safely be complied with.⁶²

- 4.5. The most intrusive of those measures, asset freezes and TPIMs, have been sparingly used in recent years. During the year to 30 September 2013:

- (a) only one person (Mohammed Khaled) was designated by the Treasury under the Terrorist Asset Freezing &c Act 2010; and
- (b) only one person (DD) was made subject to a TPIM notice.

- 4.6. Over the same period:

- (a) 48 persons were charged with terrorism-related offences, 39 were convicted of terrorism-related offences and just 3 were acquitted.⁶³ Among those sentenced in 2013, to terms of imprisonment of up to 23 years, were 11 men who had been planning to commit acts of terrorism in Birmingham on a scale potentially greater than that of the 7/7 London bombings of 2005, and six others who were preparing to attack an English Defence League rally.⁶⁴
- (b) There were some very high-profile extraditions and deportations, including in October 2012 the extradition of Abu Hamza and four other suspects for trial in the United States, and in July 2013 the deportation of Abu Qatada to face trial in Jordan..

- 4.7. When control orders were first introduced, it was envisaged in some quarters that they might affect “*hundreds – thousands, who knows*”.⁶⁵ Against that

⁶² See D. Anderson, *Control Orders in 2011*, March 2013, 3.72-3.75. The control order (and TPIM) systems have survived predictions that the obligation to give the subject a gist would render them unworkable, but some measures have had to be revoked or not proceeded with.

⁶³ Home Office, *Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stops and searches, quarterly update to 30 September 2013*, 6 March 2014, 2.4 and 3.2.

⁶⁴ http://www.cps.gov.uk/publications/prosecution/ctd_2013.html summarises this and other cases leading to terrorist convictions in 2013.

⁶⁵ C. Gearty, *Human rights in an age of counter-terrorism* (2005) 58 CLP 25, 42.

background, the sparing use made of both control orders and TPIMs is both striking and reassuring. The facts there have been only 53 such orders since 2005, and that at the time of writing not a single TPIM notice is in force, are a matter for pride rather than regret.

- 4.8. But only the most relentless of optimists would suggest that the need for TPIMs no longer exists. Had alternative disruptive measures been less successful than they turned out to be during the period under review, it is entirely possible that additional TPIM notices would have been requested and made. That possibility unfortunately remains.

Assessing the chances of prosecution

- 4.9. Chapter 7 of my 2013 TPIMs Report dealt with alternatives to TPIMs, and explored in particular the vital question of whether TPIM subjects could have been prosecuted and if not, why not. Since there were no new TPIM notices in 2013, I have had no further opportunity to examine this issue.
- 4.10. The non-admissibility of intercept evidence in criminal proceedings has been the subject of no fewer than eight investigations since 1993, the last of which is still ongoing.⁶⁶ I have been briefed in detail on the progress of that review. I remain of the view that a relaxation of the ban on intercept evidence, if feasible, would be welcome in both terrorism and organised crime cases. It must be acknowledged however that to render intercept evidence admissible, with all the resource and organisational consequences that this would involve, would not in itself remove the need for TPIMs. More significant impediments to obtaining convictions would remain: in particular, the need to protect human sources and technical surveillance techniques from public disclosure, which is likely to mean that evidence derived from them cannot be deployed in a criminal court.
- 4.11. I take comfort, as I did last year, from the fact that both the limited term of TPIMs and the intensive work required for their operation provide the authorities with an incentive to put suspects on trial. The disadvantages of disclosing valuable tradecraft in an open criminal court are routinely weighed against the prospective benefit of convictions followed by long prison terms. There was at least one striking example, during the year under review, of a prosecution being brought notwithstanding that it revealed the existence of a technique for recovering evidence that was not generally known.⁶⁷

⁶⁶ *TPIMs in 2012*, March 2013, 7.14.

⁶⁷ This was a technique, not previously used in any UK prosecution, to recover and reconstruct conversations between Richard Dart, Imran Mahood and Ayan Hadi. All three were convicted

Extension and revival of TPIMs

How the system works

- 4.12. TPIM notices are in force for an initial period of one year, which may be extended for a further year if the statutory conditions are satisfied.⁶⁸ The procedures for extending TPIMs were described in my 2013 TPIMs Report at 6.14-6.17. Once again, there were no changes to those procedures during 2013.
- 4.13. It is possible for TPIM notices to be revived after they have been allowed to expire after a year, or been revoked other than by direction of the court.⁶⁹ The expiry or revocation of the TPIM effectively “*stops the clock*”, allowing it to be restarted when the TPIM is revived. Thus, for example:
- (a) When a TPIM subject is charged with breach of his TPIM notice and remanded in custody, the Secretary of State may decide to revoke the TPIM during the custody period, so stopping the clock. The unexpired portion of the TPIM can then be revived once the subject is released from prison. If the TPIM was revoked during its initial one-year period, extension for a second year need be considered only once the sum of the periods for which the TPIM notice was in force amounts to one year.
 - (b) A TPIM subject who has absconded, whose TPIM is then revoked and who is subsequently found may in principle (after serving any sentence of imprisonment that may be imposed in respect of the abscond or otherwise) be subjected to the unexpired portion of the TPIM to which he was previously subject. Again, if the abscond took place during the initial one-year period, extension need be considered only once a TPIM has been in force for periods totalling one year.

Extension and revival during the period under review

- 4.14. Following the six extensions of January 2013, which were addressed in my 2013 TPIMs Report,⁷⁰ two more took place during the period under review. These related to:
- (a) AY, whose TPIM notice was extended for a second year in February 2013, when he was released on bail having been remanded in custody since

of Terrorism Act offences: in April 2013, Dart and Mahood received extended sentences of 14 years 9 months and 11 years respectively.

⁶⁸ TPIMA 2011, section 5.

⁶⁹ TPIMA 2011, sections 13(6)-(8), 12(9)(10).

⁷⁰ The TPIM Notices of AM, BF, BM, CD, CE and CF were all extended in January 2013. DD's did not need to be extended: the implication to the contrary in my 2013 TPIMs Report, 6.13, is incorrect.

January 2013 for alleged breach of his TPIM measures. His TPIM notice finally expired in February 2014; and

(b) CC (Mohammed Mohamed), whose TPIM notice had been revoked during a spell in prison and therefore required extension only in May 2013. The TPIM notice was once more revoked in December 2013, after CC's abscond. The clock remains stopped: if CC's TPIM is ever revived, it will have some four months to run.

4.15. I have inspected the file for each of these extensions and found that the procedures referred to at 4.12 above were correctly applied. Representations were solicited from the subjects; independent counsel gave advice; and a full submission supported by MI5 assessment and endorsed by a senior civil servant was prepared for the personal attention of the Home Secretary and Security Minister.

4.16. BX (Ibrahim Magag) never had his TPIM notice extended. He absconded in December 2012, and his TPIM notice was allowed to lapse shortly afterwards, at the end of its first year in January 2013. His TPIM could in principle be extended at any time for a second year, if the relevant conditions are met.⁷¹

4.17. DD's TPIM began in October 2012 and would in the normal course have required extension in October 2013. The need to consider extension has however not yet arisen, since during 2013 DD was remanded in custody on charges of breach, and served a prison sentence.⁷² During his imprisonment, the clock was stopped. If it is revived and then extended for a second year, DD's TPIM will have well over a year to run.

Variation of TPIMs

4.18. 52 variations were made to measures specified in TPIM notices in the year to the 30 November 2013, all but six of them in first six months. This reflects the changes that were agreed in the light of the abscond of BX (Ibrahim Magag): see 4.26(c), below. 23 applications for variation were refused.

4.19. As in 2012, the great majority of the variations were consensual, and implemented after exchange of correspondence between the Home Office and the subject's solicitors. Non-consensual variations were typically implemented after tripartite discussions between the Home Office, MI5 and the police. In particularly significant cases, ministerial approval is sought.

⁷¹ TPIMA 2011, section 13(6).

⁷² See 5.5, below.

Expiry of TPIMs

- 4.20. The TPIM notices imposed on CF, CD, BM, CE, AM, BF and AY, whose starts had been staggered in 2012, all expired between 2 January and 10 February 2014. No TPIM notices have been in force since.
- 4.21. There were challenges for MI5 and the police associated with the termination of so many notices in a short period. Those particular challenges are unlikely to be repeated, since they are the consequence of the block transfer of nine control order cases at the start of 2012, with all nine clocks thus starting to run within a few weeks of one another. In the normal course, one would expect any future TPIMs to be imposed individually or in smaller groups.

TPIM review procedures

- 4.22. The procedures for management and administrative review of TPIMs remained as described at chapter 8 of my 2013 TPIMs Report. The terms of reference of the quarterly TPIM Review Group did not change.⁷³
- 4.23. 2013 did however see the introduction of a new quarterly TPIM Strategy Meeting **[QTSM]**. QTSM is a high-level meeting, chaired by the head of the Pursue Disruptions Unit at the Home Office's Office for Security and Counter-Terrorism **[OSCT]** and attended by MI5 and the Metropolitan Police. Representatives from OSCT Prevent and from the Crown Prosecution Service **[CPS]** also attend if appropriate. QTSM has no formal terms of reference, but met soon after the TRG meetings to discuss strategic issues concerning the operation and future use of TPIMs. Following the TRGs and QTSM, Ministers were updated in each case on intelligence, abscond risk, steps taken in response and progress of work to establish and deliver an exit strategy. I have reviewed each of those updates.

TPIM review in practice

- 4.24. The nature and tone of TRG meetings (some of which I attended) changed appreciably in the aftermath of the December 2012 abscond and the critical political and media reaction to it. Meetings became longer and were chaired at a more senior level. Police and MI5 were questioned in greater detail about the adequacy of measures to manage the national security risk posed by each subject, the assessed abscond risk and actions taken to mitigate it, the extent of overt monitoring and covert surveillance, breaches, activities of concern and proposed responses. They were challenged in particular to consider the potential benefits of tightening the measures on individual subjects, for example by

⁷³ *TPIMs in 2012*, March 2013, Annex 7; see also 8.7-8.12.

extending overnight residence requirements, association and exclusion measures.

- 4.25. I was concerned that the high political risk of another abscond might cause restrictions on the remaining TPIM subjects to be unjustifiably increased. With that in mind, I cautioned last year of the need to ensure that TPIM requirements reflect only the risks that are posed by the individual upon whom they are imposed.⁷⁴ I have accordingly looked with particular care at the evolution of those requirements.
- 4.26. Without expressing a view on whether each individual measure was necessary and proportionate (which is a function of the courts, not of the Independent Reviewer), I do not believe on balance that the Home Office lost its perspective in relation to the measures in force. Thus:
- (a) Detailed assessments of risk, including risk of abscond, were conducted on all subjects.
 - (b) Though Ministers were understandably concerned to ensure that everything possible was being done to prevent further absconds, it was concluded that in most respects, further tightening of measures was unnecessary or undesirable.
 - (c) Variations to improve the effectiveness of the exclusion and financial measures were however suggested and approved in March 2013. In particular, exclusion measures were extended to international coach stations; and financial measures were amended so as to require the nominated bank accounts to be in the subject's name only. Reductions in the amounts of cash certain subjects could possess and withdraw were also made. None of these variations was challenged in court.
 - (d) The police and MI5 gave constructive consideration in the second half of the period under review not only to possible tightening but to how TPIMs might in appropriate cases be relaxed, in the interests not only of the subjects but of improving their own ability to predict their post-TPIM behaviour. An appropriate relaxation can encourage a subject to engage, or improve the insight of the authorities into the subject's likely pattern of life after the TPIM notice had expired.
 - (e) No TPIM measures were strengthened as a consequence of the abscond on 1 November 2013 of Mohammed Mohamed (CC). The great majority of TPIM notices were, by the date of the abscond, due to expire within two or

⁷⁴ 2013 TPIMs Report, 8.23, 11.28-11.29 and Recommendation 4.

three months in any event. The realisation that a subject was prepared to take the risk of absconding even in the last months of his extended TPIM notice did however prompt caution in relation to the planned relaxation of TPIMs in other cases.

Exit strategies

- 4.27. I expressed the view last year that more work needed to be done on developing exit strategies from TPIMs. TPIM notices, unless interrupted, provide a breathing-space of no more than two years. The question of how best to prevent TRA in the longer term needs to be addressed not just in the final months, but from the start of a TPIM notice and in the light of the rare opportunity for dialogue that a TPIM notice provides.⁷⁵

Coercive strategies

- 4.28. Exit strategies of a coercive nature could in principle include prosecution for new TRA, extradition for prosecution elsewhere, removal of passport under the Royal Prerogative and the freezing of assets. I recommended in December 2013 that the latter possibility should be routinely considered in all cases where it could be beneficial, including TPIM cases.⁷⁶ Designation under the Terrorist Asset-Freezing &c. Act 2010 is a powerful constraint, which may be renewed year on year without time limit.

Engagement strategies

- 4.29. Such coercive measures will however not be available or appropriate in all cases. In particular, experience has shown that persons subject to control orders or TPIMs are unlikely to commit criminal offences (other than breaches of the control order or TPIM notice) during the currency of those measures.⁷⁷ Persons whose TPIMs have come to an end may therefore be free, in the favoured journalistic phrase, to “*roam the streets*”, subject to no more than such covert surveillance (if any) as may be deemed appropriate.
- 4.30. Throughout the currency of a TPIM notice, it therefore makes sense not only to co-ordinate TPIMs with any related Prevent activity but, where it is feasible to do

⁷⁵ 2013 TPIMs Report, 11.39-11.46 and Recommendation 7.

⁷⁶ *Third Report on the Operation of the Terrorist Asset-Freezing &c. Act 2010*, 2.23-2.26 and Recommendation 12.

⁷⁷ 2013 TPIMs Report (March 2013), 11.9-11.10; *Control Orders in 2011* (March 2012), 3.19-3.21, 3.51.

so, to engage directly with TPIM subjects. I addressed this subject last year⁷⁸ and return to it again in the conclusory chapter of this report.⁷⁹

Exit strategies in 2013

- 4.31. Thought was given to the development of exit strategies in respect of each person subject to TPIMs in 2013. In my opinion, however, serious consideration came rather late in the day.
- 4.32. For obvious reasons, it is not open to me to elaborate on the strategies that were developed for individual subjects. Towards the end of 2013, however, appropriate consideration was given to most or all of the coercive outcomes, including in some cases the withdrawal of passport facilities under the Royal Prerogative. No former TPIM subject has been placed on an asset freeze. In view of the comments in my last asset-freezing report,⁸⁰ I sought and received assurance from MI5 that this possibility had not been neglected.
- 4.33. Some progress was made in relation to the promotion of stabilising factors in TPIM subjects' lives. By the time their TPIM notices expired, almost all the subjects were pursuing some form of employment or education.
- 4.34. In addition to Prevent activity targeted at institutions attended by TPIM subjects and their families, attempts were also made to establish direct contact with each TPIM subject. The results of this exceeded many expectations, and in a few cases proved productive. The ability to explore what TPIM subjects might need to manage the transition following the end of their TPIM notices can be useful in establishing and maintaining dialogue with some TPIM subjects. As a rule, however, there was not sufficient time to build up a relationship of trust; and the absence of a power of compulsion gave the probation service little leverage.

The absconds

Abscond of Ibrahim Magag (BX)

- 4.35. Ibrahim Magag absconded from his TPIM on 26 December 2012. It was widely reported that he had used scissors to cut through the strap of his GPS tag and hailed a London taxi.
- 4.36. A thorough review was commissioned by the Home Secretary after the abscond of Ibrahim Magag. Led by OSCT, it involved extensive consultation with MI5, SO15 and the wider Home Office, including UK Border Force. As the Home

⁷⁸ 2013 TPIMs Report, paras 11.39-11.46.

⁷⁹ 6.28-6.34, below.

⁸⁰ See 4.28, above.

Secretary promised in Parliament,⁸¹ I was given access to that review and have had an opportunity to consider its conclusions.

4.37. The review focussed on:

- (a) whether the abscond could have been prevented, and how adequate was the response; and
- (b) whether the TPIM regime was working as anticipated, and what more could be done to improve it.

As I would have expected, the review was extremely thorough in both respects.

4.38. It is not possible for me to summarise in a public document the conclusions or recommendations that resulted from that review. Recommendations were directed to the police, MI5 and OSCT itself. They covered a wide range of technical, operational, policy, legal and resourcing issues in the context of the abscond of Ibrahim Magag, the possibility of further absconds and the use of TPIMs more generally. The recommendations were accepted and implemented during the course of the period under review.

Abscond of Mohammed Mohamed (CC)

4.39. Mohammed Mohamed absconded on the afternoon of 1 November 2013. It was widely reported that he had entered the An Moor mosque in Acton, removed his GPS tag and left disguised as a woman wearing a burqa.

4.40. Once again, a thorough investigation was initiated, on similar lines to the Magag investigation. I have been kept in close touch with its progress and expect to consider its conclusions in due course.

GPS tags

4.41. The straps which hold the modern GPS tag to a TPIM subject's leg were the focus of controversy in two respects during the year under review.

4.42. On 30 October 2013 the prosecution informed the Crown Court that it would be offering no evidence against AY and CE on charges of tag-tampering. Required to prove that the damage was deliberate, the prosecution stated that it no longer believed there was a realistic prospect of conviction. Expert evidence served on behalf of the defence had suggested that wear and tear, imposed among other things by repeated kneeling to pray, could have been responsible for their

⁸¹ Hansard HC 8 January 2013, vol 556 col 163.

degradation. A tag-tampering charge against CC was dropped on 1 November for the same reason.

- 4.43. The second issue arose later on 1 November, when Mohammed Mohamed (CC), one of the men acquitted that very morning, managed to sever his tag and abscond.
- 4.44. Some light was thrown on the issue of tag straps in evidence given to the Home Affairs Select Committee a few days later by representatives of G4S, who design and operate the tags used by TPIM subjects.⁸² Two points in particular emerge from that evidence:
- (a) Tag straps could be made physically harder to remove, but are manufactured to a specification which specifically requires them to be breakable in emergency situations.⁸³
 - (b) Security is therefore intended to be provided not by the physical strength of the strap, but by the ability to detect an interference. Having described the various technologies available for monitoring, Mr Fernley of G4S stated: *“Within two seconds, the device knows that someone has interfered with the integrity of a fixing.”*
- 4.45. In the summary of Michael Ellis MP, a member of the Committee: *“The issue is not whether the defendant or the suspect can get them off. The issue is: can it be detected if he or she does?”* I am aware of no evidence that a strap can be cut without an automatic tamper alert being generated.

Conclusions

- 4.46. The most obvious conclusion to be drawn from the absconds – and in particular from the second abscond, which followed the implementation of the recommendations arising from the first – is that ***TPIMs cannot reduce the risk from their subjects to zero***. As I said to the Home Affairs Select Committee in November:

“It is important to appreciate what TPIMs can do and what they cannot. What they are not is a foolproof way of keeping the population safe from terrorists. The only foolproof way that I know of doing that is to lock everybody whom the Home Secretary believes might be dangerous in a high security prison

⁸² Home Affairs Select Committee – Minutes of Evidence HC 231-iii, 12 November 2013, QQ 53-83.

⁸³ The example given was *“situations like emergencies at hospitals: if someone wearing a tag is rushed into hospital and needs a CT scan or an operation, they have to be able to remove the tag.”*

and leave them there for the rest of their lives. Thankfully, that is not the sort of country we live in.”⁸⁴

People jump bail; and any system that relies on the imposition of bail-type conditions will fail from time to time. Some failures may be caused by human error, or by repairable defects in the system: it is important to identify and to correct those. Other failures may be nobody’s fault, but the simple consequence of a system which, for all its constraints, leaves TPIM subjects with many of the freedoms enjoyed by the general population.

4.47. The JCHR has recommended that the Government provide an open version of the outcome of its internal investigations and reviews, to enable public and parliamentary debate about and scrutiny of the circumstances of the two absconds.⁸⁵ I echo that recommendation, while acknowledging that it would be contrary to the public interest for specific weaknesses in the system (as opposed to errors in its application) to be publicly exposed in a way that could assist those wishing to abscond in future.

4.48. Significantly, however, the JCHR also accepted that:

“the risk of absconding is likely to be higher when a TPIM subject remains in the midst of their local community and network, and .. that, under the control order regime, no relocated individuals absconded.”

I agree with the JCHR that **locational restraints can reduce abscond risk**. Nobody can know whether Ibrahim Magag and Mohammed Mohamed would have attempted to abscond if they had been required to remain in Gloucester and Ipswich respectively. Had they done so, it is always possible that they would have succeeded. But without doubt, just as it is easier for a Londoner to keep up his links with undesirable associates when on home turf, so it is easier for him to abscond from a part of London with which he is familiar and where he has like-minded friends. That is why the judge in Magag’s case concluded, well before his abscond, that “*removal from London was properly regarded as necessary*” and that it was “*too dangerous to permit him to be in London even for a short period*”.⁸⁶

4.49. Two other factors are at play here. The first is **financial**. Ministers divulged during the period under review that the additional sums of money devoted to police and MI5 for surveillance, in order to compensate for the shift from control orders to TPIMs, amounts to tens of millions of pounds annually – a huge sum,

⁸⁴ Minutes of Evidence HC 231-iii, 12 November 2013, Q84.

⁸⁵ Report of 23 January 2014, HL Paper 113 HC 1014, para 42.

⁸⁶ *BX v SSHD* [2010] EWHC 990 (Admin), Collins J at paras 18 and 22.

given the small number of TPIM subjects.⁸⁷ There was no obligation to spend that extra money on surveillance of TPIM subjects; but the ending of the practice of relocation was the single biggest driver for the increase in resources. If, as appears to be the case, the expenditure of those very large sums has not paid dividends either in increased investigative opportunities or in an ability to prevent absconds, it seems to me only proper that the nature of the locational requirements that can be placed upon TPIM subjects should be revisited.

- 4.50. The second factor is **reputational**. CagePrisoners (now Cage), an advocacy organisation whose own officers have experience of administrative constraints both under control orders and in Guantanamo,⁸⁸ said in evidence to the JCHR:

“TPIMs do not keep us safer because those who want to abscond will.”⁸⁹

The same argument for the uselessness of such constraints was made by Liberty in the wake of the pre-2008 absconds from light-touch control orders. Public frustration with the perceived inadequacy of TPIMs was expressed by the Chair of HASC, when he asked me:

“Doesn’t it worry you that the great reputation of our security services and the police are damaged by these stories of people just getting into cabs or going into mosques and changing into a burqa and then escaping? ... Would we expect then people who are on a TPIM with a G4S tag to regularly tamper with their tag and disappear? ... In which case, what is the point of having them?”⁹⁰

- 4.51. The perception described by CagePrisoners that “*those who want to abscond will*” is dangerous on three levels. In terms of public safety, it may encourage subjects to attempt an abscond and, if they succeed, increase the risk to the public. In psychological terms, the notion that dangerous terrorists cannot be controlled gives succour to them and diminishes public reassurance in the ability of the authorities to protect them. In policy terms, it is likely to fuel demands for TPIMs to be replaced by more extreme and less rights-compliant measures. Such a course would not only be undesirable on civil liberties grounds but would play directly into the grievance agenda of terrorists and their sympathisers,

⁸⁷ Though the suggestion that the cost of surveillance has gone from £1.8 million per person per year on a control order to £18 million per person per year on a TPIM (as suggested to me by a member of HASC, Minutes of Evidence HC 231-iii, 12 November 2013, Q96) is very far from the reality.

⁸⁸ Cerie Bullivant, its Media Officer, had his control order quashed by the High Court (Collins J) in 2008. Moazzam Begg, its Outreach Officer, is a former Guantanamo detainee who had his passport removed in December 2013 and was charged with terrorism offences and designated under asset-freezing law in March 2014.

⁸⁹ JCHR report, HL Paper 113 HC 1014, 23 January 2014, para 56.

⁹⁰ HASC Minutes of Evidence HC 231-iii, 12 November 2013, QQ 126, 129, 130 (Keith Vaz MP).

adding to what a well-known solicitor in the field has described as “*the folklore of injustice*”.⁹¹

- 4.52. None of this means that relocation – perhaps the most resented feature of control orders, albeit one that was repeatedly upheld by the courts – should simply be reintroduced. But for all these reasons, and in addition to any more specific lessons that remain to be learned from the two absconds of 2012-13, it seems to me appropriate that the exact nature of the locational constraints permitted under TPIMA 2011 should in due course be revisited. I return to this subject at 6.19-6.27, below.

⁹¹ Gareth Peirce, in her evidence to the JCHR in 2010: see D. Anderson, *Control Orders in 2011*, 6.17-6.22.

5. THE COURTS

Prosecutions for breach

- 5.1. I remarked in both *Control Orders in 2011* (March 2012) and in my 2013 TPIMs Report on the considerable difficulties that attend prosecutions for breach of these measures, and attempted to explain what some of those difficulties are.⁹²
- 5.2. Success rates have always been low: indeed from 2005 to 2012, only two people were ever convicted for breach of control orders or TPIMs.⁹³ 2013 did see one conviction, on a guilty plea, for three counts of breach. That aside, however, the year was characterised chiefly by long delays and by the abandonment of tag-tampering charges against three subjects.
- 5.3. A subject whose anonymised initials cannot be disclosed was arrested on 15 September and charged five days later with a breach of his association measure. He was remanded in custody on that charge, which has not yet come to trial.
- 5.4. A table showing the charges brought in 2013 and the outcomes is at [Annex 5](#).

DD

- 5.5. DD was convicted during 2013 of three breaches of his TPIM notice. The facts were summarised as follows by the CPS:

“In February 2013, DD attended a public meeting in Birmingham organised for the Somalian community. He also gave a speech at the meeting which was broadcast on a Somalian TV channel called Royal TV. In March 2013, whilst under surveillance DD went into a local internet cafe and used one of the computers to access the internet. These activities contravened three of the measures in his TPIM notice.”⁹⁴

Charges were brought on 8 April and 18 June 2013, and DD pleaded guilty to broadcasting without permission, attending a meeting or gathering without permission and entering an internet cafe. A further three offences were allowed to lie on the file. DD was sentenced on 21 June 2013 to a custodial sentence of 9 months’ imprisonment on each count, to run concurrently. He was released from custody on 28 August 2013.

⁹² *Control Orders in 2011*, March 2012, 3.58-3.63, 4.14-4.15 and 6.15-6.16; *TPIMs in 2012*, March 2013, chapter 10 and 11.11.

⁹³ *Ibid.* 3.61-3.62, They were sentenced to 20 weeks’ and 15 months’ imprisonment respectively.

⁹⁴ https://www.cps.gov.uk/publications/prosecution/ctd_2013.html#a02

CC (Mohammed Mohamed)

- 5.6. CC was charged on 29 December 2012 with six counts of failing to report to the police station or reporting late to the police station between 22 and 28 December 2012. He was initially remanded in custody but was granted bail by the Crown Court in April 2013. He successfully argued that his trial on these charges, together with charges on 14 counts of breaching his control order for which he had been arrested in October 2011 while living in Ipswich, should be postponed to await the Court of Appeal's judgment on his TPIM review.⁹⁵ By the time of his abscond on 1 November 2013, that appeal had not been heard⁹⁶ and the criminal trial had not been listed.

AY CC and CE

- 5.7. AY, CC and CE were each charged with tag tampering, in breach of their monitoring measures.⁹⁷ In each case the CPS discontinued the prosecution. That decision came after expert evidence for the defence had suggested that damage to the tags could have had causes other than deliberate tampering.
- 5.8. CC had been remanded in custody after his arrest in July 2013, but was once again granted bail by the Crown Court in August. On the same day that charges were dropped, 1 November 2013, CC absconded.

Reviews and appeals

- 5.9. There were only two judgments during 2013 on TPIM reviews or appeals, to add to the six upon which I reported last year.⁹⁸ Both were section 16 appeals, in which the reasonableness of the Secretary of State's belief of involvement in TRA was not in issue. They are summarised at 5.11-5.22, below.
- 5.10. In addition:
- (a) CC and CF's appeals against the upholding of their control orders and TPIMs by the High Court (Lloyd Jones J) in October 2012⁹⁹ were heard in January 2014 and have not been determined as of the date of this Report going to press.

⁹⁵ CC's TPIM, and the preceding control order, were upheld by the High Court in October 2012: *SSHD v CC and CF* [2012] EWHC 2837 (Admin).

⁹⁶ It was eventually heard, in CC's absence, between 27 and 29 January 2014.

⁹⁷ AY was arrested and charged on 15 January 2013. CC and CE were arrested and charged on 25 July 2013. See further 4.42, above

⁹⁸ *TPIMs in 2012*, March 2013, chapter 9,

⁹⁹ *SSHD v CC and CF* [2012] EWHC 2837 (Admin).

(b) DD appealed the Home Secretary's decision to revive his TPIM notice in August 2013. That appeal has been stayed pending other proceedings.

CF – appeal against refusal to vary

- 5.11. On 12 April, the High Court (Wilkie J) gave judgment in an appeal under TPIMA 2011 section 16 against the Secretary of State's decision not to vary five of the measures imposed under CF's TPIM notice.¹⁰⁰
- 5.12. The High Court had previously come to the "*clear conclusion*" that CF had been involved in TRA, notably in East Africa.¹⁰¹ That activity was described by Wilkie J as "*in more than one place and of a grave nature; not just facilitation but travelling, training and fighting*". The function of the court hearing the variation appeal was not to revisit the issue of involvement in TRA,¹⁰² nor even the necessity for a TPIM notice,¹⁰³ but rather to review the necessity for and the proportionality of the challenged measures, both at the time the variation was refused and at the time of the court's judgment.¹⁰⁴
- 5.13. In a departure from the uniform practice of TPIM subjects in 2012,¹⁰⁵ CF chose to give oral as well as written evidence. No oral evidence was heard from the witnesses of the Secretary of State or of MI5, and no application to cross-examine those witnesses was made on behalf of CF.
- 5.14. In respect of four of the five measures (overnight residence, electronic communication devices, work or studies and reporting), the Secretary of State's refusal of a variation was upheld.
- 5.15. In respect of a fifth measure, non-association, the Secretary of State was directed to make an amendment. The prohibition on meeting fellow-students for social purposes whilst on campus was said to "*impose a chilling effect on CF's participation in the life of a student on this course without any, apparent, beneficial effect on national security*".¹⁰⁶ A relaxation having regrettably not been agreed, despite the urging of the High Court in 2012,¹⁰⁷ a variation proposed by the Home Secretary was ordered by the court in April 2013.

¹⁰⁰ *CF v SSHD* [2013] EWHC 843 (Admin).

¹⁰¹ [2012] EWHC 2837 (Admin), heard on appeal in January 2014; see also 2013 TPIMs Report, 4.12(g).

¹⁰² *CF v SSHD* [2013] EWHC 843 (Admin), para 20.

¹⁰³ *Ibid.*, para 46.

¹⁰⁴ *Ibid.*, paras 20-24.

¹⁰⁵ 2013 TPIMs Report, 4.13.

¹⁰⁶ *Ibid.*, para 97.

¹⁰⁷ [2012] EWHC 2837 Admin, para 69.

- 5.16. I have read the closed judgment that supplements in certain respects the reasoning expressed in the open judgment, by reference to material that it could damage national security to disclose.

BF – appeal against extension of TPIM notice

- 5.17. On 30 July 2013, the High Court (Silber J) determined an appeal against the decision of the Secretary of State in January 2013 to extend BF’s TPIM notice for a second year.
- 5.18. BF had first been placed under a control order in March 2009. By the time his TPIM expired in January 2014, therefore, he had – with interruptions from criminal proceedings not resulting in conviction – been under constraint for almost five years.¹⁰⁸ However, as Silber J noted:

“There has been a progressive relaxation of the measures applicable to BF since he was placed under his first control order with a further relaxation being granted when the present TPIM was imposed in January 2013. In addition, permission has been given on numerous occasions for BF to be given dispensation from the terms of the orders imposed on him for particular purposes.”

- 5.19. A High Court judge had previously been left in “*no doubt*” that BF had been involved in TRA, accepting the assessment of MI5 that he had been part of a network of UK extremists seeking to obtain terrorist training in Pakistan, that he had travelled to Pakistan for such purposes in 2008 and that he had intended to do so again in 2009.
- 5.20. BF did not seek to deny that he had been involved in TRA.¹⁰⁹ He did however make the point that the cumulative period of his constraints had been far longer than the two-year maximum envisaged by TPIMA 2011. He also submitted that the threat that he posed had receded, since three of the associates considered by the intelligence agencies to be dangerous had been killed by drone strikes. He claimed credit for his responsible behaviour while subject to constraint. Reference was also made to the suffering which the TPIM was said to have caused to his family, and to a mental health report.¹¹⁰

¹⁰⁸ The litigation history is set out in *BF v SSHD* [2013] EWHC 2329 (Admin), paras 2-3, and in my 2013 TPIMs Report, para 4.12(c).

¹⁰⁹ *BF v SSHD* [2013] EWHC 2329 (Admin), para 14.

¹¹⁰ *Ibid.*, paras 26-27.

5.21. Those submissions were unsuccessful. Silber J concluded that the whole package of restrictions placed on BF was necessary and proportionate, both in January 2013 and at the date of judgment.¹¹¹

5.22. It was put to me when giving evidence to the Home Affairs Select Committee that

“there were signs in judgments .. that the judges would be concerned at this point, .. several years having passed, that effectively there was a violation of the human rights we keep hearing about of these suspects”.¹¹²

Had control orders continued, matters may eventually have come to that point. As the BF case illustrates, however, the High Court has been willing to uphold even constraints that have lasted for more than four years and are likely to endure for more than five.¹¹³ It has been prepared to do this even after the enactment of legislation limiting later TPIMs notices to a maximum duration of two years.

5.23. This demonstrates that if the two-year limit is to be defended (as both my predecessor Lord Carlile and I have done in the past, and as I continue to do),¹¹⁴ it must be on its merits and not on the basis that the courts have compelled it on human rights grounds or otherwise.

Related litigation

5.24. CC and CF have a civil damages case against the Government. They allege that their detention in Somaliland was not in accordance with Somaliland law; that they were mistreated at the time of their arrest and while in detention; and that they were unlawfully deported to the United Kingdom.

5.25. The Government’s applications for public interest immunity and for a declaration under section 6 of the Justice and Security Act 2013 were heard in July 2013 and granted in a judgment handed down on 7 November 2013, six days after Mohammed Mohamed absconded.¹¹⁵ The judgment is of considerable general interest in relation to the issue of statutory closed material proceedings. Permission to appeal has been granted, though it was ordered that no appeal

¹¹¹ *Ibid.*, para 48.

¹¹² Home Affairs Select Committee – Minutes of Evidence, HC 231-iii, 12 November 2013, Q105 (Michael Ellis MP).

¹¹³ Other illustrations are the case of AM, whose TPIM notice was upheld by the High Court in 2012, after more than five years of constraint, and AY whose TPIM was upheld as the period of restraint approached its fifth year: *SSHD v AM* [2012] ECHR 1854 Admin; *SSHD v AY* [2012] ECHR 2054 Admin.

¹¹⁴ 2013 TPIMs report, 11.33-11.38.

¹¹⁵ [2013] EWHC 3402 (QB).

need be lodged until after the determination of further closed material-related issues.

Closed material proceedings

- 5.26. Reviews and appeals of control orders and TPIMs have since 2005 made use of closed material proceedings, as developed originally in the immigration context. Cases should remain as open as possible; but material that could damage national security if made public is adduced in closed session to the court and to a security-cleared special advocate who is instructed on behalf of the subject. Open judgments are supplemented by closed judgments which explain such elements of the court's reasoning as rely upon this closed material.
- 5.27. Controversially extended to judicial review and damages claims by the Justice and Security Act 2013, guidance on the use of closed material proceedings was given by the Supreme Court in the important case of *Bank Mellat v Her Majesty's Treasury*.¹¹⁶ Following that guidance, the court in BF's appeal against the extension of his TPIM was at pains to ensure that its open judgment said as much as could properly be said about the closed material that it had relied on.¹¹⁷
- 5.28. In my 2013 TPIMs Report I identified a number of long-standing concerns with closed material proceedings in the TPIM context, and recommended that a forum should be established under judicial chairmanship, with the power to consider procedural concerns raised both by special advocates and by representatives of TPIM subjects. I envisaged that this forum would be able to recommend changes to court rules and practices if it considered that such changes were necessary.¹¹⁸
- 5.29. The Government responded that it was keeping the recommendation under review, but that it did not believe "*a formal forum is required at this time*". Rather, it spoke of "*seeking to foster a flexible working relationship with Special Advocates and other professionals operating in this field*", so as to "*allow action to be taken more quickly when a compelling case for change is made*".
- 5.30. The special advocates to whom I have spoken are not aware of the means by which such a flexible working relationship is being fostered, and share my difficulties as to why that course is to be considered preferable to the working group of practical experts that I have previously recommended. Past meetings between special advocates and Ministers have been cordial but unproductive. They are no substitute for a body under judicial chairmanship which could

¹¹⁶ [2013] UKSC 38, 19 June 2013.

¹¹⁷ [2013] UKHC 2329 (Admin), paras 49-51.

¹¹⁸ 2013 TPIMs report, 9.30-9.37 and Recommendation 5.

consider in a practical manner how the interests of justice may best be reconciled with the constraints imposed by national security. As I said to the Joint Committee of Human Rights in March 2013:

“Painful as it might be to release control to the extent of saying, ‘Let’s allow a judge to chair this discussion’, that would be much more productive when these are issues that the judge understands because they come up in the judge’s court every day. One would not need to give the judge or the judge’s working party executive power to change the rules. All I suggest is that it be given the power to make recommendations.”¹¹⁹

5.31. Though that recommendation was not taken up in 2013, a useful model was provided during the period under review by the Chair of the Special Immigration Appeals Commission. As the JCHR related:

“The Chair of SIAC, Mr Justice Irwin, initiated a process of consultation and discussion with SIAC users, including the special advocates, which has culminated in a new ‘Practice Note’ which seeks to address a number of the problems with closed material procedures that have consistently been identified by the special advocates, such as endemic late disclosure.”¹²⁰

I have discussed that development with two of the special advocates, and reviewed with them the SIAC Practice Note of 25 October 2013 and the Chair’s note of the same day to SIAC users. They agree that there has been some useful if modest progress as regards the issues of disclosure and communication, and continue to believe that a judicially-chaired forum along the lines of my recommendation (and that of the JCHR) could be useful.

5.32. Giving evidence to the JCHR, I was asked by Simon Hughes MP for a “*shopping list*” of matters that such a forum could usefully consider.¹²¹ As I indicated at the time, these might include, in particular, the perceived problems of:

- (a) late and piecemeal disclosure by the Government;
- (b) late service of expert evidence, to which the special advocates lack the practical ability to respond;
- (c) the occasional over-use of closed material proceedings for evidence which could safely have been heard in open, or by other procedures such as an *in camera* hearing;¹²²

¹¹⁹ Joint Committee on Human Rights – Minutes of Evidence, 19 March 2013, Q7.

¹²⁰ JCHR Report HL Paper 113 HC 1014, 23 January 2014, para 67.

¹²¹ *Ibid.*

(d) too absolute a bar on the special advocates' ability to communicate with the subject and the open advocate after the case has gone into closed; and

(e) the time that cases (in particular, variation appeals) take to come to court.¹²³

5.33. That list should not be seen either as prescriptive or as exhaustive. It is desirable that the terms of reference of any such working group should be sufficiently broad to allow any matters of procedural concern to the court or the parties before it to be aired and, so far as possible, resolved by practice guidance or by recommendations for changes to the applicable rules.

Cost of TPIMs

5.34. The costs of TPIMs and control orders to the Home Office in 2012/13 are set out in the Table at Annex 6. Those costs amounted to some £2.5 million (the lowest figure since 2006/07), of which almost two thirds comprised legal costs. Costs incurred by the courts and the Legal Services Commission are not included in the total: nor are the costs of the police, MI5 and CPS in enforcing and administering the TPIM system.

¹²² An issue in respect of which useful guidance was given during the period under review by the Supreme Court in *Bank Mellat v HM Treasury* [2013] UKSC 38 and by the High Court in *BF v SSHD* [2013] EWHC 2329 (Admin) and *CC and CF v SSHD* [2013] EWHC 3402 (QB).

¹²³ *Control Orders in 2011*, March 2012, 3.78-3.81 (citing criticism by the current Lord Chief Justice in *BM v SSHD* [2011] EWCA Civ 366 of the time taken by a control order review to come to court and to appeal); 2013 TPIMs report, 9.31-9.37. In relation to the timing point, one solicitor for a TPIM subject suggested to me that part of the solution might be the appointment of an assigned judge to each TPIM case.

6. CONCLUSIONS

- 6.1. Relatively early in its life, the system of TPIMs has reached a pause. The original nine TPIM subjects, all transferred from control orders at the start of 2012, have been joined by only one more, in October of that year. Seven subjects were definitively freed of their TPIMs in January or February 2014. Of the other three, two have absconded and one is in prison. No TPIM notices were in force when this report went to press.
- 6.2. As the 2015 General Election approaches, it may be hoped that this pause will be used for reflection. My function is to inform rather than to participate in the policy and political debate. Accordingly, I aim to summarise the extent to which TPIMs are doing their job and then to identify some areas in which change could profitably be considered, recognising however that there are a number of aspects on which reasonable people can and do differ.

Have TPIMs been worthwhile?

- 6.3. I have spoken at length to the Home Office, MI5 and the police about the effectiveness of TPIMs. I remain of the view expressed in my 2013 TPIMs Report (at 11.3-11.9) that like control orders before them, TPIMs can be an effective means of preventing terrorism but have proved to be of little value in investigating it. In brief summary:
- (a) Some TPIM notices at least are likely to have been effective in disrupting terrorist networks.
 - (b) Because a TPIM subject is easier and cheaper to monitor than a person who is entirely free of constraint, TPIM notices have also been effective in releasing resources for use in relation to other pressing national security targets.
 - (c) Subjects are not however being prosecuted (save for breach of their TPIMs) on the basis of evidence discovered during the currency of their TPIM notices. The two-year limit on TPIMs may have sharpened the incentive to investigate; but precisely because TPIMs have been effective in deterring their subjects from engaging in terrorism, such investigations tend to be unproductive.
- 6.4. The fact that no new TPIM notices have been made in almost 18 months does not alter my conclusions as to their effectiveness. TPIMs are correctly viewed as a last resort. The absence of new notices in the period under review owes much to the strong record of prosecuting terrorists in recent years, to the Government's

successful deportation of some high-profile terrorist suspects and to the productive use of other means of disruption.¹²⁴

6.5. It must be acknowledged however that there are factors which would cause any intelligence agency to hesitate before recommending a TPIM notice, and any Home Secretary to hesitate before making one. In particular:

- (a) **Location of subjects:** The fact that all TPIM subjects must (unless they agree otherwise) be housed in a locality familiar to them makes it easier for them both to keep in touch with former networks and to abscond than would be the case if they were subject to stricter restrictions. Both these outcomes were observed during the period under review.
- (b) **Cost:** TPIMs are more expensive to administer than were control orders. Considerable extra sums of money (amounting to tens of millions of pounds per year) had to be allocated to the police and to MI5 for the purposes of surveillance, in recognition of the less restrictive conditions and in particular the ending of the power to relocate subjects to places where they could be more cheaply and reliably monitored. Though they were not ring-fenced for TPIM subjects, these extra sums could be argued to have delivered poor value, since they failed to prevent two absconds within a year.
- (c) **Litigation:** The highly judicialised TPIM system drains the time and resources of MI5 in particular, with the result that the decision to seek a TPIM notice, though considered with some frequency, is not one that is lightly taken.
- (d) **Risks of abscond:** The absconds of Ibrahim Magag and Mohammed Mohamed illustrated the limitations of TPIMs as public protection measures. They came after more than five abscond-free years, which coincided with the introduction and use of involuntary relocation. As a consequence, they brought the Government bad publicity and political criticism. For as long as the risk of abscond remains, these factors are likely to make any Minister cautious about imposing TPIMs. Where they are imposed, Ministers will be tempted to insist upon the heaviest possible restrictions and to press intelligence agencies for particularly intensive scrutiny of TPIM subjects, in circumstances where agencies may have other priorities for their limited surveillance resources. These factors could also deter MI5 from

¹²⁴ Some details are at 4.6, above.

recommending a TPIM notice in circumstances where it could have been effective.¹²⁵

- 6.6. It is factors such as these that the JCHR may have had mind when, notwithstanding the undoubted efficacy of some TPIM notices, it headlined its report of January 2014 with the statement that “*TPIMs may be withering on the vine as a counter-terrorism tool of practical utility*”.

Should TPIMs be retained?

- 6.7. It may well be, as the JCHR suggests, that the use of TPIMs is set to decline. I believe nonetheless that there is a strong case for retaining the option of TPIMs, or TPIM-like measures, as part of the toolkit for disrupting terrorists who threaten the UK or western interests abroad. In particular:

- (a) The non-use of TPIMs in 2013 is at least in part a consequence of the successful deployment of other measures, including prosecution and deportation.¹²⁶ Those successes are welcome, but cannot be guaranteed to continue every year.
- (b) While there are certainly reasons to hesitate before imposing TPIMs,¹²⁷ I have detected no sign either from Ministers or from intelligence agencies that the future use of TPIMs has been written off as unlikely. Indeed, as stated at 4.2, above, their use was actively considered in several dozen cases during 2012 and 2013.

In other words, the future emergence of cases in which TPIMs are considered necessary can certainly not be ruled out.

- 6.8. I would add a further reason for retaining TPIMs on the statute book: their familiarity. Imperfect though they may be, TPIMs are the product of many years of refinement by successive governments and the courts. As I noted last year, they have not been counter-productive in terms of community reaction;¹²⁸ and notwithstanding the difficulties of dealing with secret evidence, they are subject to something resembling a fair litigation procedure.¹²⁹

¹²⁵ As I said to HASC (Minutes of Evidence HC 231-iii, 12 November 2013, Q107): “*If every time something goes wrong with one person on one of these orders and a political storm or a media storm ensues, it seems to me the likely consequence is going to be that people become very averse to using these remedies at all. What we may find is that, for essentially political reasons, we lose what could have been a very effective remedy.*”

¹²⁶ See 6.4, above.

¹²⁷ Listed at 6.5, above.

¹²⁸ 2013 TPIMs report, 11.14-11.17.

¹²⁹ *Ibid.* 11.18-11.21.

- 6.9. TPIMs are significantly less intrusive than either of the measures that preceded them: control orders, and before that the indefinite detention of foreign nationals suspected of terrorism.¹³⁰ Indeed they have increasingly close equivalents in the form of civil preventative measures in fields other than terrorism.¹³¹ For all these reasons, there is much to be said for retaining TPIMs on the statute book, even if they do prove to be not much used. In the event of a major terrorist incident or incidents, TPIMs – supplemented if necessary by ETPIMs – would be a familiar weapon, immediately available, that could usefully reduce the surveillance burden on the intelligence agencies while avoiding the dangers to be expected from the hasty adoption of repressive laws.

Could TPIMs be improved?

- 6.10. TPIMs broke new ground. Now that two years of results are in, it would be surprising if no improvements could be devised. TPIMA 2011 expires in December 2016, unless otherwise provided,¹³² and it is always possible that Parliament will be asked to look at it again before that.
- 6.11. The optimum balance to be struck is a matter for political judgement, and I do not presume to dictate solutions. It may be that a tightening in one respect (for example, locational measures) could be balanced by a loosening in another (for example, the Condition A threshold). I do however identify some areas which seem to me deserve attention. As usual, I do so on the basis of my own assessment of the evidence and without regard to political factors.

Definition of TRA

- 6.12. I drew attention last year to the extraordinarily broad range of acts that can satisfy the statutory test of “*involvement in terrorism-related activity*”. As I pointed out, by reference to TPIMA 2011 section 4:

“Involvement in TRA encompasses the commission, preparation and instigation of acts of terrorism [**CPI**], conduct which facilitates or encourages CPI or is intended to do so, and conduct which gives support or assistance to individuals who are known or believed to be engaging in CPI, facilitation or encouragement.”¹³³

¹³⁰ *Ibid.*, 1.4-1.9.

¹³¹ D. Anderson, *Control Orders in 2011*, March 2012, 2.25-2.26. Recent or proposed additions to the range of civil preventative powers, striking in their possible breadth, are sexual risk orders (Anti-Social Behaviour Crime and Policing Act 2014, Schedule 5), and slavery and trafficking risk orders (draft Modern Slavery Bill, clauses 21-28).

¹³² TPIMA 2011 section 21.

¹³³ 2013 TPIMs Report, fn 38.

- 6.13. That test closely resembles the former test for control orders¹³⁴ but is broader than the equivalent test under the Terrorist Asset-Freezing &c. Act 2010. That catches conduct *facilitating* CPI (or a person supporting or assisting someone in facilitating CPI) but not conduct which merely *gives encouragement* to CPI (or a person supporting or assisting someone who is giving encouragement).
- 6.14. It is for consideration whether measures as strong as TPIMs need or ought to be available for use against a person whose connection with an act of terrorism could be as remote as the giving of *support* to someone who gives *encouragement* to someone who *prepares* an act of terrorism. That person is at three removes from terrorism – itself a concept that encompasses more than just politically-motivated violent acts, as the Divisional Court recently spelled out in the *Miranda* case.¹³⁵
- 6.15. It is true that the need to satisfy the existing statutory requirement of *necessity for purposes connected with protecting members of the public* (Condition C) provides some safeguard against the over-broad application of Condition A. It is also fair to say that the TPIM subjects to date have all been believed to be more than just peripheral figures where terrorism is concerned. The temptation to resort to the outer fringes of TRA might still be there, however, if not at the outset then at least in a case where “*new terrorism-related activity*” needs to be found if a second or subsequent TPIM is to be justified.¹³⁶ Thought might usefully be given to cutting the definition down, even if only to match the reduced definition in the Terrorist Asset-Freezing &c. Act 2010.

Condition A: proof of involvement in TRA

- 6.16. It is a condition (“*Condition A*”) for imposing and reviving a TPIM notice that “*the Secretary of State reasonably believes that the individual is, or has been, involved in terrorism-related activity*”.¹³⁷ I suggested last year that it was worth considering whether the Home Secretary should be required, at the High Court review provided for by the Act,¹³⁸ not just to establish that her belief of involvement in TRA is reasonable, as at present, but to prove such involvement

¹³⁴ Prevention of Terrorism Act 2005, section 1(9).

¹³⁵ *R (Miranda) v SSHD and MPC* [2014] EWHC 255, para 33. It would seem that terrorism as defined in section 1 of the Terrorism Act 2000 covers not only violent and damaging acts, but the publication or threatened publication, for the political purpose of influencing any government in the world, of any material (whether or not stolen or classified) that is liable to endanger a person’s life or to create a serious risk to public health or safety.

¹³⁶ As required by Condition B: TPIMA 2011 sections 3(3) and 3(6)(b)(c).

¹³⁷ TPIMA 2011, section 3(1).

¹³⁸ TPIMA 2011, section 9.

on the balance of probabilities. That is a test that the Government has already accepted in relation to ETPIMs.¹³⁹

- 6.17. I doubt whether the change would have made a difference to any of the cases in which TPIM notices have been made.¹⁴⁰ It would however help reinforce the legitimacy of TPIMs, by enabling the Government to say (as it cannot at present) that a TPIM notice may only be upheld if it is proved to the satisfaction of the High Court that the subject has been involved in terrorism.
- 6.18. The Government stated in its Response to last year's report that it sees no reason to change the test. In the light of this clear indication, I cannot press the issue but continue to note it.

Location measures

- 6.19. Involuntary relocation, though not practised at the outset of the control order regime, became its most controversial feature. It was characterised by critical NGOs as "*internal exile*",¹⁴¹ and opposed by Lord Macdonald QC as "*utterly inimical to traditional British norms*".¹⁴² It was strongly resented by those subject to it, and may have made a modest contribution to the potentially radicalising "*folklore of injustice*".¹⁴³
- 6.20. On the other hand, as I reported in 2012, relocation brought significant advantages from a national security point of view. It assisted in the disruption of networks, by taking people out of circulation. It is likely also to have played a significant part in stemming the flow of absconds which preceded its introduction and of which there were two further instances after subjects previously in the provinces were allowed to return to London. The courts supported relocation as a necessary and proportionate measure even as late as 2011, refusing to uphold it in only four of the 23 cases in which it was imposed.¹⁴⁴ Involuntary relocation is contemplated in the draft ETPIMs Bill.¹⁴⁵

¹³⁹ 2013 TPIMs Report, 11.47-11.52.

¹⁴⁰ As I stated in evidence to the JCHR, 19 March 2013, Q5.

¹⁴¹ Although families could move with the subjects if they wished, and subjects were in practice relocated no more than 2-3 hours' travel away: for example, from Crawley to Ipswich (*CA v SSHD* [2010] EWHC 2278 QB).

¹⁴² *Review of Counter-Terrorism and Security Powers: A Report by Lord Macdonald of River Glaven* QC Cm 8003, January 2011, para 22.

¹⁴³ As I remarked in 2012, control orders appear to have made a relative small contribution to radicalisation, by comparison for example to the now-repealed stop and search power under the Terrorism Act 2000, section 44: D. Anderson, *Control Orders in 2011*, March 2012, 6.17-6.22.

¹⁴⁴ Details are in D. Anderson, *Control Orders in 2011*, fn 82.

¹⁴⁵ Schedule 1, para 1(3).

- 6.21. The experience of the police in 2012 and 2013 has borne out their statement to Parliament in 2011 that “[t]he new freedoms that will be given to individuals will significantly increase the challenges that we have to face”.¹⁴⁶ The loss of relocation (together with other features of the transition to TPIMs) has necessitated the payment of tens of millions of pounds to the police and to MI5 to pay for additional surveillance.¹⁴⁷ It should be added that surveillance is not a complete substitute for relocation, since its purpose is to observe rather than to disrupt.
- 6.22. I have previously described the removal of relocation as a step which, though not required by the courts, was “a perfectly proper decision for Parliament to take on civil liberties grounds”, to which “the police and MI5 have managed, generally speaking, to adapt”.¹⁴⁸ I also however expressed the view that the removal of relocation was acceptable in terms of public safety “only because of the additional money that has been made available”, and remarked that while some would consider no price too high to pay for the ending of relocation, it was difficult for the public or for Parliament to make up their own minds on the cost-benefit analysis of ending relocation without knowing how much extra money had been required.¹⁴⁹
- 6.23. I believe that the time has now come to revisit the issue of locational restraints. As explained at 4.46-4.52 above, the recent absconds have the potential, if repeated, to destroy public faith in TPIMs and prevent them from being used in future. Yet TPIMs, if only for occasional use, are well worth retaining. Locational restraints have the ability to reduce the abscond risk, to rebuild confidence in TPIMs, to disrupt terrorist networks and to reduce the surveillance budget. Relocation was repeatedly described by the courts as proportionate to the risk posed by TPIM subjects. The two-year limit on any subsequent locational restraint will be a further factor in favour of its proportionality.
- 6.24. I do not however recommend the simple restoration of relocation as it was practised under the Prevention of Terrorism Act 2005. The issue of locational measures is not a binary one: a number of intermediate solutions could be explored. It may be that the requirements of security could be satisfied without resorting to relocation at all, but rather by re-interpreting or expanding the existing exclusion measures provided for by TPIMA 2011.

¹⁴⁶ See D. Anderson, *Control Orders in 2011*, March 2012, paras 6.13-6.14, citing DAC Stuart Osborne’s evidence to the TPIM Bill Committee on 21 June 2011, col 6.

¹⁴⁷ The allocation of these sums however remained at the discretion of the police and MI5: there was no requirement that they be devoted entirely to the monitoring of TPIM subjects.

¹⁴⁸ 2013 TPIMs Report, 11.32.

¹⁴⁹ Evidence to JCHR, 19 March 2013, Q11; see further at 6.5, above.

6.25. Two illustrative solutions are as follows:

- (a) The existing power to impose **exclusion measures** permits an individual to be restricted in relation to entering “*a specified area or place, or a place or areas of a specified description*”.¹⁵⁰ To date that power has been used fairly conservatively: thus, in the TPIM notice at Annex 4 to this report, it was used only to impose a requirement for Home Office permission before entering premises such as internet cafes, phone shops and some (mostly international) transport terminals. Subject to legal advice, it might be possible to use the existing power more extensively, for example to impose a similar condition on entry to a particular town or London borough, if there were a case in which that could be useful. Further or alternatively, the paragraph could be amended both so as to make it clear that use of that kind is permissible, and so as to allow the imposition of a doughnut-shaped exclusion zone encircling the area of the subject’s residence. That way, the subject and his family could still travel around the area they considered home; but any non-permitted travel outside it would be detected by the GPS system.
- (b) If such exclusion measures were considered insufficient to address the problem, perhaps because of a specific risk that dangerous associates would travel through the doughnut and visit the subject close to his own home, a new power to effect **involuntary relocation** could be introduced.¹⁵¹ Under such a measure, as under the Prevention of Terrorism Act 2005, the subject would be moved, with his family if he chose, to a town some hours’ distant from his associates. He could however be allowed considerably more freedom than was the case under control orders to travel without permission (for example, within an entire county as opposed to a relatively small area of a town or city, as was the case under control orders). GPS tags, introduced since the demise of control orders, would facilitate this additional freedom.

6.26. It is also important to stress that even if one of these courses is taken, locational measures should not be imposed on TPIM subjects as a matter of routine. The principle that TPIMs should be used only for those cases in which it is judged both necessary and proportionate to impose them in the individual case¹⁵² would apply with particular force to these powerful measures.

¹⁵⁰ TPIMA 2011, Schedule 1 para 3.

¹⁵¹ Amendment of Schedule 1, para 1 would be required.

¹⁵² Underlined in my 2013 TPIMs Report, Recommendation 4, and accepted in the Government’s response.

- 6.27. Thought would also have to be given, particularly if modified relocation is introduced, to how it could be fruitfully combined with TPIM exit strategies, particularly so far as engagement and association are concerned.

Engagement measure

- 6.28. I wrote last year and have written at 4.29-4.30, above about the importance not only of Prevent work around TPIM subjects and their families, which is being carried out where appropriate, but of engagement in at least some cases directly with the subject, other than by the police and MI5.

- 6.29. Such engagement should normally be initiated by specialised probation officers. Once the subject has been assessed, however, mentors could be provided as appropriate from other organisations. As I said last year:

“It would be naive to suppose that all TPIM subjects, particularly those who may already be hardened terrorists, could be effectively diverted away from TRA by interventions of this kind. All are however human beings; all are and will remain members of society; and some have first come under constraint while still quite young. If nothing else, an element of intervention could give them a point of reference distinct from those which are believed to have led them into TRA. At best, it could help set them on a different path.”¹⁵³

- 6.30. I further advised that any probation-style intervention with TPIM subjects was unlikely to be effective without a power of compulsion. The threat of sanctions for non-compliance is crucial to ensuring that criminal offenders co-operate with the probation service and other agencies at the pre-sentence stage, under supervision in the community and after release from prison. Where TPIMs are concerned, equally, the successful enforcement of existing measures depends ultimately on the possibility of prosecution for breach.¹⁵⁴

- 6.31. My central recommendation – that a power to require attendance at meetings with specified persons should be added to the list of TPIMs – was not accepted or indeed responded to by the Government.¹⁵⁵ Nor has it been welcomed by the legal representatives of TPIM subjects, who have sometimes sought to discourage their clients from voluntary contacts of this nature. I have however detected support for it from many different quarters, including the Joint

¹⁵³ *Ibid.*, 11.43.

¹⁵⁴ *Ibid.*, 10.4 and 11.12.

¹⁵⁵ Though it did note, almost certainly correctly, that there is no existing power under TPIMA 2011 “to require attendance at particular meetings or other engagement with any intervention that might be delivered by Prevent or NOMS [the National Offender Management System], including Probation Trusts”: Government response, May 2013, Cm 8614.

Committee on Human Rights but also the police, MI5 and the National Probation Service.

- 6.32. I remain strongly of the view that this power is desirable, and recommend that it be incorporated into any future legislative revision of the TPIM regime. If frank engagement is to be encouraged, the basis of dialogue must be made entirely clear to TPIM subjects and their representatives, and appropriate assurances may need to be given regarding the non-use of information gathered for the purposes of criminal prosecution or further executive measures. A possible model here is the restricted use undertaking provided for by section 72 of the Serious and Organised Crime and Policing Act 2005.¹⁵⁶
- 6.33. It is for consideration whether engagement of this kind should be limited (as I envisaged last year) to intervention delivered by the Probation Service or Prevent, or whether, as was suggested to me, contact could be required also with other officials. As a minimum, it is important that TPIM subjects should know at any given time exactly who they are talking to, on what terms and for what purpose.
- 6.34. I also consider it important that exit strategies should in future be considered from the very moment that a TPIM notice is first imposed. My view of the importance of this is confirmed by my contacts with the National Probation Service. TPIM subjects are often highly suspicious of anyone whom they associate with authority. Probation officers need time to gain their confidence, and false starts must be allowed for. It is commonplace for convicted offenders of all kinds to be required to attend supervision sessions with the probation service for two years.¹⁵⁷ Whilst the situation of unconvicted persons is of course not identical, there is no reason to suppose that engagement will be any more productive in their cases if limited to a few months at the end of a TPIM notice.

Employment, study and housing

- 6.35. The encouragement of work, study or association with persons not considered dangerous may in particular cases, as I said last year, override the otherwise strong interest in a zero tolerance approach to TPIM compliance.¹⁵⁸ Where it is

¹⁵⁶ Section 72(1) provides: “If a specified prosecutor thinks that for the purposes of the investigation or prosecution of any offence it is appropriate to offer any person an undertaking that information of any description will not be used against the person in any proceedings to which this section applies he may give the person a written notice under this subsection (a “restricted use undertaking”).”

¹⁵⁷ Community rehabilitation orders may be imposed for periods of between six months and three years.

¹⁵⁸ *Ibid.*, 10.10.

appropriate to do so, TPIM subjects should be given all possible assistance by the authorities in seeking productive employment or a course of study.

- 6.36. There is, in addition, a strong case for helping some of those who are coming off a TPIM to find housing. Those representing TPIM subjects have expressed to me concern that they will be unable to explain where they have lived for the past two years, will not have references from recent landlords and will not be able to afford a deposit on a private rental property. Police sources expressed some sympathy with that concern.
- 6.37. The Home Office has been prepared to allow subjects a two-month grace period in which to vacate Home Office-provided accommodation. It would be unrealistic to expect the Home Office to fund the housing of ex-TPIM subjects for any longer, or to help with the provision of private rental deposits. There may be cases, however, in which a stable housing situation helps dissuade a subject from travel for terrorism overseas, or enables him to hold down a job. All possible assistance should be given, where needed, in the form of references to private landlords, explanations to local authorities or help with applications for housing assistance. I was pleased to see that in at least one case, assistance of this kind was given during the period under review.

Other measures

- 6.38. The two headline differences between control orders and TPIMs are the power of relocation that existed under the former, and the two-year limit applicable to the latter. There were however many other differences, some of them summarised at 3.12(b), above: a total of 12 were set out in my Control Order report of 2012.¹⁵⁹
- 6.39. As a package, they amount to an appreciable (and welcome) liberalisation of the regime. Of particular significance, in addition to the headline differences, are the shortening of the maximum curfew (now referred to as an overnight residence requirement) and the removal of the option to prohibit all access to mobile phones, computers and the internet.
- 6.40. In my conversations with Home Office officials, MI5 and police, I encountered no expressions of regret at these changes. The two-year limit, while no doubt carefully debated prior to its introduction, is now generally perceived as part of the landscape. While some of the changes have created difficulties, the authorities seem to have been able to work around them.

¹⁵⁹ D. Anderson, *Control Orders in 2011*, Annex 9.

6.41. Accordingly, while I shall keep the operation of all TPIMs under careful review, I have no further recommendations at this stage other than those adverted to already in this chapter and set out formally in chapter 7, below.

7. RECOMMENDATIONS

Recommendation 1

Though no TPIMs are currently in force, the power to impose TPIMs or some analogous measure should remain on the statute book.¹⁶⁰

Recommendation 2

The very broad definition of terrorism-related activity in TPIMA 2011 section 4 should be revisited, when the occasion next arises to amend the Act.¹⁶¹

Recommendation 3

The possibility of requiring the Home Secretary to satisfy a court that a TPIM subject has been involved in terrorism (rather than, as now, that her own belief in that involvement is reasonable) should also be considered, though the Government's rejection of this recommendation in 2013 is noted.¹⁶²

Recommendation 4

The range of locational measures available under Schedule 1 to TPIMA 2011 should be revisited, with a view to using them more effectively and/or strengthening them. In particular, consideration should be given to:

- (a) making more use of the existing power to impose exclusion measures (Schedule 1, para 3);**
- (b) amending that power so as to clarify or extend the possibilities for imposing exclusion zones; and/or**
- (c) if operational requirements so dictate, restoring the power to effect involuntary relocation. Any such power could and should however allow subjects to travel within a significantly wider area than was the case under the control order system.¹⁶³**

Recommendation 5

If a power to impose new locational measures is introduced, particular care should be taken to ensure that it is used only when the individual

¹⁶⁰ 6.7-6.9, above.
¹⁶¹ 6.12-6.15, above.
¹⁶² 6.16-6.18, above.
¹⁶³ 4.48-4.52 and 6.19-6.27, above.

circumstances of the particular TPIM subject render it necessary and proportionate to do so.¹⁶⁴

Recommendation 6

A new power to require subjects to attend meetings with specified interlocutors should be added to Schedule 1.¹⁶⁵

Recommendation 7

As regards the use of that power, careful consideration should be given to:

- (a) the purpose of the intervention (which I envisage normally being led by the probation service or Prevent);
- (b) the need to afford the TPIM subject complete clarity as to the purpose of the intervention, the identity of his interlocutors and the use (if any) to which his answers could be put; and
- (c) the possible offer of reassurance on the analogy of restricted use undertakings under SOCPA section 72.¹⁶⁶

Recommendation 8

Exit strategies, including engagement-based strategies, should be formulated so far as possible when TPIM notices are first imposed, and not left to their final months.¹⁶⁷

Recommendation 9

The Home Office and police should give all possible assistance to TPIM subjects in relation to employment, studies and future housing.¹⁶⁸

Recommendation 10

A working group should be established, chaired by a High Court judge, to discuss and seek solutions to procedural and timing problems in TPIM cases, or closed material cases more generally, including (by way of an illustrative and non-exhaustive list) the perceived problems of:

- (a) late and piecemeal disclosure by the Government;

¹⁶⁴ 6.26, above.

¹⁶⁵ 4.29-4.30 and 6.28-6.33, above.

¹⁶⁶ 6.32-6.33, above.

¹⁶⁷ 6.34, above.

¹⁶⁸ 6.35-6.37, above.

- (b) late service of expert evidence, to which the special advocates lack the practical ability to respond;**
- (c) over-use of closed material proceedings for evidence which could safely have been heard in open, or by other procedures such as an *in camera* hearing;**
- (d) the absolute nature of the bar on the special advocates' ability to communicate with the subject and the open advocates after the case has gone into closed; and**
- (e) the time that cases (including but not limited to variation appeals) take to come to court.**

The terms of reference of any such group should be sufficiently broad to allow any matters of procedural concern to the court or to the parties before it to be raised and, so far as possible, resolved by practice guidance or by recommendations for changes to the applicable rules.¹⁶⁹

¹⁶⁹ 5.26-5.33, above.

ANNEX 1

Written Ministerial Statement on passport withdrawal, April 2013

WRITTEN MINISTERIAL STATEMENT

The issuing, withdrawal or refusal of passports

The British passport is a secure document issued in accordance with international standards set by the International Civil Aviation Organisation. The British passport achieves a very high standard of security to protect the identity of the individual, to enable the freedom of travel for British citizens and to contribute to public protection in the United Kingdom and overseas.

There is no entitlement to a passport and no statutory right to have access to a passport. The decision to issue, withdraw, or refuse a British passport is at the discretion of the Secretary of State for the Home Department (the Home Secretary) under the Royal Prerogative.

This Written Ministerial Statement updates previous statements made to Parliament from time to time on the exercise of the Royal Prerogative and sets out the circumstances under which a passport can be issued, withdrawn, or refused. It redefines the public interest criteria to refuse or withdraw a passport.

A decision to refuse or withdraw a passport must be necessary and proportionate. The decision to withdraw or refuse a passport and the reason for that decision will be conveyed to the applicant or passport holder. The disclosure of information used to determine such a decision will be subject to the individual circumstances of the case.

The decision to refuse or to withdraw a passport under the public interest criteria will be used only sparingly. The exercise of this criteria will be subject to careful consideration of a person's past, present or proposed activities.

Passport facilities may be refused to or withdrawn from British nationals who may seek to harm the UK or its allies by travelling on a British passport to, for example, engage in terrorism-related activity or other serious or organised criminal activity.

This may include individuals who seek to engage in fighting, extremist activity or terrorist training outside the United Kingdom, for example, and then return to the UK with enhanced capabilities that they then use to conduct an attack on UK soil. The need to disrupt people

who travel for these purposes has become increasingly apparent with developments in various parts of the world.

Operational responsibility for the application of the criteria for issuance or refusal is a matter for the Identity and Passport Service (IPS) acting on behalf of the Home Secretary. The criteria under which IPS can issue, withdraw or refuse a passport is set out below.

Issuing a passport

Passports are issued when the Home Secretary is satisfied as to:

- i the identity of an applicant; and
- ii the British nationality of applicants, in accordance with relevant nationality legislation; and
- iii there being no public interest reasons (as set out below) for refusing a passport.

IPS may make any checks necessary to ensure that the applicant is entitled to a British passport.

Refusing or withdrawal of a passport

A passport application may be refused or an existing passport may be withdrawn. These are the persons who may be refused a British passport or who may have their existing passport withdrawn:

- i a minor whose journey was known to be contrary to a court order, to the wishes of a parent or other person or authority in whose favour a residence or care order had been made or who had been awarded custody; or care and control, or to the provisions of section 25(1) of the Children and Young Persons Act 1933 as amended by section 42 of the Children and Young Persons Act 1963, or section 56 of the Adoption Act 1976, as amended by the Children Act 1989; or
- ii a person for whose arrest a warrant had been issued in the United Kingdom, or a person who was wanted by the United Kingdom police on suspicion of a serious crime; or
- iii a person who is the subject of:
 - a court order, made by a court in the United Kingdom, or any other order made pursuant to a statutory power, which imposes travel restrictions or restrictions on the possession of a valid United Kingdom passport; or

- bail conditions, imposed by a police officer or a court in the United Kingdom, which include travel restrictions or restrictions on the possession of a valid United Kingdom passport; or
 - an order issued by the European Union or the United Nations which prevents a person travelling or entering a country other than the country in which they hold citizenship; or
 - a declaration made under section 15 of the Mental Capacity Act 2005.
- iv A person may be prevented from benefitting from the possession of a passport if the Home Secretary is satisfied that it is in the public interest to do so. This may be the case where:
- a person has been repatriated from abroad at public expense and their debt has not yet been repaid. This is because the passport fee supports the provision of consular services for British citizens overseas; or
 - a person whose past, present or proposed activities, actual or suspected, are believed by the Home Secretary to be so undesirable that the grant or continued enjoyment of passport facilities is contrary to the public interest.

There may be circumstances in which the application of legislative powers is not appropriate to the individual applicant but there is a need to restrict the ability of a person to travel abroad.

The application of discretion by the Home Secretary will primarily focus on preventing overseas travel. There may be cases in which the Home Secretary believes that the past, present or proposed activities (actual or suspected) of the applicant or passport holder should prevent their enjoyment of a passport facility whether overseas travel was or was not a critical factor.

ANNEX 2

Quarterly Reports 2012-13

HOME OFFICE

Terrorism Prevention and Investigation Measures (1 December 2012 to 28 February 2013)

The Secretary of State for the Home Department (Mrs. Theresa May): Section 19(1) of the Terrorism Prevention and Investigation Measures Act 2011 (the Act) requires the Secretary of State to report to Parliament as soon as reasonably practicable after the end of every relevant three-month period on the exercise of her TPIM powers under the Act during that period.

The level of information provided will always be subject to slight variations based on operational advice.

TPIM notices in force (as of 28 February 2013)	8
TPIM notices in respect of British citizens (as of 28 February 2013)	7
TPIM notices extended	6
TPIM notice revoked	1
TPIM notices expired	2
TPIM notice revived	1
Variations made to measures specified in TPIM notices	21
Applications to vary measures specified in TPIM notices refused	12

During the reporting period: one TPIM notice was revoked as the subject was remanded in custody; one TPIM notice expired as the subject was remanded in custody and was later revived upon his release. As Parliament is aware, one individual subject to a TPIM notice (Ibrahim Magag) absconded on 26 December 2012; the TPIM notice against him expired during this period.

A TPIM Review Group (TRG) keeps every TPIM notice under regular and formal review. The TPIM Review Group met four times during this reporting period.

Two individuals were charged in relation to an offence under section 23 of the Act (contravening a measure specified in a TPIM notice without reasonable excuse) during the period.

Section 16 of the 2011 Act provides rights of appeal in relation to decisions taken by the Secretary of State under the Act. Two appeals were lodged under section 16 during the reporting period.

End of Statement.

HOME OFFICE

Terrorism Prevention and Investigation Measures (1 March 2013 to 31 May 2013)

The Secretary of State for the Home Department (Mrs. Theresa May): Section 19(1) of the Terrorism Prevention and Investigation Measures Act 2011 (the Act) requires the Secretary of State to report to Parliament as soon as reasonably practicable after the end of every relevant three-month period on the exercise of her TPIM powers under the Act during that period.

The level of information provided will always be subject to slight variations based on operational advice.

TPIM notices in force (as of 31 May 2013)	8
TPIM notices in respect of British citizens (as of 31 May 2013)	8
TPIM notices extended (during the reporting period)	1
TPIM notices revoked (during the reporting period)	1
TPIM notices revived (during the reporting period)	1
Variations made to measures specified in TPIM notices (during the reporting period)	25
Applications to vary measures specified in TPIM notices refused (during the reporting period)	4

During the reporting period one TPIM notice was revoked because the subject was remanded in custody; and one TPIM notice that had been revoked in a previous quarter was revived upon the subject's release from prison.

One individual was charged in relation to an offence under section 23 of the Act (contravening a measure specified in a TPIM notice without reasonable excuse) during the period.

Section 16 of the Act provides rights of appeal in relation to decisions taken by the Secretary of State under the Act. No appeals were lodged under section 16 during the reporting period. One judgment was handed down by the High Court in relation to an appeal under section 16 of the Act, lodged in a previous quarter. In *Secretary of State for the Home Department v CF* [2013] EWHC 843 (Admin), handed down on 12 April 2013, the High Court upheld the Secretary of State's decision not to vary four of the measures imposed under CF's TPIM notice; the Secretary of State was directed to make an amendment to one other measure. This judgment is available at <http://www.bailii.org/>

The TPIM Review Group (TRG) keeps every TPIM notice under regular and formal review. The TRG has not met during this reporting period.

HOME OFFICE

Terrorism Prevention and Investigation Measures (1 June 2013 to 31 August 2013)

The Secretary of State for the Home Department (Mrs. Theresa May): Section 19(1) of the Terrorism Prevention and Investigation Measures Act 2011 (the Act) requires the Secretary of State to report to Parliament as soon as reasonably practicable after the end of every relevant three-month period on the exercise of her TPIM powers under the Act during that period.

The level of information provided will always be subject to slight variations based on operational advice.

TPIM notices in force (as of 31 August 2013)	9
TPIM notices in respect of British citizens (as of 31 August 2013)	8
TPIM notices extended (during the reporting period)	0
TPIM notices revoked (during the reporting period)	0
TPIM notices revived (during the reporting period)	1
Variations made to measures specified in TPIM notices (during the reporting period)	6
Applications to vary measures specified in TPIM notices refused (during the reporting period)	1

During the reporting period one TPIM notice that had been revoked in a previous quarter was revived upon the subject's release from prison.

Two individuals were charged in relation to an offence under section 23 of the Act (contravening a measure specified in a TPIM notice without reasonable excuse) during the period.

Section 16 of the Act provides rights of appeal in relation to decisions taken by the Secretary of State under the Act. No appeals were lodged under section 16 during the reporting period. One judgment was handed down by the High Court in relation to an appeal under section 16 of the Act, lodged in a previous quarter. In *Secretary of State for the Home Department v BF* [2013] EWHC 843 (Admin), handed down on 30 July 2013, the High Court upheld the Secretary of State's decision to extend BF's TPIM notice and all the measures. This judgment is available at <http://www.bailii.org/>

The TPIM Review Group (TRG) keeps every TPIM notice under regular and formal review. The TRG has met twice during this reporting period.

HOME OFFICE

Terrorism Prevention and Investigation Measures(1 September to 30 November 2013)

The Secretary of State for the Home Department (Mrs. Theresa May): Section 19(1) of the Terrorism Prevention and Investigation Measures Act 2011 (the Act) requires the Secretary of State to report to Parliament as soon as reasonably practicable after the end of every relevant three-month period on the exercise of her TPIM powers under the Act during that period.

The level of information provided will always be subject to slight variations based on operational advice.

TPIM notices in force (as of 30 November 2013)	8
TPIM notices in respect of British citizens (as of 30 November 2013)	8
TPIM notices extended (during the reporting period)	0
TPIM notices revoked (during the reporting period)	1
TPIM notices revived (during the reporting period)	0
Variations made to measures specified in TPIM notices (during the reporting period)	0
Applications to vary measures specified in TPIM notices refused (during the reporting period)	6

During the reporting period: one individual was charged in relation to an offence under section 23 of the Act (contravening a measure specified in a TPIM notice without reasonable excuse) and his TPIM notice was revoked upon the subject's remand in custody.

As Parliament is aware one individual subject to a TPIM notice (Mohammed Ahmed Mohamed) absconded on 1 November 2013.

Section 16 of the Act provides rights of appeal in relation to decisions taken by the Secretary of State under the Act. One appeal was lodged under section 16 during the reporting period. No judgments were handed down by the High Court in relation to appeals under section 16 of the Act.

The TPIM Review Group (TRG) keeps every TPIM notice under regular and formal review. The TRG has met twice during this reporting period.

ANNEX 3

Obligations on TPIM subjects, December 2013

MEASURE		AM		AY		BF		BM		BX		CC		CD		CE		CF		DD	
		8h	10h	10h	6h20	9h	10h	10h	10h	10h	10h	10h	10h	10h	10h	10h	10h	10h	10h	10h	10h
Overnight residence:	confined hours	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	10h
	HO provided accommodation	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Travel:	must not leave GB	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	surrender documents	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Exclusion:	specific areas/places	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	classes of area/place	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	All mosques																				
Movement directions:	comply with directions	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	one bank account		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Financial services:	credit subject to permission		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	limit on cash held																				
Property:	notify premises and vehicles	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	no international transfers		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	limit on domestic transfers																				
Electronic communications:	one computer, landline, mobile	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	website access subject to permission																				
Association:	Specific individuals	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	notify meetings in residence	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	notify meetings outside residence	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	no international communication		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	preaching and publishing subject to permission																				
Work/studies:	notify work/studies	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	not work in notified fields	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Reporting:	daily to police station		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Photograph:	allow photo to be taken	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Monitoring:	curfew tagging	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	GPS tagging	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
	call in at specified times	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Average length of overnight residence period: 9 Hours 20minutes

*Measures have been varied over time – figures are correct on 11 December 2013.

ANNEX 4

Specimen TPIM notice, 2013

SCHEDULE OF MEASURES IMPOSED BY THIS TPIM NOTICE

This schedule sets out the measures imposed on: xxxx

GENERAL

This schedule refers to Schedule 1 to the TPIM Act 2011, which is enclosed.

In places this schedule provides that you:

- must give notice to the Home Office before doing something;
- must give notice to the Home Office after doing something; or
- must not do something without obtaining the prior permission of the Home Office.

This schedule sets out the information you must supply when **giving notice**. In some cases the Home Office may write to you for additional information. A requirement for you to give notice will not be complied with until you receive written notice from the Home Office that your notice has been received and no further information is required from you.

The information you must provide when **seeking permission** under the measures in this schedule will be notified to you separately in writing. In some cases the Home Office may write to you for additional information. Any request for permission will not be considered further unless all such information is provided. Where permission is granted, this will be notified to you in writing. Permission may be granted subject to conditions, and you must comply with all these conditions.

A breach of any measure (including failing to comply with the conditions of any permission granted) without reasonable excuse is a criminal offence.

OVERNIGHT RESIDENCE MEASURE

- 1.1) You must reside at XXXX (“your residence”).
- 1.2) You must remain inside your residence between the hours of 21.30 and 07.30. For this purpose, “residence” means only the flat at XXXX and **does not include** any garden or communal area associated with it, whether inside or outside the building.
- 1.3) You may only be away from your residence between the hours of 21.30 and 07.30 if the Home Office has given you permission to do so.
- 1.4) You must comply with the terms of occupancy associated with your residence, which are enclosed with this notice.

TRAVEL MEASURE

- 2.1) You must not leave Great Britain unless the Home Office has given you permission to do so.
- 2.2) On service of this TPIM notice, you must surrender your travel documents to a police officer.
- 2.3) You must not possess or take any step to obtain any travel document unless the Home Office has given you permission to do so.

2.4) "Travel document" means:

- a passport, as defined in paragraph 2(4) of Schedule 1 to the TPIM Act 2011; or
- any ticket or other document that permits you to make a journey from Great Britain to a place outside Great Britain or between places outside Great Britain.

EXCLUSION MEASURE

3.1) You must not enter any of the following places ('the excluded places') unless the Home Office has given you permission to do so:

- (a) any café, shop or other premises that provides internet access to customers or clients;
- (b) any shop or other premises that carries on any business that exclusively or mainly provides currency exchange or money transfer facilities whether domestic or international other than branches of the bank(s) that holds your nominated or any permitted account (see the Financial Services Measure);
- (c) any shop or other premises that carries on any business that is exclusively or mainly a travel agency; or
- (d) any shop or other premises that carries on any business that exclusively or mainly provides rental or sale of electronic communication devices (within the meaning of paragraph 7(5) of Schedule 1 to the TPIM Act 2011).

3.2) You must not enter any of the following places unless the Home Office has given you permission to do so:

- (a) any airport or sea port;
- (b) any railway station from which rail services to overseas destinations depart;
- (c) any coach station from which coach or bus services to overseas destinations depart; or
- (d) any building, car park, collection point, drop off point or other area that is within, located at or is connected or adjacent to any place mentioned in (a), (b) or (c).

MOVEMENT DIRECTIONS MEASURE

4.1) You must comply with any directions given to you by a police officer in accordance with paragraph 4 of Schedule 1 to the TPIM Act 2011.

FINANCIAL SERVICES MEASURE

5.1) You must not hold or use any account other than one "nominated account", which must be held with a bank (as defined in paragraph 5(4) of Schedule 1 to the TPIM Act 2011, which includes a building society or the Post Office), unless the Home Office has given you permission to do so.

5.2) The nominated account must be held in your name only and you must not allow any other person to use or make withdrawals from that account.

5.3) On service of this TPIM notice you must provide to the Home Office:

- (a) within two working days, notification of the name of the financial services provider, the name(s) in which the account is held, and the account number and sort code (or equivalent account details) for all accounts you hold;

- (b) within two working days, notification of which account will be your nominated account;
- (c) within 10 working days, closing statements showing that you have ended your interest in any account other than your nominated account or any “permitted account” (an account for which you have obtained permission in accordance with 5.1), or evidence that you have instructed the financial service provider to end your interest in such account/s;
- (d) within two working days, notification of any loan, credit or mortgage facility to which you have access (including credit cards, store cards or consumer credit agreements) and for each facility the name of the provider, any card or account number and the value of money you are able to borrow.

5.4) You must provide to the Home Office:

- (a) notification of the name of the financial services provider, the name(s) in which the account is held and the account number and sort code (or equivalent account details) for any permitted account opened after the service of this TPIM notice, within two working days of opening that account;
- (b) statements in relation to your nominated account and any permitted account, every month, within 10 working days of the date on which they are issued or as otherwise notified to you by the Home Office.

5.5) You must not acquire access to any loan, credit or mortgage facility (including credit cards, store cards or consumer credit agreements) unless the Home Office has given you permission to do so.

5.6) You must not:

- (a) possess more than £50 in cash; or
- (b) withdraw more than £50 in cash within any week

unless the Home Office has given you permission to do so. “Cash” has the meaning given in paragraph 5(6) of Schedule 1 to the TPIM Act 2011. “Week” means the period running from the start of Monday to the end of Sunday.

5.7) A reference in this measure to holding an account has the same meaning as in paragraph 5(7) of Schedule 1 to the TPIM Act 2011.

PROPERTY MEASURE

6.1) Within five working days of service of this TPIM notice, you must notify the Home Office of:

- The address of any building, land, or other premises in the United Kingdom that you own (solely or jointly), other than your residence.
- The address of any building, land or other premises in the United Kingdom that you rent, hire, or in which you have any other interest or in relation to which you may exercise any right (including a right of use or a right to grant access), and the nature of your interest or right.
- The make, model and registration number of any motor vehicle that you own or are the registered keeper.

6.2) If you subsequently acquire ownership of, or any other interest in or right over, any building, land or other premises in the United Kingdom, or ownership (or registered

keeper status) of any motor vehicle, you must notify the Home Office of this within two working days.

- 6.3) At least one working day in advance of the first occasion on which you drive any motor vehicle you must notify the Home Office of its make, model and registration number.
- 6.4) You must not transfer, or arrange for the transfer of, any money or other property to a person or place outside the United Kingdom unless the Home Office has given you permission to do so.
- 6.5) You must not transfer or arrange for the transfer of:
- any money in excess of £50 (except by making purchases with a debit card from your nominated account); or
 - or any other property worth more than £50

to a person or place within the United Kingdom unless the Home Office has given you permission to do so.

ELECTRONIC COMMUNICATION DEVICE MEASURE

- 7.1) Subject to 7.2 to 7.7, you must not (directly or indirectly):

- (a) use or possess (whether inside or outside the residence);
- (b) bring into the residence; or
- (c) knowingly permit another person to bring into the residence

any electronic communication device (within the meaning of paragraph 7(5) of Schedule 1 to the TPIM Act 2011) unless the Home Office has given you permission to do so.

- 7.2) You may possess and use:

- (a) inside the residence only, one computer of a make and model agreed in advance by the Home Office that provides access to the internet by connection to a fixed line (only), including any apparatus necessary and agreed in advance for that purpose (“the permitted computer”);
- (b) inside the residence only, one fixed telephone line (“the permitted telephone line”);
- (c) one mobile telephone that does not provide access to the internet (“the permitted mobile”) and one SIM card (“the permitted SIM card”); and
- (d) any device provided to you in accordance with the Monitoring Measure.

- 7.3) You may permit another person to bring the following devices into the residence whilst you are in the residence, provided the devices are switched off (where applicable) and not used at any time whilst you are in the residence:

- (a) mobile telephones and associated SIM cards
- (b) recordable disks; and
- (c) models of the following devices which are not capable of connecting to the internet:
 - i. memory sticks;
 - ii. digital music players;
 - iii. digital cameras;

- iv. dictating machines; and
 - v. pagers.
- 7.4) The prohibition in 7.1 against knowingly permitting electronic communications devices into the residence does not apply to devices belonging to:
- (a) police officers;
 - (b) employees of the electronic monitoring company;
 - (c) anyone authorised by the Home Office;
 - (d) anyone required to be given access to the residence under the terms of occupancy or for the maintenance of the water, electricity, gas or telephone supply who is operating in his/her professional capacity;
 - (e) members of the emergency services operating in their professional capacity; or
 - (f) healthcare or social work professionals operating in their professional capacity.
- 7.5) You must grant a police officer access to your residence for the purpose of inspecting or modifying any electronic communication device which you use or possess. You must hand over any such device to a police officer on request and must provide the police officer with any usernames, passwords, PIN codes or any other information reasonably required by the police officer in order to access, inspect or modify the device. You must allow the police officer to remove any such device from the residence in order to inspect or modify it at another place.
- 7.6) You must notify the Home Office of:
- (a) the telephone number and service provider associated with the permitted telephone line within 24 hours of the service of this TPIM notice;
 - (b) any change to the number or service provider associated with the permitted telephone line at least two working days prior to such change taking effect;
 - (c) the make, model and IMEI number of the permitted mobile and the number of the permitted SIM card within 24 hours of the service of this TPIM notice;
 - (d) the make, model and IMEI number of any replacement permitted mobile and the number of any replacement permitted SIM card within 24 hours of it coming into your possession;
 - (e) the make, model and operating system of the permitted computer no less than 2 working days in advance of obtaining the computer;
 - (f) the internet service provider, account number and username used to connect your permitted computer to the internet 5 working days in advance of obtaining the account, and thereafter any changes to the provider, account number or username 5 working days in advance of the change taking effect.
- 7.7) You must not install any software onto your permitted computer unless the Home Office has given you permission to do so.

ASSOCIATION MEASURE

- 8.1) You must not associate or communicate with any of the following persons (including at your residence or by attending any meeting or gathering) unless the Home Office has given you permission to do so:

XXXX
 XXXX
 XXXX
 XXXX
 XXXX

- 8.2) You must not meet any other person (including by attending any meeting or gathering) unless:
- (a) you meet the person at your residence;
 - (b) (for a person) you have notified the Home Office of the name and address of the person and the time and location of the meeting at least two working days before the first time you meet them;
 - (c) (for a meeting or gathering) you have notified the Home Office of the time and location of the meeting or gathering and the name and address of any person you expect to be there at least two working days before the meeting or gathering;
 - (d) you meet the person by chance, but you do not continue or resume the meeting at another place or time without providing notification under 8.2(a);
 - (e) the person is:
 - (i) your mother;
 - (ii) a child aged 10 or under;
 - (iii) your legal representative (but only if you have notified the Home Office that the person is your legal representative);
 - (iv) a member of the emergency services or healthcare or social work professional operating in a professional capacity;
 - (v) someone accessing your residence in a professional capacity for the maintenance of the water, electricity, gas or telephone supply or because they are required to be given access under the terms of occupancy;
 - (vi) someone authorised by the Home Office;
 - (vii) someone providing goods or services to you without appointment as a member of the public;
 - (viii) someone you are meeting for the purpose of work or studies which you have notified to the Home Office under the Work or Studies Measure;
 - (f) you are attending prayers at a mosque.
- 8.3) You must not communicate with any person who is outside the United Kingdom unless the Home Office has given you permission to do so.
- 8.4) References to “associating” and “communicating” have the same meanings as in paragraph 8(3) of Schedule 1 to the TPIM Act 2011.

WORK OR STUDIES MEASURE

- 9.1) If you are already undertaking work or studies when this TPIM notice is served on you, you must notify the Home Office of this within five working days, providing:
- (a) the name and address of the employer or provider of studies;
 - (b) the nature and location of the work or studies; and
 - (c) the usual hours of the work or studies (if applicable).
- 9.2) If you are not undertaking any work or studies when this TPIM notice is served on you, you must notify the Home Office of this fact within five working days.
- 9.3) You must not undertake work or studies in the following “notified fields” unless the Home Office has given you permission to do so:

<u>Work</u>	<u>Studies</u>
Armed Forces;	Chemistry;
Chemical industry;	Biology;
Nuclear industry;	Computer science or IT security;

Communications;
Emergency services;
Energy industry;
Water industry;
Public transport;
Security industry;
Transport or storage of High or
Very High Consequence
Dangerous Goods

Engineering;
Security;
Electronics;
Transport management;
Energy management;
Facilities management

- 9.4) If you are already undertaking work or studies in a notified field when this TPIM notice is served on you, you must cease that work or studies immediately if you receive written directions to do so from the Home Office.
- 9.5) At least two working days before undertaking any new work or studies you must provide the Home Office with the following information:
- (a) the name and address of the employer or provider of studies;
 - (b) the nature and location of the work or studies; and
 - (c) if known, the date on which you expect the work or studies to start, the usual hours of the work or studies (if applicable) and the expected duration of the work or studies (if applicable).
- 9.6) If any of the details provided under 9.1 or 9.5 change, or if you cease undertaking work or studies, you must notify the Home Office within two working days, providing updated details.
- 9.7) In this measure “work” and “studies” have the meanings given in paragraph 9(3) of Schedule 1 to the TPIM Act 2011. “Undertaking” includes holding any interest in a business.

REPORTING MEASURE

- 10.1) You must report in person to a specified police station every day at times that will be notified to you in writing by the Home Office.
- 10.2) You must comply with any instructions given to you by a police officer at the specified police station in connection with this reporting.

PHOTOGRAPHY MEASURE

- 11.1) You must permit a police officer to take photographs of you at a time and place notified to in writing you by the Home Office.

MONITORING MEASURE

- 12.1) You must allow an electronic monitoring tag (“the tag”) to be fitted to you and then wear the tag at all times.
- 12.2) You must not damage or tamper with the tag and you must not damage, move or tamper with the tag monitoring equipment or the telephone provided by the monitoring company (including the associated line).
- 12.3) You must, as required by persons employed by the monitoring company or by a police officer, cooperate with procedures for the operation, inspection, fitting,

installation, testing, calibration, repair or removal of the tag and the tag monitoring equipment. You must permit entry to your residence to persons employed by the monitoring company or police officers at any time for the purpose of such procedures.

- 12.4) You must keep the tag charged using the charging equipment provided by the monitoring company. You must not remove the charging equipment from your residence without the permission of the Home Office.
- 12.5) You must not use the telephone provided by the monitoring company (including the associated line) for any purpose other than contacting the monitoring company or as directed by the Home Office.

---END OF SCHEDULE---

ANNEX 5

Charges for breaches of TPIMs, 2013

Charges for breach of TPIM notices, 2013

Case	Measure breached	Charge (s)	Date of arrest	Date of charge	Status at present
Case 1	Monitoring measure	Tag tamper	15 January 2013	15 January 2013	1 November 2013 the CPS discontinued the prosecution
Case 2	Monitoring measure	Tag tamper	25 July 2013	25 July 2013	1 November 2013 the CPS discontinued the prosecution
Case 3	Association, exclusion, electronic communications	Six counts of addressing a gathering, entering an internet cafe, meeting with an individual without prior notification	8 April 2013 and 18 June 2013	8 April 2013 and 18 June 2013	Guilty plea to three counts (broadcasting without permission, attending or meeting a gathering without permission, and entering an internet cafe), three further counts to lie on file. Sentenced to 9 months on 21 June 2013.
Case 4	Association	Meeting an individual without prior notification.	20 September 2013	20 September 2013	Plea and case management hearing listed for January 2014. Subject on remand.
Case 5	Monitoring measure	Tag tamper	25 July 2013	25 July 2013	1 November 2013 the CPS discontinued the prosecution

Correct as of 26 February 2014

ANNEX 6

Home Office costs, 2012/13

The table below shows the costs to the Home Office of control orders and TPIMs for 2006-07 to 2012-13

All figures have been rounded to the nearest £100.

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13
Total cost to the Home Office of control orders / TPIMs⁽¹⁾	1,940,300	4,615,600	2,707,600	3,195,400	3,103,100	3,079,000	2,550,600
Legal costs to the Home Office ⁽²⁾	1,530,900	3,766,200	1,837,300	2,254,400	2,099,300	2,279,000	1,667,000
Cost to the Home Office of accommodation subsistence, council tax, telephone and utility bills for controlled persons	87,000	246,300	203,300	315,400	231,200	273,000	399,300
Staff and administrative costs to the Home Office	322,400	603,100	667,000	625,600	517,900	527,000	484,300

(1) These figures refer to the financial years 2006-07 to 2012-13. They include: the cost of Home Office staff working on control orders and TPIMs; administrative costs relating to the management of control orders and TPIMs; legal advice and other legal costs; accommodation, subsistence, Council Tax and utility bills and telephone line rental/phone cards provided to controlled persons in the course of the administration of the control order; and the fees paid to the Independent Reviewer of Terrorism Legislation. The costs for 2006-07 are based partly on estimates.

(2) These figures represent legal costs to the Home Office and do not include legal costs associated with control orders incurred by other public authorities – for example the costs of court and judicial time or costs to the Legal Services Commission.

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