

# **THE TERRORISM ACTS IN 2014**

REPORT OF THE INDEPENDENT REVIEWER ON THE  
OPERATION OF THE TERRORISM ACT 2000 AND  
PART 1 OF THE TERRORISM ACT 2006

by

**DAVID ANDERSON Q.C.**

**Independent Reviewer of Terrorism Legislation**

SEPTEMBER 2015



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## THE YEAR IN SUMMARY

- Global terrorist casualties increased sharply, with ISIL and Boko Haram the chief perpetrators. There were no Islamist or extreme right wing **terrorist attacks** in the UK during 2014 but numerous Northern Ireland-related incidents, some of them potentially deadly (Chapter 2).
- The **threat level** from “*international terrorism*” was increased in August 2014 to “*severe*”, indicating that attacks were highly likely. The following months saw attacks in other western countries and the interruption of several life-threatening terrorist operations in the UK (Chapter 2).
- 11 new groups were **proscribed** in 2014, two name-change orders made and two deproscription applications refused (Chapter 4).
- The use of TA 2000 section 43 in London and Northern Ireland continued to decline; the no-suspicion section 47A **stop and search** power was not used at all (Chapter 5).
- **Port examinations** have declined by 60% over five years but produced some useful results, including in relation to the safeguarding of vulnerable people travelling to Syria. The Supreme Court has commented on the exercise of TA 2000 Schedule 7 powers (Chapter 6).
- Terrorism-related **arrests** were more frequent in both Great Britain and Northern Ireland, notably of 18-20 year olds in Great Britain. There were high numbers of terrorism **charges** and **convictions** in Great Britain, with a sharp rise in prosecutions for activity overseas (Chapter 7).
- Three **sentences** of 10 or more years were imposed in England under TA 2006 section 5 for preparing acts of terrorism, one on a neo-Nazi and two on men who travelled to Syria (Chapter 8).
- A **Counter-Extremism Bill** was planned to supplement existing offences, including under the Terrorism Acts (Chapter 9).
- The scope of **Independent Reviewer’s functions** was increased, and some additional assistance is to be provided (Chapter 10).

# 1. INTRODUCTION

## Independent review

- 1.1 I am required by section 36 of the Terrorism Act 2006 [TA 2006] to review the operation during each calendar year of the Terrorism Act 2000 [TA 2000] and Part 1 of TA 2006 [the Terrorism Acts], and to report.<sup>1</sup> This is my fifth annual report on the Terrorism Acts, and the 15th report I have produced in all since taking up appointment as Independent Reviewer in February 2011. My previous reports, together with the Government's responses to them and much other material, are freely downloadable from my website.<sup>2</sup>
- 1.2 The function of the Independent Reviewer, as it was explained when reviews were first placed on an annual basis, is to “look at the use made of the statutory powers relating to terrorism”, and “consider whether, for example, any change in the pattern of their use needed to be drawn to the attention of Parliament”.<sup>3</sup> For more than 35 years, successive Independent Reviewers have used their reports to ask whether special powers continue to be necessary for fighting terrorism, and to make recommendations for reform.<sup>4</sup>
- 1.3 The essence of independent review lies in the combination of three concepts not often seen together: complete independence from Government; unrestricted access to classified documents and national security personnel; and a statutory obligation on Government to lay the Independent Reviewer's reports before Parliament on receipt.<sup>5</sup> My reports are based on broad reading and on the widest possible range of interviews and contacts, both in the UK and (for comparative purposes) abroad. They aim to inform – so far as is possible within the necessary constraints of secrecy – the parliamentary and public debate over anti-terrorism powers and civil liberties in the UK.
- 1.4 Whilst reviewing and reporting remain my staple functions, I communicate increasingly with the interested public through posts on my website<sup>6</sup> and through use of twitter (@terrorwatchdog).<sup>7</sup> This enables me to give a much quicker reaction to important

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<sup>1</sup> All acronyms used in this report are explained at [Annex 1](#).

<sup>2</sup> <https://terrorismlegislationreviewer.independent.gov.uk>. See in particular *The Terrorism Acts in 2013* (July 2014), *The Terrorism Acts in 2012* (July 2013), *The Terrorism Acts in 2011* (June 2012) and *Report on the operation in 2010 of TA 2000 and Part 1 of TA 2006* (July 2011). As always, I am indebted to my special adviser, Professor Clive Walker, for his invaluable research and counsel.

<sup>3</sup> Lord Elton, Hansard HL 8 March 1984, vol 449 cols 405-406.

<sup>4</sup> For a short history of independent review, see D. Anderson, “The independent review of terrorism laws” [2014] Public Law 403-420, available from my website by kind permission of the publishers.

<sup>5</sup> The phrase “on receipt” was interpreted by the then Security Minister, James Brokenshire MP, as equating to “promptly”: Hansard (Public Bill Committee) vol 532 col 253, 30 June 2011; see *The Terrorism Acts in 2011*, June 2012, 1.23-1.25.

<sup>6</sup> Over the 7.5 months from 1 January to mid-August 2015, some 17,000 users opened 25,000 sessions on the site, with 48,000 page views. 78% of sessions were from the UK and 5% from the USA. Canada, France, Australia, Germany and the Netherlands each accounted for 200-400 sessions. Since the site went live in 2011, a total of 94,000 sessions and 180,000 page views have been recorded from some 72,000 users. Source: Home Office Digital.

<sup>7</sup> As of August 2015, @terrorwatchdog had more than 4,000 twitter followers in around 60 countries, many of whom retweeted to much larger potential audiences. Their geographical spread is similar to that of the website users: 79% were based in the UK (half of those in London), a further 10% in the other Five Eyes countries (USA, Canada, Australia and New Zealand) and most of the remainder in Europe. Source: tweepmap.

judgments or legislative developments, and often results in valuable dialogue with experts and academics whom I have not had the opportunity to meet off-line.

### **Aim of this report**

- 1.5 My four previous annual reports into the Terrorism Acts, shorn of their annexes, occupied almost 500 pages of text and made 44 recommendations. Though many of those recommendations have been accepted or addressed in one way or another, some have been rejected. In any event, my previous reports continue to serve as what I hope is a useful introduction to the scheme and operation of the Terrorism Acts.
- 1.6 This report is slightly shorter than usual. This reflects a desire to avoid repetition of previous reports, as well as recent additional claims on my time.<sup>8</sup> I have however continued to receive regular briefings, travelled (in particular to Northern Ireland) and done my best to keep abreast of significant developments. With more assistance, more useful work could have been done. I return to the future of independent review at Chapter 10, below.
- 1.7 This report is also published rather later than usual: 1.17 below. I have taken the opportunity to stray past the end of the period under review where information is available and I have considered it helpful to do so.

### **Legislative change**

- 1.8 The Terrorism Acts were amended in a number of respects in 2014 and the first part of 2015.
- a) The Anti-social Behaviour Crime and Policing Act 2014 [**ASBCP 2014**] received Royal Assent on 13 March 2014. Section 148 and Schedule 9 introduced widespread changes to the port powers under TA 2000 Schedule 7. These were summarised in last year's report,<sup>9</sup> and more recent developments are catalogued at 6.18-6.22, below.
- b) The Counter-Terrorism and Security Act 2015 [**CTSA 2015**] received Royal Assent on 12 February 2015. It made changes to the remit of the Independent Reviewer of Terrorism Legislation, and empowered the Secretary of State to make regulations establishing a Privacy and Civil Liberties Board [**PCLB**] to provide advice and assistance to the Independent Reviewer (sections 44-46). These topics are discussed in Chapter 10, below. CTSA 2015 also made further changes to the scope of the Schedule 7 power (section 43 and Schedule 8), confirmed that it is an

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<sup>8</sup> My normal statutory responsibilities (annual reports on the Terrorism Acts, the Terrorist Asset-Freezing Etc. Act [**TAFSA 2010**] and the Terrorism Prevention and Investigation Act 2011 [**TPIMA 2011**]) were significantly supplemented in 2014-15 by the Investigatory Powers Review that I was invited to conduct in July 2014, culminating in the publication of the report *A Question of Trust* in June 2015, and by a review of the policy of deportation with assurances that was commissioned in November 2013 and will be completed later this year.

<sup>9</sup> *The Terrorism Acts in 2013*, July 2014, 7.16-7.24.



offence for insurers to make payments in response to terrorist demands (section 42), reformed the law relating to Terrorist Prevention and Investigation Measures [TPIMs] (Part 2), and introduced two new powers to provide temporary restrictions on travel (Part 1), which fall outside the ambit of this report but will be reported upon during 2016.

- c) The Criminal Justice and Courts Act 2015 [CJCA 2015] also received Royal Assent on 12 February 2015. Sections 1, 3, 6 and Schedule 1, commenced on 13 April 2015, increased the maximum sentences for certain Terrorism Act offences from 10 or 14 years to life imprisonment, and brought them within the dangerous offenders sentencing scheme, thus introducing the possibility of whole life orders.<sup>10</sup>
- d) The Serious Crime Act 2015 [SCA 2015] received Royal Assent on 3 March 2015. Section 81 provides for extra-territorial jurisdiction for the offence under TA 2006 section 5 (conduct in preparation for terrorism) and extends existing extra-territorial jurisdiction for TA 2006 section 6 (training for terrorism). The contemplated effect was to allow for prosecutions of people who had, for example, travelled from the UK to fight in Syria, and in respect of whom there might be evidence from (for example) social media, communications or persons they had encountered abroad. There are early signs that notwithstanding the obvious difficulties of evidence-gathering in Syria, this extension may prove useful in bringing to trial in the UK some of those who have trained or prepared for terrorism abroad.

## Response to my July 2014 report

- 1.9 The Government responded fully in March 2015 to my report of July 2014, *The Terrorism Acts in 2013*.<sup>11</sup> It noted that one of my recommendations on the definition of terrorism (a reduction in the definition of “terrorism-related activity”) had been given effect in CTSA 2015. The other recommended changes – approvingly referred to by the Supreme Court in *R v Gul*<sup>12</sup> – were not ruled out, but judged premature, since the UK definition of terrorism was said to be “the material focus of ongoing litigation”.
- 1.10 Decisions on my recommendations regarding clarification of and change to TA 2000 Schedule 8 (detention) were also deferred pending the outcome of litigation, some of which has now been definitively decided: 7.39-7.42 below. Sympathy was expressed for the recommendation that the detention clock under section 41 should be stopped, as it is under PACE, on admission of a suspect to hospital.<sup>13</sup>

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<sup>10</sup> See the Explanatory Notes to CJCA 2015 (<http://www.legislation.gov.uk/ukpga/2015/2/notes/contents>) and the Fourteenth Report of the Joint Committee on Human Rights [JCHR], HL Paper 189 HC 1293, June 2014, paras 1.8-1.30, to which the Government replied in September 2014 (Cm 8928).

<sup>11</sup> *The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation*, Cm 9032, March 2015.

<sup>12</sup> [2013] UKSC 64, paras 33-34, 62, summarised in *The Terrorism Acts in 2013* (July 2014), 4.9.

<sup>13</sup> See *The Terrorism Acts in 2011*, June 2012, 7.74 and 7.78; *The Terrorism Acts in 2012*, July 2013, 8.46-8.47.

- 1.11 Developments were noted on a number of other fronts including Schedule 7 (where my previous recommendations are recalled in the context of technical changes effected by CTSA 2015), the EU opt-out and the establishment of the PCLB, the details of which were at that time under consideration by Ministers.<sup>14</sup>

## Terminology

- 1.12 I discussed the terminology of terrorism in my first annual report under the Terrorism Acts, settling on the subdivisions “*al-Qaida inspired terrorism*”, “*Northern Ireland related terrorism*” and “*other forms of terrorism*”, and describing al-Qaida-inspired terrorism as “*a roughly accurate way of referring to the current threat from Islamist terrorism both at home and abroad*”.<sup>15</sup>
- 1.13 Though al-Qaida remains on the scene and has influenced terrorist groups all over the world, including Islamic State in Iraq and the Levant [**ISIL**], which grew out of al-Qaida in Iraq, Islamist terrorism is now practised by a diverse range of groups, many of which have no current connection with al-Qaida and some of which are actively opposed to it. The alternative phrase “*international terrorism*”, used for some Government statistical purposes, is outdated now that so many Islamist terrorists are home-grown, and the “*jihad*” label favoured by some terrorists can be seen as glamorising. Accordingly, I believe the time has come to change terminology and to refer not to al-Qaida inspired terrorism but to **Islamist terrorism**.<sup>16</sup> That convention is adopted in the remainder of this report.
- 1.14 The highest-profile (and deadliest: 2.4-2.5 below) terrorist group of 2014 is referred to indiscriminately by English-speakers as ISIL, Islamic State in Iraq and Syria [**ISIS**], (so-called) Islamic State [**IS**] and Daesh. I see no particular reason to prefer one of these names to the others. Until a consistent usage emerges, I shall stick to ISIL – without of course acknowledging the claim to statehood that any of these names may imply.

## Statistics

- 1.15 Statistics on the operation of the Terrorism Acts are to be found in three principal publications:
- a) The Home Office’s annual and quarterly releases, which report on the operation of police powers under TA 2000 and TA 2006 in Great Britain.<sup>17</sup>

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<sup>14</sup> See now 10.12-10.15 below.

<sup>15</sup> *Report on the operation in 2010 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, July 2011, 2.2-2.4.

<sup>16</sup> Of course, not all devotees of political Islam are terrorists, or terrorist sympathisers. But terrorism committed by those who profess Islamist motivations or goals may fairly be described as Islamist terrorism.

<sup>17</sup> See, most recently, “Operation of police powers under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and stops and searches, quarterly update to 31<sup>st</sup> December 2014”, 25 June 2015.

- b) The bulletin produced for the same purpose by the Northern Ireland Office **[NIO]**;<sup>18</sup>  
and
- c) The Police Recorded Security Situation Statistics, published by the Police Service of Northern Ireland **[PSNI]** on an annual basis, with monthly updates.<sup>19</sup>

1.16 There were no substantial changes during 2014 to the collection or presentation of the terrorism-related statistics. Nor has the work referred to in last year's report (in relation to the publication of data regarding warrants for further detention and refusals of access to solicitors in Great Britain, and as regards the collection of ethnicity data based on the 2011 Census categories) yet borne fruit.<sup>20</sup>

1.17 I am told that future developments could make it possible for the Home Office to produce the year-end statistics considerably earlier than is currently the case. This would be very welcome. The 2014 statistics which form the basis of much of this report were published this year only on 25 June, which along with other factors made it impossible to produce my report and have it security-checked and prepared for printing in time for it to be laid before Parliament before the summer recess. It is not desirable that the late provision of data, coupled with the nature of the parliamentary calendar, should result in a report on the previous calendar year appearing as late as the autumn. If the year-end figures appear by the end of May or earlier, I would hope to resume my normal habit of publishing this report in June or July.

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<sup>18</sup> See most recently *Northern Ireland Terrorism Legislation: Annual Statistics 2013/14*, 22 October 2014.

<sup>19</sup> *Police Recorded Security Situation Statistics, Annual Report covering the period 1<sup>st</sup> April 2014 – 31<sup>st</sup> March 2015*, 12 May 2015. See also PSNI, *Stop and Search Statistics, financial year 2014/15*, 28 May 2015.

<sup>20</sup> *The Terrorism Acts in 2013*, July 2014, para 1.9.

## 2. THE THREAT PICTURE

### Introduction

2.1 I briefly summarised the terrorist threat to the UK as it stood during the period under review in Chapter 3 of my recently-published report, *A Question of Trust*.<sup>21</sup> I draw on and expand that summary in what follows, without seeking to emulate the comprehensive accounts in some past Terrorism Acts reports.<sup>22</sup>

### The global picture

2.2 According to data prepared for the US State Department in 2015:

- a) 2014 saw some 13,500 terrorist attacks, 32,700 deaths, 34,700 injuries and 9,400 persons taken hostage or kidnapped across the world.
- b) Global attacks were 35% up, fatalities 81% up and kidnap and hostage-taking more than 200% up on 2013. Iraq, Nigeria, Afghanistan and Syria were responsible for much of these increases.
- c) More than 60% of all attacks took place in five countries (Iraq, Pakistan, Afghanistan, India and Nigeria), and 78% of fatalities took place in five countries (Iraq, Nigeria, Afghanistan, Pakistan and Syria).
- d) There were 20 attacks killing more than 100 people each, as against two in 2013.
- e) There were 574 suicide attacks, 70% of them in Iraq and Afghanistan, resulting in more than 4,700 deaths and 7,800 injuries. Suicide attacks were on average between three and four times as lethal as non-suicide attacks.<sup>23</sup>

2.3 These figures serve as a reminder that most terrorism victims (like most terrorists) are from Muslim-majority countries, and that the losses sustained in western countries represent only a minute proportion of the whole. In Iraq, the worst affected country, there were no fewer than 39 days in 2014 on which 50 or more people lost their lives from terrorist attacks.

2.4 The five principal perpetrator groups were the same as in 2013: ISIL, the Taliban in Afghanistan, al-Shabaab, Boko Haram and Maoists in India. Each of the five increased the frequency of their attacks in 2014, and ISIL branched out into Lebanon and Egypt for the first time.

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<sup>21</sup> *A Question of Trust*, report of the Investigatory Powers Review, June 2015, 3.13-3.18.

<sup>22</sup> See in particular *The Terrorism Acts in 2012*, July 2013, 2.5-2.88, a review of the 21<sup>st</sup> century terrorist threat to the UK and its citizens, with particular emphasis on the period since 2010.

<sup>23</sup> All figures in this section are taken from the National Consortium for the Study of Terrorism and Responses to Terrorism [START] country reports on terrorism 2014, June 2015, Annex of statistical information. Violent acts targeted at combatants (and so governed by international humanitarian law) are excluded from the figures.

- 2.5 ISIL and Boko Haram were each responsible for more than 6,000 deaths in 2014; ISIL took more than 3,000 hostages.

### **The ranking of terrorism as a national security threat**

- 2.6 National security is nowhere defined in statute. The Government set out in its 2010 National Security Strategy,<sup>24</sup> annually updated, what it assesses to be the 15 main risks. The highest priority risks are in summary:

- a) terrorism, both Islamist and Northern Ireland-related;
- b) cyber-attacks by other states and large-scale cyber-crime;
- c) a major accident or natural hazard which requires a national response; and
- d) an international military crisis between states.

- 2.7 The 11 other risks prioritised by the Government include the exploitation by terrorists of instability, civil war or insurgency overseas, a significant increase in organised crime affecting the UK, a significant increase in attempts by terrorists, organised criminals and carriers of drugs and firearms to cross the UK border and disruption to the supply of oil, gas or other resources.

- 2.8 In a written statement introducing his latest annual report on progress with the national security strategy, the Prime Minister highlighted terrorism for special mention:

“Islamist extremism, with most lately the emergence of ISIL, is the struggle of our generation; and we are working closely with international partners to tackle this, deploying UK Armed Forces to combat the emergence of this senseless, barbaric organisation.”<sup>25</sup>

### **The threat to the UK from Islamist terrorism**

- 2.9 The terrorist threat was recently summarised in the annual report on the Government’s counter-terrorism strategy, CONTEST.<sup>26</sup> Reference was made to:

- a) the raising of the UK threat level in August 2014 from “*substantial*” to “*severe*” (the level where it had been for most of the period 2006-2011),<sup>27</sup> meaning that an attack is highly likely;

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<sup>24</sup> *A Strong Britain in an Age of Uncertainty: the National Security Strategy*, Cm 7953, (October 2010).

<sup>25</sup> Statement HCWS159 of 18 December 2014, introducing the *Annual report on the National Security Strategy and Strategic Defence and Security Review* (2014).

<sup>26</sup> *CONTEST, the United Kingdom’s strategy for countering terrorism: Annual Report for 2014*, Cm 9048, (March 2015).

<sup>27</sup> A table charting the evolution of the threat level from “*international terrorism*” since its introduction in 2006 is in *The Terrorism Acts in 2012*, July 2013, 2.55.

- b) the 600 or so people with extremist connections to have travelled to Syria and Iraq, some of whom have combat experience and terrorist-related training and many of whom have already returned to the UK;
- c) the “*unprecedented quantity of terrorist and extremist propaganda*” that is fuelling terrorism;
- d) the continued threat from al-Qaida core, al-Qaida in the Arabian Peninsula and al Shabaab;
- e) kidnap for ransom;
- f) the advocating of attacks by lone operators; and
- g) the continuing threat from Northern Ireland-related and far right terrorism.

2.10 In evidence to my Investigatory Powers Review given in April 2015, MI5 pointed out some of the recent factors which reinforce their concerns about the terrorist threat. In particular:

- a) The number who have travelled to Syria and undertaken terrorist training since 2012 is already higher than has been seen in other 21<sup>st</sup> century theatres, such as Pakistan/Afghanistan, East Africa and Yemen.<sup>28</sup>
- b) The threat posed on their return comprises not just attack planning but radicalisation of associates, facilitation and fundraising, all of which further exacerbate the threat.
- c) The number of UK-linked individuals who are involved in or been exposed to terrorist training and fighting is higher than it has been at any point since the 9/11 attacks in 2001.

2.11 The volume and accessibility of extremist propaganda – some of it in the form of slickly-produced films – has increased. UK-based extremists are able to talk directly to ISIL fighters and their wives in web forums and on social media. The key risk is that this propaganda is able to inspire individuals to undertake attacks without ever travelling to Syria or Iraq. Through these media outputs, ISIL has inspired the increase in unsophisticated but potentially deadly attack methodologies which have been seen recently in Australia, France, Canada, Denmark and the USA.

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<sup>28</sup> Women and children travel too. Assistant Commissioner Mark Rowley QPM stated on 21 July 2015 that 43 women and girls were known to have travelled to Syria, and that the police had referred 12 families (with 30 children) to the family courts over the previous six months, “*to try and manage those safeguarding issues*”: oral evidence to Home Affairs Select Committee [HASC], *Counter-radicalisation*, HC 311, 21 July 2015, QQ 19-20. A remarkable example is *Tower Hamlets v B* [2015] EWHC 2491 (Fam): <http://www.bailii.org/ew/cases/EWHC/Fam/2015/2491.html>.

- 2.12 A major independent study of ISIL-related attack plots in Western Europe, North America and Australia between 2011 and June 2015 concluded that there had been “*more plots involving only IS sympathisers than returned foreign fighters*” but that “*the organisation’s formidable resources and verbal hints at future attacks give reason for vigilance*”.<sup>29</sup>
- 2.13 No Islamist terrorist attacks of any kind were recorded in the UK during 2014. In the circumstances, there is no case for panic about the threat – which is precisely what the terrorists want. But complacency would be equally out of order. After all:
- a) Low-sophistication terrorist attacks, some of them fatal, were recorded in a number of other western countries. Thus:
- In May 2014, a French national who is believed to have been in Syria killed four people in the Jewish Museum in Brussels.
  - In October 2014, soldiers were killed in two separate attacks in Canada, one by a car and one by shooting, and officers of the New York Police Department were attacked by a Muslim convert with an axe.
  - In December 2014, a gunman and two hostages died in the Lindt Café siege in Sydney, Australia.
  - Also in December 2014, multiple woundings were perpetrated and one person killed in separate incidents in three French cities (Tours, Dijon and Nantes).

Greater loss of life followed early in 2015, with the Paris attacks of 7 and 8 January causing 17 deaths and the Copenhagen attacks of February a further two. The choices of target (a magazine, a kosher supermarket, a free speech debate and a synagogue) underline that these attacks were not aimed just at individuals, but at whole communities and the values for which they stand.

- b) The Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, told LBC Radio on 6 August 2015 that five life-threatening terrorist operations had been interrupted in the UK over the previous 12 months, which is considerably more than the recent average. I asked for verification and was given details of five operations between November 2014 and July 2015, each of which has resulted in charges being brought, and which appear to justify the Commissioner’s comments. Because the cases have not yet come to trial, and because most of them arose after the period under review in any event, I say no more about them here.<sup>30</sup>

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<sup>29</sup> T. Hegghammer and P. Nesser, “Assessing the Islamic State’s commitment to attacking the West”, (2015) Perspectives on Terrorism vol 9 no. 4, published by the Terrorism Research Initiative and available at <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/440/html>.

<sup>30</sup> Europol also records the thwarting in France, in 2014, of “*at least two attack plots involving individuals that had returned from Syria*”, and arrests for attack planning in Austria, Italy and the Netherlands: *TE-SAT Terrorism situation and trend report*, 2015, 2.1.

- c) British nationals were killed during 2014 in confirmed or suspected terrorist attacks in Libya (January), Afghanistan (January and March) and Somalia (April). Videos showing the murders of British hostages David Haines and Alan Henning were released by ISIL in September and October 2014. 2015 saw further loss of British lives abroad, including the 31 Britons killed in the attacks of March and June on a Tunisian museum and beach resort.

2.14 It has been a feature of several major terrorist attacks, including the 7/7 bombings, the killing of Lee Rigby and the French shootings of January 2015, that one or more of the perpetrators was known to the police or security services but had not been assessed as posing a major risk at the time. The speed with which things can change, and the difficulties in knowing how best to prioritise limited surveillance resources, were illustrated in unprecedented detail by the inquiry of Parliament's Intelligence and Security Committee into Lee Rigby's killing.<sup>31</sup> I was introduced during the period under review to some of the ways in which the police and MI5 have sought to improve their procedures for keeping on the radar people deemed to present a "residual risk".<sup>32</sup>

### **The threat from Northern Ireland-related terrorism**

2.15 Northern Ireland's progress towards a post-conflict society is unfortunately far from complete. A real terrorist threat persists in parts of Northern Ireland, as the following facts demonstrate:

- a) In the year to February 2015 there were three security-related deaths, 71 shooting incidents and 44 bombing incidents, together with 49 casualties from paramilitary-style assaults.
- b) There were 22 dissident republican attacks on national security targets during 2014, ranging from rudimentary letter bombs to explosively formed projectiles [EFPs] demonstrating a developing armour-piercing capability. None caused injuries or fatalities. The Director General of MI5 has said that "*for every one of those attacks we and our colleagues in the police have stopped three or four others coming to fruition.*"<sup>33</sup>
- c) The threat level to Northern Ireland from Northern Ireland-related terrorism remains at "severe".

I have no doubt that the good work of police and security services continues to save many lives.

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<sup>31</sup> Intelligence and Security Committee, *Report on the intelligence relating to the murder of Fusilier Lee Rigby*, November 2014, HC 795, paras 342-414.

<sup>32</sup> Assistant Commissioner Mark Rowley touched on this subject in his evidence to the HASC, *Counter-radicalisation*, 21 July 2015, HC 311, Q26.

<sup>33</sup> Andrew Parker, address of 8 January 2015 to RUSI, available on [www.mi5.gov.uk](http://www.mi5.gov.uk), paras 28-29.



- 2.16 Europol stated in its annual overview of terrorism in the EU that the 109 shooting and bombing incidents reported in Northern Ireland during 2014 were the only terrorist attacks in the United Kingdom last year, and “*represent more than half of the total number of terrorist incidents in the EU for the reporting period*”.<sup>34</sup>
- 2.17 During a week spent in Northern Ireland in January 2015, I had the opportunity to learn more about the nature of terrorist activity during 2014. Police estimate that four of the most significant attacks launched during that year, each of which could have caused serious injury, were:
- a) EFPs fired in Belfast in March and Derry/Londonderry in November;
  - b) a projectile IED fired at police close to a Loyalist protest camp in North Belfast in November; and
  - c) a firebomb placed in a Derry/Londonderry hotel used by the PSNI for recruitment.
- 10 men were charged after a surveillance operation, on which I received detailed briefing, revealed alleged Continuity IRA [CIRA] plotting in Newry in October and November 2014.<sup>35</sup>
- 2.18 A series of vehicle patrols and station visits in Lurgan, Armagh, Newtonhamilton and Crossmaglen showed me policing in conditions that can still be extremely challenging. But context is everything, and the older hands take pride in being able to patrol in cars rather than helicopters. An officer in Crossmaglen police station – a heavily fortified ex-military base – spoke of progress as follows: “*It’s slow, but it’s not going back*”.

### **The threat from other terrorism**

- 2.19 As demonstrated by the convictions in 2014 of Ian Forman and Ryan McGee, both of whom had manufactured bombs (8.5(a) and (h) below), as well as by the failed appeal of Pavlo Lapshyn, sentenced for murder and mosque bombings in 2013,<sup>36</sup> the threat from extreme right-wing [XRW] terrorism is a real one.
- 2.20 It remains the case, however, that XRW terrorism in the United Kingdom is fragmented, with no unifying ideology or set of principles. As I said last year, there is no equivalent of the international terrorist networks, the sophisticated plots or the technical expertise that have in the past characterised the terrorism associated with al-Qaida.<sup>37</sup>
- 2.21 There were no attacks relating to XRW terrorism in the UK during 2014 or – according to Europol – anywhere else in the EU. Most EU Member States consider the threat

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<sup>34</sup> Europol, *TE-SAT Terrorism situation and trend report 2015*, Annex 1. Those 109 attacks include paramilitary punishment shootings.

<sup>35</sup> <http://www.bbc.co.uk/news/uk-northern-ireland-31767861>.

<sup>36</sup> *The Terrorism Acts in 2013*, July 2014, 2.39.

<sup>37</sup> *The Terrorism Acts in 2013*, July 2014, 2.34-2.39.

from XRW terrorism to be low. But a total of 33 individuals were arrested for right-wing terrorist offences in France, Poland and Italy, and there were indications that training camp activities had taken place in France, the UK and Norway.<sup>38</sup> A significant increase in anti-Semitic incidents was observed across the EU, in the context of the Gaza conflict that started in July 2014, and anti-Islamic incidents (said to have been prompted by fears about the alleged growth of Islam in Europe and the cruelty displayed in ISIL propaganda) also increased, notably in Germany, Poland and Bulgaria.<sup>39</sup>

## Conclusion

- 2.22 Recent years have not seen the complex, internationally-directed al-Qaida plots that characterised the middle period of the past decade and that have been the most eye-catching examples of UK-based terrorist activity so far this century.<sup>40</sup> Indeed now that the 10<sup>th</sup> anniversary of the 7/7 bombings has passed, it can also be said that only two people have been killed by terrorists in Great Britain in the past decade.<sup>41</sup> The incidence of terrorism in the UK, and in the West generally, is statistically tiny when compared with the huge numbers being killed and injured every year in parts of the Middle East, Asia and Africa.
- 2.23 But as the above brief summary demonstrates, a serious terrorist threat remains. Northern Ireland still experiences dozens of paramilitary-style bombings and shootings annually, and saw 26 deaths attributable to the security situation in the ten years to March 2015.<sup>42</sup> Terrorist attacks have been much rarer in Great Britain: but there have been recent sharp increases in arrests and charges (including for attack planning), and past incidents from Norway to Tunisia have demonstrated that the close involvement of a sophisticated network is not required for multiple casualties to be inflicted by either XRW or Islamist terrorists. Nor is the evil of terrorism limited to the body count or even to the fear that it promotes in the general population: by challenging the values on which society itself is based, it is liable, if allowed to flourish unchecked, to leave a toxic legacy of hatred and division.
- 2.24 In the circumstances, the need for good intelligence and strong anti-terrorism laws, accompanied by proper safeguards, is surely self-evident. In the chapters that follow, I look at the principal Terrorism Act powers with a view to assessing so far as possible whether they are both appropriate and correctly used.

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<sup>38</sup> Europol, *TE-SAT Terrorism situation and trend report 2015*, 1.1 and 5.1-5.2. Unlike the other Member States, the UK declines to classify terrorist incidents as (for example) “*religiously inspired*”, “*ethno-nationalist and separatist*” or “*right-wing*”.

<sup>39</sup> *Ibid.* 5.3.

<sup>40</sup> *The Terrorism Acts in 2012*, July 2013, 2.8.

<sup>41</sup> Mohammed Saleem and Lee Rigby, both in the spring of 2013. There were other terrorist attacks in Great Britain, one of which resulted in the death of an attacker (Glasgow airport, 2007) and one of which wounded Stephen Timms MP (2010).

<sup>42</sup> PSNI, *Police Recorded Security Situation Statistics*, 2014/15, May 2015,

### 3. THE COUNTER-TERRORISM MACHINE

#### Introduction

- 3.1 The Government's counter-terrorism strategy (CONTEST) was summarised in my 2013 report, as was the organisation of the intelligence agencies and counter-terrorism policing.<sup>43</sup> The annual report on the CONTEST strategy in 2014 was published in March 2015.<sup>44</sup>
- 3.2 There were once again few changes to either policy or organisation in the period under review. In particular, no steps were taken (or have since been taken) to give the National Crime Agency **[NCA]** a counter-terrorism role.<sup>45</sup>
- 3.3 With effect from 1 April 2015, the National Police Chiefs' Council **[NPCC]** has taken over from the Association of Chief Police Officers **[ACPO]**. Hosted by the Metropolitan Police Service **[MPS]** but independent of it, the functions of the NPCC include the command of counter-terrorism operations and the delivery of counter-terrorism policing through the national CT Network. A counter-terrorism coordination committee has responsibility for devising and driving national Counter Terrorism and Domestic Extremism strategic policy through the National Counter Terrorism Policing Headquarters **[NCTP HQ]** and reports to the NPCC and the Government.<sup>46</sup>

#### Personnel and resources

- 3.4 So far as *policing* is concerned:
- a) Counter-terrorism policing funding was protected over 2014/15 and 2015/16, receiving a flat cash annual resource budget of £564 million in Spending Round 2013. Capital funding was provided in addition to this amount, based on an assessment of investment needs. Additional resource funding is being made available to the CT policing network in 2015/16, in response to the increased threat level.
  - b) At the end of March 2015 there was a budgeted strength of some 8,200 personnel within the CT network, in line with the position a year earlier, composed of 6,200 police officers and 2,000 civilian members of staff. These numbers will increase in 2015/16. In addition, as last year, some 850 locally-funded Special Branch personnel assist in protecting national security and are in some areas managed and tasked by the regional Counter-Terrorism Unit **[CTU]**.

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<sup>43</sup> *The Terrorism Acts in 2012*, July 2013, Chapter 3.

<sup>44</sup> CONTEST: Annual Report for 2014, Cm 9048, March 2015.

<sup>45</sup> Though the HASC has recommended (by a majority) that the NCA should take over responsibility for counter-terrorism: *Counter-Terrorism*, 17<sup>th</sup> report of 2013/14, April 2014, paras 136-141 and vote at p. 104.

<sup>46</sup> <http://www.npcc.police.uk/NPCCBusinessAreas/TerrorismAndAlliedMatters.aspx>.

- 3.5 Regular police officers in Northern Ireland numbered 6,717 as of 11 August 2015, compared to 7,530 when the PSNI was founded in 2001. The decline in personnel is however considerably greater than that figure implies, once reserves and part-time police officers are taken into account.<sup>47</sup>
- 3.6 So far as the **security and intelligence agencies** are concerned (MI5, MI6 and GCHQ):
- a) Total departmental resource spending in 2014/15 was £2.228 billion: the division of that budget between agencies is not public information.<sup>48</sup>
  - b) MI5 allocated 63% of its resources to “*International Counter-Terrorism*” [ICT] during 2013/14; a further 18% was allocated to Northern Ireland.
  - c) Full-time equivalent staff numbers were 12,196 in 2014/15,<sup>49</sup> of which the majority were employed by GCHQ and some 3,900 by MI5.
- 3.7 Compared with five years earlier (2009/10):
- a) full-time equivalent staff numbers in 2014/15 were lower by 502; but
  - b) total departmental spending rose by 22% (without adjustment for inflation) over the five-year period.
- 3.8 In 2015/16, the total resources budget for the security and intelligence agencies has been set at £2.494 billion (a 12% rise on the 2014/15 outturn), and full-time equivalent staff numbers are due to rise by 5% to 12,845.

### Co-operation in Europe

- 3.9 I reported last year that the United Kingdom was proposing to opt out (under Protocol 36 to the Lisbon Treaty) from some 130 EU police and criminal justice measures which were adopted before the entry into force of the Lisbon Treaty in December 2009.<sup>50</sup>

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<sup>47</sup> There were 2449 full-time reserves in April 2001, and none in April 2015. Part-time officers (some of which were reserves in 2001) fell from 1,070 to 498. References in previous reports to 13,000 PSNI officers in 2001 should have been to 11,049, including part-timers and reserves.

<sup>48</sup> Security and intelligence agencies financial statement 2014-15, June 2015, Table 1.

<sup>49</sup> *Ibid.*, Table 4.

<sup>50</sup> *The Terrorism Acts in 2013*, July 2014, 3.8-3.10.

3.10 Having opted out of those measures *en bloc*, the United Kingdom succeeded in opting back in to the 35 which the police considered most essential in time for the deadline of 1 December 2014.<sup>51</sup> These included the European Arrest Warrant, the Second Generation Schengen Information System (SIS II), Europol and Eurojust. From an operational point of view, this is to be strongly welcomed.<sup>52</sup> As crime (including terrorist crime) crosses borders with increasing ease, the same must self-evidently be true of the information and resources that are needed by those who fight it.

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<sup>51</sup> An account of the process, with references to the multiple reports of parliamentary committees on this subject, is contained in the House of Commons Library Standard Note SN/IA/6930 of 10 November 2014, *The UK block opt-out in police and judicial cooperation in criminal matters: recent developments*.

<sup>52</sup> See *The Terrorism Acts in 2012*, July 2013, 3.17-3.23.

## 4. PROSCRIBED ORGANISATIONS

- 4.1 Part II of TA 2000 gives the Home Secretary power to proscribe organisations that she believes to be “*concerned in terrorism*”. A full account of that process, and assessments of its utility, are given in previous reports.<sup>53</sup>

### Proscription orders in 2014

- 4.2 Three proscription orders were made in 2014, covering a total of 11 groups. They were:
- a) SI 2014/927, in force from 4 April 2014 and covering Ansar Bayt al-Maqdis (ABM), Al Murabitun and Ansar al Sharia-Tunisia (AAS-T).<sup>54</sup>
  - b) SI 2014/1624, in force from 20 June 2014 and covering five groups linked to the crisis in Syria: The Islamic State of Iraq and the Levant (ISIL), which had previously been proscribed as part of al-Qaida, Turkiye Halk Kurtulus Partisi-Cephesi (THKP-C), Kateeba al-Kawthar (KaK), Abdallah Azzam Brigades, including the Ziyad al-Jarrah Battalions (AAB/JZB), and The Popular Front for the Liberation of Palestine – General Command (PFLP-GC).<sup>55</sup>
  - c) SI 2014/3189, the 16<sup>th</sup> proscription order to be made under TA 2000, in force from 28 November 2014 and covering Ajnad Misr, Jaysh al Khalifatu Islamiya (JKI) and Ansar al-Sharia-Bengazi (AAS-B).<sup>56</sup>

As has always been the case, there was no opposition in Parliament to the making of these orders.

- 4.3 In March 2015, when the Home Office produced the latest edition of its helpful document “Proscribed terror groups or organisations”,<sup>57</sup> the total number of proscribed organisations listed in TA 2000 Schedule 2 was 81, including 14 Northern Irish organisations. This compares to 62 (including the same 14 Northern Irish organisations) when I first reported in July 2011, and 77 at the end of 2014.

### Name change orders in 2014

- 4.4 Two name-change orders were made in 2014:
- a) SI 2014/612, in force from 27 June 2014 and recognising Need4Khilafah, the Shariah Project and the Islamic Dawah Association as alternative names for the group proscribed as both Al Ghurabaa and The Saved Sect, and known as Al Muhajiroun (ALM).

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<sup>53</sup> See in particular *The Terrorism Acts in 2011*, June 2012, Chapter 4.

<sup>54</sup> See Hansard HC 2 April 2014 cols 948-962 and HL 3 April 2014 cols 1115-1121.

<sup>55</sup> See Hansard HC 19 June 2014 cols 1280-1297 and HL 19 June 2014 cols 1008-1018.

<sup>56</sup> See Hansard HC 26 November 2014 cols 1037-1046 and HL 27 November 2014 cols 1099-1104.

<sup>57</sup> <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>

- b) SI 2014/2210, in force from 20 August 2014 and recognising Islamic State as an alternative name for the group proscribed as Islamic State of Iraq and the Levant (ISIL).

There were no parliamentary debates on the name-change orders, which are subject to the negative resolution procedure.<sup>58</sup>

### Deproscription applications

- 4.5 Two applications for deproscription were made in 2014 and refused by the Home Secretary. Both approaches were made in confidence, and neither applicant would allow me to disclose the names of the groups in whose names they were made.
- 4.6 A further application was made on behalf of the International Sikh Youth Federation **[ISYF]** in February 2015 and refused (through administrative error, almost three months after the expiry of the statutory time limit) on 31 July 2015.<sup>59</sup> It thus remains the case that every application ever made for deproscription under TA 2000 has been refused.
- 4.7 The application for deproscription made by persons formerly associated with the ISYF claimed that it was 20 years since the organisation had had any involvement with terrorism. Yet whilst the decision letter refusing the application for deproscription states the Home Secretary's belief that the statutory test has been met, no detailed reasons are given, and none were provided on further request. It is plainly desirable as a matter of principle that the fullest statement of reasons that is consistent with national security should be given, so as to enable the decision to be understood and so as to inform the applicant's decision as to appeal.<sup>60</sup> But whether the refusal to give reasons was acceptable in this case is not a matter on which I can comment, since I do not know what sensitivities may attach to the evidence that was taken into account by the Home Secretary, and because of the possibility that the issue may need to be determined in POAC or before the courts.

### Links to other disruption regimes

- 4.8 I have long emphasised the need for joined-up thinking where the various disruption regimes are concerned. I noted for example in one report that none of the organisations proscribed since 2001 has also been designated under TAFSA 2010, adding that while UK proscription can act as a trigger for an EU-wide asset freeze,

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<sup>58</sup> It has been suggested to me that a procedure allowing for debate would be preferable, given the importance of the issues and the desirability of publicity. This may be so, though any debate is likely in practice to be perfunctory.

<sup>59</sup> I have previously referred to the ISYF in the proscription context: *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, July 2011, para 4.32.

<sup>60</sup> See the discussion by the Grand Chamber of the Court of Justice of the EU in Case C-584/10 *Kadi* ECLI:EU:C:2013:518, paras 98-102. It is also usual, when organisations are proscribed for the first time, for at least some evidence of their current involvement in terrorism to be produced for the purposes of the required parliamentary debates.

*“there may be cases in which unilateral UK designation of the entity in question, or of persons associated with it, could at least be worth considering”.*<sup>61</sup>

4.9 I was informed in the course of preparing this report that once a proscription order or name change order has been made, the Proscription Review Group Secretariat informs other partners of the action taken, including:

- a) the Special Cases Unit, which deals with deprivation, exclusion and other immigration disruptions;
- b) members of the Asset Freeze Working Group;
- c) the Counter-Terrorism Internet Referral Unit, via its sponsor unit in Prevent; and
- d) selected foreign governments.

This is to be welcomed, though it remains important that this information should, where appropriate, be acted upon.

## **Arrests**

4.10 The proscription of a group is a trigger for support, membership and uniform offences under TA 2000 sections 11-13. A number of arrests were made on the basis of suspicion of proscription offences during 2014, including nine alleged al Muhajiroun associates in September.

## **The deproscription process**

4.11 In each of the past four years I have reported on the arrangements for proscribing and deproscribing organisations, and made recommendations, particularly in relation to deproscription.<sup>62</sup> The thrust of my observations has consistently been that:

- a) organisations are currently proscribed which appear not to meet the legal threshold for proscription, because they cannot be said to be currently “*concerned in terrorism*”, and that
- b) this should be remedied by changes either to the statutory conditions for proscription or to the deproscription system.

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<sup>61</sup> *Third report on the operation of the Terrorist Asset-Freezing Etc. Act 2010*, December 2013, 2.25 and Recommendation 12.

<sup>62</sup> *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, July 2011, Chapter 4; *The Terrorism Acts in 2011*, June 2012, Chapter 4; *The Terrorism Acts in 2012*, July 2013, Chapter 5; *The Terrorism Acts in 2013*, July 2014, Chapter 5.



4.12 As I reported last year, the Home Secretary agreed to a process under which up to 14 currently proscribed groups would have been deproscribed on the Government's initiative during the first part of 2014. Though not a formal concession, this appears to have amounted to an acknowledgment that a significant number of proscribed groups no longer satisfy the statutory test for proscription. But regrettably:

- a) the planned process was halted before any deproscriptions had taken place; and
- b) the system for annual review of each proscribed group has now been discontinued, with the last annual reviews being held in February 2014.<sup>63</sup>

Any group seeking deproscription must thus apply to the Home Secretary or Secretary of State for Northern Ireland, in its own name or through sympathetic persons prepared to act in its name. As noted above, no such application has ever been accepted. In the event of refusal, a remedy lies to the Proscribed Organisations Appeal Commission **[POAC]**.<sup>64</sup> The Government published a useful guide to POAC appeals in November 2014.<sup>65</sup> The only case to have been taken as far as judgment, on behalf of the People's Mujahideen of Iran **[PMOI]**, succeeded in 2007, a result that was upheld on appeal. People who have spoken to me about the possibility of applying to POAC have cited the likely expense – which in the case of PMOI ran into the hundreds of thousands of pounds – as a disincentive to doing so.

4.13 I repeated my usual recommendations in 2014, but it was made plain in the Government's response that the Government will not accept them.<sup>66</sup> Accordingly I can do no more than keep this unsatisfactory situation under review.

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<sup>63</sup> This, as I remarked last year, protects Ministers from the embarrassment of actively deciding to maintain the proscription of groups that do not satisfy the statutory test: *The Terrorism Acts in 2013*, July 2014, 5.9.

<sup>64</sup> Decisions of the Home Secretary in relation to (for example) the likely reaction of a foreign country to a decision of the UK government are entitled to a high degree of deference from the courts: *R (Lord Carlile) v Secretary of State for the Home Department* [2014] UKSC 60. Different principles apply where a purely factual question (e.g. current involvement in terrorism) is in issue.

<sup>65</sup> <https://www.gov.uk/appeal-against-a-ban-on-your-organisation>.

<sup>66</sup> *The Government response to the annual report on the operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation*, Cm 9032, March 2015, p. 8.

## 5. STOP AND SEARCH

### Summary

- 5.1 The stop and search powers under TA 2000 remained unaltered during the year under review.
- 5.2 Use of the suspicion-based power, TA 2000 section 43, again declined in London and Northern Ireland. The no-suspicion power under TA 2000 section 47A was not used.

### Section 43

- 5.3 As in previous years, figures for the use of section 43 are published in Great Britain only for the MPS area.<sup>67</sup> Usage in 2014 was 20% down on 2013, to around one third of the 2011 level. The arrest rate remained broadly similar.<sup>68</sup>

Year	Searches (MPS)	Arrests
2010	999	n/a
2011	1051	32 (3%)
2012	614	35 (6%)
2013	491	34 (7%)
2014	394	25 (6%)

- 5.4 In Northern Ireland, 92 people were stopped and searched under section 43 in 2014/15, as against 70 and 101 in 2013/14 and 2012/13. A further 6 were stopped under section 43A, 27 under sections 43 and 43A and 22 under sections 43 and/or 43A in combination with JSA(NI) 2007 section 21.<sup>69</sup>
- 5.5 The self-defined ethnicity of those stopped under section 43 in London is as follows:<sup>70</sup>

Year	White	Asian	Black	Chinese/Other	Mixed/not stated	Total
2010	43%	30%	11%	7%	9%	999
2011	35%	37%	9%	8%	11%	1051
2012	39%	31%	12%	7%	11%	614
2013	34%	32%	14%	9%	10%	491
2014	41%	22%	12%	9%	16%	394

<sup>67</sup> Source: Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, table S.01, and equivalent tables from previous years, corrected following private correspondence from the Home Office.

<sup>68</sup> See further 6.9 below and my website piece of 12 July 2013, "One law for the street, one for the arrivals hall": <https://terrorismlegislationreviewer.independent.gov.uk/one-law-for-the-street-one-for-the-arrivals-hall/>.

<sup>69</sup> PSNI, *Stop and Search Statistics, Financial year 2014/15*, May 2015, Section 1 Table 1, and the equivalent for previous years.

<sup>70</sup> Source: Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, table S.02, and equivalent tables from previous years, corrected following private correspondence from the Home Office. As I have previously noted, there is no subcategory specifically referable to persons of non-black North African or Middle Eastern ethnicity: *The Terrorism Acts in 2012*, July 2013, 1.26(d).

The most noticeable change in 2014 was a marked fall from recent levels in those identifying themselves as Asian, counterbalanced by a rise in those who identified as white and (from 7% to 13%) in those who did not state their ethnicity.

- 5.6 As I said last year, it is unfortunate that separate figures for the use of sections 43 and 43A are not produced for areas other than London and Northern Ireland. I received no response to last year's invitation to individual forces to consider what they could do to make this information publicly available. I can only repeat that it would be desirable if these figures could be produced for other force areas.

## Section 47A

- 5.7 Authorisations for use of the stop and search power under TA 2000 section 47A can only be issued in very particular circumstances: when a senior police officer "*reasonably suspects that an act of terrorism will take place*", and reasonably considers that the authorisation "*is necessary to prevent such an act*". The authorisation can last no longer and cover no greater an area than is reasonably considered necessary to prevent such an act. If an authorisation is in place, no suspicion is required for a stop and search to take place.
- 5.8 That power has been in place since March 2011. It replaced the former TA 2000 section 44, which though very widely used in the latter part of the last decade, was repealed after the European Court of Human Rights [ECtHR] described it as "*neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse*".<sup>71</sup> The Home Secretary has acknowledged to Parliament that the replacement of section 44 has had "*no effect on public safety*",<sup>72</sup> and the police have not suggested to me that any enhancement of existing stop and search powers is required.<sup>73</sup>
- 5.9 There has to date been only a single authorisation under section 47A, in the unusual circumstances in Northern Ireland which I described in my last annual report. During the year under review, no authorisations were issued anywhere in the United Kingdom for use of the no-suspicion stop and search power under TA 2000 section 47A.

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<sup>71</sup> *Gillan and Quinton v UK*, judgment of 12 January 2010, para 82. The complex circumstances of the replacement of section 44 by section 47A are set out in *The Terrorism Acts in 2011*, June 2012, 8.8-8.19.

<sup>72</sup> Hansard HC 2 July 2013, col 774.

<sup>73</sup> Though it should be noted that in Northern Ireland, alternative no-suspicion powers to stop, question and search exist under the Justice and Security (Northern Ireland) Act 2007. These are reported upon by the Independent Reviewer under that Act: the seventh report of the Independent Reviewer, which is the first prepared by the current Reviewer, David Seymour CB, was published in January 2015: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397442/7th\\_Report\\_-\\_Independent\\_Reviewer\\_of\\_JSA\\_\\_NI\\_\\_2007.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397442/7th_Report_-_Independent_Reviewer_of_JSA__NI__2007.pdf).

## 6. PORT AND BORDER CONTROLS

### Introduction

- 6.1 As explained in detail in my previous reports, Schedule 7 empowers ports officers to question and detain travellers at ports (including airports and international rail terminals) for the purpose of determining whether they appear to be concerned in the commission, preparation or instigation of acts of terrorism.<sup>74</sup> There is an obligation to answer questions directed to that end; and ancillary powers that are asserted include the taking of biometric data and the removal and downloading of the contents of mobile phones.
- 6.2 Notwithstanding growing fears of foreign fighters both leaving for and returning from Syria during the year under review, the use of the power continued its steep decline of recent years. The year was also marked by:
- a) substantial legislative change to the operation of Schedule 7, and by
  - b) a judgment of the Supreme Court which favoured the Government on the facts of the case, but contained significant stings in the tail.

### Statistical analysis

#### *Frequency of use*

- 6.3 The UK-wide figures for the past six years are as follows:<sup>75</sup>

	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
<b>People examined</b>	87,218	73,834	68,945	60,514	46,964	34,500
<b>Examined &gt;1 hour</b>	2,695	2,290	2,253	2,274	1,887	1,887
<b>Detained</b>	486	915	680	670	517	1,311
<b>Biometrics</b>	not available	769	592	547	353	462

This means that of the approximately 245 million people travelling through British ports in 2014/15, only 0.014% (one seventieth of one percent) were subject to a Schedule 7 examination, most of which, on past form, are completed within 15 minutes.<sup>76</sup>

- 6.4 There has been a marked and consistent decline in the number of examinations, by 60% over five years and by 27% over 2014 alone – a year which (paradoxically)

<sup>74</sup> TA 2000 section 40(1)(b) and Schedule 7 para 2(1); see in particular *The Terrorism Acts in 2011*, June 2012, Chapter 9.

<sup>75</sup> Source: ACPO/NPCC/Home Office: figures for Northern Ireland have been added to those prepared by the Home Office for Great Britain. The small adjustments to figures given in previous years (e.g. *The Terrorism Acts in 2013*, July 2014, 7.4) are explained by the exclusion of data from the Crown Dependencies, which are not part of the UK.

<sup>76</sup> Sample data from four forces indicated that 63% of sub-1 hour examinations were completed within 15 minutes, and 88% within 30 minutes: *The Terrorism Acts in 2012*, July 2013, 10.9-10.10.

brought heightened concerns about Britons travelling to and from Syria.<sup>77</sup> The trend is observable across the country, with the largest volume ports showing particularly high reductions.

6.5 I expressed curiosity about the reasons for this decline, and was shown a useful report on the subject that has recently been prepared for the NPCC. The legitimate requirements of national security prevent me from giving a full summary of this report, but a non-exhaustive list of likely causes includes, in no particular order:

- a) A reduced reliance on intuitive stops, which is in turn attributable to the refinement and greater use of tools such as:
  - increasingly complete passenger data capture to raise alerts against known individuals at airports;<sup>78</sup>
  - the work of the National Border Targeting Centre **[NBTC]** in developing rules-based targeting, which seeks to identify suspicious travel patterns or other indicators of concern by “washing” carrier data against intelligence-led indicators, or rules;<sup>79</sup>
  - more analytical use of behavioural detection techniques such as observational screening;<sup>80</sup> and
  - the national roll-out of the flight risk matrices that I first saw used at Glasgow Airport, which provide an objective framework for deciding which flights should be monitored.
- b) A change in recording conventions at certain Scottish ports which used to class the completion of a landing card as an examination.
- c) An increasing proportion of resources devoted to outbound flights, in respect of which a number of different factors apply, including the possible need to divert efforts towards safeguarding activity (e.g. unaccompanied minors who could be travelling to Syria)<sup>81</sup>

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<sup>77</sup> Figures for Great Britain (not including Northern Ireland) show a similar decline in examinations, from 46,184 to 35,004 between the calendar years 2013 and 2014: Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, table S.04.

<sup>78</sup> This bears out what I heard from several ports officers three years ago: that “if they had more accurate passenger information further in advance, they could greatly reduce the number of Schedule 7 stops”: *The Terrorism Acts in 2011*, June 2012, 9.55 and fn 303.

<sup>79</sup> For more detail see *The Terrorism Acts in 2013*, July 2014, Annex 2, p. 118, fn 397.

<sup>80</sup> This was the subject-matter of the ports officer behavioural assessment (BASS) training that I myself received in 2013. As my predecessor Lord Carlile QC remarked in his *Report on the operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, June 2009, para 157: “If modern analytical methods can distil something of the operation of quality intuition, and use it for training purposes, that is to the benefit of all.”

<sup>81</sup> In practice, law enforcement and safeguarding functions are not always easy to distinguish: for a recent example, see *X and Y* [2015] EWHC 2265 (Fam). Four children were detained at the airport where they had intended to board a flight to Turkey accompanied by three adult family members. The three adults were arrested then released. The local authority applied for emergency protection orders and then care orders in respect of all four children. Another recent instance of an outgoing port stop for safeguarding reasons is *Tower Hamlets v B* [2015] EWHC 2491 (Fam).

It remains to be seen whether the changes summarised at 6.17-6.28 below (particularly as regard police review processes) will have an impact on the number of examinations that are conducted, or indeed their duration.

- 6.6 Ports officers have spoken to me about the “*fear of zeroes*”: the reluctance to leave a shift without having examined at least a handful of people to determine whether they are terrorists. Two members of the public have contacted me over the past year about what they saw as officious and unnecessary examinations, though each declined to make an official complaint. But the latest figures, and the underlying explanations, suggest to me that the temptation to pointless examinations is being largely resisted, and that examinations – whether or not based on specific intelligence – are becoming increasingly targeted. In this respect it is helpful that there are no numerical targets for examinations or intelligence reports: rather, the National Co-ordinator of Ports Policing (now replaced by the National Co-ordinator PROTECT and PREPARE) has targeted the quality of intelligence reports and the number of terrorist disruptions.

### **Productiveness**

- 6.7 Happily, the decline in numbers has not led to a diminution in useful results. Indeed the contrary seems to be the case:
- a) Both arrests at the border (39) and seizures of cash at the border (391, to a value of £3.4 million) were more numerous in 2014/15 than in 2009/10.
  - b) Examinations lasting over 1 hour have declined only half as fast as all examinations (2,695 to 1,887: 30%): this can be seen as an indicator of increasing quality, since the more interesting subjects from an anti-terrorism perspective tend to be those who are kept for longer.
  - c) The quality of intelligence produced by Schedule 7 examinations is said to have been static or growing, even as the number of examinations has fallen; the National Ports Analysis Centre **[NPAC]** told the National Ports Conference in October 2014 that the number of Police Intelligence Reports had fallen markedly, but that their quality (as reflected in the numbers of resulting briefing documents) was much improved.
- 6.8 It is also the case that the number of complaints remains extremely low (6.14-6.16 below), notwithstanding a series of Schedule 7 workshops run by the campaign organisation CAGE,<sup>82</sup> better information about avenues for complaints available at ports, and my own repeated urgings that people who object to the way in which the powers are exercised should take the opportunity to complain. I have spent a good deal of time talking with particularly affected communities about Schedule 7.<sup>83</sup> But

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<sup>82</sup> <http://www.cageuk.org/category/tag/uk-terrorism-policy/schedule-7>.

<sup>83</sup> *The Terrorism Acts in 2011*, June 2012, para 9.12; *The Terrorism Acts in 2012*, July 2013, paras 10.4-10.5.

anecdotal evidence of problems is impossible to assess unless both sides have had their say in the context of a fair complaints process.

- 6.9 There is no cause for complacency: Schedule 7 is neither comprehensive nor foolproof as a protection; it continues to be a source of considerable irritation for some travellers of all ethnicities; and arrest rates remain very low indeed by the standards of stop and search (though this reflects the fact that terrorists are thankfully much rarer than people carrying knives or drugs; and Schedule 7 is in any event useful in many other ways).<sup>84</sup> Nonetheless, at a difficult stage of the fight against terrorism, when the border has been in the spotlight, ports officers have succeeded in doing more with less. I commend them for that.

### ***Examinations by ethnicity***

- 6.10 The collection of ethnicity data for Schedule 7 stops has been carried out on a self-definition basis since April 2010. The UK-wide figures are as follows:<sup>85</sup>

#### Examined less than 1 hour

	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>
<b>White</b>	47%	46%	42%	46%	39%
<b>Black</b>	8%	8%	8%	8%	7%
<b>Asian</b>	26%	25%	22%	19%	23%
<b>Other</b>	16%	16%	17%	16%	18%
<b>Mixed/not stated</b>	4%	5%	11%	12%	13%

#### Examined more than 1 hour

	<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>
<b>White</b>	14%	12%	14%	12%	11%
<b>Black</b>	15%	14%	14%	13%	10%
<b>Asian</b>	45%	36%	33%	34%	36%
<b>Other</b>	20%	24%	25%	26%	26%
<b>Mixed/not stated</b>	6%	14%	15%	14%	17%

<sup>84</sup> *The Terrorism Acts in 2011*, July 2012, 9.43-9.53.

<sup>85</sup> Source: ACPO/NPCC/Home Office. The adjustments to figures given in previous years (e.g. *The Terrorism Acts in 2013*, July 2014, 7.4) are explained by the exclusion of data from the Crown Dependencies, which are not part of the UK, and by a column of erroneous figures given in my July 2014 report for detentions in 2011/12, correct versions of which were given in my July 2013 report and are reproduced here.

## Detained

	2010/11	2011/12	2012/13	2013/14	2014/15
<b>White</b>	8%	8%	9%	11%	11%
<b>Black</b>	21%	23%	22%	18%	12%
<b>Asian</b>	45%	35%	31%	35%	35%
<b>Other</b>	21%	23%	22%	22%	27%
<b>Mixed/not stated</b>	5%	11%	16%	14%	15%

## Biometrics

	2010/11	2011/12	2012/13	2013/14	2014/15
<b>White</b>	8%	6%	9%	11%	11%
<b>Black</b>	21%	23%	24%	19%	11%
<b>Asian</b>	46%	35%	30%	32%	35%
<b>Other</b>	20%	24%	22%	23%	27%
<b>Mixed/not stated</b>	6%	12%	15%	15%	15%

- 6.11 I expressed the view in my 2013 and 2014 reports that while it remains essential that the police should exercise their powers under Schedule 7 in a sensitive, well-informed and unbiased manner, these statistics do not constitute evidence that those powers were being used in a racially discriminatory manner.<sup>86</sup>
- 6.12 My analysis was subjected to scrutiny by five members of the Supreme Court in the case of *Beghal* (6.34-6.39 below). Their comments were *obiter* (not binding), because there was and could have been no claim in that case that Mrs Beghal had suffered discrimination.<sup>87</sup> However:
- a) The risk of the power being misused on a discriminatory basis was said in the leading judgment (Lords Hughes and Hodge) to be “*not a substantial one*”, for the reasons given in my 2014 report and summarised at para 25 of the judgment. Lord Hughes and Lord Hodge emphasised however, as did the House of Lords in an earlier case on stop and search,<sup>88</sup> that “*neither ethnic background nor religion can (separately or together) be the sole criterion for selection, unless present in association with known terrorist profiles or with other relevant characteristics, such as age, mode of travel, destination or origin*”.<sup>89</sup>

<sup>86</sup> See, in particular, *The Terrorism Acts in 2013*, July 2014, 7.8-7.15.

<sup>87</sup> *DPP v Beghal* [2015] UKSC 49, para 50.

<sup>88</sup> *R (Gillan) v MPC* [2006] UKHL 12, per Lord Hope at para 46.

<sup>89</sup> *DPP v Beghal* [2015] UKSC 49, para 50. This seems consistent with the message contained in the Schedule 7 Code of Practice, para 19, which is strongly emphasised in the training of ports officers, though the Supreme Court found its wording “*potentially confusing*”.



- b) Lord Neuberger and Lord Dyson associated themselves with “*most of the reasoning*” in the leading judgment,<sup>90</sup> and added that “*there is no evidence that the Schedule 7 powers have been used in a racially discriminatory fashion*”, that “*discriminatory use is specifically prohibited by the code*” and that “[i]n this connection, the independent reviewer’s reports quoted in para 25 above are significant”.<sup>91</sup>
- c) An emphatic dissenting note was sounded by Lord Kerr, who noted that discrimination may be on racial grounds even if it is not the sole ground for the decision. He considered that by authorising the use of a coercive power even partly on the grounds of race and religion, Schedule 7 “*not only permits direct discrimination, it is entirely at odds with the notion of an enlightened pluralistic society all of whose members are treated equally*”.<sup>92</sup>

6.13 The legal position is thus settled, subject to any future judgment of the ECtHR.

### Complaints

- 6.14 The Independent Police Complaints Commission [IPCC] used its call-in power between July 2011 and June 2015 to ask forces to refer to it all complaints and conduct matters arising from the use of Schedule 7. The IPCC then supervised all cases where concerns were raised about the reasons for the stop.
- 6.15 The number of complaints was never large: thus, in 2014/15, the IPCC received only 20 referrals from police forces across England and Wales, of which six were sent back to local forces for investigation and 14 were subject to supervised investigation (primarily where concerns were expressed about the reasons for the stop).<sup>93</sup> The IPCC’s function of supervision was however beset by a long-running dispute with the MPS concerning the manner in which its oversight responsibilities should be discharged where the reasons for a stop were in issue. On 28 March 2014, the IPCC was granted permission by the High Court to apply for judicial review of the MPS in relation to these issues. The dispute was eventually resolved by a Consent Order dated 12 January 2015, which may be found in redacted form on the IPCC website.<sup>94</sup> In brief, the MPS acknowledged that the IPCC needed access to relevant material as part of its functions; and arrangements were made to protect the security and confidentiality of that material.
- 6.16 The IPCC told me that as of April 2015, 32 supervised investigations and four appeals relating to Schedule 7 matters were still ongoing. It has recently decided to end the requirement for forces to refer complaints and conduct matters to it, in the light of “*the*

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<sup>90</sup> *Ibid.*, para 72.

<sup>91</sup> *Ibid.*, para 89.

<sup>92</sup> *Ibid.*, para 105.

<sup>93</sup> Source: IPCC.

<sup>94</sup> [www.ipcc.gov.uk/Documents/Schedule\\_7\\_Consent\\_Order.pdf](http://www.ipcc.gov.uk/Documents/Schedule_7_Consent_Order.pdf).

*volume of evidence that we have shared with recent reviews, and the changes which have been made to Schedule 7*". But police forces will still have to refer any complaints that allege a discriminatory use of counter-terrorism powers;<sup>95</sup> and the IPCC will review the position if the evidence suggests that its closer involvement would be helpful.

## **Changes to Schedule 7**

- 6.17 Two recent Acts of Parliament effected changes to Schedule 7: ASBCPA 2014 and CTSA 2015.

### ***ASBCPA 2014***

- 6.18 I reported last year on the six broadly liberalising changes to Schedule 7 that became law in section 148 of and Schedule 9 to ASBCPA 2014.
- a) new time limits on examination and detention;<sup>96</sup>
  - b) requirements for the training and designation of examining officers;<sup>97</sup>
  - c) removal of the intimate search power, and new limits on strip searches;<sup>98</sup>
  - d) the extension to persons detained at ports of the rights to have someone informed and to consult a solicitor;<sup>99</sup>
  - e) removal of the power to take intimate biometric samples (e.g. blood, urine);<sup>100</sup> and
  - f) a new requirement for review of detention at specified intervals.<sup>101</sup>
- 6.19 All came into force in July 2014, save for the statutory review of detention, which was commenced in April 2015 so as to allow sufficient time to develop, accredit and train all examining and review officers.
- 6.20 On 4 July 2014 a revised Code of Practice was published, having been put out to consultation, and issued to front-line officers in time for the entry into force of the first tranche of amendments to the primary legislation.<sup>102</sup>
- 6.21 I had an opportunity at the National Ports Conference in October 2014 (a classified event for those concerned with security at the border) to take preliminary soundings as to how the initial changes were starting to bed down. Concerns were expressed from a number of ports about the consequences of the reduction to six hours of the total

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<sup>95</sup> Police (Complaints and Misconduct) Regulations 2012, Regulation 4(2)(a)(iv).

<sup>96</sup> ASBCPA 2014, Schedule 9 para 2, amending TA 2000 Schedule 7 para 6 and adding para 6A.

<sup>97</sup> ASBCPA 2014 Schedule 9 para 1, providing for a code of practice.

<sup>98</sup> TA 2000 Schedule 7 paras 8(4)-(7), inserted by ASBCPA 2014 Schedule 9 para 3.

<sup>99</sup> ASBCPA 2014 Schedule 9 para 5, amending TA 2000 Schedule 8 and inserting a new para 7A.

<sup>100</sup> ASBCPA 2014 Schedule 9 para 6, amending TA 2000 Schedule 8 para 10.

<sup>101</sup> Part 1A of TA Schedule 8, inserted by ASBCPA 2014 Schedule 9.

<sup>102</sup> The current version is *Code of practice for examining officers and review officers under Schedule 7 to the Terrorism Act 2000*, March 2015.

permitted period of examination and detention, coupled with the new right of detainees to consult a solicitor before questioning can begin, save when the examining officer reasonably believes that postponing the questioning until then would be likely to prejudice determination of the relevant matters.<sup>103</sup> Officers from several ports expressed concern about:

- a) ignorance of Schedule 7 on the part of duty solicitors, who took time to familiarise themselves with its unusual provisions, and in particular the right to require questions to be answered even in the absence of suspicion; and/or
- b) the potential for detainees to “*run down the clock*” by requesting solicitors: it was acknowledged that delays for interpreters and the feigning of illness were capable of being used for the same purpose.

I subsequently received one well-documented example of these difficulties, though another airport which I visited in early 2015 did not have specific problems to report.

- 6.22 ACPO guidance of December 2014 correctly emphasised that whilst a reasonable delay to await the arrival of a solicitor may be required, the detainee is not entitled to exercise the right in such a way as to frustrate the proper purpose of the examination. I will keep this issue under review, and look forward to receiving a more up-to-date and co-ordinated impression of the problem (to the extent that it still exists) at a further National Ports Conference later this year.

### **CTSA 2015**

- 6.23 The other statutory changes concerned the application of Schedule 7 to goods, and came in an obscure and uncontroversial part of CTSA 2015, little debated during the passage of the Bill.<sup>104</sup>
- 6.24 The first change is intended to ensure that the Schedule 7 power can be used in relation to cargo agents’ premises, transit sheds and designated places such as distribution depots lying outside port boundaries.
- 6.25 The second change is intended to clarify that the protection from interception afforded to postal communications in the Regulation of Investigatory Powers Act 2000 [**RIPA 2000**] does not restrict the use of Schedule 7 powers in respect of postal packets.
- 6.26 Both these issues are old chestnuts to Schedule 7 aficionados. In 2009 and 2010 Lord Carlile recommended that “*post should be treated like all other freight and, if necessary, the law should be amended accordingly*”.<sup>105</sup> I myself referred to both issues

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<sup>103</sup> See 6.18(d) above.

<sup>104</sup> CTSA 2015 section 43 and Schedule 8.

<sup>105</sup> *Report on the Operation in 2008 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, June 2009, para 155; *Report on the Operation in 2009 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, July 2010, para 195.

in my reports of 2011, 2012 and 2014. These gaps in protection were certainly not filled with indecent speed: but the end result is to be welcomed.

- 6.27 There was a further consultation on these changes between December 2014 and January 2015, and an amended Schedule 7 Code of Practice was published on 25 March 2015.<sup>106</sup>

### **Recording**

- 6.28 A further change, for which no statutory backing was needed, was the requirement that with effect from 1 April 2015, interviews with detained persons at a port must be recorded when suitable audio recording facilities are available, unless the person expresses the wish not to have it recorded. Such audio recordings are not evidential, but for use e.g. in the case of a complaint.<sup>107</sup> I look forward to monitoring how frequently, in practice, interviews are recorded given that detainees have the right to object to recording.

### **Unfinished business**

- 6.29 All these changes – though welcome – did not address three fundamental features of Schedule 7 to which I have drawn attention in a number of my reports:
- a) the fact that no suspicion is required for the exercise of most Schedule 7 powers, including the power to detain and to download the contents of a phone or laptop;<sup>108</sup>
  - b) the fact that answers given under compulsion are not expressly rendered inadmissible in criminal proceedings;<sup>109</sup> and
  - c) the need for clear and proportionate rules governing the data taken from electronic devices.<sup>110</sup>
- 6.30 I set out last year the views expressed by both the JCHR and the HASC on these matters, together with my own detailed proposals, submitted in evidence to the HASC, and the Government's response to them.<sup>111</sup>
- 6.31 No further legislation to address these matters has been proposed. Schedule 7 is in the middle of a series of high-level legal challenges, and for the time being the spotlight is on the courts. As explained at 6.34-6.39 below, the Supreme Court in *Beghal* has recently commented (in July 2015) on all three matters.

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<sup>106</sup> *Code of practice for examining officers and review officers under Schedule 7 to the Terrorism Act 2000*, March 2015. This replaced Circular 2/2015, *Guidance to examining officers on the examination of goods under Schedule 7 to the Terrorism Act 2000*.

<sup>107</sup> *Ibid.*, para 67.

<sup>108</sup> *The Terrorism Acts in 2012*, July 2013, 10.50-10.62.

<sup>109</sup> *Ibid.*, 10.63-10.64.

<sup>110</sup> *Ibid.*, 10.65-10.80.

<sup>111</sup> *The Terrorism Acts in 2013*, July 2014, 7.25-7.34, [Annex 2](#) and [Annex 3](#).

## Litigation update

- 6.32 At the time of my last annual report, only one appellate judgment had ever referred to Schedule 7, and that was not a Schedule 7 case. In *R v Gul*, a unanimous seven-judge Supreme Court referred to the “*unusual discretions*” and “*substantial intrusive powers*” granted to police, and commented that Schedule 7 detention “*represents the possibility of serious invasions of personal liberty*”.<sup>112</sup>
- 6.33 Three further cases were waiting to be heard in the higher courts (including the ECtHR):
- a) *Beghal*, which the Supreme Court was to hear in November 2014 after giving the claimant permission to appeal from the August 2013 ruling of the Divisional Court;
  - b) *Miranda*, in which the Court of Appeal had given permission to appeal from the February 2014 ruling of the Divisional Court;<sup>113</sup> and
  - c) *Malik v UK*, never brought before the UK courts but declared admissible by a unanimous section of the ECtHR in May 2013.

The background to each of those cases is given in last year’s report.<sup>114</sup>

- 6.34 The only one of those cases to have been decided thus far is *Beghal*, in which judgment was given on 22 July 2015. Like the Divisional Court before it, the Supreme Court (by a majority) rejected the submissions of Mrs Beghal that Schedule 7 was incompatible with rights guaranteed by the European Convention on Human Rights [ECHR] and the Human Rights Act 1998 [HRA 1998]. The Government thus won the case, and the tone of the majority judgments was less critical than the *obiter* comments in *R v Gul* (6.32 above).<sup>115</sup> But Lord Kerr dissented, and *Beghal* is now likely to proceed to the ECtHR.
- 6.35 Of interest (in addition to the comments of the Supreme Court on ethnicity data: 6.12 above) are the comments of the Court in relation to the areas of unfinished business referred to at 6.29 above, and set out by the Court at para 26 of its judgment:
- a) Lord Hughes and Lord Hodge appeared to indicate that if it is to be proportionate, **detention** for as long as six hours, or “*detention beyond what is necessary to complete the process*”, “*calls for objectively demonstrated grounds, such as a suspicion on reasonable grounds that the subject falls within section 40(1)(b) or of*

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<sup>112</sup> [2013] UKSC 64.

<sup>113</sup> *Miranda* has now been listed for hearing by the Court of Appeal in December 2015.

<sup>114</sup> *Ibid.*, 7.38(a) (*Beghal*); 4.11-4.23 (*Miranda*); 7.39(c) (*Malik*).

<sup>115</sup> Lord Neuberger and Lord Kerr sat in both cases.

course, other grounds for arrest”.<sup>116</sup> The views of Lords Neuberger and Dyson are less certain, but in his dissenting judgment, Lord Kerr expressed the view that even the initial stop should not be undertaken “*without any suspicion whatever*”,<sup>117</sup> and must therefore be taken to have expressed at least as strong a line as Lord Hughes and Lord Hodge about long detentions.

- b) As regards **electronic devices**, Lord Hughes and Lord Hodge (with whom Lord Neuberger and Lord Dyson expressly associated themselves) considered that “*objectively established grounds for suspicion*” should be required once the stop itself, and “*a short period afterwards to compare records*”, had passed. Whether the appropriate period for suspicionless retention should be fixed at “*the seven days prescribed for other material obtained by search*”, or at some other period, was said to need evidence that was not before the Court.<sup>118</sup>
- c) As regards the advisability of a **statutory bar on the admission** of anything said in a Schedule 7 interview in a subsequent criminal trial, Lords Hughes and Hodge said that “*it is difficult to understand why effect has not been given to the Independent Reviewer’s recommendation that the position be put beyond argument .. by the enactment of a provision making answers or information obtained inadmissible except in proceedings under para 18 of Schedule 7 or for an offence of which the gist is deliberately giving false information when questioned*”, and expressed the hope that “*following the observations of the Divisional Court and (now) this court, such enactment will follow.*” Lords Neuberger and Dyson once again agreed, and Lord Kerr considered that the absence of such a provision rendered this aspect of the Schedule 7 powers both disproportionate and not in accordance with the law.<sup>119</sup>

6.36 For these reasons, the Government can by no means derive complete comfort from its victory in *Beghal*. The facts of the case were less than ideal for a challenge to Schedule 7. In particular:

- a) Mrs Beghal was returning from a visit to her husband, a convicted terrorist in Paris.
- b) She was stopped for a total of only an hour and three quarters (which included time to pray, make arrangements for her children and speak to her lawyer) and questioned for less than half an hour.
- c) There was no inspection, copying or retention of electronic data.

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<sup>116</sup> *DPP v Beghal* [2015] UKSC 49, para 55. The passage appears to be *obiter*, since Mrs Beghal was “*prevented from moving on from the airport for about an hour and three quarters*”, a period which the Justices described as “*no longer than was necessary for the completion of the process*” (paras 53, 56). The latter phrase may require elucidation: compare *CC v MPC and SSHD* [2011] EWHC 3316 (Admin), discussed in *The Terrorism Acts in 2011*, June 2012, at 9.40.

<sup>117</sup> *Ibid.*, para 106.

<sup>118</sup> *Ibid.*, paras 57-58, 72. These remarks were also *obiter*, since it was expressly acknowledged that “*[t]he use of this power does not arise in the present appeal*”.

<sup>119</sup> *Ibid.*, paras 67, 72 and 124.

d) Though she received a conditional discharge after a guilty plea to a charge of failing to answer questions, it was not sought in any subsequent prosecution to rely on any incriminating statement that she made at the port.

6.37 Had Mrs Beghal been detained for six hours without objective suspicion, had her electronic data been retained for substantial periods of time, and had anything she said under compulsion been admitted as incriminating evidence in a subsequent criminal trial, it seems clear from the comments of all Justices (or in the case of detention, Lords Hughes, Hodge and Kerr, who on that issue constitute a majority) that the Supreme Court would have found her rights to have been infringed by aspects of her treatment.

6.38 The extent to which the Supreme Court was prepared to concern itself with circumstances that were not present in the case before it is admittedly unusual. Its judgment on these points is not binding, and the authoritative interpretation of what it said is not for me but for the courts. Nevertheless, a strong indication appears to have been given, by the highest court in the land, that the admissibility of incriminating answers given in response to Schedule 7 questioning should be expressly excluded by statute; that electronic data cannot be lawfully retained for more than a limited time; and that if Schedule 7 is to continue to be lawfully used for long detentions, a measure of suspicion (probably objective suspicion) must be required beyond a certain point. To put it more simply, claimants who have been detained without objective suspicion for six hours, or had their electronic data retained for a substantial period, may now be able successfully to challenge those aspects of their treatment.

6.39 I hope that in the light of this judgment the Government will revisit the suggestions for reform that were made in my last annual report,<sup>120</sup> as modified by the Supreme Court.

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<sup>120</sup> *The Terrorism Acts in 2013*, July 2014, 7.25-7.33 and [Annex 2](#).

## 7. ARREST AND DETENTION

### Introduction

- 7.1 Whilst arrest and detention are in most circumstances governed by the Police and Criminal Evidence Act 1984 [**PACE**], there are a number of respects in which the rules applicable to terrorism suspects are different:
- a) A special **power of arrest** is provided for by TA 2000 section 41, for use in relation to certain terrorist offences only. Unusually, the arresting officer need have no specific offence in mind: it is enough, by section 40(1)(b), for there to be a reasonable suspicion that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism.
  - b) A maximum period of **pre-charge detention**, in excess of the 96 hours allowed under PACE, applies in relation to persons arrested under section 41. Having fluctuated between 7 and 28 days over the currency of the Act, the maximum period (which is only rarely approached in practice) has stood at 14 days since January 2011.<sup>121</sup> Detention must be reviewed at 12-hour intervals during the first 48 hours; beyond that time, warrants for further detention must be obtained from a court. Police bail is not available.
  - c) The **treatment of detainees** is governed by special rules contained in Part I of TA 2000 Schedule 8 and (save in Scotland) by PACE Code H.
  - d) There are wider powers to take and retain **identification data and samples**.

### Arrests in 2014

- 7.2 In **Great Britain** there were 65 arrests in 2014 under TA section 41, up from 40 in 2013, 50 in 2012 and 54 in 2011.
- 7.3 A more eye-catching figure, often quoted by Ministers, is for “*terrorism-related arrests*”. 289 of these were recorded in 2014 (as against 223 in 2013, 258 in 2012, 170 in 2011 and an average of 216 since September 2001).<sup>122</sup>
- 7.4 As I have previously noted,<sup>123</sup> caution is required in relation to these figures. But in 2014, 86% of those charged following “*terrorism-related arrests*” were charged with offences considered to be linked to terrorism, a substantial increase over the equivalent figure of 56% in 2013.

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<sup>121</sup> As explained in *The Terrorism Acts in 2011*, June 2012, 7.12-7.16. 12 days was described recently by the ECtHR as “a relatively short period of time” and “the early stages of the deprivation of liberty” (*Magee and others v UK*, judgment of 12 May 2015, para 105), though the fact that no charges have at that stage been brought, and that detention is usually in a police cell rather than prison accommodation, makes close scrutiny of the conditions of detention essential: 7.22-7.35 below.

<sup>122</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, Table A.01. There were 2,877 “*terrorism-related arrests*” in Great Britain between 11 September 2001 and December 2014.

<sup>123</sup> *The Terrorism Acts in 2012*, July 2013, 8.3-8.7; *The Terrorism Acts in 2013*, July 2014, 8.3.



- 7.5 Two notable features of the 2014 arrests are that:
- a) They were focused on the **last quarter** of the year, which saw 46% of the arrests under TA 2000 section 41 and 37% of all the terrorism-related arrests.
  - b) There was a large increase in the number of **18-20 year olds** being arrested, which more than tripled from 15 in 2013 to 46 in 2014.
- 7.6 Continuing a recent trend, the great majority (78%) of “*terrorism-related arrests*” were under PACE rather than TA 2000 section 41. This contrasts with the period 2003-2007, in which over 90% of such arrests were under TA 2000. Two possible explanations are increased use of holding charges (identity offences, benefits fraud, internet-related offences) while terrorist offences are investigated, and the advent of certain precursor offences under TA 2006 in respect of which the TA 2000 section 41 arrest power (which is limited to the categories of person specified in section 40) may not be available. It is also conceivable that decisions on the borderline could be influenced by, for example, the different rules governing detention and/or police bail. The criteria used by police to decide whether to arrest under PACE or TA 2000, together with the practice of arresting under one power and re-arresting under the other, would repay detailed study, perhaps by the Independent Reviewer in conjunction with others.
- 7.7 In **Northern Ireland**, figures are compiled on the more straightforward basis of persons arrested under TA 2000 section 41. There were 227 in 2014/15, the highest number since 2005-06.<sup>124</sup>
- 7.8 It is a striking fact that more than three times as many people were arrested under the Terrorism Act in Northern Ireland than in Great Britain. This is despite the fact that according to the 2011 Census, Northern Ireland comprises only 2.9% of the population of the United Kingdom. Persistently low charging rates (7.16 below), which I continue to consider disappointing, are a possible indicator that the arrest power is over-used in Northern Ireland. On the other hand, any comparison of arrest rates must take into account the fact that as noted at 2.15-2.16 above, terrorist incidents are far more numerous in Northern Ireland than in the rest of the UK.

### **Periods of detention in 2013**

- 7.9 In **Great Britain**, of the 65 persons arrested in 2014 under TA 2000 section 41:
- a) 31% were held in pre-charge detention for less than 48 hours. This compares to 40% in 2013 and a total of 60% since September 2001.
  - b) 68% were held for less than a week. This compares to 95% in 2013 and 89% since September 2001.

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<sup>124</sup> PSNI, *Police Recorded Security Situation Statistics*, 12 May 2015, Table 3.

c) 22% (14 people) were held for more than 10 days, all of them in the last quarter of the year. Charging decisions in relation to 12% (8 people) were reached only on the last possible (14<sup>th</sup>) day.<sup>125</sup>

7.10 Pre-charge detention times have thus lengthened. Not too much should be built on a single year's figures. But the longer detention periods may be linked to an increase in Syria-related arrests, and to pressure of numbers in the last quarter. There could be detainees in respect of which the possibility of time-limited police bail could ease the pressure on the police to reach an early charging decision, though my recommendations on this – like those of many others – have not found favour.<sup>126</sup>

7.11 In **Northern Ireland**, a breakdown for the 227 arrested in 2014/15 is not yet available, but of the 168 persons arrested under TA 2000 section 41 in 2013/14:

a) 95% were held in pre-charge detention for less than 48 hours, 63% of those for less than a day.

b) Only one person was held for more than a week (who was the only person to be held for more than 48 hours and not charged).<sup>127</sup>

7.12 As in previous years, therefore:

a) the TA 2000 section 41 arrest power was used with far greater frequency in Northern Ireland than in Great Britain; but

b) detention beyond 48 hours, common in Great Britain, is rare in Northern Ireland.

### Numbers charged in 2014

7.13 In **Great Britain** 96 people were charged with terrorism-related offences in 2014, almost double the average of 50 charged annually between 2002 and 2013.<sup>128</sup> The increase on the 20 charges in 2010 and the 36 in 2011 is testament to a significant growth in terrorist and counter-terrorist activity.

7.14 Of those 96, 54 were charged under the Terrorism Acts, 8 under TA 2000 Schedule 7 for failure to comply with border controls, and 34 under other legislation.<sup>129</sup>

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<sup>125</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, Table A.02. 11 of the 14 people held for longer than 10 days were charged.

<sup>126</sup> *The Terrorism Acts in 2011*, June 2012, 7.71-7.73 and 12.15; *The Terrorism Acts in 2013*, July 2014, 8.31-8.32 and 12.6(b).

<sup>127</sup> NIO, *Northern Ireland Terrorism Legislation: Annual Statistics 2013/14*, October 2014, Table 7.

<sup>128</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, Table A.04.

<sup>129</sup> *Ibid.*, Table A.03.

- 7.15 38% of those subject to “*terrorism-related arrests*” in 2014 have already been charged, in line with the average charging rate since 2001. That proportion is likely to increase as more investigations are completed: the charging rate for 2013 was an impressive 58%.
- 7.16 In **Northern Ireland**, by contrast, only 32 (19%) of the persons arrested under TA 2000 in 2013/14, and 35 (18%) of those arrested in 2014/15, were subsequently charged. These are:
- a) among the lowest numbers charged for 10 years, and
  - b) the two lowest charge rates in the past 10 years.<sup>130</sup>

The very low charge rate in Northern Ireland remains disappointing. I have previously and repeatedly emphasised the need for reasonable suspicion in relation to each person arrested under section 41.<sup>131</sup>

### Gender, age, ethnicity and nationality

- 7.17 The Home Office has published detailed figures for the gender, age, ethnicity and nationality of those subject to terrorism-related arrest and charge and conviction in 2013.<sup>132</sup> No such figures are published in Northern Ireland.
- 7.18 As to **gender** and **age**, in Great Britain:
- a) Males made up 90% of those subject to terrorism-related arrest, 93% of those charged with a terrorism-related offence and 97% of those convicted of a terrorism-related offence in 2014.<sup>133</sup>
  - b) Twice as many under-24 year olds were arrested in 2014 (101) as in 2013 (51), with the most marked increase coming in the 18-20 age group (15 to 46). But the departure from the long-term average is less striking: 35% of terrorism-related arrests in 2014 were of under-24s, compared to 28% over the 2001-2014 period.<sup>134</sup> Arrests of under-18s were only slightly higher as a proportion of the whole than was the case over the 2001-2014 period (3.5% as against 3.2%).
- 7.19 As to **ethnic appearance**, the figures (based on officer-defined data) are as follows for Great Britain:<sup>135</sup>

<sup>130</sup> PSNI, *Security Situation Statistics*, 12 May 2015, Table 3.

<sup>131</sup> See, e.g., *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006*, July 2011, 7.43-7.47 and 12.5.

<sup>132</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, Tables A.09-A.12c.

<sup>133</sup> *Ibid.*, Table A.09. The equivalent figures for the period September 2001 to December 2013 were 93%, 94% and 94%.

<sup>134</sup> *Ibid.*, Table A.10.

<sup>135</sup> *Ibid.*, Table A.11.

<b>2014</b>	<b>White</b>	<b>Black</b>	<b>Asian</b>	<b>Other</b>	<b>N/K</b>
<b>% terrorism-related arrests</b>	29%	13%	49%	8%	1%
<b>% terrorism-related charges</b>	27%	17%	47%	7%	2%
<b>% terrorism-related convictions</b>	30%	17%	40%	7%	7%

They correspond closely to the following figures for the period 2005-2012, also based on police perceptions:<sup>136</sup>

<b>2005-2012</b>	<b>White</b>	<b>Black</b>	<b>Asian</b>	<b>Other</b>	<b>N/K</b>
<b>% terrorism-related arrests</b>	25%	14%	44%	16%	2%
<b>% terrorism-related charges</b>	24%	17%	46%	11%	2%
<b>% terrorism-related convictions</b>	26%	16%	47%	8%	3%

7.20 As to (self-defined) **nationality**, British citizens comprised 76% of those arrested for terrorism-related offences, 75% of those charged with and 73% of those convicted of such offences in 2013.<sup>137</sup> These are well in excess of the equivalent figures for the period September 2001 - December 2013, which are 50%, 64% and 63%.

7.21 Of the 452 persons convicted of terrorism-related offences in Great Britain between September 2001 and December 2014, the largest numbers of foreign nationals have come from Algeria (26), Albania (14), Somalia (11), Pakistan (11), India (8) and Ireland (7).

### Conditions of detention

7.22 I have previously explained the arrangements by which I exercise the Independent Reviewer's power to visit detention centres (colloquially known as "*TACT suites*") in order to verify whether the requirements of TA 2000 Schedule 8 and of PACE Code H have been complied with in relation to persons detained under TA 2000 section 41 under a warrant for further detention (i.e. for more than 48 hours).<sup>138</sup> As I remarked last year, the requirements of Directive 2013/13/EU, regarding information to be given to detainees, were implemented during 2014.<sup>139</sup>

7.23 I reiterate my impression, gained from my visits and inspections in London and from talking to detainees, detainees' solicitors, independent custody visitors [**ICVs**], forensic medical examiners [**FMEs**] and police officers and staff, that there are no currently endemic problems in the treatment of terrorist detainees. Indeed at Southwark, the busiest of the TACT suites in Great Britain, detainees are often generous with praise for the way in which they are fed and looked after, both when I meet them in person

<sup>136</sup> Figures provided to me in personal communication from the Home Office. The 2013 percentages are in *The Terrorism Acts in 2013*, July 2014, 8.15.

<sup>137</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, Tables A.12a-A.12c.

<sup>138</sup> *The Terrorism Acts in 2012*, July 2013, 8.24-8.34.

<sup>139</sup> *The Terrorism Acts in 2013*, July 2014, 8.22.

and when they speak to ICVs.<sup>140</sup> Custody records are for the most part scrupulously completed, while complaints tend to be minor and focus on such matters as cell temperature and malfunctioning equipment. The frequent presence of solicitors, experienced FMEs and ICVs, the universal appreciation of the special demands of TACT detention and the almost ubiquitous video surveillance of TACT centres make police ill-treatment within the buildings appear an unlikely prospect. But in the highly-charged field of terrorism, the consequences of a death in custody, or even a credible allegation of abuse, could be very grave. It is for such reasons that Parliament entrusted the Independent Reviewer with additional powers of verification.<sup>141</sup>

### ***Detainee visits***

7.24 During the year under review:

- a) The system of protocols notifying me of cases when warrants for further detention have been granted for the most part worked well.
- b) The reports of ICVs, on which I tend to rely when deciding whether to visit, are generally provided in a timely fashion.
- c) Remote access to the custody records of detained persons on my own secure terminal in the Home Office has still not been made possible, despite repeated requests.
- d) I made a small number of visits to Southwark Police Station in London, with or without notice, to speak to detainees (most of whom were happy to speak to me), and visited both the Antrim Serious Crime Suite and Musgrave Street Police Station in Belfast.
- e) The practical difficulties that I face in visiting detainees outside London, described in my 2014 report,<sup>142</sup> continue to exist.
- f) I was able to visit, in total, less than a quarter of the 45 persons detained in Great Britain for longer than 48 hours during 2014, and none of the nine persons so detained in Northern Ireland during 2013/14.

### ***The NPM and national guidelines***

7.25 Conscious that I might be able to contribute more as part of a larger expert body, I asked during 2014 to join the National Preventative Mechanism **[NPM]**,<sup>143</sup> and am told

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<sup>140</sup> HM Inspectorates of Prisons and Constabulary **[HMIP]** and **[HMIC]** made a joint inspection of the Southwark custody suites in November 2013, reporting in 2014: <https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/2014/05/southwark-joint-inspection-of-custody-suites.pdf>.

<sup>141</sup> House of Commons Library Standard Note SN/HA/5129, 14 July 2009; *The Terrorism Acts in 2011*, June 2012, 7.44-7.47.

<sup>142</sup> *The Terrorism Acts in 2013*, July 2014, 8.20.

<sup>143</sup> *Ibid.*, 8.23.

that my application remains under active consideration. I was grateful for an invitation to address a meeting of the NPM in March 2015, and an interesting discussion ensued regarding the possibility of future collaborative work focussing in depth on TACT suites. I hope to make progress on this, not just because of the constraints on my own time and resources but because of the experience and expertise in custody visiting of other NPM members such as HMIC and HMIP. Detention under TA 2000 Schedule 8, with its possible maximum duration of 14 days, falls between the more familiar worlds of short-term detention in police station and imprisonment, and it would be desirable to aim at a set of common guidelines or recommendations, with the assistance of NPM members and on the basis of such international standards or best practice as may be applicable.

7.26 Also in March 2015, I attended a meeting at Southwark Police Station of police officers responsible for detention in the principal TACT suites across the UK. This meeting strongly confirmed me in my opinion (which I understood to be widely shared by officers present) that some national guidance is desirable. I have remarked in previous reports on the differences in facilities and treatment of detainees in different TACT suites. Examples of the matters on which I was asked for my opinion were:

- a) my attitude to civilian detention officers performing the traditional functions of the custody sergeant;
- b) whether detainees always need to be transferred from regional TACT centres to national centres after 48 hours, when (despite smaller cells) both investigating police and their families might find it more convenient to keep them where they were;
- c) whether detainees should have the ability to watch selected videos in their cells (as at Southwark, but not at Govan or in Northern Ireland);
- d) what food options should be available;
- e) whether smoking should be banned (as is the custom in all national TACT suites except Southwark), and whether nicotine patches or lozenges should be provided in lieu, and if so on whose authority; and
- f) the optimal viewing system for checking on detainees in-cell.

While some of those questions arise in other police custody contexts, the answer to each of them is at least potentially affected by the longer maximum period of detention in police cells under the Terrorism Act.

7.27 I ventured provisional answers to some of those questions, but consider it far preferable that there should be a co-ordinated approach based on collaboration with other NPM members. I hope that my application for NPM membership can now proceed with expedition and that a joint exercise will soon be possible.

## ***Specific issues***

### Forensic Medical Examiners

- 7.28 I made contact during the period under review with Dr Neil Frazer, who is the most experienced medical examiner of terrorist suspects in London, with Dr Meng Aw-Yong, Medical Director of Forensic Healthcare Services at the Metropolitan Police, and with NHS England to discuss the ongoing process of transferring contracts for the provision of custody health care to a joint police force/NHS commissioning process.
- 7.29 It soon became plain that the dedicated medical professionals who handle the FME work in London had concerns about the possible consequences of the introduction of NHS commissioning. They did not feel confident that the new commissioning process would ensure the continuation of health care provision for TACT detainees that would be adequate in all the circumstances, given the unusual nature of those detainees, the circumstances that surround their detention and the length of time that they can be detained.
- 7.30 The FMEs are not acting out of self-interest, but out of fear that this vitally important function will in future end up being entrusted to people who are prepared to work on a sessional basis for a company such as Serco or G4S because they have chosen not to progress in conventional medical careers and, who lack the necessary skills to do a sensitive and highly specialised job.
- 7.31 It is no part of my function to bang the drum for the FMEs. I can say though from what I have observed, inside and outside the police station, that to reduce the quality of healthcare that is currently routinely made available to TACT detainees in London would be a serious and potentially very costly mistake.
- 7.32 As a minimum, anyone with responsibility for the healthcare of a terrorist detainee needs to be a ***strong and independent professional*** with an ***understanding of terrorist detention*** and ***specialist training in mental health***. I have set out some of the reasons for this in a previous report,<sup>144</sup> but in summary:
- a) Some detainees are picked up on their way back from conflict zones where they may have suffered mentally as well as physically.
  - b) Some are young: 10 of those arrested on suspicion of terrorism-related offences in Great Britain in 2014 were under 18, and a further 46 were 18, 19 or 20.

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<sup>144</sup> *The Terrorism Acts in 2011*, June 2012, 7.41-7.43, 7.79 and 12.17.

- c) TACT detainees are liable to be kept in solitary confinement in a police station for as long as 14 days, a prolonged period of custody during which they should be entitled to the same standard of care as is available in the community from doctors who are GPs or can demonstrate competence over a broad range of medicine.<sup>145</sup>
- d) Some may feign mental illness so as to fool medics. An FME needs to be sufficiently skilled to detect this.
- e) The current FMEs read about Abu Ghraib and Guantanamo; they know some of the habits of different terrorist groups; they know when the custody clock does or does not stop; and they are familiar with concepts ranging from the ticking time bomb to fluid refusal. They are senior, locally-based professionals who can be relied upon not to panic or lose their heads in the aftermath of the next major atrocity.
- f) Should a detainee go on hunger strike (as happened recently in London), or should difficult clinical decisions need to be taken (as only rarely occurs when shorter periods of police custody are concerned), wise decision-making is paramount. Detainees may have a high public profile (both Gerry Adams and Moazzam Begg were detained in 2014); others may be alert to allege brutality or to claim deficiencies in the arrangements for their detention.
- g) Should the detainee require admission to a hospital (as was the case with the hunger striker), the FME needs the seniority, the personal skills and ideally the local connections to negotiate the admission of a terrorist suspect in circumstances where security concerns may mean significant disruption to the normal work of the hospital.
- h) If a detainee is considered to be not fit for interview, an FME needs the strength and the independence to be able to tell the Senior Investigating Officer that precious time cannot be used for this purpose. The FME may then need to resist what could be very considerable pressure to reach a charging decision in a case in which national security could be jeopardised by the detainee's release.
- i) FMEs may need to attend court to give evidence, and will need to have the requisite skills and training. Should the evidence be unimpressive, or the court form a poor view of the FME's competence, the consequences for the trial, and thus for national security, could be great.

7.33 The strength and independence of FMEs assumed historic importance during the Troubles in Northern Ireland, when police surgeons brought the ill-treatment of prisoners into the public domain, at considerable risk to themselves, and so made a

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<sup>145</sup> In the last quarter of 2014, 14 suspects were held in TACT detention in Great Britain for more than 10 days: see 7.9(c) above.



significant contribution to bringing those abuses to an end.<sup>146</sup> The story is an extreme (and inspiring) one, but there have been many lesser examples of, as one FME put it to me, “*stopping problems before they become problems*”.

- 7.34 Economies in this area, therefore, are likely to be false ones. I strongly recommend to all concerned that the necessary steps are taken to retain the current high quality of FME provision throughout the United Kingdom.

#### Visual inspections at Southwark

- 7.35 I reported last year on an issue which originally came to my attention by talking to a detainee at Southwark: detainees being woken on an hourly basis throughout the night by officers who had to open a noisy sliding gate on the cell door to perform a visual inspection.<sup>147</sup> This is an example of an apparently small issue which could have significant consequences for individuals facing up to two weeks of detention, potentially giving rise to allegations of sleep deprivation in custody.
- 7.36 I am pleased to report that remedial work is now in train to install cell security viewers in the wall of each cell at Southwark, which will permit the whole of the bed to be observed without disturbing the detainee.

#### **Right not to be held incommunicado and to access a solicitor**

- 7.37 In Northern Ireland, which is the only place where figures are kept, 52 of the 59 persons who requested to have someone informed of their detention under section 41, and each of the 168 persons who requested access to a solicitor, were allowed their request immediately in 2013/14.<sup>148</sup>
- 7.38 I continue to look forward to seeing the equivalent figures, at least where access to a solicitor is concerned, for Great Britain.<sup>149</sup>

#### **Litigation**

- 7.39 The Government was successful in 2014/15 in two long-running cases before the ECtHR.<sup>150</sup>
- 7.40 The first of these was ***Ibrahim and others v United Kingdom***, a case brought in 2008 and 2009 by three of the failed 21/7 London bombers and a fourth man who had been convicted of assisting one of them. The Fourth Section of the Court found by a majority of 6-1 that the “*safety interviews*” to which the men had been exposed without the

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<sup>146</sup> The story was impressively documented by Pat McGrath, FME in Northern Ireland, at a conference of the Faculty of Forensic and Legal Medicine that I attended in April 2014.

<sup>147</sup> *The Terrorism Acts in 2013*, July 2014, 8.21.

<sup>148</sup> NIO, *Northern Ireland Terrorism Legislation: Annual Statistics 2013/14*, Tables 8 and 9.

<sup>149</sup> *The Terrorism Acts in 2013*, July 2014, 1.9; *The Terrorism Acts in 2012*, July 2013, 1.30(c).

<sup>150</sup> See also *McAuley's Application* [2014] NIQB 31, in which the applicant argued unsuccessfully that he was wrongly excluded from part of a hearing for a warrant for further detention under TA 2000 Schedule 8 para 33(3).

presence of lawyers, in the interests of discovering whether further attacks were imminent, had not breached their rights to a fair trial.<sup>151</sup> The judgment is however not final, since the case has now been referred to the Grand Chamber.

7.41 The second case was ***Magee and others v United Kingdom***, a case arising out of arrests in 2009 for the murder of two soldiers at Masserene Barracks, Antrim, and for the murder of a police officer two days later. The background was explained more fully in my report of July 2013.<sup>152</sup> Arguments based on the non-availability of police bail to those arrested under TA 2000 and on the process for obtaining warrants for further detention both survived the scrutiny of a unanimous Fourth Section. In relation to bail, the Court reiterated at para 101 that it would be “*highly desirable*” for the court considering a warrant for further detention to have competence to consider release on bail for reasons other than the lawfulness of the detention or the existence of a reasonable suspicion that the applicant had committed a criminal offence, but that this was not a requirement of the ECHR. This judgment is final.

7.42 Two other cases relevant to arrest and detention remain undecided. These are:

- a) ***Sher v United Kingdom***, a case arising out of Operation Pathway and challenging various aspects of TA 2000 arrest and detention;<sup>153</sup> and
- b) ***RE v United Kingdom***, communicated to the Government in April 2013 and concerning the covert surveillance of persons in detention.<sup>154</sup>

Each has already been before the Strasbourg court for some four years.

### Response to past recommendations

7.43 I noted last year that one effect of the Strasbourg litigation, particularly where bail and warrants for further detention are concerned, was to place in the deep freeze the various recommendations that I made on this theme in my reports of 2011 and 2012.<sup>155</sup>

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<sup>151</sup> Judgment of 16 December 2014. I reported on another case in which safety interviews were used in my first report as Independent Reviewer, *Operation Gird: report following review*, May 2011.

<sup>152</sup> *The Terrorism Acts in 2012*, July 2013, 8.50-8.55. The judgment of the ECtHR was handed down on 12 May 2015.

<sup>153</sup> See *The Terrorism Acts in 2013*, July 2014, 8.26-8.29.

<sup>154</sup> See *The Terrorism Acts in 2012*, July 2013, 8.54-8.55.

<sup>155</sup> *Report on the operation in 2010 of TA 2000 and Part 1 of TA 2006*, July 2011, 7.50 and 12.8; *The Terrorism Acts in 2011*, June 2012, 7.63-7.74 and 12.14-12.16. Those recommendations were not predicated on the outcome of any litigation: in her response of March 2015 to my last annual report the Home Secretary declared herself “*sympathetic*” to one of them (suspension of the detention clock in the case of TA 2000 detainees admitted to hospital).

## 8. CRIMINAL PROCEEDINGS

### Statistics – Great Britain

- 8.1 Abundant statistics are now published by the Home Office on a quarterly basis, accompanied by a helpful commentary.<sup>156</sup> I seek here to give no more than some headline figures.

#### ***Charges in 2014***

- 8.2 I have already noted (at 7.13 above) that 96 persons were charged with terrorism-related offences as a principal offence in 2014. Of these:
- a) 62 persons were charged under the terrorism legislation.<sup>157</sup>
  - b) The other 34 persons were charged with terrorism-related offences under non-terrorism legislation.<sup>158</sup>

The commonest charge in 2014 was for preparation of terrorist acts under TA 2006 section 5, which was charged 30 times.<sup>159</sup> Section 5 offences vary in seriousness, but at the top end can be punished by life imprisonment.<sup>160</sup> It is now recorded as the most-charged provision of terrorism legislation over the period since 9/11 (103 charges), despite the fact that it reached the statute book only in 2006.<sup>161</sup>

- 8.3 As of late June 2015, 55 of these 96 persons were still awaiting prosecution. 33 had been prosecuted (with 30 convictions and 3 not guilty verdicts), while 8 were not proceeded against.<sup>162</sup>

#### ***Trials in 2014***

- 8.4 38 trials for terrorism-related offences were completed in 2014 (as against 44 in 2013). Previous good conviction rates were maintained: 31 defendants (82%) were convicted, and 7 acquitted. As has become normal in recent years, there were many guilty pleas.

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<sup>156</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation: arrests, outcomes and stops and searches, quarterly update to 31 December 2014*, 25 June 2015, Tables A, C and P series.

<sup>157</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation: arrests, outcomes and stops and searches, quarterly update to 31 December 2014*, 25 June 2015, Table A.05a.

<sup>158</sup> *Ibid.*, Table A.05b.

<sup>159</sup> *Ibid.*, Table A.05a.

<sup>160</sup> Though the most serious offenders (e.g. the 21/7 London would-be bombers, and the airline liquid bomb plotters of 2006) tend to be charged with murder, attempted murder or conspiracy to murder.

<sup>161</sup> Though since the statistics record only the principal offence charged, it is possible that lesser offences e.g. TA 2000 sections 57 and 58 (recorded 76 and 55 times respectively between 2001 and 2014) would outrank it if all charges were included in the totals.

<sup>162</sup> *Ibid.*, Table A.06c.

## **Prison**

- 8.5 At the end of 2014, 124 persons were in prison for terrorism-related offences (up from 100 a year earlier), of whom 85 had been convicted. Listed separately in the statistics are 59 “*domestic extremist*” prisoners, of whom 54 had been convicted.<sup>163</sup>
- 8.6 Of the 124 prisoners described as “*terrorists*”, 123 declared themselves to be Muslim. The “*domestic extremist*” prisoners however claimed a rich variety of religious affiliation, with various forms of Christianity and “*no religion*” predominating.<sup>164</sup> When right-wing extremists such as Pavlo Lapshyn are classed as terrorists for other purposes, it seems anomalous to maintain this distinction for the purposes of the prison statistics.

## **Statistics – Northern Ireland**

### ***Charges in 2013/14***

- 8.7 Limited statistics for Northern Ireland are available for the year to March 2014.<sup>165</sup> These indicate that:
- a) Of the 168 persons arrested under TA 2000 section 41 in 2013/14, 32 were subsequently charged with a total of 88 offences.
  - b) 16 of those charges were brought under terrorism legislation, including 5 for membership of a proscribed organisation (TA 2000 section 11), 5 for possession of articles useful for terrorism (TA 2000 section 57), 3 for terrorist funding and 2 for preparation of terrorist acts (TA 2006 section 5).
  - c) The most common offences with which people detained under TA 2000 section 41 were charged were however non-TACT offences: communicating false information causing a bomb hoax (14), explosives offences (14) and firearms offences (11).

### ***Convictions in 2014***

- 8.8 17 defendants appeared before the Crown Court on a total of 26 charges under TA 2000 or TA 2006 during 2014. 15 defendants were convicted on at least one charge and two defendants were acquitted on all charges.
- 8.9 A further 32 defendants appeared in the Magistrates’ Court on 43 charges during 2014. One defendant was found guilty on at least one charge, while 31 were acquitted on all charges.<sup>166</sup>

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<sup>163</sup> Home Office, *Operation of police powers under TA 2000 and subsequent legislation: arrests, outcomes and stops and searches, quarterly update to 31 December 2014*, 25 June 2015, Tables P.01 and P.02.

<sup>164</sup> *Ibid.*, Table P.04.

<sup>165</sup> NIO, *Northern Ireland Terrorism Legislation: Annual Statistics 2013/14*, October 2014, Tables 4, 5a and 5b.

## Attorney General's consent

- 8.10 Under both Terrorism Acts, the permission of the Attorney General is required before prosecutions may be brought in respect of offences said to have been committed outside the UK or for a purpose wholly or partly connected with the affairs of a country other than the UK.<sup>167</sup>
- 8.11 In 2014, the Attorney General's permission was sought for the prosecution of no fewer than 37 suspects under TA 2000 (13 cases), TA 2006 (14 cases) or both (9 cases). In 36 cases, permission was granted: in the remaining case (under TA 2006) it was refused.
- 8.12 This was a marked increase on 2013, when permission was sought and granted for the prosecution of only 10 suspects.
- 8.13 Nor was the increase a flash in the pan: in the first seven months of 2015, permission had been sought and granted for the prosecution of a further 30 suspects.<sup>168</sup>

## Principal convictions

- 8.14 The principal convictions in England and Wales that are recorded on the CPS website include the following:<sup>169</sup>
- a) ***R v Ian Forman***: Mr Forman was an admirer of Hitler who had been conducting research with a view to blowing up two mosques on Merseyside with home-made IEDs. He was convicted in March 2014 of conduct preparatory to terrorism under TA 2006 section 5, and sentenced to 10 years' imprisonment.
  - b) ***R v Ibrahim Hassan and Shah Hussain***: Mr Hassan and Mr Hussain, formerly associated with Anjem Choudary's Al-Muhajiroun group, pleaded guilty in March 2014 to encouraging terrorism through lectures and to disseminating an Anwar al-Awlaki video on their YouTube channel. They were each sentenced to 3 years' imprisonment.
  - c) ***R v Mohommod Hassin Nawaz and Hamza Nawaz***: These two brothers pleaded guilty in May 2014 to conspiring in 2012/13 to attend a place used for terrorist training, and were sentenced respectively to 4.5 and 3 years' imprisonment. The former was sentenced also for a firearms offence. They were stopped by UK border officials on a ferry bound for Dover, and photographs and videos found on an iPhone established that they had attended a terrorist training camp in Syria.

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<sup>166</sup> Source: NIO. Provisional figures for 2013/14 (for convictions only) are in *Northern Ireland Terrorism Legislation: Annual Statistics 2013/14*, October 2014, Table 10.

<sup>167</sup> TA 2000 section 117(2A); TA 2006 section 19(2).

<sup>168</sup> Source: Attorney General's Office.

<sup>169</sup> See the CPS website: [http://www.cps.gov.uk/publications/prosecution/ctd\\_2014.html](http://www.cps.gov.uk/publications/prosecution/ctd_2014.html), which does not however purport to be an exhaustive list of convictions, and says nothing of acquittals.

- d) ***R v Mohammed Saeed Ahmed and Mohammed Naeem Ahmed***: These two brothers pleaded guilty to a number of offences contrary to TA 2000 section 58, having collected various documents of a kind likely to be useful to a person committing or preparing an act of terrorism, including Inspire Magazine, The Al-Qaida Manual and The Anarchist Cookbook. They received custodial sentences of 20 months and 15 months respectively, suspended for 2 years.
- e) ***R v Runa Khan***: Ms Khan pleaded guilty in July 2014 to disseminating terrorist publications including a picture of a suicide vest, details of a route from Turkey into Syria and a group which the recipient could join (sent to an undercover police officer) and a Facebook article illustrated by a group of women in Islamic dress, holding rifles. She was sentenced to 5 years and 3 months' imprisonment.
- f) ***R v Amal el-Wahabi***: Ms El-Wahabi was convicted after a trial of funding terrorism under TA 2000 section 17. At the instigation of her husband, who was in Syria, she had recruited a friend to take 20,000 Euros out of the country. The money was found hidden in her clothing when she was stopped at Heathrow airport, about to board a flight to Turkey. She was sentenced to 2 years and 4 months' imprisonment.
- g) ***R v Andreas Pierides***: Mr Pierides was a Cypriot national studying at Southampton University. A member of the public noticed him viewing bomb-making instructions on his laptop, photographed his screen and informed the police. He was subsequently arrested at Stansted Airport on his way to Cyprus, having checked in a box of maritime distress flares. He pleaded guilty to possession of the Handbook under TA 2000 section 58 and to having a dangerous article at an aerodrome, and was sentenced to 20 months' imprisonment, suspended for 2 years.
- h) ***R v Ryan McGee***: Mr McGee was a serving soldier based in Germany. A search of his address revealed component parts for IEDs, a nail bomb and publications including The Anarchist Cookbook. He admitted extreme right-wing sympathies and making explosives, but denied they were for terrorist purposes. He pleaded guilty to possession under TA 2000 section 58 and to making a nail bomb contrary to the ESA 1883, and was sentenced to 24 months' detention.
- i) ***R v Mahur Choudhury***: Mr Choudhury left the UK in October 2013 with five other men from Portsmouth, intending to join Islamist groups fighting the government forces in Syria. He was arrested on his return, less than three weeks later, and convicted after a trial of preparing acts of terrorism contrary to TA 2006 section 5. He was sentenced in December 2014 to four years' imprisonment and a notification period of 10 years.

- 8.15 The longest sentences of the year were imposed in December 2014 on **Yusuf Sarwar** and **Mohammed Ahmed**, 22 year olds from Birmingham who had travelled to Syria and were both imprisoned for 12 years and 8 months after pleading guilty to preparing acts of terrorism contrary to TA 2006 section 5. The head of West Midlands CTU said after the case that the men had no connection to extremist organisations and had not previously been known to the police.<sup>170</sup>
- 8.16 These convictions (which make up less than half of the 31 convictions for terrorism-related offences recorded in Great Britain in 2014) were for a varied mix of terrorist and pre-terrorist activity, both Islamist and extreme right-wing: several of them were for precursor offences such as possession of bomb-making instructions and encouragement to terrorism, and two (Forman and McGee) were for making bombs. Terrorist activity in Syria was an increasingly prevalent theme, a trend that is likely to continue after the spate of terrorism-related arrests in the last quarter of 2014.
- 8.17 2014 saw no convictions for sophisticated plotting or attack-planning against UK targets. Despite undoubted threats (Chapter 2, above), nothing reached the courts on the scale of the London Stock Exchange Plot<sup>171</sup> or even Pavlo Laphsyn's murder and mosque-bombing campaign,<sup>172</sup> both of which were sentenced in 2013, let alone the major internationally-directed plots of the period 2004-2007.<sup>173</sup>

#### A trial in secret

- 8.18 The prosecution of Erol Incedal and Mounir Rarmoul-Bouhadjar made headlines in part because of the restrictions placed on reporting it.<sup>174</sup> Though widely described as "*secret justice*", it is important to note that all the evidence relied upon was made known in its entirety to the defendant and the jury as well as to the judge. There is no parallel, therefore, with closed material proceedings in occasional civil cases, in which some evidence is disclosed not to the subject or even to his legal team, but only to a special advocate retained to fight his corner.<sup>175</sup>
- 8.19 The reporting restrictions imposed by the trial judge and varied by the Court of Appeal were however extreme: Nicol J in April 2014 ordered that the trial "*should take place entirely in private with the identity of both defendants withheld*", and though the Court of Appeal in June 2014 expressed "*grave concern as to the cumulative effects of holding a criminal trial in camera and anonymising the defendants*", and varied the order so as

<sup>170</sup> "Two Britons jailed for 13 years for joining jihadi group in Syria", The Guardian, 5 December 2014. The case is not currently recorded on the CPS website.

<sup>171</sup> *The Terrorism Acts in 2012*, July 2013, para 11.15(a).

<sup>172</sup> *The Terrorism Acts in 2013*, July 2014, para 2.39.

<sup>173</sup> Notably the fertiliser bomb plot and dirty bomb plot of 2004, the 7/7 and 21/7 attacks of 2005, the airline liquid bomb plot of 2006 and the Tiger Tiger and Glasgow Airport attacks of 2007, summarised in *The Terrorism Acts in 2012*, July 2013, para 2.8.

<sup>174</sup> Each defendant was convicted in late 2014 on charges of possessing a terrorist document (Rarmoul-Bouhadjar after a guilty plea), but the jury failed to reach a verdict on the main TA 2006 section 5 charge against Incedal, and he was acquitted on that charge at a second trial in March 2015.

<sup>175</sup> Justice and Security Act 2013 [**JSA 2013**]; and cf. the procedures for resolving national security issues e.g. in TPIM cases, POAC and SIAC.

to allow the defendants' identity to be known, it continued to require that the core of the trial take place in private session, allowing only certain journalists to attend parts of the trial and on strict conditions. A challenge to the retention in force post-trial of those reporting restrictions is currently before the Court of Appeal: I hope to comment on the case once the litigation has been resolved.

## Fighting against ISIL

- 8.20 I was frequently asked during the year whether British people (often ex-Army) who travel to Syria to fight *against* ISIL are at risk of prosecution. They will clearly be at risk if they fight for a proscribed organisation (such as the PKK),<sup>176</sup> or if they have committed war crimes (e.g. the targeting of civilians). Even persons falling outside these categories might in theory be prosecuted for terrorist offences, though prosecution would have to be considered to be in the public interest and a jury would have to be persuaded to convict them.<sup>177</sup> There has in practice been no prosecution of such persons, some of whom may provide valuable intelligence on their return.
- 8.21 Another approach is taken in Australia, which has a “*declared area offence*” under which travel to areas where terrorist groups are active is prohibited, with very limited exceptions. A similar idea has recently been mooted in Canada.<sup>178</sup> If it is considered to be in the public interest to restrain British residents from fighting abroad, even when they are fighting against terrorist groups – which is an open policy question<sup>179</sup> – that solution has two attractions: it is likely to require only limited evidence of activity abroad; and it excuses the already overstretched concept of terrorism from being used to catch people who considered themselves to be fighting *against* terrorists.

## Allegedly discriminatory sentencing

- 8.22 It is generally perceived that sentencing for terrorism-related offences is lower in Northern Ireland than in Great Britain, though I am aware of no published analysis of this and the work to which I referred last year<sup>180</sup> has not yet come to fruition. An illustration that has been referred to from the period under review is the sentence of two years' probation and 100 hours' community service under the Explosive Substances Act 1883 [ESA 1883] section 4 which was upheld by the Northern Ireland Court of Appeal on an 18-year-old who had helped to make very crude pipe bombs for the Loyalist Action Force in order to cause disruption, fear and annoyance in the Catholic community.<sup>181</sup> Though each sentencing decision of course turns on its own

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<sup>176</sup> In March 2015 Silhan Ozcelik, an 18-year-old woman, was charged under TA 2006 section 5 with making preparations to fight abroad for the PKK.

<sup>177</sup> Some of the legal issues are canvassed in *The Terrorism Acts in 2013*, July 2014, 10.60-10.70. Anyone fighting abroad could in principle be prosecuted were they to commit war crimes or crimes against humanity: but the obstacles to investigation in Syria of such allegations are currently, and likely to remain, immense.

<sup>178</sup> See C. Forcese, “(Almost) a good idea: banning travel to designated conflict zones”, National Security blog, 10 August 2015.

<sup>179</sup> Some of the elements of this debate were listed in *The Terrorism Acts in 2013*, July 2014, 10.69-10.70.

<sup>180</sup> *Ibid.*, 9.21-9.24.

<sup>181</sup> *Re Attorney General's Reference (no. 17 of 2013)* [2014] NICA 6.



facts, this has been contrasted with the heavier sentencing of persons in England for merely possessing information about bombs, contrary to TA 2000 section 58.<sup>182</sup>

- 8.23 In response to allegations of discriminatory sentencing of Muslims and non-Muslims in England and Wales for terrorism-related offences, I referred last year to an analysis performed by OSCT Counter-Terrorism Research and Analysis [CTRA], and also to a decision of the Court of Appeal, rejecting the submission that sentences of up to 19 years imposed upon two men convicted under TA 2006 section 5 for preparing terrorist acts against an English Defence League demonstration in Dewsbury were discriminatory by comparison with lower sentences imposed in XRW cases.<sup>183</sup> That judgment has now been published,<sup>184</sup> but allegations of discriminatory sentencing continue to be made.<sup>185</sup>
- 8.24 I would caution strongly against drawing inferences of discriminatory sentencing on the basis of a small number of cases, particularly when their facts are very different. The sheer variety of factors to be taken into account renders this a treacherous and unreliable exercise. But sensitivities are high, and this is an area in which it is particularly important that the courts are seen to be completely even-handed. A careful academic comparison of the sentences passed on Islamist, XRW and Northern Irish terrorists would for that reason be desirable. Alternatively or in addition, the sentencing of terrorist offences may be a topic on which the Sentencing Council might wish to consult with a view to producing a definitive guideline.

### **Impact of terrorism offences on the work of international NGOs**

- 8.25 I referred last year to concerns that had been raised with me about the impact of widely-drawn terrorist offences on the work of international NGOs, and recommended that a dialogue be initiated between international NGOs and policymakers, including in the Home Office and the Treasury.<sup>186</sup> That dialogue has duly been initiated, and is currently under way.
- 8.26 I adverted to the issue in evidence given on 2 December 2014 to the Draft Protection of Charities Bill Joint Committee,<sup>187</sup> and again in a report of March 2015 into the operation of TAFE 2010.<sup>188</sup> I retain my links with NGOs, and look forward to reporting on the outcome of their current dialogue with Government.

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<sup>182</sup> G. Lennon and C. Walker, *Routledge Handbook of Law and Terrorism* (2015), pp. 453-454, citing *R v Mansha* [2006] EWCA Crim 2051, *R v Aabid Hassain Khan* [2009] EWCA Crim 2653 and *R v Sultan Mohammed* [2010] EWCA 227.

<sup>183</sup> *The Terrorism Acts in 2013*, July 2014, 9.18-9.20.

<sup>184</sup> *R v Omar Mohammed Khan* [2014] EWCA Crim 1766.

<sup>185</sup> See Annex 2 to this Report, p.4, in which the Muslim Council of Britain contrasts the 2-year sentence on Ryan McGee (8.5(h) above) with the much heavier sentences passed on Runa Khan (8.5(e) above) and on Yusuf Sarwar and Mohammed Ahmed (8.6 above). The 10-year sentence on the neo-Nazi Ian Forman (8.5(a) above) was not mentioned in this context.

<sup>186</sup> *The Terrorism Acts in 2013*, July 2014, 9.25-9.33.

<sup>187</sup> <https://terrorismlegislationreviewer.independent.gov.uk/draft-protection-of-charities-bill-joint-committee-2014/>.

<sup>188</sup> *Fourth report on the operation of TAFE 2010*, March 2015, 4.19-4.25.

## 9. COUNTERING EXTREMISM

- 9.1 With a Counter-Extremism Bill due to be introduced this autumn, the relationship between terrorism and extremism will be under the spotlight. This Chapter ventures no opinion on the Bill itself, which has not been published, but uses my experience of reviewing the anti-terrorism legislation to reflect on the relationship between terrorism and extremism, and to identify 15 specific issues that will need to be addressed by Parliament as it scrutinises the Bill.<sup>189</sup>

### Terrorism and extremism

- 9.2 Drummer Lee Rigby was horrifically killed in May 2013 by Michael Adebolajo and Michael Adebolawe. As the trial judge later said, when sentencing both defendants for murder:

“You each converted to Islam some years ago. Thereafter you were radicalised and each became an extremist – espousing a cause and views which, as has been said elsewhere, are a betrayal of Islam and of the peaceful Muslim communities who give so much to our country.

...You Adebolajo handed out a pre-prepared written statement seeking to justify your joint cause and actions. In addition, carrying the bloodied cleaver in your equally bloody hands, and knowing that you were being filmed, you made a political statement. Images of that filmed statement were broadcast around the world. The effect of the two statements was to seek to justify your joint actions as being retaliation for deaths in Muslim lands, and to incite the removal of the Government in this country.”<sup>190</sup>

- 9.3 Lee Rigby’s killing has become a textbook example of a terrorist murder. Similar political/religious motivations to those described by the judge can be discerned from suicide videos prepared by past UK plotters, such as Mohammad Siddique Khan (2005 7/7 bomber) and Abdulla Ahmed Ali (2006 liquid airline bomb plot).<sup>191</sup> Recent terrorist killings in Belgium, France and Denmark appear to be further examples of the same phenomenon. An opposite ideology was espoused by the Norwegian mass-killer Anders Breivik, in the video and manifesto that he distributed to justify his terrorist attacks in 2011.

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<sup>189</sup> An useful introduction to the subject is J. Dawson, *Counter-Extremism Policy* (HC Lib Briefing Paper No. 7238, August 2015). The HASC announced on 27 August 2015 an inquiry into countering extremism, and has asked for written evidence by 7 October 2015.

<sup>190</sup> *R v Adebolajo and Adebolawe*, sentencing remarks of Sweeney J, 26 February 2014.

<sup>191</sup> The text of these speeches can easily be found online. A comprehensive summary of al-Qaida related attacks in the UK between 2000 and 2012 is in *The Terrorism Acts in 2012*, July 2013, ch 2.

- 9.4 Ideologies are a necessary pre-condition for terrorist acts, which must seek to advance (in the words of TA 2000 s1, which conforms in this respect to international norms) “a *political, religious, racial or ideological cause*”. Many people nurse grievances, with diverse origins in family circumstances, childhood experiences or the frustrations of adult life. Some are even motivated by those grievances to commit acts of violence. But they will not be terrorists unless they seek to justify their violent acts by reference to ideological (including political, religious or racial) factors.<sup>192</sup> Ideologies which are invoked to justify acts of violence may fairly be described as extreme, or extremist.
- 9.5 The evils of violent extremism are self-evident. It is central to terrorist crime, and may be an ingredient for other crimes too. No democracy that takes seriously the idea of individual liberty and self-determination should tolerate those who threaten or incite violence against or death to Muslims, Jews, Christians, members of the armed forces, apostates, blasphemers, homosexuals, adulterers or anybody else, irrespective of any claimed justification in politics, religion or social custom. While it is ultimately only social pressure that can cause such views to disappear, the state is entitled to use all legitimate means at its disposal to counter them, including prosecuting the various offences under the Terrorism Acts.
- 9.6 Non-violent extremism requires much greater caution, and not only because (as noted at 9.16 below) it is easier to spot in communities other than our own. Most of us have little sympathy for those who campaign for a law against blasphemy or adultery; consider homosexuality to be an abomination; seek to deny the right to choose a religion; or maintain that democracy is outdated, that sharia law is preferable to the law of the land or that western invasions of Muslim countries are the consequence of nothing more than prejudice, greed or Zionist influence. But the response of a vigorous democracy to bad ideas is to take them on, outsell them and eventually consign them to history. The Government may need to protect the vulnerable from indoctrination and intimidation, whether in schools, prisons or even the family. As well as putting its own views forward, it may facilitate “*counterspeech*” by others. But the powers of the state to suppress the expression of religious and political views, for reasons other than the prevention of violence or abuse, have traditionally been very limited.

## Existing powers against extremism

### ***Criminal law***

- 9.7 Speech or other conduct which is liable to provoke or to justify violence is prohibited by a number of laws. In its guidance note *Violent extremism and related criminal offences*,<sup>193</sup> the Crown Prosecution Service [CPS] defined violent extremism as:

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<sup>192</sup> A further condition in most definitions is that the terrorist must seek to intimidate (for example by inspiring terror), coerce or compel. UK law gives effect to that principle only partially, for which I have criticised it: *The Terrorism Acts in 2013*, July 2014, 10.34-10.50.

<sup>193</sup> [https://www.cps.gov.uk/publications/prosecution/violent\\_extremism.html](https://www.cps.gov.uk/publications/prosecution/violent_extremism.html).

“The demonstration of unacceptable behaviour by using any means or medium to express views which:

- foment, justify or glorify terrorist violence in furtherance of particular beliefs;
- seek to provoke others to terrorist acts;
- foment other serious criminal activity or seek to provoke others to serious criminal acts; or
- foster hatred which might lead to inter-community violence in the UK.”

The guidance note referred to well over a dozen offences (including several in the Terrorism Acts)<sup>194</sup> which may be constituted by such behaviour. A few of them (e.g. incitement to racial hatred) may be committed even if the risk of a violent or other criminal act being committed cannot be proved: these could be described as extending to non-violent extremism, though it is still necessary to prove that the behaviour is threatening, abusive or insulting.

9.8 Some of those offences were highly controversial as they passed through Parliament, because of their obvious impact on the freedom of speech.<sup>195</sup> For example, the concept of “*indirect encouragement*” in TA 2006 was explained by a responsible Minister as making it an offence “*to incite people to engage in terrorist activities generally*” and even “*to incite them obliquely by creating a climate in which they may come to believe that terrorist acts are acceptable*”.<sup>196</sup> The latter statement goes as far as any in suggesting that extremism may fall within the scope of the criminal law even when the link to violence is indirect or even tenuous.

9.9 Mindful both of the right to freedom of speech and of the limits to what juries will accept, the CPS has never tested the boundaries of some of these offences. While noting that some of them could be interpreted more broadly, it points out that:

“The distinct common thread in terms of criminal prosecutions under the radicalisation umbrella has been a manifested desire to kill, maim or cause a person or group of people immense fear for their personal safety through the threat of (often) extreme violence based on their race or religion, and urging others to take this course.”

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<sup>194</sup> TA 2000 section 59 (incitement to commit acts of terrorism overseas), TA 2000 section 12 (inviting support for a proscribed organisation), TA 2000 sections 15-18 (terrorist financing offences), encouragement of terrorism (TA 2006 section 1), dissemination of terrorist publications (TA 2006 section 2), encouragement and dissemination via the internet (TA 2006 section 3).

<sup>195</sup> The Racial and Religious Hatred Act 2006 followed failed attempts to prohibit religious hate speech in 2001 and 2004. TA 2006 sections 1 and 2 also had a difficult parliamentary passage, and are described by the leading legal text as “*highly controversial*” and “*riddled with uncertainties and anomalies*”: Clive Walker, *Terrorism and the Law* (2011), 8.155.

<sup>196</sup> Hansard HL 5 December 2005, cols 432-3, Baroness Scotland QC (Minister of State, Home Office).

Successful prosecutions (such as those of Bilal Ahmad, Abu Hamza, Abdullah al-Faisal, Bilal Mohammed and the cartoon protesters, referred to in the guidance note) tend to bear this out. The Home Office acknowledges that “*prosecuting people under [TA 2006 sections 1 and 2] has not been simple*”,<sup>197</sup> and prosecutions have been rare.<sup>198</sup>

## **Prevent**

- 9.10 Countering extremism is also a stated aim of the Prevent programme, part of the CONTEST strategy, whose key objectives are to:
- respond to the ideology of extremism and terrorism and the threats we face from those who promote it;
  - prevent people from being drawn into terrorism and ensure that they are given appropriate advice and support; and
  - work with specific sectors where there are risks of radicalisation which we need to address.<sup>199</sup>

- 9.11 For the purposes of Prevent:

“**Extremism** is vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. We also include in our definition of extremism calls for the death of members of our armed forces, whether in this country or overseas”,

and **radicalisation** is defined as “*the process by which a person comes to support terrorism and forms of extremism leading to terrorism*”.<sup>200</sup>

- 9.12 As the above definition shows, and notwithstanding the reference to “*calls for the death of members of our armed forces*”, Prevent in its current formulation extends to non-violent as well as violent extremism. According to the Home Office:

“We remain absolutely committed to protecting freedom of speech in this country. But preventing terrorism will mean challenging extremist (and non-violent) ideas that are also part of a terrorist ideology. *Prevent* will also mean intervening to stop people moving from extremist groups or from extremism into terrorist-related activity.”<sup>201</sup>

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<sup>197</sup> *Prevent Strategy*, Cm 8092, June 2011, 6.13.

<sup>198</sup> A total of five people were prosecuted (as a principal offence) with encouragement of terrorism (TA 2006 section 1) and 13 with dissemination of terrorist publications (TA 2006 section 2) between the entry into force of those offences and the end of 2014: Home Office, *Operation of police powers under TA 2000 and subsequent legislation*, 25 June 2015, Table A.05a.

<sup>199</sup> CONTEST: Annual Report for 2014, Cm 9048, March 2015, 2.21.

<sup>200</sup> *Prevent Strategy*, Cm 8092, June 2011, Annex A.

<sup>201</sup> *Ibid.*, 3.10.

- 9.13 Partly for that reason, Prevent (which is predominantly though not entirely focused on Islamist extremism) is controversial among Muslims in the UK. I do not have responsibility for reviewing the Prevent programme (though I have recommended that it should be reviewed by independent people with a range of expertise),<sup>202</sup> so express no conclusions about its operation. But my own contacts indicate that while good work is undoubtedly done under Prevent, it is also the focus of considerably more resentment among Muslims than either the criminally-focussed prohibitions discussed elsewhere in this report or the executive orders (TPIMs, asset freezes) that are sparingly used in particularly serious cases. This is likely to be a function of the relatively broad reach of Prevent, in terms of both the number and age group of persons that it touches, and its capacity to target the expression of non-violent views which may be associated with religious and cultural norms.
- 9.14 A submission was recently made to me by the Muslim Council of Britain [MCB], with numerous examples which are said to underscore the shortcomings of Prevent, including:
- a) young Muslim children being viewed by public bodies (schools, police) through the lens of security; and
  - b) the allegedly discriminatory concentration of Prevent on Islamist extremism.<sup>203</sup>

I do not comment on the accuracy or otherwise of the instances given in that submission, or of the media reports on which it is based. The submission is reproduced not as evidence of its truth, but because it is indicative of the strong sensitivities that are aroused, particularly in minority groups, by any state activity which seeks to monitor the expression of opinions. However well-intentioned, such activity is liable to be perceived as directed not just to the risk of terrorism but to culturally specific activities from which any possible link to future violence is indirect and even tenuous.

### **How serious is the problem of “*extremism*”?**

- 9.15 How much “*extremism*” exists, and how important it is as a generator of terrorism or other harmful activity, are notoriously difficult questions to answer. It is important to acknowledge both the fact that extremist ideas flourish in all communities, and the risk that fear of “*the other*” may lead us to concentrate unduly on extremism to be found in communities that are not our own.
- 9.16 That realisation is particularly important when it comes to non-violent extremism. Any fair-minded person will see that if violent Islamist extremism is a fair target, so too must be violent neo-Nazi extremism. But active opposition to the freedom of expression (a

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<sup>202</sup> *Counter-Terrorism and Human Rights*, Evidence to the JCHR, 26 November 2014, Q23, p.17.

<sup>203</sup> With the permission of the MCB, its submission is annexed for convenience at [Annex 2](#) to this report. The MCB was the subject of one of the questions in the 2015 ComRes poll referred to at 9.18-9.19 below. 55% thought it did “*a good job in representing the views of Muslims*”, as against 28% who disagreed. Similar instances are publicised by TellMAMA, the independent NGO co-chaired by ex-Home Office Minister Shahid Malik.

“*fundamental British value*” if ever there was one) is easier to condone, or not to notice, when it comes from one’s own community. Thus, Muslims who engage in non-violent protest against insulting depictions of the prophet meet the Prevent definition of extremism, and can safely be reminded of the principle that “*the freedom only to speak inoffensively is not worth having*”.<sup>204</sup> Yet few would think of categorising as extremists those who urge the prosecution of Muslims for insulting the war dead by burning poppies on Armistice Day (indeed 82% of Britons approved of such prosecutions in 2011).<sup>205</sup>

9.17 Both the Prevent programme and more recent pronouncements about countering extremism (as to which, see 9.24-9.27 below) frankly admit that Islamist extremism is the greatest current concern. Things can always change (and of course look very different in Northern Ireland, where the Prevent strategy does not apply): but when one witnesses the almost daily terrorism-related arrests,<sup>206</sup> the high proportion of those claiming allegiance to Islam among those charged and convicted of terrorist offences and the steady trickle of British Muslims travelling to live and fight under the barbarous ISIL regime, it is hard to disagree. Assessing the extent and the risks of “*Islamist extremism*” is beyond the capacities of a report such as this. It is made particularly difficult by widespread ignorance on the part of mainstream society, and even as between different Muslim communities.<sup>207</sup> But opinion surveys shed at least a little light on the nature and preponderance of certain extremist views.

9.18 A positive starting point is that 95% of British Muslims (according to a telephone survey early in 2015) express loyalty to Britain, with 93% believing that Muslims should always obey British laws.<sup>208</sup> In a rebuff to those who see Muslims as self-isolating, only 13% agreed with the statement that they would rather socialise with Muslims than non-Muslims: 85% disagreed.

9.19 Less happily, when the same survey touched on matters related to terrorism, it revealed that:

- a) Only 49% believed that Muslim clerics who preached that violence against the west could be justified were “*out of touch with mainstream Muslim opinion*”, with 45% taking the other view.
- b) 27% said they had “*some sympathy for the motives behind the attacks on Charlie Hebdo in Paris*”.

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<sup>204</sup> *Redmond-Bate v DPP* [1999] EWHC Admin 732, per Sedley LJ.  
<sup>205</sup> “Poppy burning”, British Religion in Numbers website, 11 March 2011: <http://www.brin.ac.uk/news/2011/poppy-burning/>. Retribution for poppy burning is however relatively mild: the one defendant who was convicted in relation to the November 2010 incident which prompted that survey question was fined £50.  
<sup>206</sup> There were 289 terrorism-related arrests in Great Britain in 2014: 7.3 above.  
<sup>207</sup> The BBC producer Innes Bowen’s book *Medina in Birmingham, Najaf in Brent: Inside British Islam* (2014), which is not written through a security lens, provides considerable insight into Britain’s highly diverse Muslim communities.  
<sup>208</sup> ComRes poll for BBC Radio 4 Today, February 2015: <http://comres.co.uk/polls/bbc-radio-4-today-muslim-poll/>.

- c) 24% thought that acts of violence against those who published images of the prophet could sometimes be justified, and 11% agreed that “*organisations that publish pictures of the Prophet Muhammad deserve to be attacked*”.
- d) 11% said they felt sympathetic to people who want to fight against western interests, as against 85% who did not.

9.20 Considerable caution should be exercised in interpreting these results. Thus:

- a) There was no non-Muslim control group, a point made persuasively at the time by Baroness Warsi. Some of the results are put in valuable perspective by a 2011 YouGov poll of British non-Muslims. This showed that some *non-Muslims* believed terrorism could be justified, not just in defence against a foreign occupation (54%) but for environmental causes (8%), for “*protecting your religious faith*” (9%), and even – astonishingly – for the cause of “*Islamic extremism*” (7%).<sup>209</sup>
- b) Sympathy for motives (e.g. of the Charlie Hebdo attackers) should not be confused with support for actions.<sup>210</sup> Once again, surveys of non-Muslims provide a useful corrective:
  - While only single-figure percentages of the non-Muslim YouGov respondents agreed in 2011 that suicide attacks could sometimes be justified, around 30% claimed to “*understand why some people might behave in that way*”.
  - Between 20% and 40% of Northern Irish respondents reported some “*sympathy*” for violent Loyalism or Republicanism in the Northern Ireland Life and Times Survey 2007, as against only 8% who told the European Value Study in 2008 that terrorism can be justified in certain circumstances.<sup>211</sup>
- c) There are also signs that people may be much less inclined to tolerate violence in their own lives than they are in the abstract: an impressive 94% of the British Muslims surveyed said that if someone they knew from the Muslim community was planning an act of violence, they would report them to the police.

It nonetheless appears that an appreciable minority of British Muslims are prepared, if asked, to express some sympathy for the political or religious motives behind terrorist violence; and that depicting the prophet is considered by some to justify a violent reaction.

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<sup>209</sup> The results of the survey are appended to a draft paper by Dr Maria Sobolewska for a conference, “Measuring support for terrorism: a survey experiment and an attempt at a comparison” (2012), available at [http://www.sociology.ox.ac.uk/documents/epop/papers/Sobolewska\\_Support\\_for\\_terrorism\\_EPOP\\_2012.pdf](http://www.sociology.ox.ac.uk/documents/epop/papers/Sobolewska_Support_for_terrorism_EPOP_2012.pdf).

<sup>210</sup> As is demonstrated by the 2006 ICM poll for the Daily Telegraph which found that 20% of British Muslims had sympathy with the “*feelings and motives*” of the 7/7 bombers, but that only 1% thought that what they did was right: “Poll reveals 40% of Muslims want sharia law in UK”, Telegraph website 19 February 2006.

<sup>211</sup> The relevant questions from those polls are reproduced by Ady Cousins in “Muslim opinion and the myth of ‘tacit support’ for terrorism”, Counterfire website, 20 March 2015, to which I am indebted for these comparisons.



- 9.21 Moving away from terrorism, previous polls have indicated significant levels of support for sharia law and – shockingly for anyone who acknowledges the fundamental right to worship as one pleases – for death as a punishment for converting to another religion.<sup>212</sup> Attitudes to blasphemy and apostasy are perhaps the most striking instances (other than terrorism itself) of disconnection between the attitudes of some British Muslims and fundamental human rights. What is shocking is not that blasphemy and apostasy are thought to be wrong, but that a minority appears to consider violence, even killing, to be an acceptable response to them.
- 9.22 The 2015 poll also showed a sense of alienation from mainstream society on the part of the 20% who agreed that “*western liberal society can never be compatible with Islam*”,<sup>213</sup> the 31% who would like their children to go to a “*Muslim state school*”, the 35% who felt that most British people do not trust Muslims and the 46% who agreed that “*prejudice against Islam makes it very difficult to be a Muslim in this country*”.
- 9.23 The insight given by these figures is only fragmentary. They tell us something about the views of British Muslims on topics related to extremism, but little about the prevalence of extremism itself, which by the Prevent definition requires “*vocal or active opposition*” rather than simply the holding of beliefs. Nor do they offer much clue as to the importance of extremism as a cause of terrorism. Violent extremism is an ingredient of terrorism, and has long been punishable as such. The links between non-violent extremism and terrorism are less direct, and less obvious.<sup>214</sup>

### **New anti-extremism measures**

- 9.24 The forthcoming Counter-Extremism Bill, to be introduced in the autumn of 2015, had its origins in the Task Force on Tackling Radicalisation and Extremism, established by the Prime Minister in the wake of Lee Rigby’s murder.
- 9.25 Reporting in December 2013, the Task Force noted the Prevent definition of “*extremism*” (9.11 above), and announced that “*We will not tolerate extremist activity of any sort, which creates an environment for radicalising individuals and could lead them on a pathway towards terrorism*”. A particular target was “*Islamist extremism*”, described as “*the greatest risk to our security*” and defined in the following terms:

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<sup>212</sup> A 2007 Populus poll for Policy Exchange found that nearly a third of 16-24 year old British Muslims, though less than a fifth of those over 55, believed that those converting to another religion should be executed: “More young Muslims back sharia, says poll”, Guardian website 29 January 2007. In the 2015 ComRes poll, 17% thought it appropriate that converts from Islam should be cut off by their families. The right to change one’s religion is guaranteed by the 1948 UN Universal Declaration of Human Rights (Article 18) and self-evidently engages both “*individual liberty*” and “*mutual respect and tolerance of other faiths and religions*”: to call for it to be punished by death, or even just to speak against it, would seem to fall squarely within the Prevent definitions of, respectively, violent and non-violent extremism.

<sup>213</sup> Though this figure is much lower than the 55% of British voters who thought that there was “*a fundamental clash between Islam and the values of British society*” in a March 2015 YouGov survey: <https://yougov.co.uk/news/2015/03/30/majority-voters-doubt-islam-compatible-british-val/>.

<sup>214</sup> The pathways into terrorism are various: see e.g. Paul Gill, “Bombing Alone: Tracing the Motivations and Antecedent Behaviours of Lone-Actor Terrorists” (2014) 59 Journal of Forensic Sciences 425-435, sponsored by the US Department of Homeland Security, co-ordinated through the Home Office and freely available at <http://onlinelibrary.wiley.com/doi/10.1111/1556-4029.12312/abstract>.

“This is a distinct ideology which should not be confused with traditional religious practice. It is an ideology which is based on a distorted interpretation of Islam, which betrays Islam’s peaceful principles, and draws on the teaching of the likes of Sayyid Qutb. Islamist extremists deem Western intervention in Muslim-majority countries as a ‘war on Islam’, creating a narrative of ‘them’ and ‘us’. They seek to impose a global Islamic state governed by their interpretation of Shari’ah as state law, rejecting liberal values such as democracy, the rule of law and equality. Their ideology also includes the uncompromising belief that people cannot be Muslim and British, and insists that those who do not agree with them are not true Muslims.”<sup>215</sup>

The Task Force agreed a number of “*practical steps*” to address “*the gaps in our response*” to extremism, under the headings of disrupting extremists (including by consideration of new types of banning orders and civil powers), countering extremist narratives and ideology, preventing radicalisation, integration, and stopping extremism in institutions (schools, universities and further education, prisons).

9.26 These ideas were further developed by a speech given by the Home Secretary in September 2014, and found a place in the Conservative Party’s manifesto for the 2015 general election. This promised, among other things:

- a) to “*outlaw groups that foment hate with new **Banning Orders** for extremist organisations*”, and
- b) to create **Extremist Disruption Orders** to “*restrict the harmful activities of extremist individuals*”, for example by “*prevent[ing] those who are seeking to radicalise young British people online from using the internet or communicating via social media*”.

The briefing that accompanied the Queen’s Speech stated that the Bill would also provide for **Closure Orders**, “*a new power for law enforcement and local authorities to close down premises used to support extremism*”.<sup>216</sup>

9.27 In a speech given on 20 July 2015, the Prime Minister spoke of the need to defend “*basic liberal values such as democracy, freedom and sexual equality*” from “*certain intolerant ideas*”. Among the many ideas that he voiced for countering extremist ideology and encouraging integration, he referred also to plans for “*new narrowly targeted powers to enable us to deal with ... facilitators and cult leaders, and stop them peddling their hatred*”.

9.28 The Prime Minister’s Task Force conducted no public consultation; and there has been no Green or White Paper on either the definition of the extremist activity that it is proposed to suppress, or the details of the proposed new Banning Orders and Extremist Disruption Orders. This could have been helpful. Previous Bills impinging on free speech, even in relatively confined respects, have been understandably

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<sup>215</sup> *Tackling Extremism in the UK*, December 2013, para 1.4.

<sup>216</sup> Cabinet Office and Prime Minister’s Office, *Queen’s Speech 2015: background briefing notes*, May 2015.

controversial.<sup>217</sup> The issues are complex, and the liberties of every citizen are potentially affected. Broad cross-community support may be considered essential if extremists are to be marginalised and divisions healed.

9.29 For those concerned with the Bill and its progress, 15 issues of particular sensitivity may be identified:

- a) **How extremist activity is to be defined:** in particular, the range of political and religious views whose expression falls within the definition of extremism; whether that definition includes views critical of the Government; and whether the definition of extremist activity is intelligible, clear and predictable.<sup>218</sup>
- b) The **objectives** (including but not limited to the prevention of terrorism) that the new law is intended to achieve, and the consistency of those objectives with the ECHR.
- c) The evidence for a **causal link** between the expression of extremist views, as defined in the Bill, and terrorism or the other undesirable consequences that the Bill aims to prevent.
- d) The reasons for believing that **existing means of control** (including the various “precursor” offences under the Terrorism Act, as well as the hate speech offences) are **insufficient** for the purposes that it is sought to achieve.<sup>219</sup>
- e) The proposed **geographical application** of the new law: in particular, whether it is to apply to “extremism” in Northern Ireland (and the extent to which that is manifested in parades, marches and sectarian speech).
- f) Why it is deemed necessary to resort to **civil orders** rather than the creation of additional criminal offences, thereby removing the protections inherent in jury trial from those accused of extremist activity.<sup>220</sup>

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<sup>217</sup> For example, the enactment of the Racial and Religious Hatred Act 2006 followed unsuccessful attempts to criminalise religious hate speech in 2001 and 2004.

<sup>218</sup> I underlined in last year’s report the risk that an over-broad definition of *terrorism* inhibits the free expression of political opinion: *The Terrorism Acts in 2013*, July 2014, 4.20-4.16 and 10.14-10.18. These concerns are likely to be accentuated if a still broader definition is given to *extremism*, and if extremist activity becomes punishable by suppressive measures.

<sup>219</sup> Anjem Choudary, founder of a number of organisations proscribed under TA 2000 and sometimes cited as an example of the sort of person who the new law would be needed to catch, was charged in August 2015 with encouraging support for ISIL contrary to TA section 12, leading Douglas Murray of the Henry Jackson Society to comment “Perhaps .. the most visible chink in the UK’s counter-extremism policy has finally resolved itself”: “Will Britain pass the Choudary test?”, Gatestone Institute website, 12 August 2015. The Henry Jackson Society had previously called for more use of proscription prosecutions to disrupt and challenge Anjem Choudary’s organisations: H. Stuart, *Disrupting Extremists*, 2014.

<sup>220</sup> Conviction in the Crown Court requires a jury to pronounce itself sure of the defendant’s guilt, an outcome which is unthinkable unless a randomly-selected sample of the population accepts the basic fairness of the prohibition that it is asked to enforce. Hence the characterisation of the jury as “the lamp that shows that freedom lives”: Lord Devlin, *Trial by Jury* (Hamlyn Lectures, 8<sup>th</sup> series), 1956, p. 164.

- g) The **burden of proof** that will be required for the making of civil orders, whether they will be made by **Ministers or judges** and the provision for and likely time scale of **appeals**.
- h) The **requirements that it will be legitimate to impose** on the subjects of banning orders and extremist disruption orders, by comparison for example to the defined categories of preventative measures that are permitted under TPIMA 2011 (TPIMs) and CTSA 2015 (temporary exclusion orders).<sup>221</sup>
- i) The permitted maximum **duration** of the new civil orders.
- j) Whether banning orders will **lapse** automatically unless renewed, or whether an application to discharge the order will be required, and if so to whom the application will be made and how speedily the process will operate.
- k) The **penalties for breach** of the new civil orders that the criminal courts will be able to impose, and whether those penalties are to be considered proportionate in view of the types of conduct being restrained.
- l) The police resources that will be needed to **enforce civil orders**, and how likely it is that enforcement will be effective, given the vast range of opportunities to communicate that are now available.
- m) The likely effect of their new investigatory and enforcement functions on **public perceptions of the police**, in affected communities and generally.
- n) The effect that the chosen definition of extremist activity is liable to have on the **freedoms of those who are not under a civil order**, which will in turn depend on:
  - (i) the extent to which police, public authorities, informers and other members of the public will be encouraged to **scrutinise the political and religious views** expressed by other adults and children, in the workplace, the school, the university or the home, when searching for persons who have been engaged in or exposed to “*extremist activity*”;
  - (ii) whether **surveillance and investigatory powers** (tailing, bugging, undercover police operations, CHIS, interception warrants, searches of communications data) may be used for the purposes of determining whether a person has engaged in, or been exposed to, extremist activity, in person or over the internet; and

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It was for example suggested in 2014 that the subjects of extremist disruption orders might be required to submit proposed social media publications to the police in advance, presumably for approval.

(iii) the “**chilling effect**” that may result from characterising activity as extreme and from the sort of investigations referred to above, irrespective of whether a civil order has been issued.

o) Whether provision is to be made for robust and **independent review** of the operation of the new Act (and/or of the Prevent programme), on the model of the independent review of terrorism legislation or by a more diverse review body.

9.30 These issues matter because they concern the scope of UK discrimination, hate speech and public order laws, the limits that the state may place of some of our most basic freedoms, the proper limits of surveillance, and the acceptability of imposing suppressive measures without the protections of the criminal law. If the wrong decisions are taken, the new law risks provoking a backlash in affected communities, hardening perceptions of an illiberal or Islamophobic approach, alienating those whose integration into British society is already fragile<sup>222</sup> and playing into the hands of those who, by peddling a grievance agenda, seek to drive people further towards extremism and terrorism.

9.31 Of particular importance is the potential of the new law to affect those who are not its targets.<sup>223</sup> No doubt it will be said, with perfect sincerity, that it is intended to make only a handful of individuals and organisations subject to the new orders, and that those who peddle hatred and prejudice in order to sow division deserve nobody’s sympathy. But to speak only of the intended targets does not address the dangers that are inherent in all over-broad laws and discretions: dangers which are present even in the relatively confined area of anti-terrorism law,<sup>224</sup> and which become still more marked as the range of suspect behaviour is extended. If it becomes a function of the state to identify which individuals are engaged in, or exposed to, a broad range of “*extremist activity*”, it will become legitimate for the state to scrutinise (and the citizen to inform upon) the exercise of core democratic freedoms by large numbers of law-abiding people. The benefits claimed for the new law – assuming that they can be clearly identified – will have to be weighed with the utmost care against the potential consequences, in terms of both inhibiting those freedoms and alienating those people.

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<sup>222</sup> See 9.22 above.

<sup>223</sup> See 9.29(a), (e), (m) and in particular (n) above.

<sup>224</sup> The “*unusually wide discretions*” accorded to “*all those concerned with the application of the counter-terrorism law, from Ministers exercising their power to impose executive orders to police officers .. and prosecutors ..*” were considered by the Supreme Court in *R v Gul* [2013] UKSC 64 to be capable of threatening both civil liberties and the rule of law: see my summary in *The Terrorism Acts in 2013*, July 2014, 4.9-4.10. They may also render the powers, or their exercise, counter-productive. Some examples of ways in which law-abiding British Tamils and Kurds are affected by the proscription of terrorist organisations associated with their communities, and the consequent behaviour of police and others, were given in *The Terrorism Acts in 2011*, June 2012, 4.41-4.47. The resentment caused by Schedule 7 examinations (and the former TA 2000 section 44 stop and search power) are further instances of how powers targeted on the few are capable of aggravating the many. This is not to say that powers should not exist: but rather that they should be granted only when they are clearly necessary, and exercised in a manner that minimises both the impact on individual freedom and the risk of counter-productive effects.

## 10. THE FUTURE OF INDEPENDENT REVIEW

### The problems

- 10.1 I set out last year my thoughts on the future of independent review of terrorism law.<sup>225</sup> I identified three problems with the current arrangements:
- a) Significant parts of the law as it relates to counter-terrorism were going unreviewed.
  - b) The remaining powers had to be reviewed to an inflexible annual schedule.
  - c) The Independent Reviewer was operating at the limit of his capacity.

### Recent developments

- 10.2 It was a surprise to learn on 15 July 2014, just before my annual Terrorism Acts report went to press, that the Coalition Government proposed to abolish the post of Independent Reviewer of Terrorism Legislation and replace it by a committee to be known as the Independent Privacy and Civil Liberties Board **[IPCLB]**.<sup>226</sup> This was suggested without meaningful consultation, and as part of the last-minute political deal that enabled the Data Retention and Investigatory Powers Act **[DRIPA 2014]** to pass through Parliament in only four days. I took the view that there were opportunities but also risks in this proposal: my reaction was published on my website on the following day,<sup>227</sup> and I was able to make last-minute amendments to my report so as to recommend that the proposal be subject to the widest possible consultation, including with the parliamentary committees which are among the most important users of the Independent Reviewer's reports.<sup>228</sup>
- 10.3 By the time the Counter-Terrorism and Security Bill was published in December, the proposal had undergone significant change. The Independent Reviewer was now to co-exist with, rather than be replaced by, a new PCLB (Privacy and Civil Liberties Board), which was to be very well-resourced,<sup>229</sup> but whose name no longer included the word "*independent*". The Bill actually did less than the initial proposal of July 2014 to resolve the first two problems identified at 10.1 above. Once again, I recorded my reaction on

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<sup>225</sup> *Ibid.*, Chapter 11. For the evolution and current scope of the post of Independent Reviewer, see "The independent review of terrorism laws", [2014] Public Law 403-420, reproduced on my website by kind permission of the publishers: <https://terrorismlegislationreviewer.independent.gov.uk/what-does-a-terror-watchdog-do/>.

<sup>226</sup> The name appears to have been inspired by the US Privacy and Civil Liberties Oversight Board **[PCLOB]**, though the functions of the proposed new Board would not have included investigatory powers, which have thus far been the sole object of PCLOB's attentions.

<sup>227</sup> <https://terrorismlegislationreviewer.independent.gov.uk/whirligig/>.

<sup>228</sup> By a strange coincidence, the proposed replacement of the office of Independent Reviewer came just a few hours before the equivalent Australian office of Independent National Security Legislation Monitor **[INSLM]**, whose abolition had been announced some months previously, was rerieved. I have since met (in London) and enjoyed discussions with the current INSLM, the Hon. Justice Roger Gyles AO.

<sup>229</sup> The then budget for the Independent Reviewer (£250,000 p.a.) was to be supplemented by the additional expenditure of between £2.1 million and £8.1 million over 10 years, according to the Impact Assessment that accompanied the Bill.

my website.<sup>230</sup> The consultation that I had recommended on the proposed PCLB was launched on 17 December and closed on 30 January,<sup>231</sup> receiving 27 responses. These remain unpublished.<sup>232</sup>

10.4 The proposals proved controversial and as promised to the House of Commons at committee stage on 28 January, the Government introduced substantial amendments to the Bill which went some way towards:

- a) expanding the remit of the Independent Reviewer,
- b) relaxing the formerly inflexible schedule for reviews, and
- c) defining the relationship between the Independent Reviewer and the Board (which was now to act under the Reviewer's "*direction and control*").

A further amendment (not backed by the Government), which would have given the Independent Reviewer the power to review the Justice and Security Act 2013 and immigration powers used for counter-terrorism purposes, was unsuccessful.

10.5 In a third website post, which was referred to in the subsequent House of Lords debate,<sup>233</sup> I continued to express disappointment that:

- a) the Independent Reviewer was not being given powers to review laws (e.g. immigration laws) which are in practice used to deal with terrorism;
- b) there were to be no statutory assurances of access to secrets or the prompt publication of reports; and
- c) the proposed name of the new Board would remain a poor guide to its functions.<sup>234</sup>

But as I concluded: "*[I]t would be wrong to sound a churlish note. These amendments, should they find their way into law, will greatly improve the Bill. It will be for me to ensure that they improve the quality of the independent review for which I am responsible.*"

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<sup>230</sup> <https://terrorismlegislationreviewer.independent.gov.uk/oversight-of-counter-terrorism-powers/>. At the foot of the post are references to the initial parliamentary debates on the matter and to media comment, e.g. D. Pannick, "Counter-terrorism bill aims to protect us from violent fundamentalists", *The Times*, 4 December 2014; J. Rozenberg, "Why terrorism law watchdog is worried about proposed changes to legislation", *Guardian Law Blog*, 8 January 2015.

<sup>231</sup> <https://www.gov.uk/government/consultations/privacy-and-civil-liberties-board>.

<sup>232</sup> The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation, Cm 9032, March 2015, p. 11.

<sup>233</sup> Hansard HL 4 February 2015, cols 759-773.

<sup>234</sup> <https://terrorismlegislationreviewer.independent.gov.uk/independent-review-and-the-pclb/>.

## Scope of responsibilities

### *Counter-terrorism law*

10.6 The current responsibilities of the Independent Reviewer are set out in sections 44-45 of CTSA 2015. The regular statutory functions have been changed in the following way:

- a) The Independent Reviewer is given responsibility for **reviewing more statutes**.<sup>235</sup> To the current range (TA 2000 and 2006, TAFE 2010, TPIMA 2011) are added:
- Part 1 of the Anti-Terrorism Crime and Security Act 2001 [**ATCSA 2001**] (terrorist property);
  - Part 2 of ATCSA 2001 (freezing orders) as it applies in certain cases;
  - CTA 2008 (various matters); and
  - Part 1 of CTSA 2015 itself (temporary restrictions on travel: passport seizures and temporary exclusion orders).
- b) The Independent Reviewer retains his power to review the operation of TA 2006 Part 1, TAFE 2010 and TPIMA 2011, but is **no longer obliged to review each of them every year**.<sup>236</sup>
- c) The Independent Reviewer **must inform the Secretary of State and the Treasury**, by 31 January of each year, of any plans to review ATCSA 2001 Parts 1 and 2, TA 2006 Part 1, CTA 2008, TAFE 2010, TPIMA 2011 and CTSA 2015 Part 1 in that year, and must complete those reviews during that year or as soon as reasonably practicable after the end of it.<sup>237</sup>
- d) In summary:
- The requirement to conduct annual reviews of the operation of TA 2000 continues.
  - Six other statutes or part-statutes, including the four currently subject to annual review, may be reviewed at intervals decided by the Independent Reviewer, after notifying the Government.

10.7 These changes introduce some welcome flexibility into the Independent Reviewer's work. It may be possible for little-used or uncontroversial powers to be reviewed less frequently than at present. As the Home Secretary has herself acknowledged, the changes "*provide the scope to carry out thematic reviews, if appropriate*".<sup>238</sup> Possible candidates for such thematic reviews (I welcome other suggestions) could be:

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<sup>235</sup> CTSA 2015 Section 44(1)(2).

<sup>236</sup> The obligation to review annually the operation of TA 2000 remains: TA 2006 section 36.

<sup>237</sup> CTSA 2015, sections 44(3)(4), 45(1)(c) and 45(2)(3).

<sup>238</sup> *The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation*, Cm 9032, March 2015, p. 11.



- a) a report on the use of executive orders (combining the review of TPIMs, terrorist asset-freezing, temporary exclusion orders and passport removal, together perhaps with proscription), or
- b) a report on the methods for dealing with terrorist financing under the various statutes that make provision for it and on which the Independent Reviewer is now entitled to report.

### ***Immigration law***

- 10.8 Save where I am specifically invited to review their operation, immigration powers will remain outside my remit, even in circumstances where they are used for the purpose of countering terrorism.
- 10.9 Two such specific invitations are however outstanding: to review the policy of deportation with assurances, on which I hope to report in late 2015;<sup>239</sup> and to review a new power of citizenship deprivation, about which I say a little more at 10.10-10.11 below.
- 10.10 The Immigration Act 2014 [**IA 2014**] section 66 confers upon the Home Secretary a power to deprive naturalized British citizens who are not dual nationals of their citizenship, if she believes that a person has conducted himself in a manner seriously prejudicial to the interests of the United Kingdom and if she has reasonable grounds for believing that he is able to become a national of another country under that country's law. That power was sufficiently controversial to persuade Parliament that review of its operation was needed, and section 66(3)-(8) provides for a review to be conducted in relation to the first one-year period of the operation of the section (a period which expired in late July 2015) and each subsequent three-year period.
- 10.11 By letter of July 2015 the Immigration Minister asked me to conduct the first review. I have agreed to do so, and will report later this year.

### **Assistance for the Independent Reviewer**

- 10.12 CTSA 2015 section 46 permits (but does not require) the Secretary of State by statutory instrument to establish the PCLB and to make regulations concerning its membership, remuneration, appointment and so on. If this happens, the Independent Reviewer will be given the power to make recommendations for appointment to the PCLB, and will chair the PCLB which will be subject to his direction and control.
- 10.13 The Coalition Government appeared committed to "*bringing forward regulations which will establish the Board*".<sup>240</sup> The Government that was elected in 2015 is of a different

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<sup>239</sup> <https://terrorismlegislationreviewer.independent.gov.uk/deportation-with-assurances-call-for-evidence/>.  
<sup>240</sup> *The Government Response to the Annual Report on the Operation of the Terrorism Acts in 2013 by the Independent Reviewer of Terrorism Legislation*, Cm 9032, March 2015, p. 11.

mind. I have been informed that there are no current plans to establish a PCLB, and invited instead to discuss with the Government how my own additional needs for assistance could be met at much more modest expense.

- 10.14 At least for the time being, therefore, the somewhat tortuous evolution of the PCLB (10.2-10.5 above) has become an irrelevance. A body which was to replace the Independent Reviewer in July, co-exist with him in December and work under his direction and control in February and March will not now be called into being at all.
- 10.15 I take no pleasure in this, since in its final incarnation (after a couple of false starts) it seemed to me that the PCLB could have been an effective way of enhancing the Independent Reviewer's work: 10.5 above. But I look forward to working with the Home Office in order to ensure that the additional money allocated to assist the Independent Reviewer (£50,000 in respect of his core functions) is used as effectively as possible, so that the quality as well as the range of reviews can be enhanced.
- 10.16 In that connection, a final reflection is in order. The reports of successive Independent Reviewers have been heavily relied upon by Parliament and by the courts, sometimes (though by no means always) to the advantage of the Government. To take a recent example, as one of its reasons for holding (in July 2015) that the Schedule 7 port questioning powers were attended by sufficient safeguards to meet the requirement of legality, the Supreme Court stated:

“the continuous supervision of the Independent Reviewer is of the first importance; it very clearly amounts to an informed, realistic and effective monitoring of the exercise of the powers and it results in highly influential recommendations for both practice and rule change where needed.”<sup>241</sup>

Those words are at the same time welcome and intimidating. There is a difference between the function of *review*, as practised by successive Independent Reviewers working alone on a part-time basis, and the *inspecting* and *auditing* functions undertaken by other independent figures such as the Chief Inspector of Borders and Immigration or the Interception of Communications Commissioner, in each case with the help of trained inspectors and other staff. While I have devoted considerable time over the past four years to questioning ports officers and ports users, many of my contacts have been at a very senior level; I witness examinations only occasionally; there are still many ports I have never visited; and my efforts could be said to have amounted to “*continuous supervision*” or to “*monitoring*” only in a fairly general sense of those words. There are other functions in respect of which the Independent Reviewer is more thinly stretched still;<sup>242</sup> further responsibilities have been or are to be added;<sup>243</sup>

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<sup>241</sup> *DPP v Beghal* [2015] UKSC 49, para 43(x), per Lord Hughes and Lord Hodge.

<sup>242</sup> For example, visiting detainees outside London, the practical difficulty of which was adverted to in *The Terrorism Acts in 2013*, July 2014, para 8.20; and keeping in touch with the complex issues that arise in Northern Ireland on the basis of what can only be a limited number of annual visits.

<sup>243</sup> 10.6(a) and 10.9 above.

and it is desirable to keep some slack in the system for one-off tasks or “*snapshot*” reports.

- 10.17 Accordingly, if future Independent Reviewers are to function as (and be relied on by the Government as) effective supervisors or monitors of controversial anti-terrorism powers, it will be essential to ensure that they have the resources that are needed to perform as such. In discussion with the Government, my guiding principle will be to identify the areas of responsibility where additional help could do most to improve the range and quality of reports, and to indicate the specific expertise that will be needed if that help is to be provided.

## 11. RECOMMENDATIONS

11.1 Of the recommendations I made last year:

- a) The first four (***definition of terrorism***), save to the extent that the fourth has already been implemented, remain extant and could usefully be revisited once the *Miranda* case has been determined.
- b) The fifth to eighth (***independent review***) have been resolved by CTSA 2015 and subsequent policy decisions.
- c) The ninth (***port and border controls***) could usefully be revisited in the light of the comments of the Supreme Court in *Beghal*.
- d) The tenth (***proscription***) would appear to have been definitively rejected.
- e) The eleventh (***detention***) is maintained, though it is recognised that save in relation to the suspension of the detention clock, to which the Home Secretary has declared herself sympathetic (7.43 above), it may be wished to await the determination of *Sher v United Kingdom*.
- f) The twelfth (***dialogue with international NGOs***) was accepted.

11.2 I further recommend that

- a) The NPCC, and forces other than the MPS and PSNI, consider whether it would be feasible to make available statistics for the use of TA 2000 sections 43 and 43A (5.6 above).
- b) The necessary steps are taken to retain the current high quality of FME provision throughout the United Kingdom (7.34 above).
- c) The Sentencing Council considers whether it might usefully consult on guidelines for the sentencing of terrorism offences (8.24 above).

## LIST OF ACRONYMS

### Legislation

ASBCPA 2014	Anti-social Behaviour, Crime and Policing Act 2014
ATCSA 2001	Anti-Terrorism, Crime and Security Act 2001
CJA 2009	Coroners and Justice Act 2009
CTA 2008	Counter-Terrorism Act 2008
CSA 2010	Crime and Security Act 2010
CJCA 2015	Criminal Justice and Courts Act 2015
CTSA 2015	Counter-Terrorism and Security Act 2015
DRIPA 2014	Data Retention and Investigatory Powers Act 2014
ESA 1883	Explosive Substance Act 1883
HRA 1998	Human Rights Act 1998
IA 2014	Immigration Act 2014
JSA 2013	Justice and Security Act 2013
JS(NI)A 2007	Justice and Security (Northern Ireland) Act 2007
PACE	Police and Criminal Evidence Act 1984
PFA 2012	Protection of Freedoms Act 2012
POCA 2002	Proceeds of Crime Act 2002
PTA 2005	Prevention of Terrorism Act 2005
RIPA 2000	Regulation of Investigatory Powers Act 2000
SOCPA 2005	Serious and Organised Crime and Police Act 2005
SCA 2015	Serious Crime Act 2015
TA 2000	Terrorism Act 2000
TA 2006	Terrorism Act 2006
TAFA 2010	Terrorist Asset-Freezing Etc. Act 2010
TPIMA 2011	Terrorism Prevention and Investigation Measures Act 2011

### Other

ACPO	Association of Chief Police Officers (now replaced by NPCC)
AQAP	Al-Qaida in the Arabian Peninsula
CIRA	Continuity Irish Republican Army
CJEU	Court of Justice of the European Union
CPI	Commission, preparation or instigation [of terrorism]
CPS	Crown Prosecution Service
CTIRU	Counter-Terrorism Internet Referral Unit
CT Network	Police Counter-Terrorism Network

CTU	Counter-Terrorism Unit
CTIU	Counter-Terrorism Intelligence Unit
CTRA	Counter-Terrorism Research and Analysis (OSCT)
DE	Domestic Extremism
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EDL	English Defence League
EFP	Explosively Formed Projectile
FATA	Federally Administered Tribal Areas
FATF	Financial Action Task Force (G8)
FOSIS	Federation of Student Islamic Societies
FME	Forensic Medical Examiner
GCHQ	Government Communications Headquarters
HMIC	Her Majesty's Inspectorate of Constabulary
HMIP	Her Majesty's Inspectorate of Prisons
HOSB	Home Office Statistical Bulletin
ICT	International Counter-Terrorism
ICVs	Independent Custody Visitors
INSLM	Independent National Security Legislation Monitor (Australia)
IPCLB	Independent Privacy and Civil Liberties Board (UK – proposed July 2014)
IED	Improvised Explosive Device
IMC	Independent Monitoring Commission (Northern Ireland)
INSLM	Independent National Security Legislation Monitor (Australia)
IPCC	Independent Police Complaints Commission
IS	Islamic State
ISIL	Islamic State in Iraq and the Levant (same as IS)
ISIL	Islamic State in Iraq and Syria/al-Sham (same as IS)
JCHR	Joint Committee on Human Rights
JTAC	Joint Terrorism Analysis Centre
MCB	Muslim Council of Britain
MI5	Security Service
MI6	Secret Intelligence Service
MPS	Metropolitan Police Service
NCA	National Crime Agency
NCTC	National Counter-Terrorism Center (USA)
NCTP HQ	National Counter-Terrorism Policing Headquarters (UK)
NDEDIU	National Domestic Extremism and Disorder Intelligence Unit
NDEU	National Domestic Extremist Unit
NIPB	Northern Ireland Policing Board

NIO	Northern Ireland Office
NPCC	National Police Chiefs' Council (replaced ACPO)
NPM	National Preventive Mechanism
ONH	Óglaigh na hÉireann (Soldiers of Ireland)
OPCAT	Optional Protocol to the Convention against Torture
OSCT	Office for Security and Counter-Terrorism
PCLB	Privacy and Civil Liberties Board (UK)
PCLOB	Privacy and Civil Liberties Oversight Board (US)
PIRA	Provisional Irish Republican Army
PNR	Passenger Name Records
POAC	Proscribed Organisations Appeal Commission
PMOI	People's Mujahideen of Iran
PRG	Proscription Review Group
PPS	Public Prosecution Service (Northern Ireland)
PSNI	Police Service of Northern Ireland
PWG	Proscription Working Group
RAAD	Republican Action Against Drugs
RIRA	Real Irish Republican Army
RPG	Rocket-Propelled Grenade
SIAC	Special Immigration Appeals Commission
SO15	Counter-Terrorism Command, Scotland Yard
SOCA	Serious Organised Crime Agency
TACT	Terrorism Act
TE-SAT	Terrorism Situation and Trend Report (Europol)
TFTP	Terrorist Finance Tracking Provisions
TPIMs	Terrorism Prevention and Investigation Measures
TRA	Terrorism-Related Activity
XRW	Extreme Right Wing

# Meeting between David Anderson QC and the MCB

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## Concerns on Prevent

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Prepared by Miqdaad Versi, Assistant  
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**About us:** The Muslim Council of Britain is the UK's largest Muslim umbrella body with over 500 affiliated national, regional and local organisations, including mosques, charities and schools.

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## Context

The Muslim Council of Britain (MCB) met the Independent Reviewer of Terrorism Legislation, David Anderson QC on Tuesday 28 July 2015, and discussed a range of issues pertaining to the background of the MCB, its area of interest, its previous work and the views of many parts of the Muslim community on counter-terror legislation.

## Purpose of document

This document has been put together to share case studies to help support some of the key concerns raised during the meeting, as requested by Mr Anderson.

## Background to case studies

The Muslim Council of Britain has long spoken out against terrorism and violent extremism. Ever since the atrocities of 11 September 2001, the MCB has initiated statements and campaigns to speak out against the scourge of terrorism. Our message - ever since 9/11 - has been unequivocal and focussed: to call on all members of society to eschew criminality and participate positively in society.

The Muslim Council of Britain echoes the concerns held by a wide number of stakeholders that the “Prevent” policy, has flawed analytical underpinnings and leads to the Muslim community being viewed through the prism of security.

The excellent work of Mr Anderson within his in-depth report entitled: *“A Question of Trust - Report of the Investigatory Powers Review”* (June 2015) demonstrates the value of an independent reviewer. The MCB strongly agrees with Mr Anderson, who said in evidence to the Joint Committee of Human Rights on the Counter-Terrorism and Security Act in November 2014 that: “Prevent needs oversight” and that such a committee should have “breadth of experience”.<sup>1</sup>

Mr. Anderson has argued in December 2014 that there is a “monstrously wide” definition of terrorism, and that this is “certainly not ideal”.<sup>2</sup>

When it comes to tackling “extremism” as part of the Prevent duty, the definition of “extremism” is even broader than that of terrorism, and the situation is even more “not ideal”. Our concerns have been exacerbated following the extension of the Prevent duty to public bodies after the passing of the Counter Terrorism & Security Act, given the number of people implementing the duty has grown significantly, leading to many documented excesses, some of which are outlined below.

## Case studies

We highlight below several instances that underscore the shortcomings of Prevent – firstly at schools, and secondly more broadly. In sum, they show how Prevent has led young children being viewed through the lens of security, how there are serious concerns about discrimination in the implementation of terror legislation, and how it has led to self-censorship of young children in schools.

### 1. The Prevent duty extension to public bodies has led to Muslim young children in particular being viewed through the lens of security

There are police officers who believe that children as young as 4 could be radicalised<sup>3</sup> and guidance documents promote the idea that signs of radicalisation include discussion of Palestine and international conflicts,<sup>4</sup> subtle changes to behaviour in teenage (Muslim) children.<sup>5</sup>

This has led to many worrying case studies with children being referred to the Channel de-radicalisation programme as part of the Prevent policy

- i. **Broad-brushed policy:** 80% of Channel referrals between 2006 and 2013 were rejected by Channel panels,<sup>6</sup> demonstrating that children are being viewed through the lens of security and practitioners are finding threats where none exist in many cases. This can be seen by the following case studies:

1 [http://www.parliament.uk/documents/joint-committees/human-rights/Daivd\\_Anderson\\_Transcript\\_271114.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Daivd_Anderson_Transcript_271114.pdf)

2 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/draft-protection-of-charities-bill-committee/draft-protection-of-charities-bill/oral/16289.html>

3 BBC, 2009: <http://news.bbc.co.uk/1/hi/uk/8408305.stm>

4 Leaflet for Public Sector Workers: <http://www.preventforschools.org/download/file/Channel%20leaflet%20Updated%2020141.pdf>

5 By Commander Mak Chishty, a key advisor to the Commissioner of the Metropolitan Police e.g. see The Guardian in May 2015: <http://www.theguardian.com/world/2015/may/24/jihadi-threat-requires-move-into-private-space-of-uk-muslims-says-police-chief>

- One schoolboy was accused of holding "terrorist-like" views by a police officer due to possession of an Israel Boycott, Divestment and Sanctions leaflet; "Free Palestine" badges were deemed "extremist"; and another teenager required "deradicalisation" for attending protest against an Israeli diplomat.<sup>7</sup>
  - Teachers confirmed to the MCB that they were trained to find out the views of young children by making them do presentations on sensitive topics:
    - A parent told the MCB how a young child was asked to do a presentation on Syria, showing both sides of the conflict, to find out the parents' views.<sup>8</sup>
    - A young child in south London referred to social services for signs of radicalisation after he was specifically asked to write a piece on British foreign policy and he mentioned the history of the Caliphate.<sup>9</sup>
  - A two year old child in East London who has a diagnosed learning disability, sang an Islamic song and said "Allahu Akbar" spontaneously – he was subsequently referred to social services for "concerning behaviour".<sup>10</sup>
  - Parents in Stoke-on-Trent were brought in because their children were using inappropriate language, such as "Alhamdulillah", which is a religious term used, meaning "Praise be to God".<sup>11</sup>
  - Two college students were stopped by a lecturer who noticed that they had made way for two female students and lowered their gaze. They were reported to the senior team for concerning behaviour.<sup>12</sup>
  - Sermons at Friday prayers at a secondary school, which used to be delivered by other children, were now only allowed if conducted by a non-Muslim teacher whose understanding was limited to the extent that he told the children that it was not an obligation to pray Friday prayers.<sup>13</sup>
- ii. **Discriminatory application of the law in schools:** Where religious affiliation data was collected, c. 60% were Muslim (vs. 5% in the population)<sup>14</sup>. We have been led to believe that the proportion of far-right extremists taken through Channel in recent years is c. 10%, in spite of the worrying growth in Islamophobia and far-right extremism becoming more mainstream, with even 31% of young children believing Muslims are taking over England and 26% who believe that Islam encourages terrorism.<sup>15</sup> Examples of discriminatory application include:
- Schools in BNP and EDL heartlands are monitoring only Muslim pupils<sup>16</sup>
  - Multiple teachers told the MCB that a Muslim young child who is deemed anti-Semitic (or having specific views about a utopian state) will be treated differently to another child of another or no faith who is anti-Semitic.<sup>17</sup>
  - One physics teacher told the MCB how, when nuclear fission was being explained, no concern was raised when those of no faith or a faith other than Islam, queried how to build a bomb; but when a Muslim young boy asked, there was a request for him to be referred.<sup>18</sup>

6 Freedom of Information Request: <http://site.npcccms.coraidr.com/documents/FoI%20publication/Disclosure%20Logs/Terrorism%20%20Allied%20Matters%20FOI/2013/117%2013%20ACPO%20Response%20-%20Channel%20Project%20Referrals.pdf> and <https://yahyabirt1.wordpress.com/2015/07/17/channel-referrals-are-shrouded-in-too-much-secrecy-we-need-better-figures-and-more-transparency-and-accountability/>

7 Al Jazeera English, July 2015: <http://www.aljazeera.com/indepth/features/2015/07/stifling-freedom-expression-uk-schools-150721080612049.html>

8 Case study shared with the Muslim Council of Britain

9 Case study shared with the Muslim Council of Britain

10 Case study shared with the Muslim Council of Britain

11 Case study shared with the Muslim Council of Britain

12 Case study shared with the Muslim Council of Britain

13 Case study shared with the Muslim Council of Britain

14 <https://yahyabirt1.wordpress.com/2015/06/04/safeguarding-little-abdul-prevent-muslim-schoolchildren-and-the-lack-of-parental-consent/>

15 Largest survey of schoolchildren by Show Racism the Red Card: <http://www.theguardian.com/education/2015/may/19/most-children-think-immigrants-are-stealing-jobs-schools-study-shows>

16 The Bureau of Investigative Journalism: <https://www.thebureauinvestigates.com/2015/03/31/prevent-policy-schools-barnsley-edl-bnp-heartland/>

17 Case study shared with the Muslim Council of Britain

18 Case study shared with the Muslim Council of Britain

iii. Impact on self-censorship of young children:

- A week after the Charlie Hebdo atrocity, in a school where news items are discussed on a weekly basis, no young Muslim child brought the issue up because they feared they would be “put on a register”.<sup>19</sup>
- Parents told the MCB that after hearing the story of a three-year old child being placed in the government’s anti-extremism programme,<sup>20</sup> they are training their children at home not to speak about their beliefs or rituals at school.<sup>21</sup>

Further to this, there are concerns about transparency and accountability as many young people are referred even **without the consent of their parents**,<sup>22</sup> and Freedom of Information requests have regularly been rejected. In addition, because there is no requirement by the Department for Education for schools to publish any risk assessments carried out for Prevent, information is scarce.<sup>23</sup>

This demonstrates the importance of putting “protections” for programmes in Prevent, as Mr Anderson suggested in November 2014,<sup>24</sup> and as the MCB proposed in its Parliamentary Briefing in January 2015.<sup>25</sup> Whilst there are many other concerns with the Prevent duty, as outlined in our previous press releases and Parliamentary briefings, the above demonstrates the specific concerns highlighted in the discussion on 28 July.

**2. There is a serious concern about discrimination in the implementation of terrorism legislation**

- After a threatening letter was sent to Torbay Islamic Centre in September 2013, one of those who had also daubed graffiti and admitted conspiracy, had a terror manual on his computer (inspired by Breivik and EDL) and he only received a suspended sentence;<sup>26</sup>
- The leader of the UK arm of the Jewish Defence League, Roberta Moore, was found guilty of assaulting two people at a pro-Palestinian event in Haringey after invading the platform whilst being armed<sup>27</sup> and received a sentence of 150 hours of community service and a small fine with no involvement of anti-terror officers.
- 2 years in prison for EDL member Ryan McGee for building a viable nailbomb as he was “not terrorist but immature teenager”<sup>28</sup> vs. 6 years in prison for Ms Runa Khan who put promoting terrorism on Facebook<sup>29</sup> and 12 years for Yusuf Sarwar and Mohammed Ahmed who came back from Syria whilst the mother told them about it<sup>30</sup>
- Sir James Munby reunited a child with his EDL-supporting father saying “we must guard against the risk of social engineering...as the state does not and cannot take away children” but when it comes to Muslims, “More than 30 children have been subjected to judicial orders because they are at risk of indoctrination or are already deemed extremist”<sup>31</sup>
- Liam Lyburd told police that he intended to “shoot a bunch of people” and blow up Newcastle college – this was not seen as an act of terrorism.<sup>32</sup>

The above small number of case studies demonstrate some of the key concerns with the terrorism legislation, and demonstrate that many of the concerns previously raised have proven well-founded.

19 The Guardian, July 2015: <http://www.theguardian.com/commentisfree/2015/jul/01/muslim-children-enemy-radicalisation>  
 20 The Independent, July 2015: <http://www.independent.co.uk/news/uk/home-news/threeyearold-child-from-london-placed-in-government-antiextremism-programme-10419346.html>  
 21 Case study shared with the Muslim Council of Britain  
 22 <https://yahyabirt1.wordpress.com/2015/06/04/safeguarding-little-abdul-prevent-muslim-schoolchildren-and-the-lack-of-parental-consent/>  
 23 The Bureau of Investigative Journalism: <https://www.thebureauinvestigates.com/2015/03/31/prevent-policy-schools-barnsley-edl-bnp-heartland/>  
 24 [http://www.parliament.uk/documents/joint-committees/human-rights/Daivd\\_Anderson\\_Transcript\\_271114.pdf](http://www.parliament.uk/documents/joint-committees/human-rights/Daivd_Anderson_Transcript_271114.pdf)  
 25 <http://www.mcb.org.uk/wp-content/uploads/2015/01/MCB-Briefing-on-introducingPrevent-as-a-statutory-duty-for-all-public-bodies.pdf>  
 26 Herald Express, September 2013: <http://www.torquayheraldexpress.co.uk/Torquay-Knights-Templar-inspired-Breivik-murders/story-19824726-detail/story.html>  
 27 Jewish News, March 2015: <http://www.jewishnews.co.uk/jdls-uk-leader-convicted-palestine-solidarity-event-violence/>  
 28 The Guardian, November 2014: <http://www.theguardian.com/uk-news/2014/nov/28/soldier-jailed-nailbomb-ryan-mcgee-manchester-bomb>  
 29 BBC, December 2014: <http://www.bbc.co.uk/news/uk-england-30439913>  
 30 The Guardian, December 2014: <http://www.theguardian.com/world/2014/dec/06/yusuf-sarwar-mother-british-jihadist-police-betray-syria>  
 31 The Times, July 2015: <http://www.thetimes.co.uk/tto/news/uk/article4509122.ece>  
 32 BBC, July 2015: <http://www.bbc.co.uk/news/uk-england-33718094>





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