TERRORISM PREVENTION AND INVESTIGATION MEASURES IN 2014

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

by

DAVID ANDERSON Q.C.

Independent Reviewer of Terrorism Legislation

MARCH 2015

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1. INTRODUCTION

TPIMs in summary

1.1. Terrorism Prevention and Investigation Measures **[TPIMs]** are restrictions imposed on individuals by a TPIM notice. Their primary intention is to protect the public from the risk posed by persons whom the Home Secretary believes to have engaged in terrorism-related activity, but whom it is feasible neither to prosecute nor to deport.

1.2. TPIM notices are imposed by the Home Secretary but subject to quasi-automatic review in the High Court. Those reviews are held partly in closed session, in the presence of special advocates. The TPIM subject hears the gist of the national security case against him, but not the detailed evidence.

1.3. Introduced by the Terrorism Prevention and Investigation Measures Act 2011 **[TPIMA 2011]**, in force since December 2011, TPIMs replaced system of control orders under the Prevention of Terrorism Act 2005 **[PTA 2005]**. A total of ten persons have been subject to TPIMs.

1.4. TPIMs are (and will remain, after the changes summarised in chapter 3 of this report) considerably less onerous than the control orders which they replaced. In particular:

(a) Control orders could be imposed on reasonable suspicion of involvement in terrorism; TPIMs required reasonable belief.

(b) Control orders could be rolled over year on year, without limit; TPIMs last for a maximum of two years.

(c) Curfews, initially of up to 18 hours for control order subjects, trimmed to a maximum of 16 after the intervention of the courts, came down to 10 under TPIMs.

(d) TPIM subjects, in contrast to control order subjects, are entitled to the use of a phone and a computer.[1]

[1] I published a full list of the differences between control orders and TPIMs is in *TPIMs in 2012,* March 2013, at Annex 1. It was reproduced by the Home Affairs Select Committee **[HASC]** in its report into Counter-terrorism (17th report of 2013-14) **[HASC 2014 Report]**, HC 231, May 2014, at para 106.

None of these liberalising changes have been reversed.[2] But one other – the removal of involuntary relocation, whereby a control order subject could be required, with his family if he wished, to live away from his home – was reversed in 2015.[3]

1.5. Against the possibility that tighter restrictions might in the future be required, a draft Bill providing for enhanced TPIMs was drafted and given pre-legislative scrutiny in 2012.[4] Its enactment has not been thought necessary to date.

Independent Review

The Reviewer's task

1.6. As the Independent Reviewer appointed under TPIMA 2011 section 20, I have until now been required to report annually to the Home Secretary on the operation of that Act in the previous calendar year.[5] She in turn is required to place my reports before Parliament on receipt.[6]

1.7. The Independent Reviewer is given unlimited access to classified material relating to each case.[7] It is my habit also to discuss the issues with civil servants, prosecutors, intelligence officials and police, and to attend and observe some of the regular meetings at which individual TPIM subjects are discussed.

1.8. To balance my consideration and inform myself as fully as possible, I talk also with representatives of TPIM subjects, special advocates and judges; and with academics and NGOs with an interest in the field.

Previous reports

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

(a) *Control Orders in 2011* (March 2012), in which I gave a comprehensive appraisal of the control order system as it operated in

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2 Indeed the "*reasonable suspicion*" test referred to at 1.4(a) has been replaced by a "*balance of probabilities*" test, though the effect of this limited change is doubtful: see 3.8(b), below.

3 Counter-Terrorism and Security Bill 2015 **[CTSB 2015]**, sections 16 and 17: see 3.8(c) and 3.15-3.25, below.

4 *TPIMs in 2012*, March 2013, chapter 3.

5 The position has now changed: see 3.30, below.

6 In other words, promptly: see *The Terrorism Acts in 2011*, June 2012, 1.23-1.25.

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

its final year and (by extension) generally, and made seven recommendations for the TPIM system that was replacing it;[8]

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

(c) *Terrorism Prevention and Investigation Measures in 2013* (March 2014) updated the position to 10 February 2014, at which point all TPIM notices had either expired or been revoked, and made 10 recommendations.

Both those reports, and the Government's responses to them, are freely available via my website,[9] as are transcripts and videos of evidence that I give to Parliamentary Committees.[10]

The purpose of this Report

1.10. The brevity of this report reflects the facts that only one person remained subject to a TPIM in 2014 and that no new TPIMs were made during the year, giving credence to the assessment of the Joint Committee on Human Rights that they had "*may be withering on the vine as a counter-terrorism tool of practical utility*".[11]

1.11. The system did however see significant change. The Counter-Terrorism and Security Act **[CTSB 2015]** amended TPIMA 2011 for the first time, along the lines recommended in my last report, and received Royal Assent in February 2015. The Government also gave a positive response to my other recommendations of last year.[12]

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

9 https://terrorismlegislationreviewer.independent.gov.uk

10 See, in particular, the oral evidence I gave on TPIMs to the Joint Committee on Human Rights **[JCHR]** on 19 March 2013, 26 March 2014 and 28 November 2014; and to HASC on 12 November 2013 and 3 December 2014.

11 *Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011*, 10th report of 2013-2014, HL Paper 113 HC 1014, 23 January 2014, Conclusions, para 15.

12 The Government Response to the Report by David Anderson Q.C. on Terrorism Prevention and Investigation Measures in 2013, December 2014: Annex 2 to this Report.

2. THE OPERATION OF TPIMs in 2014

TPIMs in force

2.1. The Home Secretary reports quarterly on the operation of TPIMs. I have previously indicated the degree of detail that I consider is appropriate in those reports.[13] Copies of the four reports covering the year under review (to 30 November 2014) are at Annex 1.

2.2. TPIM notices have a maximum duration of two years, "*to emphasise that they are a short term expedient and not a long term solution*".[14] In the event that a TPIM subject absconds or goes to prison, a TPIM notice may be revoked, and the unexpired portion revived (on the chess clock principle) at a subsequent date.

2.3. There have been a total of 10 TPIM subjects. Nine were transferred from control orders in early 2012 and one (DD, the only foreign national to have been subject to the regime) was served with a TPIM notice in October 2012. As I noted last year, TPIM notices finally expired between 2 January and 10 February 2014 on all but three of the subjects. The remaining three notices (on the absconders BX and CC, and on DD who was in prison) had been revoked at the time of my last report in March 2014.

2.4. Since then, no new TPIM notices have been made, and the absconders' TPIM notices have not been revived. DD's TPIM notice was revived, revoked and revived again in the circumstances set out in the judgment referred to below.

2.5. The Home Secretary considered recommendations to make contingency TPIM notices on a number of subjects in 2014. None of these recommendations resulted in a TPIM notice being served.

Legal proceedings

2.6. The judgment of November 2014 in *DD v Secretary of State for the Home Department* was the only civil judgment in a TPIM case during the period under review.[15] The judgment was published in its entirety, the Secretary of State having been refused permission by the Judge to rely on closed evidence.

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13 *Control Orders in 2011*, March 2012, Recommendation 6.

14 *Review of Counter-Terrorism and Security Powers*, Cm 8004, January 2011, p. 41 para 24

15 *DD v Secretary of State for the Home Department* [2014] EWHC 3820 (Admin) (Ouseley J), available from the bailii website: http://www.bailii.org/ew/cases/EWHC/Admin/2014/3820.html.

2.7. DD was acquitted of fund-raising for al-Shabaab after a trial in 2009 and was placed under a TPIM notice for the first time in October 2012. As the judgment recorded, he was believed up to that time to have been recruiting, radicalising, assisting and guiding individuals to travel to Somalia for terrorism-related activity, raising money for al-Shabaab, contributing to extremist websites and intending himself to travel to Somalia for terrorism-related purposes.[16] He chose not to progress the automatic review of the original decision to make a TPIM notice.[17] By agreement of the parties, the court proceeded (for the purposes of the issue decided in November 2014) on the basis that the Home Secretary's national security case against DD was accurate.[18]

2.8. During the next two and a half years, periods of imprisonment alternated with periods at home under the constraints of a TPIM notice. As recorded in the judgment (paras 5-7):

(a) DD was charged in April 2013 with breaching the terms of his TPIM notice (restrictions on the use of electronic equipment and on association) and sentenced to nine months' imprisonment during which time his TPIM was revoked.

(b) The TPIM was revived again on his release from prison in August 2013; but in September 2013 he was again arrested for breach, remanded in custody and the TPIM revoked.

(c) He pleaded guilty in April 2014 to two counts of breaching the TPIM (unauthorised meeting and use of a computer), for which he was sentenced to 15 months' imprisonment.

(d) Released on licence in May 2014, the TPIM was briefly revived, only to be revoked again later in the month when DD was once again arrested and charged with breach.

(e) Released again in July 2014, the TPIM was revived. The judgment of November 2014 was on DD's appeal from this latest revival of his TPIM.

2.9. The preliminary issue decided in November was whether the imposition of a TPIM on DD was a breach of his rights under Article 3 of the European Convention on Human Rights, which prohibits inhuman and

16 Judgment, paras 9-12.
17 *TPIMs in 2012* (March 2013), 4.14(c).
18 Judgment, paras 12, 124.

degrading treatment as well as torture. The application was based on DD's mental illness, which the Court described (at para 112) as follows:

> "It is clear that the TPIM has exacerbated the symptoms of DD's mental illness which are PTSD, and either paranoid schizophrenia or a schizoaffective disorder, depressive type. These illnesses have caused the TPIM's conditions to have a much more significant effect on DD than they would have had on a person of normal mental health; they have maintained and exacerbated his illnesses, so that his mental health is worse than it would have been without the TPIM – whether or not without it, his health would have improved to the extent that treatment was not necessary. I accept Dr Deeley's evidence that the TPIM conditions cause severe anguish, though fluctuating, and that he has a significant burden of suffering. I also accept that the longer the TPIM remains in force, the worse the prognosis and the more difficult the eventual recovery after its removal. Professor Fahy said that DD would be prone to crises, from the TPIM and family problems, which is consistent with Dr Deeley's analysis."

Particularly frightening and distressing for DD was the experience of wearing a GPS tag, because of his paranoid delusion that it was an explosive device and a camera. The court also remarked on DD's "*understandable sense of hopelessness*", given his "*delusion*" that his TPIM was a punishment by MI5, and the cycle which he was experiencing of breach, custody, release, revival and breach again.[19]

2.10. The Court concluded (para 126) that the TPIM restrictions, including the effect of the tag:

> "do not amount to a violation of Article 3, provided that the requisite measures for the care of DD, including those measures which arise from the imposition of the TPIM, are met. Those requisite measures cannot include quashing the TPIM since the TPIM is, by necessary assumption, a legitimate measure necessary and proportionate to the risk. Nor can they include quashing the TPIM with a view to its re-imposition, minus the tag requirement, for the same reason; that measure is legitimate, necessary and proportionate to the risk."

2.11. Permission to appeal the determination of the Article 3 issue was granted. Both that appeal and the substantive appeal against the necessity and proportionality of the TPIM are listed to be heard in the spring of 2015.

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[19] Judgment, para 114.

2.12. In the circumstances, comment from me on this difficult and distressing case would not be appropriate. If nothing else, it serves as a reminder that as I have consistently recommended and the Government has accepted, these restrictive measures should be imposed only when unavoidable, and as a last resort. They are a useful tool for the protection of the public in the exceptional cases where a credible terrorist threat cannot be dealt with by prosecution or deportation. But though it is important that TPIMs should be fit for use in those rare cases, the sparing use to date of both control orders and TPIMs is no cause for regret.

3. CHANGES TO THE REGIME

My recommendations

3.1. My reasons for recommending change to the TPIM regime were given in my report of March 2014,[20] supplemented by a further report I was asked to produce in September.[21] In summary:

(a) TPIMs, properly used as a last resort, can be an ***effective*** method of disrupting the networks of dangerous terrorists and releasing resources for use in relation to other pressing national security targets.

(b) They are the product of years of ***improvement*** (largely in a liberalising direction) by successive Governments and the courts; they have not been counter-productive in terms of community reaction; and despite the difficulties of dealing with secret evidence, they are subject to something resembling a fair litigation procedure.

(c) Their efficacy is however reduced (and their cost increased) by the fact that, in contrast to the control order regime, all TPIM subjects must be housed in a ***locality*** familiar to them, making it easier for them to keep in touch with former networks and to abscond.

(d) TPIMs (particularly if strengthened in this way) are so intrusive that they should be made available only if a court can be persuaded on the ***balance of probabilities*** that the subject was involved in terrorism-related activity.

(e) The concept of ***terrorism-related activity*** is unduly broad, and should be reduced so as not to expose people to the risk of TPIMs when their association with terrorism is at two removes (e.g. A who supports B who encourages C, when it is only C who is involved in the commission, preparation or instigation of an act of terrorism).

(f) Absent a power to require attendance at interviews during the currency of a TPIM, the Government was not maximising the opportunity offered by TPIMs to ***engage with subjects*** and offer them an alternative point of reference to their radicalised mindset.

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20 *TPIMs in 2013*, March 2014, chapter 6.

21 See 3.15-3.25, below.

(g) The two-year maximum duration of a TPIM could be more effectively used by having an ***exit strategy*** from the very start, and by assisting those who come off a TPIM to find housing.

(h) There is a need for a judge-led response to some long-standing ***procedural concerns*** that special advocates and others have identified in closed material cases, including TPIM reviews and appeals.

3.2. There was support for a number of these recommendations in reports issued during the period under review of two parliamentary committees to which I gave evidence: the JCHR (January 2014)[22] and the HASC (May 2014).[23] In particular:

(a) The JCHR underlined the need for TPIMs to be tailored to the individual risk presented by the subject in question, and endorsed my suggestion of a judicially-chaired forum to address the long-standing concerns of special advocates;[24]

(b) The HASC strongly agreed that the Government needed to do more to engage with TPIM subjects and to prepare an exit strategy, recommending that "*all TPIM subjects are placed on a graduated scheme, which commences concurrently with the measures, with the sole purpose of engagement and de-radicalisation*".[25]

Each Committee made further recommendations of its own, which are considered at 3.26-3.28, below.

3.3. In its response to my Report (Annex 2), the Government in large part accepted my 10 recommendations of March 2014.

3.4. One of those recommendations (number 10) was given effect by a Government commitment to set up a working group, chaired by a High Court Judge, to discuss procedural and timing concerns in the closed material aspect of TPIM litigation, and to seek solutions and/or make recommendations for improvements. The terms of reference of that group, which with the agreement of the Lord Chief Justice is to be chaired

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22 JCHR, Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011, 10th report of 2013-2014, HL Paper 113 HC 1014 **[JCHR 2014 Report]**, 23 January 2014. My oral evidence was taken on 19 March 2013, QQ 1-13.

23 HASC 2014 Report, May 2014. My oral evidence was taken on 12 November 2013: QQ 84-138.

24 JCHR 2014 Report, Conclusions, paras 3 and 10.

25 HASC 2014 Report, para 120.

by Mitting J, are set out at the back of the Government Response at Annex 2 to this report.

3.5. The other recommendations that required action were provided for in the Bill that became the Counter-Terrorism and Security Act 2015.

Counter-Terrorism and Security Act 2015

3.6. The Counter-Terrorism and Security Act 2015 **[CTSA 2015]** made further provisions for TPIMs in its Part 2 (sections 16-20).

3.7. Explanatory notes to the Bill were published,[26] together with an impact assessment which estimated that under the new powers there would be an additional 5-15 TPIM cases per year, but did not, "*for privacy and security reasons*" quantify the savings consequent delivered by relocation to police and security services. More generally, the Prime Minister announced in the House of Commons on 25 November 2014 that an additional £130 million would be made available for counter-terrorism budgets for the next two years. The parliamentary scrutiny of the Bill is summarised in a useful House of Commons Library note.[27]

Enactment of my recommendations

3.8. In conformity with my recommendations:

(a) The ***definition of terrorism-related activity*** has been reduced, as I recommended, in order to remove from its scope those whose supposed connection with terrorism is at two removes.[28]

(b) A ***balance of probabilities test*** has been introduced, albeit only at the executive and not also (as I had recommended) at the judicial stage.[29]

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26 http://www.publications.parliament.uk/pa/bills/cbill/2014-2015/0127/en/15127en.htm.

27 *Counter-Terrorism and Security Bill 2014-15 – Parliamentary stages*, SN/HA 07073: http://www.parliament.uk/briefing-papers/SN07073/counterterrorism-and-security-bill-201415-parliamentary-stages, 10 February 2015.

28 CTSA 2015, section 20(2). In a welcome step, the same (reduced) definition of terrorism-related activity was used for the purposes of the new powers to seize travel documents and impose temporary exclusion orders: sections 1(1) and 2(3).

29 CTSA 2015, section 20(1). The JCHR regretted this missed opportunity (5th report of 2014-15, Legislative Scrutiny: Counter-Terrorism and Security Bill, January 2015 **[JCHR 2015 Report]**, 4.10), as did the former Supreme Court Justice Lord Brown of Eaton-under-Heywood (supported by the former Lord Chief Justice Lord Woolf), who sought to require the Home Secretary, at least where relocation is sought, not only to be satisfied but to satisfy a court on the balance of probabilities that a TPIM subject was involved in terrorism-related activity: Hansard HL 2 February 2015, cols 482-488.

(c) ***Involuntary relocation*** has been re-introduced for appropriate cases, subject to a 200-mile limit.[30] The Government also accepted my recommendation (number 5) that particular care should be taken to ensure that this power is used only when the individual circumstances of the particular TPIM subject render it necessary and proportionate to do so.[31]

(d) The power to impose ***appointments measures*** (pursuant to interventions that I envisaged would normally be led by the probation service or Prevent) has been introduced.[32] Statutory provision has not however been made, as both the JCHR and I had recommended, for the giving of assurances that would protect the privilege against self-incrimination by ensuring that information gathered in the course of such appointments would not be used in criminal or similar proceedings.[33]

3.9. I am pleased by the Government's positive response to my recommendations.[34] The package may have been rendered more digestible because it contained both strengthening and liberalising measures; and by the fact that significant parts of it had been endorsed by influential parliamentary committees. My only reservations relate to:

(a) the failure to require that a court be persuaded on the balance of probabilities of involvement in terrorism-related activity, and

(b) the failure to make statutory provision for the giving of assurances in relation to the non-use of information given at compulsory interviews.

3.10. The Government and Parliament having however considered and rejected these aspects of my recommendations so recently, I do not consider it appropriate formally to repeat them in this report.

Further changes to TPIMs

3.11. The CTSA 2015 made three further changes, which neither I, the JCHR nor the HASC had recommended:

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30 CTSA 2015, section 16. See further at 3.15-3.25, below.

31 Government Response to the report by David Anderson Q.C. on Terrorism Prevention and Investigation Measures in 2013, December 2014, p.3; and cf. JCHR 2014 Report, para 47.

32 CTSA 2015, section 19.

33 *TPIMs in 2013*, March 2014, 6.32; cf. the restricted use undertakings provided for by the Serious and Organised Crime and Policing Act 2005, section 72.

34 It contrasts with the brief and formal response to my eight 2013 recommendations: Government Response to the Report by David Anderson Q.C. on Terrorism Prevention and Investigation Measures in 2012, Cm 8614, May 2013. The JCHR described this earlier response as "*perfunctory and unhelpful*": JCHR 2014 Report, para 24.

(a) Section 17(3) introduces an element of strict liability to TPIM breach, by removing the "reasonable excuse" defence from the crime of leaving the United Kingdom while subject to a TPIM.

(b) Section 17(4) increases the maximum custodial sentence for contravening a travel measure from five years to 10 years; and

(c) Section 18 allows the Secretary of State to impose on an individual subject to a TPIM notice a prohibition on making an application for a firearm certificate or shot gun certificate, a prohibition on possessing an imitation firearm and a prohibition on possessing offensive weapons or explosives.

The first two are no doubt a reaction to the two high-profile absconds of 2012-2013. These changes were uncontroversial in their passage through Parliament.

Terrorism exclusion orders

3.12. A further innovation is the Terrorism Exclusion Order **[TEO]** provided for by CTSA 2015, sections 2-15. Imposed by the Home Secretary on individuals suspected of involvement in terrorism-related activity outside the United Kingdom, TEOs will invalidate such individuals' passports[35] and allow "*permitted obligations*" to be placed on them as a condition of permission to return to the UK. The permitted obligations are notifying the police of place of residence, reporting to a police station and attendance at appointments etc.[36] The latter two are taken straight from the TPIM regime. TEOs may remain in force for two years, and may be supplemented by further TEOs thereafter.[37]

3.13. TEOs are a reaction to the spate of British citizens travelling to fight in Syria and Iraq, and were designed for the specific purpose of managing their return. The range of permitted obligations is far narrower than the maximum available under both control orders and TPIMs. They do however have marked similarities with the "*light-touch control orders*" that were applied between 2005 and 2007.[38]

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35 CTSA 2015, section 4(8).

36 CTSA 2015 section 9(2), referencing TPIMA 2011, Schedule 1 paras 10 and 10A.

37 CTSA 2015 sections 4(3), 4(8).

38 See *Control Orders in 2011*, March 2012, 3.28 for a description of the (very similar) obligations that typically formed part of a light-touch control order. Other similarities with control orders are the reasonable suspicion threshold and the potential for orders to succeed each other year on year.

3.14. TEOs evolved considerably between the initial political announcement (which had emphasised exclusion rather than managed return),[39] and were not welcomed in all quarters.[40] However they received a generally positive reception in Parliament. I concentrated my efforts, in evidence to parliamentary committees and elsewhere, on seeking to have:

(a) procedures for judicial protection written into the Bill, equivalent to those that operated in relation to control orders and operate in relation to TPIMs;[41] and

(b) a power for the Independent Reviewer to review the operation of TEOs.[42]

Both issues featured strongly in the debates, and were the subject of Government amendments in the House of Lords which were enacted.[43]

Relocation

3.15. The most controversial of my recommendations (made in September 2014, in a report for the Prime Minister, Deputy Prime Minister and Home Secretary) was for the return of relocation.

3.16. One of the major differences between control orders and TPIMs was the removal of the power to "relocate" control order subjects, with their families if they so chose, to a town or city some two or three hours' travel from their home. Of the 52 control order subjects between 2005 and 2011, 23 were relocated for national security or practical reasons, not counting those who moved voluntarily. In most though not all cases, their relocation was upheld by the courts as necessary and proportionate. Relocation became widespread after 2007, in response to seven absconds prior to that date. No control order subject who was relocated ever succeeded in absconding.

3.17. Relocation was in some cases very strongly resented by those who were subject to it and by their families, who spoke of encountering loneliness and racism in the places to which they were relocated. Equally, however, it was valued by police and MI5 both as an effective way of disrupting networks that were concentrated in particular areas and as a way

39 http://www.bbc.co.uk/news/uk-29008316.
40 JCHR 2015 report, chapter 3.
41 https://terrorismlegislationreviewer.independent.gov.uk/the-judicial-oversight-of-teos/.
42 https://terrorismlegislationreviewer.independent.gov.uk/oversight-of-counter-terrorism-powers/.
43 CTSA 2015 sections 3 and 11 (judicial permission and review); sections 44(1), 44(2)(d) (independent review).

of making abscond more difficult. As I reported in 2013, "*It was prized for national security purposes as much as it was resented by families*."[44]

3.18. I have consistently described the removal of relocation as a step which, though not required by the courts, was a perfectly proper decision for Parliament to take on civil liberties grounds. In my TPIMs report of March 2014, however, I noted that the ending of relocation had significantly increased the challenges faced by the police, and added that (together with other features of the transition to TPIMs), it had necessitated the payment of tens of millions of pounds to pay for additional surveillance. Observing that confidence in the TPIM system had been hit by two recent absconds, to the point where the advocacy group CAGE had stated in evidence to the Joint Committee of Human Rights that "*those who want to abscond will*",[45] I recommended that the time had come to revisit the issue of locational constraints.[46]

3.19. Mindful however of the need to explore less restrictive alternatives to relocation, I indicated that it should only be re-introduced if the power to impose exclusion measures (restricting an individual from entering a specified area or place) was insufficient to address the problem.

3.20. There the matter rested until 11 September 2014, when the Home Secretary wrote asking me to advise her, the Prime Minister and the Deputy Prime Minister on whether

(a) the operational objectives for the management of TPIM subjects could be met through the sole use of exclusion zones (either under the existing legislative framework or through amendment of the legislation to allow more extensive use), or whether

(b) some form of relocation power would be needed and if so what form the new power should take.

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44 *TPIMs in 2012*, March 2013, 11.30. See, on relocation generally, *Control Orders in 2011*, March 2012, 3.33-3.36 and 6.13-6.14; *TPIMs in 2012*, March 2013, 5.5-5.11 and 11.30-11.32; *TPIMs in 2013*, March 2014, 6.19-6.27 and Recommendations 4, 5.

45 *Post-Legislative Scrutiny: Terrorism Prevention and Investigation Measures Act 2011*, 10th report of 2013-2014, HL Paper 113 HC 1014, 23 January 2014, para 56.

46 *TPIMs in 2013, March 2014*, 6.19-6.27. The JCHR agreed that "*in principle, the risk of absconding is likely to be greater when a TPIM subject remains in the midst of their local community and network*", but expressed the view that relocation was "*too intrusive and damaging to family life to be justifiable*": JCHR 2014 Report, Conclusions, para 8. In claiming my support for the latter view, the Committee may have read more into my evidence of 19 March 2013, Q11, than was justified. I took no firm position on relocation until my review of September 2014.

3.21. I conducted an urgent review, as requested, and produced a protectively marked report on 17 September. In the course of my review I questioned the Office of Security and Counter-Terrorism at the Home Office, the Security Service and the SO15 TPIM unit in the Metropolitan Police, as well as speaking to police Special Branch officers from three regional forces and familiarising myself with internal Home Office reviews of the absconds of Ibrahim Magag (December 2012) and Mohamed Mohamed (November 2013). I re-read all the High Court judgments on relocation, and had regard to the particular nature of the current terrorist threat, on which I am regularly and fully briefed. I was also well aware, through my reading and contacts with former control order / TPIM subjects and their representatives, of their negative views on and experiences of relocation.

3.22. The summary conclusions of my September 2014 review were as follows:

(a) Exclusion zones backed by GPS tags are useful in deterring TPIM subjects from travelling to prohibited areas or places, including for the purpose of harmful association. More aggressive use of exclusion zones could increase their efficacy.

(b) In the absence of relocation, exclusion zones can however do nothing to prevent a subject from meeting harmful associates on his home patch for the purposes of terrorist plotting, facilitating an abscond or simply maintaining links and networks.

(c) A power to relocate subjects away from their home areas would be of real practical assistance to the police and MI5 in distancing subjects from their associates and reducing the risk of abscond. It would also facilitate monitoring, save money and could help restore faith in a TPIM regime that has withered on the vine.

(d) Statutory limitations on any relocation power could be considered, as should more general measures of a liberalising kind. It is in any event important that relocation (which could in some circumstances be harmful) be used only when justified by the specific threat posed by the subject concerned.

3.23. I have for some time been attempting, in the interests of transparency, to obtain clearance to publish a redacted version of my September 2014 report as an annex to this report. Unfortunately it proved impossible to agree appropriate redactions within the necessary timescale. I regret therefore that my September 2014 report cannot presently be published even in redacted form.

3.24. Having received my September 2014 report, the Coalition Government agreed to re-introduce a relocation power as part of the package of recommendations that I had put forward.[47] Involuntary relocation may be to a maximum distance of 200 miles from a subject's home: no maximum had been specified where control orders were concerned, though few if any relocations were as long as this and some (e.g. Derby to Chesterfield) had been relatively short. The Home Secretary must publish factors that she considers appropriate to take into account when deciding the area within which a person is free to travel: according to the explanatory notes to the Bill, these may include, for example, "*proximity to airports, prohibited associates and other TPIM subjects, variety/number of services within the restricted area*". I had made the point in my reports of March and September 2014 that the introduction of GPS tagging could make it possible to extend the areas within which a relocated person could safely be allowed to roam.

3.25. The re-introduction of relocation proved to be largely uncontroversial in Parliament, in contrast with previous debates when the issue had sharply divided Government and Opposition.[48] Challenged to justify the measure by the former Home Secretary Kenneth Clarke, the Security Minister James Brokenshire referred to the "*very altered threat picture*",[49] to which (with particular reference to the numbers of jihadis now returning and likely to return from Syria and Iraq, many of them from the same parts of London) I had also alluded in my September report. Even the JCHR, which had previously been consistently opposed to relocation, reluctantly accepted my judgment that the changing nature of the threat justified the reintroduction of the power, while looking to the Government to be proactive in bringing forward ideas to mitigate what it considered would be "*the alienation and resentment likely to be caused in some minority communities*."[50]

Other reports and recommendations

3.26. The JCHR 2014 Report, the HASC 2014 Report (though not the JCHR 2015 Report) made a number of distinct recommendations to the Government, which may be summarised as follows:

47 CTSA 2015, sections 16 and 17.
48 See e.g. the opposition day debate following the abscond of Mohamed Mohamed: Hansard HC, 21 January 2014, cols 623-674.
49 Hansard HC, 9 December 2014, col 800.
50 JCHR 2015 Report, 4.10.

(a) renaming TPIMs Terrorism Prevention Orders, or similar, "*to reflect the reality that their sole purpose is preventive, not investigative*";[51]

(b) providing an open account of its investigations into recent absconds;[52]

(c) not necessarily applying the full range of restrictions to every TPIM subject;[53]

(d) asking the Joint Terrorism Analysis Centre **[JTAC]** to provide a regular, publicly accessible report about the threat from terrorism;[54]

(e) setting out in more detail the work carried out with TPIM subjects with a view to minimising the risk;[55]

(f) producing specific guidance, with the CPS, on investigating and prosecuting breaches (while noting, as I had done myself, that prosecution would not be appropriate in the case of every minor infringement;[56]

(g) Requesting independent testing of the tags provided by G4S to verify whether a tag-tamper alert can only be caused through deliberate actions.[57]

3.27. As to the latter two proposals:

(a) A Memorandum of Understanding (MOU) for both the review of control orders/TPIMs and the prosecution of breaches, designed to ensure a consistent and robust approach and engage CPS from the outset had already been agreed by the Home Office, police, CPS and MI5. This is discussed regularly and updated to take account of new processes and any lessons learned.

(b) Following discontinuation of the prosecutions, G4S commissioned a range of tests on the tags to look at their vulnerability to wear and tear, and the Government continues to keep under review the question of whether tags can be further improved. It acknowledges that there will always remain a possibility that an individual may damage their tag without deliberately intending to do so. The Government's priority when a tag is damaged, whether deliberately or

51 JCHR 2014 Report, para 35.
52 *Ibid.*, para 42,
53 *Ibid.*, para 47; cf, *TPIMs in 2012*, March 2013, Recommendation 4.
54 *Ibid.*, para 75; cf. *TPIMs in 2012*, March 2013, Recommendation 1.
55 *Ibid.*, para 14.
56 HASC 2014 Report, paras 112; cf. *TPIMs in 2012*, March 2013, Recommendation 6.
57 HASC 2014 Report, paras 113-115.

otherwise, is that timely action is taken in response to tag tamper alerts.

Future review of TPIMs

3.28. CTSA 2015 changed the role of the Independent Reviewer of Terrorism Legislation in a number of respects, which I broadly welcomed and indeed to an extent had encouraged.[58]

3.29. One change was to replace the previous rigid requirement that the operation of TPIMA 2011 be reviewed every year (a relic of the days when counter-terrorism statutes were subject to annual renewal in Parliament) by a more flexible arrangement whereby:

(a) reviews of TPIMA 2011 may be more or less frequent than on an annual basis; and

(b) thematic reviews will also be possible, ranging over more than one power and concentrating on a more detailed examination of selected topics.

The plans for such reviews will have to be notified to Ministers at the beginning of every calendar year, but could no doubt be amended should events take place requiring urgent consideration or review.

3.30. Other changes were to bring TEOs (along with several other counter-terrorism powers) within the scope of independent review for the first time, and to establish a body to be known as the Privacy and Civil Liberties Board in order to advise and assist the Independent Reviewer, under his direction and control.[59]

3.31. Still exempt from independent review, however, is the use of the royal prerogative to withdraw passport facilities, to which I referred in my last report on TPIMs[60] and which I understand to have been used 24 times during 2014.

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58 https://terrorismlegislationreviewer.independent.gov.uk/independent-review-and-the-pclb/.

59 CTSA 2015, section 46(1) and 46(4)(b).

60 *TPIMs in 2013*, March 2014, 2.13-2.19.

4. CONCLUSION

4.1. 2014 was a barren year for the use of TPIMs, but a fertile one in terms of adapting them for future use. With the passage of CTSA 2015 and the establishment of the High Court working group, the shape of the changes is now complete and the task of their implementation remains.

4.2. Evidence-based policy making cannot be taken for granted in the counter-terrorism field: but the conclusions of my own detailed reviews of control orders and TPIMs over the years since 2011 have been strongly – if not in all respects – reflected in the statutory and non-statutory changes that were arrived at. This demonstrates, if not the value of independent review, then at least the fact that it is taken seriously at the heart of Government.

4.3. I believe that the resultant regime (TPIMs Mk II) should be fairer and more serviceable than either the control order regime in force from 2005-2011, or TPIMs Mk I. That proposition will be tested in the years ahead. In any event, I hope nobody will lose sight of the fact that these exceptionally intrusive measures, though a powerful weapon against the undoubted threat of terrorism, are also a last resort.

4.4. Though the annual reporting requirement has gone, I intend to use the flexibility and the additional resources conferred upon my office by CTSA 2015 to ensure that TPIMs and such similar powers as fall within my remit continue to be reviewed as frequently and as carefully as is merited by their usage and by the concerns of Parliament and the public, including those communities and individuals who are most affected by the application of counter-terrorism law.

4.5. I have not thought it appropriate this year to make any formal recommendations. As always, however, I welcome the contributions of anyone who has useful experience or ideas to impart. I can be followed on twitter @terrorwatchdog, and contacted by email on independent.reviewer@brickcourt.co.uk.

ANNEX 1

Quarterly Reports 2013-14

E.R

Thursday 27 March 2014

HOME OFFICE

Terrorism Prevention and Investigation Measures (1 December 2013 to 28 February 2014)

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

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

TPIM notices in force (as of 28 February 2014)	0
TPIM notices in respect of British citizens (as of 28 February 2014)	0
TPIM notices extended (during the reporting period)	0
TPIM notices revoked (during the reporting period)	1
TPIM notices revived (during the reporting period)	0
Variations made to measures specified in TPIM notices (during the reporting period)	0
Applications to vary measures specified in TPIM notices refused (during the reporting period)	0

As Parliament is aware, one individual subject to a TPIM notice (Mohammed Ahmed Mohamed) absconded on 1 November. The TPIM notice against him was revoked during this reporting period.

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

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

E.R

Thursday 12 June 2014

HOME OFFICE

Terrorism Prevention and Investigation Measures (1 March 2014 to 31 May 2014)

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

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

TPIM notices in force (as of 31 May 2014)	0
TPIM notices in respect of British citizens (as of 31 May 2014)	0
TPIM notices extended (during the reporting period)	0
TPIM notices revoked (during the reporting period)	1
TPIM notices revived (during the reporting period)	1
Variations made to measures specified in TPIM notices (during the reporting period)	3
Applications to vary measures specified in TPIM notices refused (during the reporting period)	0

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

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

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

End of Statement

E.R

Friday 12 September 2014

HOME OFFICE

Terrorism Prevention and Investigation Measures (1 June 2014 to 31 August 2014)

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

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

TPIM notices in force (as of 31 August 2014)	1
TPIM notices in respect of British citizens (as of 31 August 2014)	0
TPIM notices extended (during the reporting period)	0
TPIM notices revoked (during the reporting period)	0
TPIM notices revived (during the reporting period)	1
Variations made to measures specified in TPIM notices (during the reporting period)	0
Applications to vary measures specified in TPIM notices refused (during the reporting period)	0

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

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

End of Statement

E.R

Thursday 9 December 2014

HOME OFFICE

Terrorism Prevention and Investigation Measures (1 September 2014 to 30 November 2014)

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

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

TPIM notices in force (as of 30 November 2014)	1
TPIM notices in respect of British citizens (as of 30 November 2014)	0
TPIM notices extended (during the reporting period)	1
TPIM notices revoked (during the reporting period)	0
TPIM notices revived (during the reporting period)	0
Variations made to measures specified in TPIM notices (during the reporting period)	1
Applications to vary measures specified in TPIM notices refused (during the reporting period)	2

During the reporting period one TPIM notice has been extended.

The TPIM Review Group (TRG) keeps every TPIM notice under regular and formal review. The next TRG will take place in December.

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

One judgment was handed down by the High Court in relation to an appeal under section 16 of the Act. In *DD v Secretary of State for the Home Department* [2014] EWHC 3820 (Admin), handed down on 20 November 2014, the High Court dismissed a preliminary issue in DD's appeal against the revival of his TPIM notice. This preliminary issue related to DD's submission that the revival of the TPIM notice breached Article 3 ECHR. The remainder of the appeal will be heard in March 2015 . This judgment is available at http://www.bailii.org/

End of Statement

ANNEX 2

Government Response to 2014 Report

David Anderson QC
Brick Court Chambers
7-8 Essex Street
London
WC2R 3LD

26 November 2014

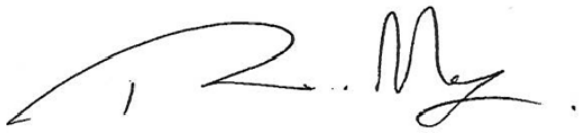
Dear David

SECOND ANNUAL REPORT ON THE OPERATION ON TERRORISM PREVENTION AND INVESTIGATION MEASURES ACT 2011

Thank you for your report on the operation in 2013 of the Terrorism Prevention and Investigation Measures Act 2011.

I am grateful to you for providing a helpful and considered report and I enclose the Government's formal response to the recommendations you have made.

I am copying this letter and the Government response to the Rt Hon Keith Vaz MP, Chair of the Home Affairs Select Committee and to Dr Hywel Francis MP, Chair of the Joint Committee on Human Rights, and will place a copy in the House Library. A copy will also be placed on the gov.uk website.



The Rt Hon Theresa May MP

The Government Response to the Report by David Anderson Q.C. on Terrorism Prevention and Investigation Measures in 2013

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

The Government agrees that TPIMs should remain part of the disruptions available to deal with terrorists where the police and Security Service consider them a suitable tool and such measures are necessary and proportionate for the protection of national security.

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

The Government accepts that it is important to keep the definition of terrorism-related activity in the TPIM Act 2011 under review to ensure that it does not unintentionally include cases for which a TPIM notice would not be necessary or proportionate.

The amendments to the TPIM Act as published in the Counter-Terrorism and Security Bill therefore include removing elements of the current definition of terrorism-related activity as specified at section 4 of the TPIM Act. The amendment means that involvement in terrorism-related activity will no longer include conduct which gives support or assistance to individuals who encourage or facilitate the commission, preparation or instigation of acts of terrorism.

The Government will continue to keep the definition of terrorism-related activity in the TPIM Act 2011 under review to ensure that it continues to provide sufficient scope to address the terrorist threat from individuals who cannot currently be prosecuted or deported, and that there are sufficient safeguards in place to ensure that TPIMs are only used in appropriate cases.

Where a TPIM notice has been imposed, the Secretary of State must also demonstrate in court that it is necessary to impose the TPIM notice to protect the public from the threat of terrorism and that doing so is proportionate. As the Independent Reviewer's report indicates, a TPIM notice has only been imposed when the individual circumstances of the case have justified its use. The power has been used sparingly and in each case the TPIM notice has been upheld in review by the courts. This review process is an important safeguard to ensure that TPIM notices are not imposed where there is insufficient justification for doing so and, when notices are imposed, it is in full knowledge that the exercise of this power will be subject to intense and detailed scrutiny by the courts. The court would quash or revoke a TPIM notice if it considered the tests were not met – whether because it did not consider there were reasonable grounds to believe that the individual was involved in terrorism-related activity, or because the notice was not necessary to protect the public or proportionate to that aim. Consequently a TPIM notice imposed without adequate grounds would not survive court scrutiny.

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

The Government accepts that the legal test for a TPIM notice should be kept under review to ensure that it provides an adequate safeguard. The amendments to the TPIM Act as published in the Counter-Terrorism and Security Bill increase the legal test from the current test that "the Secretary of State "reasonably believes" an individual is involved in terrorism-related activity to a higher threshold of the Secretary of State is satisfied on the "balance of probabilities" that an individual is involved in terrorism-related activity.

The Government will continue to keep the legal threshold under review to ensure that it enables the police and Security Service to make use of TPIMs in appropriate cases to protect the public from terrorism. In conjunction with this, the Government will also continue to keep under review whether any changes require additional safeguards and whether any existing ones remain adequate.

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

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

5. **If a power to impose new locational measures is introduced, particular care should be taken to ensure that it is used only when the individual circumstances of the particular TPIM subject render it necessary and proportionate to do so.**

The Government accepts these recommendations. The police and Security Service have said that they believe TPIMs have been effective in disrupting individuals and their networks. The Government has made clear to the police and Security Service that they should consider using every available power under the TPIM Act to its fullest possible extent.

Nonetheless, the Government continues to keep under review the powers that are available to the police and Security Service in order to manage the evolving threat from terrorism. As a result of this, and following consultation with the police and Security Service, the provisions in the Counter-Terrorism and Security Bill will allow TPIM subjects to be required to live anywhere appropriate in the UK and for measures to be imposed which restrict their ability to travel outside of the area in which they may be required to live. The provisions in the Bill also place limits on how this power may be used. For example, it would only be possible to move a TPIM subject a maximum of 200 miles from their former residence, unless they agree to a location of a greater distance. The Secretary of State will publish factors that she considers are appropriate to take into account when deciding whether to impose measures restricting travel.

As with any measure available under the TPIM Act, it will only be possible to move TPIM subjects under these provisions where it is necessary and proportionate to do so. When powers are exercised under the TPIM Act 2011, the decision takes into account what is necessary to protect the British public and to prevent the subject from undertaking terrorism-related activity. In each instance, both the notice itself and the use of individual measures

must be necessary and proportionate. It is also open to the court to assess whether each of the measures is necessary and proportionate.

6. **A new power to require subjects to attend meetings with specified interlocutors should be added to Schedule 1.**

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

   a) **the purpose of the intervention (which I envisage normally being led by the probation service or Prevent);**
   b) **the need to afford the TPIM subject complete clarity as to the purpose of the intervention, the identity of his interlocutors and the use (if any) to which his answers could be put; and**
   c) **the possible offer of reassurance on the analogy of restricted use undertakings under SOCPA section 72.**

The Government accepts the substance of these recommendations. We engaged probation to work with certain TPIM subjects during the final months of their TPIM notices. In a number of cases this engagement was beneficial. We also continue to keep under review whether additional powers are needed in order to manage TPIM subjects effectively, including whether there are powers available under other legislation that could assist with the management of TPIM subjects. As a result, the amendments to the TPIM Act as published in the Counter-Terrorism and Security Bill include a new measure that can be used to require TPIM subjects to attend meetings. This new power will mean TPIM subjects must meet with statutory bodies and other persons as required by the Secretary of State. This could include: probation, Prevent officers, Job Centre Plus staff or others who can contribute to the ongoing management of a TPIM subject. We do not at this stage judge that specifying a blanket approach to, for example, reassurance about meetings with the wide range of different actors who might be relevant would be appropriate.

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

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

The Government agrees that the forthcoming expiry of a TPIM notice should always form part of the ongoing management of TPIM subjects. We have always been clear that TPIM notices were time limited and would come to an end after two years. Throughout the life time of the notices, the Home Office, Security Service and police therefore planned on this basis and drew up exit plans accordingly. Whilst each TPIM notice was in force, we regularly reviewed the ongoing management of each TPIM subject, the plans for the lead up to the expiry of the TPIM notices, and the plans for the period after their expiry. We will continue on this basis for all current and future TPIM notices.

As part of the planned ending of the TPIM notices, we have provided opportunities for TPIM subjects to discuss issues connected with employment, studies and housing with the appropriate bodies and have provided all other appropriate assistance. For example, we have offered mentoring from the probation service to help former TPIM subjects to secure employment, made reasonable adjustments to TPIM measures to allow TPIM subjects to

take part in education and study (where that was consistent with the requirements of national security), and liaised with relevant housing providers to ensure TPIM subjects were in a position to take steps to access appropriate accommodation after the expiry of their measures.

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

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

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

The Government accepts this recommendation and will seek to establish a working group, chaired by a High Court judge, to discuss and seek solutions to perceived procedural and timing problems with TPIM cases, **or** closed material cases more generally. The group's purpose would be to discuss procedural and timing concerns and seek solutions and/or make recommendations to the Home Office for improvements.

The Government remains committed to the TPIM regime and will always seek to adhere to any court directions to enable the proper scrutiny of cases. The illustrative areas that a working group might cover include a range of issues which it is already clearly within the court's remit to address. For example, if the court believes that a closed material proceeding is not appropriate it is not required to enter such a proceeding, and even if a closed proceeding forms part of a case it may require specific pieces of material to be put in open if they are to be relied upon. As part of the important role carried out by Special Advocates, they can and have successfully argued that some previously closed material should be disclosed to TPIM subjects. In addition, there is not an absolute bar on Special Advocates' ability to communicate with subjects and the open advocates after the case has gone into closed. Communications can, and do, take place where permission is granted by the court. We are also not aware of any instances where the delay in hearing cases, including variation appeals, was specifically due to the Government. Nevertheless, a working group will be established to ensure that any concerns are considered by stakeholders.

TPIM Closed Material Working Group
Terms of Reference

Purpose

To discuss procedural and timing concerns in the closed material aspect of TPIM litigation and seek solutions and/or make recommendations to the Home Office for improvements.

Role

A working group should be established, chaired by a High Court judge, to discuss and seek solutions to perceived procedural and timing problems with TPIM cases, or closed material cases more generally.

Membership

Chair: High Court judge

Special Advocates for ongoing TPIM litigation

Special Advocates with previous experience of TPIM litigation

Counsel for the Secretary of State for TPIM litigation

Representatives of the Secretary of State for the Home Department

Representatives of the Treasury Solicitor

Others, by agreement of all parties

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