Neutral Citation Number: [2014] EWCA Crim 2158

Case No: 201302447 A7, 201302499 A7, 201302495 A7, 201302498 A7, 201302681A8

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM
The Crown Court at The Central Criminal Court, Simon J T201227273 (Dart)
The Crown Court at Woolwich, Wilkie J T20127446 (Iqbal, Ahmed, Arshad & Hussain)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/10/2014

Before :

LORD JUSTICE PITCHFORD
MR JUSTICE SWEENEY
and
THE HONORARY RECORDER OF MIDDLESBROUGH
HIS HONOUR JUDGE BOURNE-ARTON QC
(Sitting as a Judge of the CACD)

- -

Between :

Dart & Others	**Applicants**
- and -	
The Queen	**Respondent**

Ali Bajwa QC and **Mozammel Hossain** for the **Applicant Richard Dart**
James Wood QC and **Hugh Mullen** (instructed by **McCormacks)** for the **Applicant Zahid Iqbal**
Henry Blaxland QC and **Hossein Zahir** (instructed by **Birnberg Peirce and Partners**) for the **Applicant Mohammed Ahmed**
Joel Bennathan QC (instructed by **Birnberg Peirce and Partners**) for the **Applicant Umar Arshad**
Hossein Zahir (instructed by **Birnberg Peirce and Partners**) for the **Applicant Syad Hussain**
Max Hill QC and **Rebekah Hummerstone** (instructed by the **CPS**) for the **Respondent**

Hearing date: 16 April 2014

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Approved Judgment

Sweeney J:

Introduction

1. On 15 March 2013, at a Plea and Case Management Hearing before Simon J in the Central Criminal Court, Richard Dart (aged 31) and his then co-defendants Jehangir Alom (now aged 28) and Imran Mahmood (now in his mid 20s) each pleaded guilty, with a Basis of Plea, to an offence of engaging in conduct in preparation for acts of terrorism, contrary to section 5(1) of the Terrorism Act 2006 ("the 2006 Act"). Dart's Basis of Plea was not agreed by the prosecution, nor was Mahmood's, but it was not considered to be necessary to determine the points at issue by the calling of evidence.

2. On 25 April 2013 Dart was sentenced by Simon J to an extended sentence of 11 years with a custodial term of 6 years and an extension period of 5 years; Alom was sentenced to 4 years 6 months' imprisonment; and Mahmood was sentenced to an extended sentence of 14 years 9 months with a custodial term of 9 years 9 months and an extension period of 5 years. Dart and Mahmood were each subject to terrorist notification periods imposed pursuant to the provisions of Part 4 of the 2008 Act for 15 years, and Alom for 10 years. A deprivation order in respect of specified property was made pursuant to s.143 of the Powers of Criminal Courts (Sentencing) Act 200 ("the 2000 Act"), and a forfeiture order in relation to £4,800 in cash was made against Dart under the provisions of section 23A of the 2008 Act.

3. Dart now renews his application for leave to appeal against sentence, and for a representation order, following refusal by the Single Judge.

4. On 1 March 2013, at a Plea and Case Management Hearing before Wilkie J in the Crown Court at Woolwich, Zahid Iqbal (now aged 33), Mohammed Ahmed (now aged 27), Umar Arshad (now aged 26) and Syad Hussain (now aged 23) each pleaded guilty, with (in their cases) a Basis of Plea which was not contested by the prosecution, to an offence of engaging in conduct in preparation for acts of terrorism, contrary to section 5(1) of the 2006 Act.

5. On 18 April 2013 Iqbal was sentenced by Wilkie J to an extended sentence of 16 years 3 months with a custodial term of 11 years 3 months and an extension period of 5 years; Ahmed was also sentenced to an extended sentence of 16 years 3 months with a custodial term of 11 years 3 months and an extension period of 5 years; Arshad was sentenced to 6 years 9 months' imprisonment; and Hussain was sentenced to 5 years 3 months' imprisonment;. Each was subject to terrorist notification periods imposed pursuant to the provisions of Part 4 of the Counter-Terrorism Act 2008 ("the 2008 Act") – Iqbal and Ahmed for 30 years and Arshad and Hussain for 15 years. A deprivation order in respect of specified items of property was made pursuant to s.143 of the 2000 Act.

6. Each now renews his application for leave to appeal against sentence, and for a representation order, following refusal by the Single Judge.

7. There is no factual link between the two cases. However, it was convenient to hear them together - given that all the sentences were imposed for an offence contrary to section 5(1) of the 2006 Act (the maximum penalty for which is life imprisonment),

and that it was suggested in each, whether explicitly or implicitly, that we should endeavour to give some (further) general guidance as to sentencing in s.5 cases.

The relevant legislation and authorities

8. Section 5 of the 2006 Act provides that:

"(1) *A person commits an offence if, with the intention of –*

(a) committing acts of terrorism, or

(b) assisting another to commit such acts,

he engages in any conduct in preparation for giving effect to his intention.

(2) It is irrelevant for the purposes of subsection (1) whether the intention and preparations relate to one or more particular acts of terrorism, acts of terrorism of a particular description, or acts of terrorism generally……".

9. Section 20 of the 2006 Act provides that:

"*(1) Expressions used in this Part and in the Terrorism Act 2000 (c.11) have the same meanings in this Part as in that Act.*

(2) In this Part –

'act of terrorism' includes anything constituting an action taken for the purpose of terrorism, within the meaning of the Terrorism Act 2000 (see section 1(5) of that Act)……."

10. Section 1 of the Terrorism Act 2000 ("the 2000 Act"), as amended, defines terrorism as follows:

"(1) In this Act "terrorism" means the use or threat of action where—

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) Action falls within this subsection if it—

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section—

(a) "action" includes action outside the United Kingdom,

(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and

(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation."

11. At para.27 of the judgment in *R v Gul* [2014] 1 Cr.App.R.14 the Supreme Court summarised the effect of s.1(1), as follows:

"*The effect of s.1(1) of the 2000 Act is to identify terrorism as consisting of three components. The first is the 'use or threat of action', inside or outside the United Kingdom, where that action consists of, inter alia, 'serious violence', 'serious damage to property', or creating a serious risk to public safety or health – s.1(1)(a), (2) and (4). The second component is that the use or threat must be 'designed to influence the government [of the United Kingdom or any other country] or an [IGO] or to intimidate the public' – s.1(1)(b) and (4). The third component is that the use or threat is 'made for the purpose of advancing a political, religious, racial or ideological cause' – s.1(1)(c)."*

12. It follows that s.5 of the 2006 Act requires proof that an individual had a specific intent (albeit that it may have been general in nature) to commit an act or acts of terrorism (as defined) in this country or abroad, or to assist another to do so, and that he or she engaged in conduct in preparation for giving effect to that intention.

13. As is clear from the definition of terrorism, it makes no difference to the seriousness of the offence whether the intended act or acts were to take place in this country or abroad – see e.g. *Regina v F* [2007] QB 960.

14. In *Tabbakh* [2009] EWCA Crim 664, on an application for leave to appeal against sentence, this Court was not prepared to lay down any general range for s.5 offences. More recently in *Khan & Others* [2013] EWCA Crim 468, which was an appeal against sentences imposed principally for s.5 offences, this Court declined to set out guidelines or indicative sentences. In giving the judgment, Leveson LJ (as he then was) said:

"*73. Although potentially highly relevant both to culpability and potential harm (and, thus, of importance for the purpose of fixing the punitive part of any sentence) in our judgment, when assessing the future risk to the public, too much weight should not be placed on conversations for the purpose of*

ascribing comparative sophistication: it is not implausible that some self-publicists will talk 'big' and other, more serious plotters, may be more careful and keep their own counsel.……..

74. It is not the purpose of this judgment to seek to set out guidelines or indicative sentences for terrorism which comes in many different forms. Offences range from murder, attempted murder and conspiracy to murder, through causing explosions likely to endanger life or cause serious injury to property (s.2 of the Explosive Substances Act 1883), conspiracy or possession with intent to cause explosions likely to endanger life or cause serious injury to property (s.3 of the 1883 Act) to engaging in conduct in preparation for or assisting in committing acts of terrorism contrary to s.5 of the Terrorism Act 2006. This last offence is particularly wide covering acts just short of an attempt to conduct that only just crosses the line into criminality.

75. A number of principles, however, can be properly emphasised. First, as with any criminal offence, s.143 of the Criminal Justice Act 2003 directs the sentence(r) to consider culpability and harm: in most terrorist cases the former will be extremely high. Second, the purpose of sentence for the most serious terrorist offences is to punish deter and incapacitate. Rehabilitation will play little, if any part: see Martin [1999] 1 Cr App R (S) 477. Third, the starting point for sentence for an inchoate offence is the sentence that would have been imposed if the objective had been achieved with an attempt to commit the offence being more serious than a conspiracy; see Barot [2008] 1 Cr App R (S) 31. Fourth, sentences that can be derived from Martin – or, indeed, any cases before the impact of Schedule 21 of the Criminal Justice Act 2003 identifying minimum terms for murder – are of historical interest only and do not provide any assistance as to the approach which should now be adopted: for the impact of Schedule 21 in uplifting determinate sentences, see AG's Reference Nos 85-87 of 2007 [2008] 2 Cr App R (S) 45 and, in relation to terrorism, Jalil [2009] 2 Cr App R (s) 40 at paras. 22 and 24.

76. Finally, because of the enormous breadth of potential offences (and, consequently, the differing potential assessment of culpability and harm depending on the precise facts), we do not consider it appropriate to seek to provide guidelines based on these cases alone (or a combination of these cases and those in Jalil). If guidelines are needed, a better course would be for the offences to be considered by the Sentencing Council for England and Wales although we readily accept that (the) breadth of s.5 of the Terrorism Act 2006 would make the task of providing guidelines extremely difficult."

15. Having started with the notional sentence that would have been imposed if the intended act(s) of terrorism had actually been carried out, the factual nexus between the offender's conduct in preparation for giving effect to that intention and the future commission of the intended act(s) of terrorism will be a significant factor in determining the ultimate sentence for a s.5 offence – see e.g. *Attorney General's Reference (No.7 of 2008)* [2008] EWCA Crim 1054.

16. Whilst the purpose of sentence for the most serious terrorist offences is to punish deter and incapacitate, what was said by Lord Phillips CJ (albeit in a case concerned with an offence of dissemination of a terrorist publication, contrary to s.2 of the 2006 Act) in giving the judgment of the Court in *Rahman and Mohammed* [2009] 1 Cr.App.R. (S.) 70 at para.8 must also be borne in mind, namely:

"…..*It is true that terrorist acts are usually extremely serious and that sentences for terrorist offences should reflect the need to deter others. Care must, however, be taken to ensure that the sentence is not disproportionate to the facts of the particular offence…….If sentences are imposed that are more severe than the particular circumstances of the case warrant this will be likely to inflame rather than deter extremism…*"

17. A small number of other offences under the 2000 and 2006 Acts also carry a maximum sentence of life imprisonment. An offence contrary to s.57 of the 2000 Act (possession of articles for terrorist purposes) carries a maximum sentence of 15 years' imprisonment. A number of offences, including those contrary to s.6 of the 2006 Act (providing or receiving terrorist training - which was relied on in argument in the instant cases) carry a maximum sentence of 10 years' imprisonment. Two offences, including those contrary to s.2 of the 2006 Act (see immediately above) carry a maximum sentence of 7 years' imprisonment. Others carry a maximum sentence of 5 years' imprisonment.

18. As the then Vice-President (Hughes LJ) said at para.9 of the judgment in *Roddis* [2009] EWCA Crim 585:

"…..*It seems to us that some caution needs to be exercised in the welter of anti-terrorist legislation that now exists in making any assumption as to the exact Parliamentary intent. Some overlap between offences, even in the same statute, undoubtedly exists…*"

19. Section 6(1) of the 2006 Act makes it an offence to provide certain types of instruction or training. Section 6(2) makes it an offence to receive certain types of instruction or training.

20. Section 6(2) provides that:

"*A person commits an offence if –*

(a) he receives instruction or training in any of the skills mentioned in subsection (3); and

(b) at the time of the instruction or training, he intends to use the skills in which he is being instructed or trained –

(i) for or in connection with the commission or preparation of acts of terrorism or Convention offences; or

(ii) for assisting the commission or preparation by others of such acts of terrorism."

21. It is therefore clear that, whilst there is an overlap, the intention required for the commission of an offence contrary to s.6(2) is wider than the intention required for the commission of a s.5 offence – in that intentions to use the relevant skills for or in connection with the preparation, or in assisting the preparation by others, of acts of terrorism (or Convention offences) are also caught.

22. In *Iqbal & Iqbal* [2010] EWCA Crim 3215 the first applicant sought to argue that there was no logical reason that Parliament should have intended to cover training in both sections 5 and 6, not least given the different penalties, and that where the alleged activity fell quintessentially under s.6, as was said to be the position in that case, a s.5 offence should not be charged. At para.10 of the judgment the Court said:

"*In our view, there is nothing illogical in a degree of overlap in the offences created by the different sections of the Act. It was a point that the Vice-President commented upon in Roddis at [9]*……[above]……*Section 5 casts the net wide. It is an offence which was intended to add to the existing common law offences of conspiracy to carry out terrorist acts and attempting to carry out such acts. Conspiracy demands that there be an agreement, and the law of attempts requires something more than acts which are merely preparatory. The offence created by this section goes further and catches acts of preparation, when coupled with the relevant intention. In our view, there was no reason for the behaviour of the first applicant in this regard not to be charged under section 5."*

23. Our attention was drawn to the sentences imposed, on their particular facts, in the various cases to which we have made reference above, and to a number of other cases in which, again, the sentence imposed was dependant on the particular facts. Overall, the sentences imposed for s.5 offences ranged from life imprisonment to four-and-a-half years' imprisonment. Given the very limited assistance which that exercise provided, we do not propose to cite all the cases. We simply observe that the lowest of those sentences was imposed in *Attorney General's Reference (No.7 of 2008)* (above) following a plea of guilty which attracted a discount of 25%. The defendant, who it was accepted might be a Walter Mitty type, was stopped leaving this country with kit and money. He intended to make himself useful to the cause in one way or another. The Court concluded that the sentence was lenient but not unduly so.

Our approach

24. Given the relatively limited number of cases in this Court to date in relation to sentences imposed for s.5 offences (which cases were, in any event, decided on their own facts); the breadth of the offence; the consequent difficulty in giving general guidance beyond the identification of the principles identified in *Khan and Others* and in the other cases also cited above; and our agreement with the view that, if guidelines are needed, it would be better for the offence to be considered by the Sentencing Council, we decline the invitation to give any further general guidance. These renewed applications, and any consequent appeal(s), must be decided by reference to established principles and on their own facts.

Dart: The Facts

25. Dart and Alom had no previous convictions, whereas Mahmood had a number and was in admitted breach of a suspended sentence – albeit that, in the end, no order was

made in relation to that. Dart lived with his wife in Ealing. Alom lived in East London and had, in the past, been a Community Support Officer with the Metropolitan Police and a member of the Territorial Army.

26. The Indictment contained a single Count to which, as we have already indicated, all three pleaded guilty with a Basis of Plea. The Particulars of Offence asserted that the defendants:

"*…between the 25th day of July 2010 and the 6th day of July 2012, with the intention of committing acts of terrorism or assisting another to commit such acts, engaged in conduct for giving effect to their intention, namely:*

i. travelling to Pakistan for training in terrorism,

ii. travelling abroad to commit acts of terrorism,

iii. advising and counselling the commission of terrorist acts by providing information about travel to Pakistan and terrorism training, and operational security whilst there."

27. All three defendants held radical Islamist beliefs. Alom had an associate named Mohammed Tariq Nasar. In July 2010 Mahmood (then aged around 20) travelled from this country to Pakistan where he received terrorist training – including rudimentary training in explosives. Thereafter, however, he was arrested by the authorities in Pakistan and held in custody. In July 2011 (whilst Mahmood was still in custody in Pakistan and preceded by Nasar who had helped them to procure visas) Alom and Dart travelled separately from this country to Pakistan with the intention of obtaining terrorist training in order thereafter to fight coalition forces in Afghanistan. Alom's flight to Karachi was on 13 July 2011. When questioned by the police at Heathrow before his departure he said that he was going to a wedding and that thereafter he was to be introduced to a cousin of the bride with a view to marriage. The following day Alom was in telephone contact with Dart (in this country) and Nasar (in Pakistan). Telephone contact between Alom and Dart continued on an almost daily basis until Dart also left this country for Pakistan on 29 July 2011. There was a clear inference (via the subsequent lack of telephone contact between them) that thereafter he and Alom were together in Pakistan until Alom returned to this country – arriving at Heathrow on 10 August 2011. On his return Alom was stopped and interviewed by the police – during which he admitted that he had been in Quetta (close to the border between Kandahar Province and Afghanistan). He said that he had attended the wedding of his friend Tariq (though he could not give Tariq's surname). He said that, as part of the celebrations for the wedding, he had fired a handgun and a rifle, and that he had taken the opportunity to become engaged to a local girl.

28. Dart returned to this country on 19 August. He too was interviewed on arrival and said that he had been to visit his friend Tariq Khan in Quetta, and that he had left early for a number of reasons.

29. Mahmood was deported from Pakistan and arrived back in this country on 24 August 2011. He had two rucksacks with him, which were seized by the police. In interview he said that he had been travelling about in Pakistan and had been detained near Quetta after he had been unable to produce evidence of his identity. Later examination

of the rucksacks revealed, between them, the presence of traces of a number of high explosives at levels consistent with Mahmood having handled explosives during his training (as it was eventually admitted that he had). Mahmood's passport was retained by the police.

30. After their return Dart and Alom continued to be in regular telephone contact and began to plan their return to Pakistan – again in order to obtain terrorist training with a view to going on to fight coalition forces in Afghanistan. Preparations were put in train to obtain visas. On 27 October 2011 Alom booked flights to Karachi on 11 November 2011 for both of them. Dart paid for his own ticket.

31. In the afternoon of 4 November 2011 Dart and Mahmood met up at Dart's flat in Ealing. Being security conscious, they then sought to conduct a "silent conversation" by typing entries into a Word document on Dart's computer, not saving the entries and then deleting them. They were clearly under the misapprehension that, once deleted, the text could never be recovered. In the event, much of the text was later able to be reconstructed by the prosecution expert Professor Sams and interpreted by one of the investigating officers DS Rye.

32. During the sentencing process there was, as Simon J put it, "little enthusiasm" to cross-examine DS Rye about her interpretation of the words used, nor did Dart and Mahmood offer to explain their intended meaning. Hence Simon J proceeded upon the basis that unless he was sure of the meaning of material exchanges he would not draw any adverse inference from them. In particular, Simon J made clear that although it was likely that Dart was speaking with Mahmood on behalf of both himself and Alom he would not, in view of Alom's accepted Basis of Plea (which denied any connection with the conversation), treat what was said as affecting Alom's sentence. .

33. We therefore confine our summary of the silent conversation between Dart and Mahmood to the matters of which Simon J was sure. They discussed the fact that the people to be contacted in Pakistan were the TTP (a Taliban movement in the tribal areas), with Mahmood saying that he knew the people to approach, where they were to be found, that they were a mixture of the TTP and Al Qaeda, and that he would be able to effect an introduction to those who had carried out the "Abu Dujani Op" (which was a suicide attack on a US forward operating camp called Camp Chapman in Afghanistan). Dart made clear that he wanted "to be active with the right people". Mahmood indicated that, due to the number of people wanting to take part, there would be a limit to the number of operations that might be carried out. Mahmood asked Dart to get his (Mahmood's) book whilst he was in Pakistan as in it he had noted the necessary quantities of easily obtained chemicals from which a bomb could be made. There then followed a discussion about what would constitute a legitimate target. Dart then talked about the perceived advantages and disadvantages of attacking civilians rather than soldiers. He was equivocal about attacking civilian targets in this country, since it might be treated as justifying war. In any event, he later distanced himself from a terrorist attack in this country. Mahmood then talked about testing an improvised device and detonator in this country without the need to travel into the countryside to do so. He also mentioned various commonly available chemicals used for explosive devices. They then discussed how to make contact with the right people in Pakistan in order to get training - with Dart saying that he was not definitely planning to come back to this country, but that he would try to get information back to

Mahmood. Mahmood then advised Dart as to how to make contact with the TTP, how to set up a webmail account in a way that would make covert communications easier, and also gave operational security advice.

34. On 7 November 2011 Alom sent an email to Dart with instructions as to how to avoid the two of them being associated together whilst at the airport on 11 November.

35. On 8 & 9 November 2011, using the same silent method that he and Mahmood had used on 4 November, Dart had conversations with his wife at their flat. These were concerned in the main with the ways in which they would communicate after Dart had arrived in Pakistan without alerting the authorities to his whereabouts and the purpose of his travel, together with what could be done to protect his wife from prosecution. Dart made it clear that he intended to remain in Pakistan for some time. He said that, even if the plane crashed on the way out, Allah would accept him as a martyr because of his intention in going to Pakistan. Dart also referred to Mahmood's visit on 4 November - saying that although the authorities had been unable to prove anything against Mahmood they were still monitoring him.

36. On the morning of 11 November 2011 Mahmood travelled from West Yorkshire to Ealing where, that afternoon, he met Dart and they had another silent conversation – this time exchanging messages on their iPhones. Thereafter Alom received a call from Nasar, who was still in Pakistan.

37. Dart and Alom then travelled separately to Heathrow, but were stopped by the police from boarding the flight to Karachi.

38. Dart was found to be in possession of a visa sponsorship letter asking that he be permitted to attend a wedding on 15 November 2011, and stating that he would also be introduced to potential marriage candidates. The telephone number given in the letter was Nasar's Pakistani number. Dart also had a USB stick the content of which included his Islamic will – which listed Anjem Choudary (the leader of al-Muhajiroun who had presided over Dart's conversion / reversion to Islam) and Alom as his executors. Also recovered from Dart were £4,800 in cash, two SIM cards and two mobile phones (in one of which was stored Nasar's Pakistani number under the name 'Tariq, Pakistan'. When questioned Dart said that he was travelling with Alom who was intending to get married, and that he (Dart) was also going to hike and horse ride in the region. He said that £3,500 of the money was his, and that the remainder had been collected by others and was intended for charity.

39. Alom was found to be in possession a black ski jacket, gloves, a telephone which contained Nasar's details, and a SIM card. When questioned he said that he was travelling to Pakistan in order to attend the wedding of a man called Zaid Uddin, and to be introduced to potential brides.

40. Dart's home in Ealing was searched. The laptop that had been used for the silent conversations was recovered, along with an external hard drive containing a video file relating to the proscribed group 'Muslims against Crusaders' – with Dart reading the script of what was called 'Message to the EDL' (English Defence League). Also found was a Pakistani visa sponsorship letter purporting to be signed by Imran Adil, and notes relating to the visa application process and the cover story to be used.

41. Alom's home was also searched. The property recovered there included a sponsor letter, dated May 2011, also purportedly from Imran Adil, which bore the same contact telephone number and Pakistani ID card number as the letter found at Dart's address.

42. Dart and Alom were not arrested at that stage. On 12 November 2011 (the day after they had been due to leave) the telephone normally used by Alom's sister was used on several occasions to try to contact Nasir's number in Pakistan.

43. In the following months the authorities continued to keep a careful watch on all three men. Dart and Alom were in frequent telephone contact and were seen to meet in November 2011, December 2011, late March 2012 and June 2012.

44. Dart and Mahmood kept their distance from each other until 16 February 2012 when they were observed, in particular, in a restaurant in Ealing. Surveillance officers overheard aspects of their conversation during which Dart was variously heard to say words to the effect of:

"*Things have to be done. It doesn't matter if you are in this country or abroad, things have to be done. That's the thing with this country, even though I'm going to be watched, innit. A lot of brothers are scared for going inside but I'm not. I don't need brothers around me to study Jihad…..I'll do it on my own…..Where's the fighting at the moment……*(after talk about beheading, specific areas of fighting and mention of the north west)*….No one can do it full-time, it's too much to do it full time…"*

45. Dart and Mahmood were observed meeting again on 23 February 2012, on four occasions in March 2012, twice in April 2012 and finally on 25 May 2012. In the meanwhile Nasar had returned from Pakistan on 17 March 2012 and Alom met him on 18 April and 7 May 2012.

46. There was a coordinated arrest operation on 5 July 2012, during the course of which Dart, Alom and Mahmood were arrested. Alom's by then wife was found to be in possession of an SD card on which there were two copies of 'Inspire'. (which included material intended to inspire fundamentalist Islamists to undertake terrorist activities in their own countries and provided practical instruction and guidance). Nothing of significance was found in relation to Dart and Mahmood.

47. Alom and Dart made no comment in their interviews. Mahmood spoke but said little of any significance - other than denying that he knew that Dart held extremist views.

48. Dart was charged on 18 July 2012, and was sent for trial shortly thereafter. The trial was fixed for 10 April 2013. The prosecution served its evidence in or around November/December 2012. Dart was permitted to change his solicitor and counsel in December 2012. In February 2013 Dart put forward a Basis of Plea which was rejected by the prosecution. Thereafter the PCMH was postponed more than once in order to allow further discussion between the parties as to an acceptable basis of plea. It finally took place on 15 March 2013 (less than a month before the trial date).

49. Dart's Basis of Plea (which included a number of footnotes) stated that:

"*1. The defendant's conduct in the UK in preparation for the intended act of terrorism was:*

a. To make arrangements to travel to Pakistan on 29 July 2011 with a view to exploring possibilities in relation to undertaking combat training (however, the defendant did not undertake any training during the 3-week trip to Pakistan in July/August 2011);

b. To make arrangements to travel to Pakistan on 11 November 1991 in order to undertake combat training, with a view to engaging in combat in Afghanistan against such sections of NATO controlled armed forces as he might encounter; and

c. In October and November 2011 to seek and obtain advice about training and contacts in Pakistan (this includes discussing where to go, who to contact, how to contact them, who would be 'active' and about opportunities to engage in combat operations).

2. The defendant did not intend to commit an act of terrorism (a) involving the targeting of civilians or loss of civilian life or (b) in the UK.

3. Between the authorities refusal to permit him to fly to Pakistan on 11 November 2011 and his arrest on 5 July 2012, the defendant did not engage in conduct in preparation to commit an intended act of terrorism."

50. It was, however, accepted that on 4 November 2011 Dart had spoken about the possibility of the commission of acts of terrorism in the UK, and it was noted that the prosecution observed that the overheard conversation with Mahmood on 16 February 2012 demonstrated an ongoing fervour for extremist activity.

51. As we have already touched on above, Dart's Basis of Plea was not accepted by the prosecution and nor was Mahmood's, but it was not considered necessary to determine the points in issue by the calling of evidence. Sentence therefore had to be passed on a factual basis consistent with the Basis of Plea.

52. There was a Pre-Sentence Report in respect of each defendant. The authors of those in respect of Dart and Mahmood reached the clear conclusion that they were dangerous offenders.

53. During the course of mitigation defence counsel drew the judge's attention to s.6(2) of the 2006 Act which, as already touched on above, makes it an offence (with a maximum sentence of 10 years' imprisonment) to receive terrorist training. All submitted that if the facts relied upon in an indictment charging offences under s.5 of the 2006 Act went no further than alleging attempts to obtain training, any sentence of imprisonment should be set at less than ten years.

54. The broader mitigation advanced on Dart's behalf included reliance upon his previous good character; the fact that he never got near his goal of training for terrorism, and thus did not get near to his further goal of carrying out terrorist attacks abroad; and his plea of guilty. It was, however, accepted that although he did not intend to kill civilians, his intended actions might have resulted in civilian losses. Reliance was

also placed on sentences imposed in a small number of other s.5 cases including *Khan and others* (above).

55. Alom's Basis of Plea, which was accepted by the prosecution, was to the effect that part of his purpose in travelling to Pakistan in July 2011 was to seek out groups from whom to obtain instruction/training to be used by him thereafter to engage in combat with allied forces in Afghanistan. He had not, however, succeeded in locating any such group, and accordingly did not receive any training. He had sought to travel to Pakistan again on 11 November 2011 for the same purpose. The silent conversation between Dart and Mahmood on 4 November 2011 was no reflection of his own intentions – indeed there was no evidence emanating from him of any wider intention beyond his admitted purpose of travel.

56. In his long, detailed and clearly expressed sentencing remarks Simon J set out the facts including, as we have already touched on in para.33 above, the aspects of the silent conversation between Dart and Mahmood on 4 November 2011 of which he was sure. He also observed that the commitment of Dart and Mahmood to Jihad activities seemed not to have been moderated by what had happened in November 2011 - given what had happened afterwards.

57. As to the argument advanced in relation to s.6(2) of the 2006 Act, Simon J accepted that some s.5 offences were very much more serious than others, and that it followed when looking at a particular s.5 offence, and where the offences were of broadly similar culpability, the court should have a broad regard to the maximum sentence under s.6.

58. Having referred to the matters relied upon in mitigation, Simon J observed that it was clear that the defendants were all fundamentalists (although they would be sentenced for their criminal actions rather than their beliefs), and that they all intended that training in Pakistan would be followed by acts of terrorism - which meant killing people to the extent that it was possible to do so. He accepted that, to some extent, Dart and Alom had been the subject of suspicion from their fellow radicals, and may have felt the need to prove themselves.

59. Simon J then went on to conclude that Mahmood was the most dangerous of the three defendants – indicating that the fact that Mahmood had asked Dart to get hold of the book that he believed held the means to make a viable explosive device was highly relevant to the question of dangerousness.

60. Simon J observed that Dart had wanted to be "active with the right people" – i.e. those most committed to Jihad and most effective in promoting it. He had intended to use the £4,800 in cash found upon him on 11 November 2011 for the contacts provided by Mahmood. Simon J then underlined that he did not sentence Dart on the basis that he had intended to carry out terrorist activities in this country, but rather upon the basis that his immediate objective had been to go out to Pakistan for training, with a view to carrying out subsequent (albeit as yet not crystallised) terrorist operations there. The ways in which he had communicated with others showed that he was surveillance conscious and belied the argument that his offence was unsophisticated. His conversations with Mahmood were relevant to both his culpability and the risk of serious harm to members of the public. The fact that he had acted in concert with Alom was an aggravating feature.

61. In Alom's case, Simon J observed, there was no more than his thwarted intention to obtain training in Pakistan, and the persistence of it – together with the aggravating feature of his having acted in concert with Dart.

62. As to dangerousness, Simon J accepted that neither Dart nor Mahmood had identified a target, whether at home or abroad, but was sure that neither had ruled out an attack of some sort in the United Kingdom, and that Mahmood was looking for ways of arming himself with a rudimentary bomb. Having considered the consequences of imposing an extended sentence, Simon J concluded that Mahmood's commitment to terrorist activity over a significant period, and the determined steps taken by Dart to obtain information and assistance for the purpose of obtaining terrorist training abroad marked each out as being particularly dangerous. He therefore exercised his discretion to impose the extended sentences to which we have already made reference upon them – giving, in the process, a discount for plea of 25%, and taking into account the need to focus on the nexus between the preparatory acts and the ultimate intended terrorist act(s), and that purpose of sentence in cases of this type is to punish, deter and incapacitate. It follows that the notional custodial term after trial that Simon J had in mind in Dart's case was one of 8 years.

63. Simon J also concluded that Alom was dangerous, but was persuaded that it was not a risk that could only be managed by means of an extended sentence. He therefore exercised his discretion not to pass such a sentence in Alom's case. Instead he imposed the determinate sentence to which we have already made reference – again giving a discount for plea of 25%, and particularly taking into account the impact of sentence for an offence under s.6. It follows that the notional sentence after trial in Alom's case was one of 6 years' imprisonment.

Dart: Grounds & Submissions

64. The imposition of an extended sentence is not disputed. The Ground of Appeal asserts that:

> "*The applicant's sentence of 6 years' imprisonment is manifestly excessive, in particular:*
>
> *a. The learned judge took too high a starting point of 8 years' imprisonment;*
>
> *b. There is an objectionable disparity with Alom's sentence of 4 years 6 months' imprisonment; and*
>
> *c. Insufficient credit of 25% was given for the applicant's guilty plea.*

65. Mr Bajwa QC, on Dart's behalf, concentrated his oral submissions on the notional custodial term after trial and the alleged unfair disparity with Alom's sentence.

66. As to the notional custodial term after trial, Mr Bajwa asserted that there was a risk in s.5 cases, where it was less than certain what the basis of fact was, of an excessive sentence being imposed. Hence, he submitted, there was a need to be clear as to the intended act of terrorism and the preparatory conduct of which a defendant was convicted or admitted; for consistency with other s.5 cases and amongst co-defendants; for the sentence to be no more than the maximum for the intended offence

being prepared for; and for care to be taken to ensure that non preparatory matters were not given disproportionate weight.

67. Mr Bajwa submitted that, in accordance with his Basis of Plea, Dart's intention was to receive terrorist training with a view to fighting coalition forces in Afghanistan, and that therefore his intended offence amounted to no more than an aggravated form of receipt of training for terrorism, contrary to s.6(2) of the 2006 Act, but one which came nowhere near the sort of completed offence which would attract the maximum sentence of 10 years' imprisonment – which, Mr Bajwa postulated, would be a case in which the defendant managed to receive training, had a bad record, and was intent on mass murder. Here, Mr Bajwa submitted, the judge ought to have had in mind more clearly where the admitted intended offence fitted in the scale of s.6(2) cases, the limitations of the admitted conduct in preparation, Dart's previous good character and the fact that, as between his attempt to fly to Pakistan on 11 November 2011 and his arrest on 5 July 2012 he had gone no further. All of which, Mr Bajwa asserted, should have resulted in a notional custodial term after trial of less than 8 years.

68. As to disparity, Mr Bajwa submitted that Alom was, in reality, an equal partner with Dart. The only difference between them was that it was Dart who had met with Mahmood on 4 November 2011 and had the silent conversation with him. The reality of that conversation was that Dart had been speaking on behalf of both himself and Alom and, notwithstanding the prosecution's acceptance of Alom's Basis of Plea (distancing him from that conversation), the Judge could have honoured Alom's Basis and still found no difference between them. In particular, the parties had been prepared to have a *Newton* hearing as to the content of that conversation; what was accepted by Dart as to the content (which thus should have been the basis of sentence) did not justify an inference of difference with Alom; and the judge wrongly took the view that it added to Dart's dangerousness even though it was not conduct in preparation as such.

69. In his written submissions, having set out the chronology of events post charge (see para.48 above), Mr Bajwa asserted that it was arguable that, in those circumstances, Dart ought to have been given full discount for his plea.

70. On behalf of the Respondent, Miss Hummerstone submitted that it was clear that the principal acts of terrorism that Dart intended to carry out involved him killing coalition forces in Afghanistan, with the accepted reality that his intended actions might have resulted in civilian losses as well. As he had made plain in his silent conversation with his wife, he did not intend to return until the coalition forces were out of Afghanistan. In addition his acts in preparation, both travelling to Pakistan in July/August 2011, and trying to travel there again in November 2011, combined with the evidence of what he had said in the various conversations, showed a considerable determination to succeed in his ultimate intention.

71. Miss Hummerstone further submitted that, given the conversations to which Alom was not a party, and for the reasons given by the judge, there was clearly no unfair disparity with the sentence imposed on Alom. Nor, she submitted, was this a case for the award of full credit for plea – given that an unacceptable Basis had first been forwarded only in mid-February 2013, and that the PCMH had been postponed on several occasions at the behest of the defendants, and had eventually taken place less than a month before the trial date.

Dart: Conclusion

72. There is, rightly in our view, no criticism of the Judge's finding of dangerousness, nor of the exercise of his discretion to impose an extended sentence. As to the length of the custodial term, the prosecution were clearly entitled in accordance with *Iqbal & Iqbal* (above) to charge a s.5 offence, which thus carried a maximum sentence of life imprisonment. Dart pleaded guilty to that offence. There was no dispute that the ultimate acts of terrorism that Dart intended to commit involved the killing by him of coalition forces in Afghanistan, with the acceptance that his intended acts might have resulted in civilian losses as well. It made no difference to the seriousness of the offence that the intention was to be achieved abroad. This was therefore a very serious case, in which (in accordance with established principles) the starting point was the notional sentence which would have been imposed if that intention had been achieved. Hence, in this case, the relevant starting point was one of life imprisonment. It was then incumbent on the judge to consider, as he did, the factual nexus between Dart's admitted conduct in preparation for giving effect to his intention and the act(s) of terrorism ultimately intended, and to have in mind (as he also did) the purpose of sentence in cases of this type, and (we would add) the need to ensure that nevertheless the sentence was not disproportionate to the facts. As to the nexus, Dart, who on the evidence was a committed extremist, had travelled to Pakistan once, and had determinedly tried to travel there again to get training in order to go straight on to carry out his ultimate intention of killing coalition forces in Afghanistan (with the risk of killing civilians as well). He had also tried to take a significant sum in cash, part of which was to be given to terrorist to assist them. He had only failed because the authorities had intervened – albeit that he did not try again. The nexus was thus relatively close. We reject the argument that the judge was bound by the maximum sentence for a s.6 offence and that a comparison with the worst type of s.6 case that can be envisaged shows that the notional custodial term after trial of 8 years was too long. Indeed, in the circumstances of the hypothetical worst case postulated by Mr Bajwa, it would obviously be wholly inadequate to charge a s.6 offence. That is not to say that there will not be s.5 cases in which it would be appropriate, on the particular facts, to give weight to the maximum sentence for a s.6 offence. On the particular facts of this case, however, it is simply not arguable that a notional custodial term after trial of 8 years was manifestly excessive. Indeed, there could have been no realistic complaint if a significantly longer notional custodial term had been identified.

73. For the reasons which the judge gave, there was clearly an appropriate basis in relation to Alom upon which to exercise his discretion against the imposition of an extended sentence, and also to identify a shorter notional custodial term after trial. No arguably unfair disparity arose. The argument that, in the particular circumstances of this case, the judge erred in confining the discount for plea to 25% is, in our view, equally unmeritorious.

74. In all those circumstances, Dart's renewed application is refused

Iqbal, Ahmed, Arshad & Hussain: The Facts

75. The applicants, each of whom was of previous good character, pleaded guilty to Count 1 of a 14 count indictment. The Particulars of Offence were as follows:

"*On divers days between 1 January 2011 and 25 April 2012 (each of the applicants) with the intention of committing acts of terrorism or assisting others to commit such acts, engaged in conduct in preparation for giving effect to that intention, namely*

(i) facilitating, planning and encouraging travel overseas

(ii) organising, encouraging and participating in physical training

(iii) purchasing survival equipment

(iv) downloading, researching and discussing electronic files containing practical instruction for a terrorist attack

(v) discussing methods materials and targets for a terrorist attack including firearms and improvised explosive devices

(vi) collecting and supplying funds for terrorist purposes overseas."

76. The remaining 13 counts on the indictment variously charged Iqbal (Counts 2 & 3), Ahmed (Counts 4-6), Arshad (Counts 7-10) and Hussain (Counts 11-14) with the possession of information, contrary to section 58(1)(b) of the 2000 Act (which carries a maximum sentence of ten years' imprisonment). In each case the material was found when their home was searched on 2 September 2011. Those counts were eventually ordered to lie on the file. However, and without objection, the undisputed facts underlying them were taken into account when sentence was imposed.

77. Each of the applicants lived in Luton at the material time. The prosecution case was that Iqbal had a contact in Pakistan who was thought to have access to insurgents on the border with Afghanistan. The contact was used for the purpose of assisting Iqbal in placing Ahmed for terrorist training in Pakistan. To that end, Iqbal and Ahmed discussed, in particular, how to ensure success without drawing the attention of the security services, or even Ahmed's own family, to what he was doing. Discussions included what Ahmed should wear and pack for his trip, and what telephone numbers would be used whilst he was in Pakistan. Iqbal also provided Ahmed with £850 to be passed on for use for terrorist purposes. He also discussed with his contact the arrangements for Ahmed's travel and for his reception in Pakistan for the purposes of terrorist training. Arshad also provided assistance to Ahmed during the course of the preparations for the trip – including providing him with Pakistani SIM cards (one of which Ahmed later used, whilst in Pakistan, to keep in touch with Iqbal and Arshad), encouraging him, giving him £100 for the purposes of terrorism and coaching him as to a cover story.

78. On numerous occasions Ahmed attended a gym for training and went on trips to mountainous areas (in particular Snowdonia) – all with a view to becoming physically fit for purposes connected with terrorism. He was also instrumental in encouraging and transporting others to take part in outdoor military style physical training.

79. In February 2011 Iqbal discussed (in veiled terms on the phone) acquiring firearms and ammunition. On 21 February 2011 he met a third party and they discussed more explicitly the procurement of a firearm and ammunition as well as referring to the Al Qaeda magazine 'Inspire' (as to which see para. 46 above).

80. Ahmed duly travelled to Pakistan on 9 March 2011 but returned (ten days earlier than expected) on 15 March 2011. The foreshortening of the trip was said by Ahmed to be due to his lack of facility in Pashtu and Arabic, and to enhanced security in the relevant part of Pakistan.

81. Iqbal claimed to have joined a gym in March 2011. After his return from Pakistan, Ahmed went on a number of further physical training trips to Snowdonia in April and July 2011 – accompanied by Arshad on a number of occasions and by Hussain on one occasion. Iqbal and Ahmed discussed training for military purposes, as did Ahmed and Hussain.

82. In the meanwhile, in April 2011, Ahmed had a conversation in his car with two other people about the acquisition of firearms and ammunition. In May 2011 Ahmed and Hussain discussed the possibility of obtaining firearms. Ahmed indicated that he was minded to buy a gun and Hussain advised him as to potential sources. Thereafter, on 25 May 2011, Ahmed had a conversation in his car with two other males - during which the purchase of a firearm was discussed. There was no evidence that any of the expressed intentions about firearms and ammunition ever got beyond the discussion stage, but they were serious discussions.

83. Also in April 2011, and again in May 2011, Iqbal and Ahmed had a discussion based around the magazine 'Inspire' which they recognised enabled people such as themselves to take terrorist action in their home country without the need to travel abroad and to attend training camps there. They also discussed an article in 'Inspire' about assembling an IED from readily available items and ingredients. Further, they spoke of modifying the device that was described in the article with a view to attacking a Territorial Army Centre in Luton. The evidence showed that, as described in the article, the device was viable, but that, if modified in the way discussed, it would not have been. Nevertheless these were detailed and serious discussions, even though they did not get beyond that stage.

84. Arrangements were made for Iqbal to travel to Pakistan on 4 September 2011 for terrorist purposes (including, once there, giving up to £10,000 to the insurgents). He discussed the plan with Ahmed – including the logistics of travelling with his family, the physical and weapons training that he would hope to receive in the mountains, and how best he might assist the terrorist cause with those in Pakistan.

85. Iqbal and Ahmed also discussed the possibility of Hussain travelling in the cause of Jihad. On several occasions Ahmed discussed with Hussain the desirability of Hussain travelling abroad for terrorist training and, thereafter, taking part in fighting. Indeed, Ahmed encouraged Hussain to do so. Nevertheless, the discussions never got beyond the aspirational stage – albeit that in June 2011 Iqbal and Ahmed discussed facilitating Hussain's travel overseas, and thereafter discussed Hussain going to Pakistan or the Yemen for training purposes. Hussain was believed to have some £15,000 available to contribute to the terrorist cause overseas and to be awaiting a call to leave home. Arshad was engaged in sending money to Pakistan for terrorist purposes.

86. Each man had access to, and did access, many documents espousing violent jihad as an essential part of the obligation of a fundamental Islamist.

87. However, starting in January 2011 (which was the opening date alleged in the indictment) aspects of their activities and conversations had been the subject of surveillance and covert recording by the authorities. In consequence, on 2 September 2011 (two days before Iqbal was due to travel to Pakistan) each of the applicants' homes was raided and searched. The various items the subject of Counts 2-14 were recovered – they had, for the most part, been downloaded onto computers. The nature of the publications, particularly the electronic versions of 'Inspire' magazines, illustrated the extent to which each had exposed himself to fundamentalist beliefs, including the desirability of advancing those beliefs by terrorist activities – both abroad and at home (as advocated in 'Inspire'). Iqbal also had Cyberscrub software which could be used to delete data from a computer. In addition, £13,400 in cash was found at Iqbal's home address, and £2,500 in cash was found in Ahmed's bedroom. The prosecution alleged that the £2,500 was money which Ahmed had collected for terrorist purposes. He, however, disputed that. Many phones in different names were also found, the examination of which showed significant contact between each of them. One of the phones had been used by Iqbal to communicate with his contact in Pakistan, and to contact Ahmed whilst Ahmed was in Pakistan. Another was the one used by Ahmed in Pakistan – with the SIM card provided by Arshad.

88. There were no arrests on 2 September 2011. The applicants were eventually arrested on 24 April 2012 (which was the day before the closing date alleged in the indictment) when their homes were again searched. The property found at Iqbal's home included "39 ways to support Jihad" (which had been downloaded since the previous search), concealed press cuttings relating to drone attacks, additional mobile phones (the number for one of which was stored in a phone belonging to Ahmed), a DVD for an Arab language course and a rucksack the content of which included a GPS Navigator, torches and a compass. The property found at Ahmed's home included, on his computer, a complete set of 'Inspire' magazines (all of which had been downloaded since the previous search and included the latest edition which commemorated the 9/11 attacks). In addition, survival equipment, including a head torch and maps of Snowdonia, was recovered from a car connected with Ahmed that had not been searched before. Nothing of significance was found at the homes of Arshad and Hussain.

89. Iqbal, Ahmed and Arshad made no comment in their subsequent interviews. Hussain replied to some questions - otherwise he too made no comment.

90. There was a preliminary hearing before Fulford J (as he then was) on 11 May 2012. On 31 May 2012 Fulford J allowed Ahmed to change his solicitors. The trial was fixed for 10 April 2013. In December 2012 (after an earlier refusal by Fulford J) Wilkie J allowed Arshad and Hussain to change their solicitor to the solicitor representing Ahmed. A Plea and Case Management Hearing was fixed for 1 March 2013. In the last week of February 2013, following discussions between the parties that had begun at the end of January 2013, the Bases of Plea were put forward. At the PCMH on 1 March 2013, and supported by the prosecution, each of the four applicants sought a *Goodyear* indication. Wilkie J declined to give a full *Goodyear* indication, but did indicate the approach that he would take, as a matter of principle, to the sentence of each applicant and the areas in relation to which he would require further information and upon which he required to be addressed by both sides in relation to sentence. Thereafter each applicant pleaded guilty with a written Basis of

Plea which, as we have already touched on, was not contested by the prosecution. There were Pre-Sentence Reports on Iqbal and Ahmed; neither Arshad nor Hussain requested such a report.

91. Combining each applicant's Application for a *Goodyear* indication, Basis of Plea, Pre-Sentence Report (where appropriate) and mitigation:

(1) Iqbal accepted that he was an Islamist who sympathised with the insurgency in Afghanistan. His own terrorist intent was generalised, ill formed and never settled. His discussions were embryonic. Although he contemplated the possibility of committing an act of terrorism in the UK, he did not form a specific intent to do so. Of all the matters discussed, he was most likely to have travelled abroad himself. He had intended to travel to Pakistan in September 2011, taking some £10,000 in cash (which he had saved and collected) with him – some of which was to be used for terrorist purposes [Particulars (i) & (vi)]. He accepted that prior to that he had assisted Ahmed to travel to Pakistan in March 2011 by discussing with him methods to avoid detection, by putting him in touch with his contact and by arranging for them to meet. He did not know his contact in Pakistan well, but believed him to have contacts with insurgents in the border area of Pakistan and Afghanistan. He had also given Ahmed £850 to pass on to his (Iqbal's) contact for use for terrorist purposes overseas [Particulars (i) & (vi)]. However, he had thought that it was unlikely that his contact would be able to use Ahmed and that Ahmed would be sent home. He had lost touch with his contact after Ahmed had returned. He accepted downloading, researching and discussing electronic files containing practical instructions for terrorist attacks [Particular (iv)]. He also accepted discussing methods, materials and targets for a terrorist attack (including exploring the possibility of constructing an IED by the method described in 'Inspire' – though he did not pursue that idea beyond the reflection and consideration stage). He further accepted that he had made enquiries with a friend from London about the feasibility of purchasing a firearm (though he had no specific plan as to what to do if he had acquired one and had last discussed it in February 2011) [Particular (v)]. In addition to Iqbal's previous good character and employment record, reliance was placed in mitigation upon the fact that he was married with two young children, had been in custody since 24 April 2012; the fact that the prosecution accepted that there was no evidence of contemplation by him of further terrorist action in the UK or abroad after September 2011; that the prosecution also accepted that the evidence did not demonstrate that he posed an imminent threat in the months leading to his eventual arrest; that the great majority of the items recovered from his address on 24 April 2012 were in his possession for innocent purposes; and that the Pre-Sentence Report indicated that he had been naïve and susceptible to the views and influence of others and posed a low risk of re-offending (albeit posing a high risk of harm). It was further submitted that there was no distinction to be drawn between his role and that of Ahmed; that he had never met Hussain; that he had only briefly met Arshad on one or two occasions; and that, in reality, his was a case about limited actions and about conversations which had never remotely come to fruition.

(2) Ahmed accepted that between 1 January 2011 and 2 September 2011 he had sought to travel to Pakistan for terrorist training, and had sought to achieve physical fitness and to acquire outdoor survival equipment to take with him to

Pakistan. That had been his focus. He had travelled to Pakistan in March 2011 and had provided less than £1,000 to those purporting to offer training (which money he understood was to be deployed for a terrorist purpose overseas), but had been rejected and had returned within a few days [Particulars (i) & (vi)]. After his return he had maintained an aspiration to return to Pakistan for training, but had been unsuccessful. He had also sought to travel to other countries to learn Arabic, but had again been unsuccessful. In addition to his own travel, he had sought in general terms to encourage Hussain to travel to Pakistan for training [Particular (i)]. He had also been involved in the organisation of, and had participated in, mountain walks and physical exercise with others – one of the purposes of which had been to prepare himself for the rigours of a training camp [Particular (ii)]. He had purchased survival equipment for use in Pakistan, as well as for exercising in the UK [Particular (iii)]. He had downloaded and read copies of 'Inspire' (some of the editions of which contained information of a type likely to be useful to a person preparing or committing an act of terrorism) principally to access the ideological content [Particular (iv)]. On 22 April 2011, in the context of having read Inspire, he had discussed the possibility of engaging in terrorist action in the UK using an IED – however that had been speculative and nothing had been done to further the idea. Whilst he had contemplated the possibility of committing an act of terrorism in the UK, he had not formed a specific intent to do so. On 12 May 2011 he had discussed obtaining firearms - however that too had been speculative. On 25 May 2011 he had again discussed obtaining a firearm – but that had been in the context of an escalation of violence between Muslim groups in Luton. Thereafter he had neither obtained, nor attempted to obtain, a firearm. [Particular (v)]. He had also received funds from others and provided funds to those whom he reasonably believed were engaged in terrorist activities overseas [Particular (vi)]. In the period after the police searches on 2 September 2011 there was, as the prosecution accepted, no evidence that he had pursued any ambition to leave the UK for training. Reliance was placed in mitigation on a letter from Ahmed's elder sister; the fact that he had since married a woman chosen by his family; and the assertion that he was not dangerous - as to which reliance was placed on the letter from the sister, references in the Pre-Sentence Report to the fact that he had exaggerated his experiences in Pakistan and had since disengaged from radical Islamist ideology voluntarily, and the lack of imminent threat posed by him between September 2011 and his arrest in April 2012.

(3) Arshad had no intention of travelling to Pakistan himself, but accepted that he had become aware of his friend Ahmed's intention to depart there for military training - but only shortly before Ahmed's departure on 9 March 2011. He had provided Ahmed with limited practical assistance on 8 & 9 March 2011 – namely the provision of SIM cards (which had been left over after his own trip to Pakistan in 2010 for a wedding), advice about a cover story and advice about how to blend in when in Pakistan [Particular (i)]. He had also participated in physical training and had undertaken a number of trips with Ahmed and others to Snowdonia and elsewhere. It was submitted that he had gone on training days with his friend Ahmed and in support of Ahmed's terrorist ambitions – rather than that evidencing his own terrorist ambitions [Particular (ii)]. In mid-August 2011 he had downloaded a number of electronic editions of 'Inspire', principally for their ideological content, but accepted that some editions contained information likely

to be useful for a person preparing acts of terrorism, and that he was aware, in general terms, of the content [Particular (iv)]. However, he had never engaged in discussions about the construction or deployment of an IED in the UK, or about the procurement of firearms. He had given Ahmed £100 before Ahmed's departure to Pakistan - which funds were to be passed on to others and to be deployed for terrorist purposes overseas [Particular (vi)]. In addition to his previous good character and young family, reliance was placed in mitigation upon a letter from his older brother, his remorse, and the fact that, overall, his actions had been confined to a few days.

(4) Hussain had not formed a specific intent to commit an act of terrorism in the UK. He accepted that between mid-May and early July 2011 he had discussed travelling to Pakistan with Ahmed, that Ahmed had encouraged him to travel there, and that he himself had expressed a desire to do so – but, in the end, he had not made any plans as such. He had not facilitated or encouraged anyone else to do so either [Particular (i)]. He had not organised or encouraged physical training for terrorist purposes, but had participated in a walking trip to Snowdonia on 14 July 2011 – one of the purposes of which was preparation for training in Pakistan [Particular (ii)]. He accepted that he had downloaded electronic editions of 'Inspire' in order to access their ideological content, and was aware that they also contained information likely to be useful to a person preparing or committing an act of terrorism [Particular (iv)]. On 12 & 25 May 2011 he had had discussions with Ahmed about sourcing a firearm, but had not taken that any further. He had never discussed IEDs, nor was he aware of any discussion amongst others about them [Particular (v)]. Although he had intended to provide funds to others which he believed would be sent to those engaged in terrorism in Pakistan, he had not in fact done so [Particular (vi)]. In addition to his previous good character, reliance was placed in mitigation upon a letter from his father, the continuing support of his family, his remorse, and the doubts and fears that he had expressed when indicating a desire to travel to obtain terrorist training.

92. The judge was referred to a small number of cases, decided at first instance and in this Court, in which sentences had been imposed for s.5 offences -including the sentences that he himself had imposed at first instance in *R v Chowdhury and Others*, some of which were the subject of the appeal in *Khan and Others* (above).

93. On behalf of each applicant it was argued, by reference to the relevant Sentencing Council Guideline, and to the then recent guideline case of *Caley and Others* [2013] 2 Cr.App.R. (S.) 47 (which Wilkie J had drawn to the attention of the parties), that there should be full discount, or at least more than 25% discount, for plea. On behalf of Arshad and Hussain it was argued that their late change of representation meant that 1 March 2013 was their first reasonable opportunity to indicate a plea. On behalf of all the applicants it was argued that it was important for a precise Basis of Plea to be formulated for all of them before the first reasonable opportunity to indicate a plea could be said to have arisen for any of them or, alternatively, that the complex factual and evidential basis of the prosecution case meant that this was a case where considerable benefits accrued from the avoidance of a scheduled three month trial, and that that should be reflected by a discount of more than 25%.

94. It was further argued on behalf of each applicant that he was not dangerous in the terms of s.229 of the Criminal Justice Act 2003 ("the 2003 Act") and that, even if he

was, the effect of s.246A of the 2003 Act (as to eligibility for release under the extended sentence provisions) was such that the court's discretion should be exercised against the imposition of any extended sentence.

95. In his full and clear sentencing remarks (which ran to 114 paragraphs) Wilkie J first set out the facts by reference to each of the numbered Particulars, and then the combined effect of the Basis of Plea and mitigation in the case of each applicant. Having recorded the procedural history, and identified the approach to discount for plea required by the combination of the relevant Sentencing Council Guideline and *Caley and Others* [above], Wilkie J concluded that (for reasons that he set out in detail) none of the applicants had indicated an intention to plead guilty at the first reasonable opportunity because each well knew what he had done and did not need any sophisticated advice to inform him that what he had done amounted to a s.5 offence. In this regard Wilkie J noted that, at least until 20 September 2012, Arshad and Hussain had had the benefit of representation by counsel and solicitors (including the benefit of one or more consultations with leading counsel) and that from 19 December 2012 they had had the benefit of representation by the solicitor who had been representing Ahmed since the end of May 2012. Wilkie J further concluded that, although the evidence was multifaceted and substantial, the question of whether the applicants were guilty or not guilty, given what they knew they had done, was neither complex nor difficult, and that nor was this a case where a wholly exceptional course should be taken by giving more than the standard discount of 25% for pleas at a PCMH (which, in this case, had been postponed until just over a month before the trial date). Hence he applied a discount of 25% in each case.

96. Against the background that s.5 of the 2006 Act is a specified offence, Wilkie J then went on to consider the dangerousness provisions of the 2003 Act and the guidance given in *Lang* [2006] 1 WLR 2509; whether dangerousness was proved in the case of any applicant; and, if so, whether he should exercise his discretion to impose an extended sentence. In the result, he concluded (for reasons that he set out in detail) that neither Arshad nor Hussain was dangerous, and that thus he would pass determinate sentences upon them. In contrast, he concluded (for reasons which he again set out in detail) that both Iqbal and Ahmed were dangerous, and exercised his discretion to impose an extended sentence upon each of them. In particular, Wilkie J made clear that he regarded the discussions in which they had respectively been involved in relation to IEDs and firearms as being serious in nature (albeit that, by September 2011, no practical steps had been taken to carry them into effect). Iqbal was, he concluded, naïve – but only about the extent to which he would continue to be under surveillance.

97. Wilkie J summarised his conclusions in relation to the dangerousness of Iqbal and Ahmed, and the exercise of his discretion, as follows:

> "*92. Despite the search on 2 September 2011, on 24 April there was evidence that he [Iqbal] continued to have the same views as had informed his earlier activity. He had downloaded, since September 2011, "39 ways to support Jihad". He had concealed press cuttings relating to drone attacks in Waziristan. He had mobile phones, one of which evidenced a continuing connection with Ahmed. Also found were items capable of use in terrorist related activities or training for it such as torches, a rucksack with GPS navigator and compass. I have been told by counsel that these are innocently possessed in connection with his work as a lorry*

driver and to enable him to pray facing Mecca. In addition there was found a DVD said by him to be an Arabic Koranic language course which relates to his religious observances. Whatever may be the truth of that, I regard the downloading of the "39 ways" as significant.

……..…..

95. In my judgment, the nature persistence and extent of his [Iqbal's] involvement in a series of different types of possible terrorist activity described above coupled with the evidence that he continued after September 2011 with the mindset which informed those actions satisfies me that he continues to be a person who poses a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences. I do therefore find him to be dangerous…..

100. Although he is younger than Iqbal, I do not regard that as a significant factor in assessing Ahmed's dangerousness nor in comparing their culpability. In Ahmed's case, having regard to the nature, intensity and persistence of his preparatory activities prior to 2nd September and having regard to the evidence of his continuing in the same mindset thereafter and until the search on 24 April 2012, I am satisfied that, as of that date, he was a person who posed a significant risk to members of the public of serious harm occasioned by the commission of further specified offences. Whilst I have regard to the assessment of the authors of the pre-sentence report and their expertise in such matters, I am of the view that the effect of the material up to 24th April is not overborne by subsequent assertions by him of a change of heart since his remand into custody to the extent necessary to avoid my coming to the conclusion that he still satisfies the dangerousness condition.

101. In each of their cases, having concluded that they satisfy the dangerousness condition, I have to consider whether to exercise my discretion to impose an extended sentence……..

102. In my judgment, however, in each of their cases, their persistent commitment to terrorist activity, in a number of different ways, over a significant period of time and, in each case, their willingness to take practical steps to obtain terrorist training abroad, marks them out as particularly dangerous. This, coupled with the fact that, after their houses had been searched, and they were obviously under serious suspicion, they nonetheless continued to access material consistent with the mindset which informed their previous preparatory activities, persuades me that they continue to be 'dangerous' to such a degree that I should exercise my discretion to pass an extended sentence. It is, in my judgment, appropriate for the public to be protected by requiring a direction from the Parole Board that they be released, before they are released prior to the expiration of the custodial term. That direction will be given, or not, in the light of the circumstances which exist after they have served two thirds of the appropriate custodial sentence and only on the basis that the Parole Board is satisfied that it is no longer necessary for the protection of the public that the offender should be confined. Accordingly, I will impose on Iqbal and Ahmed an extended sentence…."

98. Wilkie J reminded himself that the fact that the main thrust of terrorist activity was aimed abroad was not a relevant factor in determining seriousness, and considered the sentences imposed in the other s.5 cases to which he had been referred – concluding that the offences were less serious than those with which he had dealt in *Chowdhury & Others* (considered on appeal in *Khan & Others* above). Wilkie J concluded that, in their different ways, Iqbal and Ahmed were the most serious offenders in this case and bore equal culpability. He underlined (at para.107 of his remarks) that Iqbal had not only facilitated, through his contact, the travelling by Ahmed to Pakistan for terrorist training, but had virtually completed the practical arrangements for himself to go to Pakistan for a similar purpose, taking with him a very significant sum for use, at least as to part, in supporting terrorist activity abroad. In addition he had seriously discussed with Ahmed the assembling and deployment of an IED with a specific target in mind, and had discussed with others the acquisition of a firearm and ammunition.

99. Wilkie J further underlined (at para.108 of his remarks) that Ahmed had travelled to Pakistan for training taking funds with him to support terrorism abroad. He had persisted in his wish to do so, envisaging obtaining the necessary language skills by travelling, if need be, to obtain them. He was actively involved in undertaking and encouraging relevant training in the UK for himself and others, including Arshad and Hussain. Taking a steer from the change of direction envisaged in 'Inspire', he had joined with Iqbal in serious discussions about assembling and deploying one or more IEDs and possibly targeting a Territorial Army base. He had also investigated obtaining a firearm and ammunition. Against that background Wilkie J identified the notional custodial term after trial in relation to both Iqbal and Ahmed as being one of 15 years, and then (having applied the 25% discount for plea) proceeded to impose the sentences upon them to which we have already made reference.

100. Wilkie J then concluded (at para.111 of his remarks) that Arshad's offending was at a lower level than that of either Iqbal or Ahmed. Arshad, he said, was however no "Walter Mitty" character, but was rather a serious minded person who had actively participated in assisting and encouraging Ahmed to go to Pakistan for terrorist training, by providing him with a SIM card, supplying him with advice and support and giving money to support terrorism abroad. Thereafter, he had been sufficiently serious in his commitment to undertake, repeatedly, training in mountainous and other terrain in preparation for terrorism. He, too, had exposed himself to the influence of 'Inspire' and to other texts of radical Islamist ideology. Hence in his case Wilkie J identified a notional sentence after trial of 9 years' imprisonment, and then (having again applied the discount for plea of 25%) imposed the sentence to which we have already made reference.

101. Wilkie J then concluded (at para.112 of his remarks) that Hussain's offending was less serious than that of Arshad. He was also younger than the others. He had discussed a variety of types of terrorist activity and expressed a willingness and ambition to travel for training, to provide funding for terrorist purposes and to source a firearm for Ahmed – but it had never got beyond that, save for one attendance on a trip organised by Ahmed for military style training in a remote country area. He too had accessed the literature advocating a violent fundamentalist Islamist ideology over a period of months prior to the searches on 2 September 2011. Hence, in his case, Wilkie J identified a notional sentence after trial of 7 years' imprisonment, and then

(having again applied the discount of 25%) imposed the sentence to which we have already made reference.

Iqbal, Ahmed, Arshad & Hussain: Grounds & Submissions

102. Contrary to some of the Grounds originally advanced in writing, it was accepted in argument that, in the light of the then recent decisions in *Attorney General's Reference (No.27 of 2013)* [2014] EWCA Crim 334 and *Francis and Lawrence* [2014] EWCA Crim 334, Wilkie J had not been required to reduce the custodial terms of the extended sentences imposed in order to reflect the new early release scheme for such sentences.

103. Mr Wood QC, on behalf of Iqbal, argued that Wilkie J had erred in three respects:

(1) The finding of dangerousness and the imposition of an extended sentence.

(2) The length of the custodial term.

(3) Giving less than full discount for plea.

104. As to dangerousness, Mr Wood submitted that there were failures, errors and weaknesses of reasoning in Wilkie J's factual assessment which should give rise to anxious consideration and re-evaluation by the Court. In this regard Mr Wood placed particular emphasis upon paras.92 & 95 of the sentencing remarks (quoted in para.97 above), and e.g. the fact that phone seized in April 2012 had originally been seized in September 2011 and then handed back – hence its connection with Ahmed was old not new. Mr Wood relied upon the fact that Iqbal had not been arrested in September 2011, and that the prosecution had accepted that in the period between then and his arrest in April 2012 the evidence did not demonstrate that he posed an imminent threat, and that no further material in relation to preparatory acts had come to light. Nor, Mr Wood submitted, did the Pre-Sentence Report support a finding of dangerousness. As to the imposition of the extended sentence Mr Wood initially sought to argue that, having found dangerousness, Wilkie J had then failed to consider the requisite exercise of his discretion as to whether an extended sentence should actually be imposed. However, that argument was abandoned after the passages in the sentencing remarks showing that Wilkie J had plainly done so were pointed out.

105. As to the length of the custodial term Mr Wood, whilst acknowledging that it had been a difficult sentencing exercise for all involved, submitted that (given, in particular, that the admitted intention was general in nature) Wilkie J had failed to honour Iqbal's Basis of Plea in a number of respects - relying, amongst others, on paragraphs 14-16, 39, and 42-43 of the sentencing remarks. Thus, it was said, Wilkie J had taken inappropriate matters into account. Mr Wood submitted that a notional custodial term after trial of 15 years was "way too long" and in completely the wrong bracket. This was in reality, he submitted, a case involving much talk which had never progressed to preparatory action.

106. As to the discount for plea, Mr Wood submitted that this was, in effect, a plea indicated at the first opportunity. It was a complex and difficult case in which the defence needed to wait until they could see the case in the round, and the defendants needed legal advice before being able to indicate a plea – hence the case fell within

the exception recognised in para.14 of the judgment in *Caley* (above). It was simply not possible for a plea to be indicated until after negotiations involving all parties had taken place – with the prosecution being aware of the full picture and thus able to decide upon the acceptability of all the defendants' bases of plea. In the alternative, the fact that a long trial had been avoided made it a proper case for full discount.

107. On behalf of Ahmed, Mr Blaxland QC relied upon four Grounds, as follows:

(1) There was no proper evidential basis for the finding of dangerousness.

(2) The judge should have exercised his discretion against imposing an extended sentence.

(3) The notional custodial term after trial was significantly too long.

(4) Full discount for plea should have been given.

108. As to the finding of dangerousness, Mr Blaxland strongly relied upon the content of Ahmed's Pre-Sentence Report and, in particular, the fact that the authors recorded that he appeared to have disengaged from his previous ideology and that that reflected a reduction in risk. Mr Blaxland submitted that the fact that in the period between September 2011 and April 2012 Ahmed had downloaded a complete set of 'Inspire' magazines (including the then latest edition which commemorated the 9/11 attacks), and that outward bound equipment was recovered in April 2012, did not displace the "very clear" conclusion of the author of the Pre-Sentence Report that Ahmed had disengaged. Mr Blaxland relied upon the fact that Ahmed was not arrested in September 2011, and the undisputed inference to be drawn from that that the authorities did not believe that he posed an imminent threat. Mr Blaxland also relied upon the approach in para.73 of the judgment in *Khan & Others* (see para.14 above). Thus, he submitted, Wilkie J's finding of dangerousness was against the weight of the evidence. If those submissions were rejected, Mr Blaxland invited the Court to conclude that, given the terrorist notification provisions, this was a case in which the judge should have exercised his discretion against the imposition of an extended sentence and imposed an appropriate determinate sentence instead.

109. As to the notional custodial term after trial, Mr Blaxland submitted that it was important to distinguish between what Ahmed did by way of actual preparation and what he talked about but took no further. The many hours of recordings of conversations gave a clear evidential picture of what Ahmed and the others were actually up to – which amounted to much talk but little by way of action. For example, whilst there had been talk about Improvised Explosive Devices and firearms, no explosive materials or firearms had ever been obtained. Ahmed's principal focus had been on travel abroad and training – hence the determinate term should not have exceeded the maximum for a s.6 offence. Ahmed also had strong personal mitigation. Whilst rightly accepting that comparison with other cases decided on their own particular facts did not assist a great deal, Mr Blaxland submitted that, in Ahmed's case, Wilkie J had "got it badly wrong".

110. As to discount for plea, Mr Blaxland accepted that normally there could be no complaint about the award of a 25% discount for a plea first indicated at a PCMH (especially when it took place relatively shortly before trial). He submitted, however,

that given the breadth of s.5 there were problems in this case (which were likely to occur in other s.5 cases) in view of the broad nature of the Particulars. That had required advice to be tendered before pleas were indicated – which advice could only sensibly be given once the picture in the round could be seen, particularly given the problems in representation. It was also impracticable and undesirable to have semi-public negotiations about the basis of plea. In any event, the pleas had resulted in a huge saving of public money and Wilkie J should have regarded the case as being one where the exercise of his residual flexibility, as explained at para.28 of the judgment in *Caley* (above), required the award of full discount. Hence, by whichever route, there should have been full discount in this particular case.

111. On behalf of Arshad, Mr Bennathan QC relied on two Grounds, as follows:

(1) The notional sentence after trial of 9 years' imprisonment was manifestly excessive.

(2) There should have been full discount for plea.

112. As to the notional sentence after trial, Mr Bennathan underlined that the particulars of conduct in preparation for giving effect to his intention that Arshad had admitted in his Basis of Plea were limited to *facilitating the overseas travel of Ahmed* (i.e. two months after Iqbal and Ahmed had discussed Ahmed travelling to Pakistan and pretending to be a member of the Tablighi sect as cover, he had two conversations with his friend Ahmed in the course of which he encouraged Ahmed to go, saying e.g. "*true Muslims march towards death and don't come back*", gave advice as to how a Tablighi would dress, gave Ahmed two appropriate hats, gave advice about not drinking the water and avoiding being cheated by taxi drivers, and gave him a local SIM card - which Arshad had obtained on an innocent visit to Pakistan); *participating in physical training* (namely trips with Ahmed and others to Snowdonia and to the countryside near Luton, and playing football on a number of occasions – but not with the intention of going to Pakistan or elsewhere for training himself); *downloading electronic files containing practical instructions for terrorism* (which was done over a period of three days in early August 2011 and involved the bulk downloading of "Jihadist" material including copies of 'Inspire' but not, albeit that he was aware in general terms of the nature of the material, the accessing of all the copies of 'Inspire' - given that his principal interest was in their ideological content, and he had not downloaded any further material after 2 September 2011); and *supplying funds for terrorism* (namely the £100 that he had given to Ahmed in the hope that it would be given to those with whom Ahmed hoped to train for terrorism).

113. Thus Mr Bennathan submitted that, by reference to other s.5 cases (albeit decided on their own facts) and to the statutory maxima of 7 years' custody for encouraging terrorism (contrary to s.1 of the 2006 Act) and 10 years' custody for providing training (contrary to s.6 of the 2006 Act), and given the mitigation provided by Arshad's previous good character, good work record, age and the impact on his family (albeit accepting that personal mitigation is of less importance in cases of this type), the notional sentence after trial was "far, far too high".

114. As to the appropriate discount for plea, Mr Bennathan submitted that in saying (at para.74 of his sentencing remarks) that this was not one of those cases in which "a wholly exceptional course should be taken of giving more than the standard discount

for a plea of guilty at the PCMH" Wilkie J applied the wrong test – in that in dealing with residual flexibility at paras.28 & 29 of the judgment in *Caley* (above) the Court did not so limit the exercise of a judge's discretion. Hence, in the particular circumstances of this case, full discount for plea should have been given.

115. On behalf of Hussain, Mr Zahir also relied on two Grounds, as follows:

(1) The notional sentence after trial of 7 years' imprisonment was manifestly excessive.

(2) In the particular circumstances of this case, there should have been full discount for plea.

116. As to the notional sentence after trial, Mr Zahir emphasised that the particulars of conduct in preparation that Hussain had admitted in his Basis of Plea were limited to the period between May 2011 and September 2011 and to *planning travel overseas* (but only to the very limited extent of being encouraged by Ahmed to travel to Pakistan for training and on occasion expressing a desire to do so); *participating in physical training* (but only by going on a walking trip to Snowdonia with Ahmed and others on 14 July 2011 – in part in preparation for training in Pakistan); *downloading electronic files containing instruction for a terrorist attack* (by downloading a number of electronic editions of 'Inspire' – principally in order to access the ideological content, but accepting that some of the editions contained information of a kind likely to be useful to a person preparing an act of terrorism); *discussing firearms* (with Ahmed on 12 & 25 May 2011, when they discussed the possible sourcing of a firearm – but he had never attempted to obtain a firearm and had never formed a specific intent to commit an act of terrorism in the UK); *collecting and supplying funds* (but limited to intending to provide funds to others who he believed would send them to those engaged in terrorism in Pakistan)

117. Against that background, Mr Zahir submitted that Hussain was very much at the lowest end of the wide spectrum of s.5 offences, and that when compared to the sentences imposed in other cases, and given the mitigating features (including the fact that that Hussain was aged only 20/21 during the material period, his previous good character, the fact that his offending was largely talk that never went anywhere and involved a degree of bravado, the fact that after the search of his home in September 2011 his offending had ceased and that the prosecution accepted that there was no evidence demonstrating that he posed an imminent threat) the appropriate notional sentence after trial in his case was shorter than 7 years. In the Grounds originally submitted on Hussain's behalf it was argued that the correct sentence in his case was one of no more than 5 years' imprisonment.

118. As to discount for plea, Mr Zahir argued that Hussain's previous solicitors had failed to provide him with sensible advice, and that it was not until after his representation order had been transferred to his current solicitors in December 2012 that work on his case (which involved voluminous papers) had truly begun. Mr Zahir further argued that given, amongst other things, that Hussain was aged only 21 when he was charged, that a substantial amount of key prosecution evidence was only served in September 2012, that (in Hussain's particular circumstances) legal advice was required to help him as to whether he was guilty or not, that his current lawyers could

not have acted more quickly than they did, and for the sound reasons advanced by the other applicants, full discount should have been given.

119. On behalf of the Respondent, Mr Hill QC submitted, in short, that:

(1) It was quite wrong, in particular in the cases of Iqbal and Ahmed, to seek to equate the Respondent's acceptance that, in the period between September 2011 and April 2012, there was no evidence that either posed an imminent threat (such as to require an operational decision to arrest them), with a concession that neither was dangerous for the purposes of the 2003 Act. Mindful of all the served material, it was axiomatic that the police and the Security Service maintained close coverage upon the applicants during the period between the two police searches, and imminence of threat and dangerousness were not one and the same thing. The Respondent had never conceded, as had been asserted at one stage on Ahmed's behalf, that he had not posed a threat in September 2011.

(2) Rather, for the reasons that he carefully explained, Wilkie J was obviously entitled to conclude that Iqbal and Ahmed were dangerous, and to exercise his discretion (as he undoubtedly did) to impose an extended sentence in each case. He was, for example, not bound by the views expressed in Ahmed's Pre-Sentence Report, and clearly entitled to take into account what had been found during the searches at the homes of Iqbal and Ahmed in both September 2011 and April 2012.

(3) The applicants had each pleaded guilty to a joint s.5 offence, rather than to any other offence, and in circumstances in which the activities alleged in the remaining counts were subsumed in those pleas. In relation to s.5 offences the prosecution were entitled to rely upon a general intent to commit an act of terrorism (as defined) and/or an intention to assist one or more others to do so. It was perfectly possible for the applicants to have indicated what broad type(s) of act of terrorism they intended to commit, or that they intended to assist others to commit and, failing that, it was open to the judge to draw any appropriate inferences, consistent with each applicant's Basis of Plea, as to what the general intention of each involved.

(4) Viewed overall, the instant case involved a course of conduct over many months, including in the cases of Iqbal and Ahmed facilitation for and/or actual travel, as well as multiple discussions of attack planning, together with discussions about firearms and improvised explosive devices. Thus, even if it was right to have the maximum for offences contrary to ss.5 & 8 of the 2006 Act in mind at the outset, the application of aggravating features would result in the same custodial terms being achieved. In addition, the joint venture nature of much of the surveilled and recorded activity was an important feature of the case in general – notwithstanding the comparative roles and therefore the limited culpability of Arshad and Hussain as compared to Iqbal and Ahmed – as reflected in the marked distinctions in the respective notional custodial terms after trial.

(5) This was clearly not a case in which the pleas had been indicated at the first reasonable opportunity. Wilkie J, who was a member of the Court in *Caley*, was right to conclude that all the applicants "*well knew what they had done and did not need any sophisticated legal advice to inform them that what they had done*

amounted to the section 5 offence". Whilst discussions between the parties had begun at the end of January 2013, the pleas did not crystallise until very shortly before the PCMH on 1 March 2013, which was some ten months after charge and only some six weeks before the trial date. The Respondent had not been able to scale down its preparation until that stage - by which time the majority of the necessary pre-trial work (including about three quarters of the electronic presentation material) had been completed. Hence this was not a case for the exercise of residual flexibility to give full discount. Wilkie J had clearly been entitled to limit discount for plea to 25%.

Iqbal, Ahmed, Arshad & Hussain: Conclusion

120. In our view Wilkie J was clearly entitled to conclude, for the reasons that he gave, that both Iqbal and Ahmed were dangerous. The prosecution's concession that there was no evidence that, in the period between September 2011 and April 2012, they posed an imminent threat (such as to require their arrest) did not prevent such a conclusion. As the Respondent argued, in the circumstances of this case, imminence of threat and dangerousness under the 2003 Act are not one and the same thing. Equally clearly, Wilkie J was entitled to take into account, amongst other things, the content of the recorded discussions involving Iqbal and/or Ahmed (which he was equally entitled to conclude were serious in nature - notwithstanding that they did not result in any crystallisation of intent, nor in any further action prior to the searches in September 2011), as well as what was found during the searches in both September 2011 and April 2012. Nor can we see any arguably significant failures, errors and weaknesses of reasoning in Wilkie J's factual assessment, and (to the extent that he did) he was plainly entitled, given the wider evidence, to reach a different conclusion those expressed in the Pre-Sentence Reports in relation to Iqbal and Ahmed. Nor is there any arguable merit in the submission that he should have exercised his discretion against the imposition of an extended sentence.

121. As to the 25% discount for plea, it will be recalled that Wilkie J was a member of the Court in *Caley* (above) and that it was he who drew the attention of the parties to it.

122. At para. 28 of the judgment in *Caley* the Court said:

"…..*A third case which is* ***sometimes*** *treated as meriting* ***exceptional treatment*** *is the exceptionally long and complex trial, whether in fraud or otherwise (such as people trafficking, complex drug cases, serial sex abuse cases with many complainants and the like). Since the rationale of reduction for plea is the public benefit which we have described, we leave open* ***the possibility*** *that,* ***unusually****, some considerable benefits may well ensue from a plea of guilty even at a late stage.* ***Care must however be taken*** *with such a proposition so that it does not become routine……*" (**our emphasis**).

123. At para.68 of his sentencing remarks Wilkie J accurately summarised the effect of that part of the judgment in *Caley*. Whether the words that we have highlighted are accurately summarised in a phrase to the effect that the giving of a greater discount than the standard discount is "a wholly exceptional course" (which Wilkie J used at para.74 of his sentencing remarks) or "an exceptional course" may be debated. However, we are clear that Wilkie J did not inappropriately fetter his residual flexibility in relation to discount for plea. In the particular circumstances of this case,

and for the reasons that he gave, the pleas simply did not merit a discount in excess of 25%. The contrary is, in our view, unarguable.

124. That leaves, in the case of each applicant, the question of whether it is arguable that his notional custodial term after trial was manifestly excessive.

125. By his plea of guilty each applicant admitted that he intended to carry out an act of terrorism (as defined) and/or to assist another to do so. As we have noted above, s.5(2) of the 2006 Act makes clear that it is irrelevant whether the intention (and preparations) relate to one or more particular acts of terrorism, acts of terrorism of a particular description, or acts of terrorism generally. In this case each asserted that his intention was general in nature. It is a striking feature of the Bases of Plea that whilst, in a number of instances, there were statements as to what the general intention did not include, there was little spelling out of the broad sort(s) of acts of terrorism that were encompassed within the scope of the admitted general intent. Accordingly, Wilkie J was entitled to reach his own conclusions in that regard provided that, in each case, his finding was consistent with the relevant Basis of Plea. It is clear that he concluded, whether explicitly or implicitly, that the broadly intended acts were at the upper end of the spectrum of operational acts of terrorism – i.e. killing people, endangering life, and other serious violence. In our view he was entitled to do so. As he rightly reminded himself, the fact that the main thrust of the terrorist acts was aimed abroad was not a relevant factor in determining seriousness. It follows that the starting point in the consideration of each custodial term was one of life imprisonment.

126. It was then necessary to examine the factual nexus between each applicant's conduct in preparation for giving effect to his intention and the future commission of the intended act(s) of terrorism. Again, that is what Wilkie J did. We detect, in that process, no arguably significant departure by him from any Basis of Plea.

127. Iqbal, who was an Islamist who sympathised with the insurgency in Afghanistan, clearly intended both to commit an act or acts of terrorism himself (whether alone or in conjunction with others) and to assist others to commit such acts. His conduct in preparation for giving affect to those intentions (which included acting with others) took place over an extended period of time and included use of his contact in Pakistan (who in turn was in contact with insurgents) to assist Ahmed to travel to Pakistan in March 2011 for terrorist training with a view to terrorist action. He also gave Ahmed £850 to be passed on to his (Iqbal's) contact in Pakistan for use for terrorist purposes. Ahmed did travel to Pakistan - albeit that he did not obtain any training. Iqbal downloaded electronic files containing practical instructions for terrorist attacks. He also conducted serious, albeit embryonic, discussions about methods, materials and targets for a terrorist attack (including exploring the possibility of constructing an IED by the method described in an edition of 'Inspire') and about the feasibility of obtaining a firearm. He had virtually completed the practical arrangements to travel to Pakistan himself in early September 2011 for terrorist training with a view to terrorist action, intending to take with him some £10,000 in cash (which he had saved and collected) – some of which was to be used for terrorist purposes. It was only because of the intervention by the authorities that he did not go to Pakistan. Whilst, in the sense described by the Respondent, there was no evidence that he posed an imminent threat in the months between September 2011 and his arrest in April 2012, he had during that period downloaded "39 ways to support Jihad"

128. As in Dart's case (see para.72 above) the prosecution were clearly entitled in accordance with *Iqbal & Iqbal* (above) to charge a s.5 offence, and the judge was not bound by the maximum for a s.6 offence.

129. Having taken into account all the relevant factors advanced in mitigation, Wilkie J concluded that, in Iqbal's case, the appropriate notional custodial term after trial was 15 years. Given the dual intention, the nexus of the conduct in preparation in relation to each intention, the period of time of the conduct, the involvement with others, and the purpose of sentence in this type of case (tempered by the need to avoid disproportionality) it seems to us that that term, albeit tough, was within the appropriate range. Accordingly it is not, in our view, arguable that Iqbal's ultimate sentence was manifestly excessive.

130. Ahmed also clearly intended both to commit an act or acts of terrorism himself (whether alone or in conjunction with others) and to assist others to commit such acts. Like Iqbal his conduct in preparation for giving effect to those intentions (which included acting with others) took place over an extended period of time. It included the fact that in March 2011 he had travelled to Pakistan for the purpose of obtaining terrorist training with a view to terrorist action. Albeit that he had failed to obtain the training, he had taken money with him - somewhat less than £1,000 of which he had given to those purporting to offer training to be deployed for a terrorist purpose overseas. After his return he had been persistent in his desire and planning to obtain training in the end. He had also sought, in general terms, to persuade Hussain to travel to Pakistan for training. He had purchased survival equipment for use in Pakistan, and for exercising in the UK. He had been involved in the organisation of, and had participated in, mountain walks and physical exercises with others – in part to prepare himself for the rigours of a training camp. He had downloaded copies of 'Inspire' and, in that context, had seriously (but speculatively) discussed engaging in terrorist action using an IED and (on one occasion) firearms. Between September 2011 and April 2012 he had downloaded a complete set of 'Inspire' magazines

131. Against that background it seems to us that Wilkie J was entitled to conclude that, in their different ways, the culpability of Ahmed and Iqbal was broadly equal. Hence, having taken into account all the relevant mitigating features (which were also broadly equal) he identified a notional custodial term after trial of 15 years. For broadly the same reasons as our conclusion in relation to Iqbal, it seems to us that that term, albeit tough, was within the appropriate range in relation to Ahmed as well. Accordingly it is not, in our view, arguable that Ahmed's ultimate sentence was manifestly excessive.

132. Arshad's intention was to assist others to commit acts of terrorism. Wilkie J was entitled to conclude, as he did, that Arshad was a serious minded person. Arshad's conduct in preparation for giving effect to his intention took place on a relatively limited number of days but was spread across the period between March and September 2011. In the run up to his friend Ahmed's departure to Pakistan in March 2011 he had two conversations with him in the course of which, knowing that Ahmed was going with the intention of undergoing terrorist training with a view to terrorist action, he encouraged him to do so and gave him practical assistance and advice in a number of respects. He gave Ahmed £100 to pass on to others in Pakistan for use for terrorist purposes overseas. After Ahmed's return he participated in physical training on a number of occasions with others, including Ahmed, in support of Ahmed's

terrorist ambitions. Over three days in early August he downloaded a great deal of "Jihadist" material, including copies of 'Inspire' and thereafter accessed a number (but not all) of the copies of 'Inspire'. His principal, but not his sole, interest in doing so was the extremist ideological content.

133. Having taken into account all the relevant factors advanced in mitigation, Wilkie J concluded that, in Arshad's case, the appropriate notional custodial term after trial was 9 years. In all the circumstances that was, in our view, too severe. Accordingly in his case we propose to grant leave, and to treat the hearing of the application as the hearing of the appeal. We have concluded that the correct notional custodial term after trial in his case was one of 7 years, resulting after discount for plea in a sentence of 5 years 3 months' imprisonment. In his case therefore we quash the sentence imposed and substitute for it a sentence of 5 years 3 months' imprisonment.

134. Wilkie J correctly concluded that Hussain's offending was less serious than that of Arshad. Hussain is also younger than the rest. His intention appears to have been to commit acts of terrorism. His conduct in preparation for giving effect to that intention involved, as set out in para. 116 above, limited planning to travel overseas, participating in physical training on one occasion, downloading electronic files containing instruction for a terrorist attack (principally in order to access the ideological content), discussing sourcing a firearm on two occasions, and intending to provide funds to others (but never actually doing so).

135. Having taken into account all the relevant factors advanced in mitigation, Wilkie J concluded that, in Hussain's case, the appropriate notional custodial term after trial was 7 years. In all the circumstances that was also, in our view, too severe. Accordingly in Hussain's case we propose to grant leave, and to treat the hearing of the application as the hearing of the appeal. We have concluded that the correct notional custodial term after trial in his case, particularly bearing in mind his age, was one of 5 years, resulting after discount for plea in a sentence of 3 years 9 months' imprisonment. In his case therefore we quash the sentence imposed and substitute for it a sentence of 3 years 9 months' imprisonment. It follows that his terrorist notification period is automatically reduced to one of 10 years

136. For the avoidance of doubt, we have considered whether the substituted sentences in relation to Arshad and Hussain result in any unfair disparity with the sentences imposed on Iqbal and Ahmed, and have concluded that they do not.

Overall Conclusion

137. For the reasons that we have set out above, we refuse the renewed applications of Dart, Iqbal and Ahmed. On the particular facts relevant to them, we grant leave to Arshad and Hussain, treat the hearing of their applications as the hearing of the appeal, quash the sentences imposed upon them, and substitute for them sentences of 5 years 3 months' imprisonment and 3 years 9 months' imprisonment respectively. In consequence, Hussain's terrorist notification period is automatically reduced to 10 years.

138. Finally, we grant representation orders to Arshad (Mr Bennathan QC) and Hussein (Mr Zahir) but refuse all other applications for such an order.