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Case No: AC-2025-LON-002122

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**
**ADMINISTRATIVE COURT**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2025

**Before** :

**MR JUSTICE CHAMBERLAIN**

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**Between :**

**THE KING**
**on the application of**
**HUDA AMMORI** — **Claimant**

**- and -**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT** — **Defendant**

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**Raza Husain KC, Blinne Ní Ghrálaigh KC, Paul Luckhurst, Owen Greenhall, Audrey Cherryl Mogan, Mira Hammad and Grant Kynaston** (instructed by **Birnberg Peirce Solicitors**) for the **Claimant**
**James Eadie KC, David Blundell KC, Ben Watson KC, Stephen Kosmin, Andrew Deakin and Karl Laird** (instructed by **the Government Legal Department**) for the **Defendant**
**Tim Buley KC, Dominic Lewis and Jesse Nicholls** (instructed by **the Special Advocate Support Office**) as **Special Advocates**

Hearing dates: 21 July 2025

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# Approved Judgment

This judgment was handed down in Court 72 at 2pm on Wednesday 30 July 2025.

## Mr Justice Chamberlain:

## Introduction

1. The claimant is one of the founders of Palestine Action ("PA"). She challenges the Home Secretary's decision to make an order adding PA to the list of proscribed organisations in Schedule 2 to the Terrorism Act 2000 ("the 2000 Act").

2. The Home Secretary announced on Monday 23 June 2025 that she would lay a draft order proscribing PA. The present claim, challenging that decision, was sent to the court on the evening of Friday 27 June. The order was laid in draft on Monday 30 June and approved by affirmative resolutions of the House of Commons (on 2 July) and House of Lords (on 3 July).

3. After an initial hearing on 30 June, I heard an application for interim relief on 4 July. In a judgment handed down that afternoon, I held that the claim raised at least one serious issue to be tried, but that the balance of public interest was against the grant of interim relief: [2025] EWHC 1708 (Admin). Later that evening, the Court of Appeal heard and refused an application for permission to appeal: [2025] EWCA Civ 848.

4. The proscription order was made on 4 July and came into force at 00:01 on 5 July.

5. After a CLOSED hearing on 16 July, at which the claimant's interests were represented by Special Advocates, I announced in OPEN that I had decided to make a declaration under s. 6 of the Justice and Security Act 2013 ("the 2013 Act") and had given the Home Secretary permission to withhold sensitive material for the purposes of permission only, on the basis that further directions would be given for the resolution of disclosure issues if permission were granted.

6. I have read the CLOSED material filed to date.

7. The defendant filed Summary Grounds of Defence. The claimant filed an Amended Statement of Facts and Grounds, incorporating points raised at the interim relief hearing, in respect of which I gave permission to amend on 4 July.

8. The hearing to determine permission to apply for judicial review was on 21 July. Submissions for the claimant were made in OPEN by Raza Husain KC and Blinne Ní Ghrálaigh KC and in CLOSED by Mr Tim Buley KC, lead Special Advocate. Sir James Eadie KC made submissions in OPEN and CLOSED for the defendant.

## Background

9. A summary of the evidence adduced by the claimant in support of the claim and the background to the proscription order can be found at [8]-[25] of my judgment on interim relief. A summary of the applicable legal framework is set out at [27]-[39]. These are not repeated here.

## Further evidence

10. In addition to the evidence before me at the interim relief hearing, the claimant relies on additional evidence about what has happened since. I have read this evidence, but do not record or summarise it here. It includes examples of cases where individuals have been subjected to police action for expressing various kinds of support for the Palestinian cause. In some cases, these expressions of support have been taken as giving rise to suspicion that an offence has been committed, generally under ss. 12 or 13 of the 2000 Act.

11. There is also evidence about the deteriorating humanitarian situation in Gaza. It is not necessary to say more about this here. It was described in vivid terms in a joint statement on 21 July 2025 by the Secretary of State for Foreign, Commonwealth and Development Affairs, together with the Foreign Ministers of 27 other countries ("The suffering of civilians in Gaza has reached new depths…").

## Preliminary issue

12. Sir James's first submission in opposing permission was that the claimant could apply to the Home Secretary for PA to be deproscribed. If this was refused, she could appeal to the Proscribed Organisations Appeal Commission ("POAC"). This was an adequate alternative remedy, which meant that judicial review was not available.

13. This point was also argued at the interim relief hearing. I concluded that it did not, on its own, supply a sufficient basis to say that there was no serious question to be tried, while indicating that the matter could be considered further at the permission hearing: see [57]-[61] of the interim relief judgment.

14. I asked the parties how the alternative remedy point should be determined. Sir James submitted that, if the point were a good one, the Secretary of State should not have to defend these proceedings substantively. The point was also likely to be of importance to future proscription decisions. Accordingly, he invited me to determine it as a preliminary issue, so that (if necessary) it could be appealed at this stage. Mr Husain did not oppose this course.

15. Where a defendant raises a point in opposition to a judicial review claim, which if decided in the defendant's favour would be fatal to the claim, and the point may well arise in other cases, it may be appropriate for the court to determine the point as a preliminary issue. For a recent example, see *R (Campbell) v Attorney General* [2025] EWHC 1653 (Admin). I am satisfied that the same course is appropriate here, given the potential importance of the issue to other cases.

16. I therefore proceed to decide the alternative remedy point as a preliminary issue.

## The alternative remedy point

Submissions for the Secretary of State

17. Sir James Eadie KC for the Secretary of State submitted that the purpose of judicial review is "to ensure that the rule of law is respected where no other procedure is suitable to achieve that objective": *R (Glencore Energy UK Ltd) v HMRC* [2017] EWCA Civ

1716, [2017] 4 WLR 213, [55]. The existence of an alternative remedy is a discretionary bar to the grant of permission and/or relief, not a jurisdictional one: *Sharma v Brown-Antoine* [2006] UKPC 57, [2007] 1 WLR 780, [14(4)].

18. In *R (Watch Tower Bible & Tract Society of Britain and others) v Charity Commission* [2016] EWCA Civ 154, [2016] 1 WLR 2625, Lord Dyson MR (with whom McCombe and David Richards LJJ agreed on this point) said this at [19]:

> "If other means of redress are 'conveniently and effectively' available to a party, they ought ordinarily to be used before resort to judicial review: per Lord Bingham of Cornhill in *Kay v Lambeth London Borough Council* [2006] 2 AC 465, para 30. It is only in a most exceptional case that a court will entertain an application for judicial review if other means of redress are conveniently and effectively available. This principle applies with particular force where Parliament has enacted a statutory scheme that enables persons against whom decisions are made and actions taken to refer the matter to a specialist tribunal... To allow a claim for judicial review to proceed in circumstances where there is a statutory procedure for contesting the decision risks undermining the will of Parliament."

19. The same principle was affirmed by Lord Sales and Lord Stephens for a unanimous Supreme Court in *Re McAleenon's Application for Judicial Review* [2024] UKSC 31, [2024] 3 WLR 803, at [51]:

> "Where Parliament has enacted a statutory scheme for appeals in respect of certain decisions, an appeal will in ordinary circumstances be regarded as a suitable alternative remedy in relation to such decisions which ought to be pursued rather than having resort to judicial review: *Glencore Energy*, above, paras 55-58; *Watch Tower Bible & Tract Society*, above, para 19. Otherwise, use of judicial review would undermine the regime for challenging decisions which Parliament considers to be appropriate in that class of case".

20. In the present case, Sir James submitted that there is a "convenient and effective" alternative remedy. Once proscribed, an organisation or "any person affected by the organisation's proscription or by the treatment of the name as a name for the organisation" can make an application to the Secretary of State for, inter alia, an order under s. 3(3)(b) removing it from Sch. 2 (see ss. 4(1) and 4(2) of the 2000 Act). Regs 3 and 4 of the Proscribed Organisations (Applications for Deproscription etc.) Regulations 2006/2299 ("the 2006 Regulations") set out in detail the information that should be provided with such an application. The Secretary of State must then determine that application within 90 days: reg. 7 of the 2006 Regulations. If the Secretary of State refuses, the applicant may appeal to POAC: s. 5(2) of the 2000 Act. POAC will allow the appeal if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review: s. 5(3) of the 2000 Act. Where it allows an appeal, it may make an order such that the Secretary of State must, as soon as reasonably practicable, lay an order/make an order in accordance with s.123(4) or (5) to remove the organisation from Sch. 2 (s.5(5)).

21. The legal logic of this regime is that, following proscription, it is for the Secretary of State to consider any application for deproscription and make a determination. Parliament has provided for that determination to be reviewed by POAC – no doubt

because it will have been made on the basis of full submissions from the people affected. It also recognises the primacy that Parliament affords to the Secretary of State in matters relating to national security, ensuring the effectiveness of proscription decisions based on national security grounds by enabling such decisions to take effect before the right of appeal arises. The claimant's attempt to challenge the proscription of PA by way of judicial review at this stage subverts this process.

22. The primacy of the statutory process created by ss. 4-5 of the 2000 Act was recognised by Richards J in *R (Kurdistan Workers' Party) v. Secretary of State for the Home Department* [2002] EWHC 644 (Admin), [70]-[92].

23. As to the adequacy of the POAC procedure, the Secretary of State makes the following further submissions.

24. First, the claimant's grounds are all capable of being determined by POAC in a statutory appeal: *Kurdistan Workers' Party,* [81]-[82]; and *Secretary of State for the Home Department v Lord Alton* [2008] EWCA Civ 443, [2008] 1 WLR 2341. By s. 5(3) of the 2000 Act, POAC is required to allow an appeal if it considers that the decision to refuse to deproscribe was flawed.

25. Secondly, POAC is a specialist tribunal with procedures designed specifically to deal with the determination of claims relating to proscription. In that context, Parliament has considered it necessary, as part of the overall detailed regime of proscription, to establish such a forum, and to designate it as the appropriate tribunal for the purposes of s. 7 of the Human Rights Act 1998 in relation to proceedings against the Secretary of State in respect of a refusal to deproscribe.

26. Thirdly, the claimant's appeal against deproscription lies to POAC as of right. Unlike judicial review, there is no arguability threshold.

27. Fourthly, as a matter of principle, challenges relating to proscription may raise sensitivities relating to international relations. Information relating to international relations may be considered by POAC in CLOSED in circumstances where its disclosure would be damaging to the public interest: para. 5(2)(b) of Sch. 3 to the 2000 Act and rule 14(2)(c) of the Proscribed Organisations Appeal Commission (Procedure) Rules 2007 ("the POAC Procedure Rules", SI 2007/1286). This is not possible in the High Court, even after the introduction of the 2013 Act, which provides for the withholding of national security sensitive information only: see s. 6(11) of the 2013 Act. Thus, in a case where sensitive material relating to international relations is in issue in a claim for judicial review of a proscription decision, it would be necessary for the Secretary of State to make a claim for public interest immunity over such material. This would be unsatisfactory.

28. Fifthly, the statutory procedures relating to POAC make express provision for the effect of a successful deproscription appeal on criminal convictions: see s. 7(1) of the 2000 Act.

29. Finally, in his oral submissions Sir James submitted that the whole procedure for applying for deproscription and for appealing against the refusal would become otiose if judicial review were available.

## Discussion

*The statutory scheme*

30. The following features of the statutory scheme should be noted at the outset:

    (a) The decision whether to proscribe is legally distinct from the decision whether to grant an application to deproscribe. The former is taken under s. 3(3)(a), the latter under s. 3(3)(b). Section 5(2) confers a right of appeal to POAC against the refusal of an application to deproscribe, not against the initial decision to proscribe.

    (b) An application to deproscribe will often be made some considerable time after proscription, on the basis that events have moved on. The argument will typically be that, whatever the position at the time of proscription, the organisation is no longer "concerned in terrorism". That was the basis for the appeals of the two organisations whose cases have come before POAC to date: see *Lord Alton*, [2] and [14]; *Arumugam v Secretary of State for the Home Department* (PC/06/2002, 21 June 2024), [4]-[8].

    (c) Although there is nothing to stop an organisation from applying for deproscription shortly after it is first proscribed, the initial decision to proscribe is temporally distinct from the decision to refuse an application to deproscribe. Once an application to deproscribe is made, the Secretary of State has 90 days in which to determine it. During this period, and then while any appeal to POAC is pending and unless and until a deproscription order is made, the organisation remains proscribed, with all the consequences I set out at [33]-[39] of my interim relief judgment.

    (d) The statute does not purport to oust judicial review of decisions to proscribe. As I pointed out at the permission hearing, a contrast may be drawn in this respect with the Sanctions and Anti-Money Laundering Act 2018. That Act confers power to designate individuals. A designated individual can request variation or revocation of the decision to designate him or her. Section 38 creates a right of appeal against a range of decisions to refuse applications to de-designate, but not against decisions to designate in the first instance. Section 39(5) provides: "A decision mentioned in sub-paragraph (i), (ii) or (iii) of section 38(1)(d) [i.e. a decision to designate in the first instance] may not be questioned by way of proceedings for judicial review (and nor may a decision to which section 38 applies)". This is an example of the language Parliament uses where it intends that the only route of challenge to an initial decision is by way of appeal against the refusal of an application to vary or revoke it. There is nothing similar in the 2000 Act. Richards J made this point at [71] of his judgment in the *Kurdistan Workers' Party* case (drawing a contrast with another statutory ouster in the Anti-Terrorism, Crime and Security Act 2001).

31. These matters are not determinative of the alternative remedy submission (which, as Sir James submitted, goes to discretion rather than jurisdiction), but they are important in setting the context in which that submission falls to be considered.

*The test to be applied in assessing whether an alternative remedy is adequate*

32. The authorities cited by Sir James make clear that the suitability of an alternative remedy depends on whether the remedy is "conveniently and effectively available": see *Watch Tower*, at [19]. The authorities make clear that the application of this test depends not only on the statutory context, but also on the circumstances of the individual case. Sir James for the Home Secretary did not demur and indeed accepted that, in a case where the illegality of a proscription order was clear, judicial review may well be appropriate.

33. There are five factors that seem to me to be relevant. I consider them in turn, and cumulatively, before considering the impact of the judgment of Richards J in the *Kurdistan Workers' Party* case.

*Factor (1): Timing*

34. If there is an arguable basis for saying that the proscription order is unlawful, and the proceedings are expedited, a substantive judicial hearing could be listed relatively quickly, even allowing for the steps necessary for a closed material procedure under the 2013 Act. It is possible to envisage a substantive hearing in the autumn of 2025. If, on the other hand, it is necessary to apply for deproscription, the Home Secretary will have up to 90 days from the date on which the application is made to determine it. Only then will the right to appeal be triggered. At that point, the claimant (or others) would have to prepare and file an appeal, special advocates would have to be appointed and directions given. Given the normal timescales in POAC and SIAC, it is very unlikely that an appeal would be listed before the middle of 2026.

35. An alternative remedy may in principle be regarded as sufficiently effective to qualify as a suitable alternative remedy even though it is not available immediately. *Glencore* is an example. There, the consequence of using the alternative remedy was that the taxpayer had to pay the disputed tax while a review was undertaken and an appeal considered. This meant that the taxpayer was kept out of his money for longer than he would have been if judicial review had been available, though if the appeal ultimately succeeded the tax would be repaid with interest. Sales LJ held at [66] that this regime created a "fair balance between the interest of the public in the timeous payment of tax and the interest of the taxpayer should it eventually show that tax was not in fact due". The alternative remedy was suitable.

36. As the reasoning in *Glencore* shows, whether a later alternative remedy is suitable depends on the nature of the detriment that would be suffered in the period before a decision is reached and on whether, under the relevant statutory scheme, there is an effective remedy for that detriment if it is later shown that the decision was unlawful.

*Factor (2): The nature of the detriment*

37. The detriment in the present case is that, in the period between proscription and the date of the final decision about its legality, the order will have an impact on the claimant's and others' freedom of expression and freedom to protest on an issue of considerable importance to them and, whether one agrees with them or not, to the country as a whole. If, as the claimant says, the proscription order is likely to have a significant chilling

effect on the legitimate political speech of many thousands of people, that would do considerable harm to the public interest. A decision requiring the Home Secretary to lay an order to deproscribe PA, given sometime in the middle of 2026, could not repair that injury in the way that a payment of interest could on the facts of the *Glencore* case.

38. This point had some substance even before the proscription order came into force. At [100] of my interim relief judgment, I said this:

> "It is possible that some who have been protesting legitimately under the banner of PA will be deterred from continuing to protest for fear of incurring criminal liability (for example on the basis that continuing their protest might be perceived as expressing support for PA or as organising on its behalf). The evidence I have seen establishes that the broad criminal prohibitions imposed by the 2000 Act, and the very long sentences potentially available for breach of them, can cast a long shadow over legitimate speech. This, however, is the inherent consequence of a regime which aims to disrupt and disable organisations which meet the threshold for proscription and which the Secretary of State and Parliament decide to proscribe."

39. The evidence filed by the claimant since the interim relief judgment suggests that some of the claimant's predictions about the effects of the proscription order have been borne out by events.

40. First, there are cases where persons protesting against what they consider to be Israel's genocide and in support of Palestine or Gaza—who are not on any view expressing support for PA—have attracted various kinds of police attention, from questioning to arrest. An example can be found in the witness statement of Laura Murton, who was questioned by armed officers from Kent Constabulary for holding a sign with the words "Free Gaza" and a Palestinian flag. She videoed the interaction and has produced a transcript. There are other reports of similar incidents. For example, the human rights campaigner Peter Tatchell posted on social media that he had been stopped by security staff at a concert in Trafalgar Square because he was wearing a badge in the colours of the Palestinian flag, bearing the words "Palestine Solidarity Campaign – Free PALESTINE" and the web address of that organisation.

41. On one level, it is important not to draw too much from the fact that police and others appear to have misunderstood the law on some occasions. It may be anticipated that the number of such misunderstandings will diminish over time and that, if they do not, the criminal courts will make matters clear in due course. As I said at [97] of my interim relief judgment, it remains lawful to express one's opposition to Israel's actions in Gaza and elsewhere, including by drawing attention to what some regard as Israel's genocide and other serious violations of international law. This can be done lawfully in private conversations, in print, on social media and at protests. It also remains lawful to express one's support for Palestine, Palestinians, or pro-Palestinian organisations not connected with PA. Nonetheless, reports of the kind of police conduct referred to in [35] above are liable to have a chilling effect on those wishing to express legitimate political views. This effect can properly be regarded as an indirect consequence of the proscription order.

42. Secondly, and more importantly, there are numerous examples of speech which have attracted police attention where the line between legitimate and proscribed speech is

more difficult to draw. Here, the police have the unenviable task of distinguishing between those seeking to express support for PA without saying so in terms and those whose intention is simply to call for action of one kind or another in relation to the situation in Palestine. Criminal courts may have to make decisions in individual cases about instances such as these. It would not be appropriate for me to say anything here about these cases, save that the existence of a large category of cases that are close to the line demonstrates that the proscription order is likely to have a significant deterrent effect on legitimate speech. This shows that the proscription order is likely to give rise to a substantial interference with rights guaranteed by the common law and by Articles 10 and 11 of the European Convention on Human Rights ("ECHR").

43. Third, there are cases where individuals who have clearly expressed support for PA have been arrested and in some cases charged with offences under ss. 12 and 13 of the 2000 Act. In these cases, the individuals concerned have chosen to do something that—on the assumption that the proscription order is itself lawful—they know is now a criminal offence. As I said at [98] of the interim relief judgment, it would be wrong to accord significant weight to the interests of those who plan deliberately to flout the law. This category of affected persons seems to me to be relevant in another way, however. Persons charged with offences under ss. 12 and 13 of the 2000 Act may wish to test the assumption that the proscription order is lawful. I consider the relevance of this to the "alternative remedy" argument as factor 3 below.

*Factor (3): Criminal cases*

44. It is a premise of the Home Secretary's "alternative remedy" argument that there are two routes by which the proscription can be challenged: (i) judicial review or (ii) application for deproscription followed by appeal to POAC. This leaves out of account a third possible route. Those charged with criminal offences under the 2000 Act in respect of alleged support for PA may seek to challenge the validity of the proscription order by way of defence to their criminal proceedings. On the face of it, since the order is secondary legislation, it seems likely that they would be entitled to do so, applying the principles set out by the House of Lords in *Boddington v British Transport Police* [1999] 2 AC 143.

45. As a matter of principle, it seems likely that the defence could include the incompatibility of the order with Articles 10 and 11 ECHR: see e.g. *RR v Secretary of State for Work and Pensions* [2019] UKSC 52, [2019] 1 WLR 6430. Sir James would not be drawn on whether such a defence would be open to defendants in criminal proceedings, but suggested no plausible reason why not.

46. If the legality of the proscription order can properly be raised by way of defence to criminal proceedings, that would open up the spectre of different and possibly conflicting decisions on that issue in Magistrates' Courts across England and Wales or before different judges or juries in the Crown Court. That would be a recipe for chaos. To avoid it, there is a strong public interest in allowing the legality of the order to be determined authoritatively as soon as possible. The obvious way to do that is in judicial review proceedings.

47. The public interest in such a determination would be at least as strong if the challenge fails as if it succeeds. If the proscription order is determined to be lawful, there would

a real benefit in making that clear to the general public as soon as possible, so as to prevent the criminal courts from becoming clogged up with unmeritorious defences.

48. At one stage it was suggested that those charged with criminal offences which depend on the validity of the proscription order could invite the criminal courts to adjourn their cases pending the outcome of an application for deproscription and appeal to POAC. That seems unlikely to provide a satisfactory solution, not least because an appeal to POAC does not render the proscription order void ab initio and the provisions of s. 7 of the 2000 Act (which provide for appeals against criminal convictions in respect of offences in relation to organisations that are subsequently deproscribed) apply only where the activity in respect of which the individual was convicted took place on or after the date of the refusal to deproscribe.

49. Sir James suggested that there might be a way around this: s. 3 of the Human Rights Act 1998 could be used to achieve an ECHR-compliant reading of s. 7. It is by no means obvious that such an argument would succeed, given the clear terms of s. 7. In any event, it is a complication that would not arise if the proscription order can be challenged in judicial review proceedings. The status of criminal convictions in respect of activity in relation to PA since proscription is far from a theoretical issue, given that large numbers of individuals have already been arrested for engaging in such activity.

*Factor (4): Forum and procedure*

50. Sir James placed heavy emphasis on the fact that Parliament had created a bespoke tribunal, POAC, with a special constitution and unique procedural rules, to hear challenges of this kind.

51. In my judgment, however, this point has relatively little force in the present context for three reasons. First, it is necessary to unpack what is meant by "challenges of this kind". As noted above, Parliament created an appellate route to POAC for challenges to refusals of applications to deproscribe. It could have ousted, but did not oust, judicial review of the initial decision to proscribe. It may have proceeded on the assumption that applications to deproscribe would typically be made on the basis that, at the time of the application, the organisation in question is no longer concerned in terrorism, rather than on the basis that the initial decision to proscribe was unlawful.

52. Secondly, and in any event, the availability of a closed material procedure under the 2013 Act marks a significant difference between the position as it was at the time of the *Kurdistan Workers' Party* case and the present day. In that case, Richards J identified two respects in which POAC was "at a clear advantage over the Administrative Court": first, the availability of a closed material procedure with special advocates representing the interests of the excluded party in the CLOSED part of the proceedings; and secondly, the ability to receive certain kinds of evidence which were ordinarily inadmissible.

53. On the law as it then stood, Richards J speculated at [76] that the court "might be able to devise something equivalent to the closed material procedure", but said that "it would be far less satisfactory to go down that route than to utilise the POAC procedure already carefully formulated for the purpose". At [77], he addressed the suggestion that the provisions governing the inadmissibility of intercept evidence could be read down to

achieve compatibility with the ECHR. This, he said, was "at best very uncertain and would again be a less satisfactory route than reliance on the clear and general exception under s.18(1)(f) [of the Regulation of Investigatory Powers Act 2000] in respect of any proceedings before POAC or any proceedings arising out of proceedings before POAC".

54. The position has moved on. Since the date of Richards J's decision, the 2013 Act, taken together with CPR Part 82, makes available in High Court proceedings a closed material procedure with special advocates, which is in most respects similar to that applicable in POAC; and Sch. 3 to the Investigatory Powers Act 2016 makes intercept evidence (which is inadmissible in most other proceedings) admissible in proceedings in which a declaration under s. 6 of the 2013 Act has been made. This means that the two main advantages of POAC over the High Court identified by Richards J have now largely disappeared.

55. I accept that there is still a difference between the closed material procedure in POAC and that available in the High Court under the 2013 Act. In POAC, CLOSED material may be withheld on the ground that its disclosure would be contrary to "the interests of national security, the international relations of the United Kingdom or the detection and prevention of crime, or in any other circumstances where disclosure is contrary to the public interest" (see r. 4 of the POAC Procedure Rules). By contrast, in proceedings under the 2013 Act in the High Court, CLOSED material may only be withheld on the ground that its disclosure would be contrary to the interests of national security (s. 6(11) of the 2013 Act). The significance of this difference should not, however, be overstated.

56. In most cases where an organisation is proscribed under the 2000 Act, the material which the Home Secretary seeks to withhold will be material whose disclosure would be damaging to the interests of national security, even if it would also be damaging to some other public interest. In the present case, I have already made a declaration under s. 6 of the 2013 Act and given limited permission to withhold sensitive information under s. 8. If there had been material whose disclosure was damaging to another public interest, but not to the interests of national security, the Home Secretary would have had to issue a public immunity certificate. She has not. It cannot be entirely ruled out that such a certificate might become necessary at a later stage. At the present moment, however, this is a speculative possibility and, even if it were to eventuate, there is no reason to suppose that the material in question would be of central importance to the case. This minor difference between the closed material procedures available in the High Court and POAC does not justify the weight that Sir James sought to place on it.

57. There is, of course, a difference in constitution between the High Court and POAC. The former consists only of judges, though in a case such as this it is possible that any substantive hearing would be heard before a Divisional Court. The latter typically sits as a panel consisting of a judge, a lawyer and a member with expertise in security and intelligence matters. This difference is not, however, sufficient on its own, to render the High Court an inappropriate forum for the resolution of the issues likely to arise in a challenge to the lawfulness of the order. Judges sitting in the High Court regularly resolve issues relating to the legality and proportionality of measures designed to address terrorism when considering Terrorism Prevention and Investigation Measures, financial restrictions and sanctions.

58. Finally, Richards J placed some reliance on the fact that POAC had been designated as the appropriate tribunal for the purposes of s. 7 of the HRA: see the Proscribed Organisations Appeal Commission (Human Rights Act Proceedings) Rules 2001 (SI 2001/127). However, an examination of the terms of those rules seems to me to support the opposite conclusion. They designate POAC as the appropriate tribunal only for proceedings under s. 7(1) of the HRA against the Secretary of State "in respect of a refusal by him to exercise his power under section 3(3)(b) of the Terrorism Act 2000 to remove an organisation from Schedule 2 to that Act".

59. On its face, that does not cover human rights claims arising from the initial decision to proscribe under s. 3(3)(a). If that is right, claims for human rights damages flowing from the initial decision to proscribe, like other human rights claims flowing from public decisions where quashing is sought, should be brought in judicial review proceedings under s. 31(4) of the Senior Courts Act 1981.

*Factor (5): Would the availability of judicial review render the deproscription/POAC route a dead letter?*

60. Sir James submitted that, if judicial review were available, no proscribed organisation would need to apply for deproscription or appeal to POAC. This, he said, would render the carefully calibrated statutory regime a dead letter. I do not accept that submission.

61. Many applications for deproscription will be made on the basis that, whatever the position when the initial proscription order was made, by the time of the application to deproscribe the organisation has ceased to be concerned in terrorism. The organisation will often be one that operates in another country or countries. The focus of the application for deproscription, and of any appeal from a refusal to deproscribe, will be on how the organisation has changed, whether it has renounced the methods it previously used and on how political changes in the countries where it operates affect the way it is properly to be characterised. As I have said, this was the focus of the appeals which POAC has heard to date. (POAC has heard appeals in respect of only two organisations: the People's Mujahideen of Iran and the Tamil Tigers.)

62. An organisation wishing to advance an argument of this kind could not, of course, seek judicial review of the initial decision to proscribe. It follows that, in such cases, the availability in principle of judicial review of initial decisions to proscribe would not affect in any way the use of the statutory deproscription procedure (and, if necessary, the appeal to POAC).

*The Kurdistan Workers' Party case*

63. Against this background, I can explain relatively briefly what I draw from Richards J's judgment in the *Kurdistan Workers' Party* case.

64. Richards J identified three considerations which, at [79], he said "tell strongly in favour of POAC being the appropriate tribunal" for consideration of issues about the proportionality of proscription. As I have sought to explain, the considerations at [76] and [77] flowed from the absence at the relevant time of a statutory closed material procedure in the High Court. The position in that respect has changed, so these parts of

Richards J's reasoning are no longer apposite. Moreover, Richards J was in my view wrong, in [78] of his judgment, to identify as a significant factor in favour of POAC's suitability as a forum for hearing challenges to proscription the fact that it had been designated as the appropriate tribunal in respect of human rights claims arising from refusals to deproscribe.

65. At [85], Richards J took into account the difference in remedies available in POAC and on judicial review, including the fact that, even if an appeal to POAC succeeded, "the proscription Order remains valid as from the date when the original order came into effect until the date of the further Order removing the organisation from the list". He acknowledged that this difference might be relevant "if any of the claimants were subject to sanctions dependent upon the validity of the proscription in the interim period (though account would have to be taken of the mitigating effect of s.7)". He nonetheless concluded that this difference would not have any practical consequence for the claimants in that case.

66. This may have been a fair comment on the facts of the cases before Richards J, where criminal proceedings for offences in relation to the proscribed organisations were apparently not in prospect. In the present case, however, there are already a large number of criminal proceedings for offences in relation to PA. Richards J's reasoning does not take into account the procedural repercussions of the defendants in these cases raising the invalidity of the order as a defence to these prosecutions. It also fails to consider the difficulty that would arise for those charged in respect of conduct occurring before any refusal to deproscribe if the only remedy is a prospective one.

67. For these reasons, the circumstances of the case before Richards J are, in my judgment, materially different from those in the present case. I am therefore not bound by judicial comity to follow his reasoning. In any event, I consider that decision to be clearly wrong in the respects I have identified and I decline to follow it.

*Conclusion*

68. For these reasons, the preliminary issue is determined in the claimant's favour. An application to deproscribe, coupled with an appeal to POAC if the application is refused, is not a suitable alternative remedy in the circumstances of this case. The existence of this remedy is therefore not a proper basis for refusing permission or relief in the exercise of the court's discretion, in circumstances where Parliament has not ousted the judicial review jurisdiction in respect of decisions to proscribe under s. 3(3)(a) of the 2000 Act.

**The claimant's grounds of challenge**

69. I have already considered the strength of the claimant's grounds of challenge in some detail at [62]-[91] of my judgment on interim relief. I do not propose to repeat what I said there. I confine myself to dealing, briefly, with the additional points raised at the permission hearing.

Ground 2

70. In my interim relief judgment, I said that ground 2 raises a serious question to be tried. I have carefully considered the six points made by the Secretary of State in her Summary Grounds of Defence and the other points made by Sir James at the permission hearing. I have also read the evidence, both OPEN and CLOSED, and considered the oral submissions of Ms Blinne Ní Ghrálaigh. I consider it reasonably arguable that the proscription order amounts to a disproportionate interference with the Article 10 and 11 rights of the claimant and others. That being so, the point will have to be determined at a substantive hearing and it would not be appropriate for me to say more now.

Ground 1

71. At [62]-[69] of my interim relief judgment, I set out five difficulties faced by the claimant in advancing ground 1. In his skeleton argument for the permission hearing, Mr Husain made clear that this ground is now advanced as an allegation that the proscription power was used for an improper purpose (rather than that the order was ultra vires). The argument, set out at para. 21, is that I should consider the following question:

> "Did Parliament intend that the Home Secretary should be permitted to exercise her conferred power for the purpose of proscribing an organisation that satisfied the section 1 TA definition, but:
>
> (i) whom the Home Secretary accepts does not advocate violence;
>
> (ii) the vast majority of whose actions were assessed by JTAC [the Joint Terrorism Analysis Centre] and PRG [the Proscription Review Group] to be lawful;
>
> (iii) whose protests are directed at preventing acts widely recognised as atrocity crimes and breaches of international law (including by the Foreign Secretary himself;
>
> (iv) which enjoys widespread and justifiable popular support;
>
> (v) where proscription would cause support for those lawful actions to be punishable by up to 14 years' imprisonment;
>
> (vi) where 'civil disobedience on conscientious grounds has a long and honourable history in this country' (Fn: *R v Jones (Margaret)* [2006] UKHL 16, [2007] 1 AC 136, [89]); and
>
> (vii) as this Court appeared to accept, where proscription may have adverse consequences 'for public confidence in the regime of the 2000 Act' (interim relief judgment, [53])?"

72. At the permission hearing, Mr Husain indicated that he no longer relies on statements made in Parliament in support of this ground.

73. In my judgment, the points Mr Husain makes in para. 21 of his skeleton argument are all ones that can be made under ground 2. They are all, in reality, reasons for saying that the proscription order gives rise to a disproportionate interference with the Article 10 and 11 rights of the claimant and others. As elucidated in the skeleton argument for permission and at the permission hearing, however, ground 1 alleges not that the proscription order was disproportionate, but that it was made for an "improper purpose". I do not consider that this point is arguable. As I said at [64] of my interim relief judgment, the starting point is that:

> "An action done for the purposes set out in s. 1(1)(b) and (c) constitutes terrorism if it involves serious damage to property even if it does not involve violence against any person or endanger life or create a risk to health or safety… [T]his definition of 'terrorism' makes the statutory concept wider than the colloquial meaning of the word."

74. I accept that it is possible to envisage a case where the Home Secretary exercises the proscription power in respect of an organisation which falls within the four corners of the statutory definition, but for a purpose which is not the statutory purpose. That would be the case if, for example, the decision-maker acted "for some extraneous purpose, such as to quell political views with which she disagrees" (see [68] of my interim relief judgment). But I do not see how the Home Secretary can be said to have acted for an improper purpose simply because (on the claimant's case) she has exercised the power to proscribe an organisation which does not advocate violence against persons, but does engage in other conduct which satisfies the statutory definition of terrorism.

75. That argument would have the same effect as the ultra vires argument which Mr Husain made originally (see para. 65 of the original Statement of Facts and Grounds) but now disavows. It is not reasonably arguable for the reasons I gave at [65] of my interim relief judgment.

76. Ground 1 is not reasonably arguable.

Ground 3

77. Ground 3 has two limbs. The primary one is that the Home Secretary erred in law in concluding that PA committed acts designed to influence the UK Government. At [76] of my interim relief judgment, I described this argument as "ambitious in circumstances where the action which immediately preceded the announcement of the decision to lay a proscription order was against an RAF base". The excerpts from the claimant's Amended Statement of Facts and Grounds set out there make it obvious that this attack at least was intended to influence the UK Government. At the permission hearing, Mr Husain argued that the decision documents show that the decision to proscribe had been taken before the attack on RAF Brize Norton was reported, and that there was at least an arguable error in the conclusion that PA's previous attacks against defence contractors were designed to influence the UK Government. In my judgment, this point goes nowhere for two reasons, either of which would be sufficient to dispose of the point on its own.

78. First, attacks on defence contractors which supply the UK and allied militaries can rationally be said to be designed to influence UK Government policy, at least in

circumstances where the UK permitted (and to some extent still permits) the export of some defence related goods whose final destination is Israel and this policy is controversial.

79. Secondly, Sir James indicated on instructions that the Home Secretary was aware of the attack on RAF Brize Norton at the time when she decided to lay the draft order. The timing suggests that she must have been. This means that, even if the claimant could show that the earlier attacks were not designed to influence the UK Government, the outcome is highly unlikely to have been substantially different. So, under s. 31(3D) of the Senior Courts Act 1981, I am obliged to refuse permission unless it is appropriate to disregard that requirement for reasons of exceptional public interest under s. 31(3E). I do not consider that there are such reasons, particularly given that the proportionality of the proscription order is being considered under ground 2 in any event.

80. The alternative argument under ground 3 is that there was no sufficient nexus between the terrorism identified and the organisation. This point has no merit for the reasons given at [77] and [78] of my interim relief judgment. The argument that it was wrong to proscribe an organisation most (but not all) of whose activities were lawful will in any event have to be considered under ground 2.

Ground 4

81. As explained in the claimant's skeleton argument for permission, this ground alleges that the Home Secretary failed to gather sufficient information on (i) the scope and nature of PA's activities, (ii) the impact of proscription on particular individuals associated with PA, including vulnerable categories such as young persons and elderly supporters and (iii) the broader implications for other direct action and protest groups, such as environmentalists and trade unionists.

82. At the interim relief stage, I had not seen any disclosure of the documents before the Home Secretary when the challenged decision was taken. I have now seen these documents. They include a Community Impact Assessment, which discussed a range of evidence about how the proscription would be perceived and about its possible effects, including evidence as to perceptions of environmental and other direct action groups. In the light of this and the other documents before the Home Secretary, and given the legal position as outlined in [82] of the interim relief judgment, I do not consider this point to be reasonably arguable.

Ground 5

83. This ground has two aspects. First, it is said that the Home Secretary acted unlawfully in taking into account irrelevant considerations, namely, (i) whether PA's methods were morally or politically justifiable, (ii) the lost revenue arising from PA's direct action; and (iii) the views of pro-Israel lobby groups.

84. None of these points discloses a reasonably arguable error of law. It was open to the Home Secretary to consider that direct action involving serious damage to property was illegitimate. It may fall to be considered in another case whether loss of revenue can be taken into account in deciding whether damage to property is serious. In this case, it does not matter, because, even without taking these losses into account, the Home

Secretary could properly conclude that the property damage caused in PA's direct actions, which ran into millions of pounds, was serious. There is no good reason why the Home Secretary should not take into account the view of pro-Israel lobby groups, provided that she did not treat those views as determinative—and the decision documents make clear that she did not.

85. Nor do I consider that there is any point in debating whether the Home Secretary failed properly to address the fact that PA seek to prevent conduct which many regard as amounting to genocide and/or other serious violations of international law, the impact on free speech, the impact of proscription on direct action or the availability of civil injunctions or other less onerous ways of dealing with direct action. All these matters will have to be considered as part of the court's own assessment whether the proscription order was a proportionate restriction on the Article 10 and 11 rights of the claimant and others. If the court concludes that it was, there is no realistic prospect of the Home Secretary reaching a contrary view. If it was not, it does not matter whether the Home Secretary was required to have regard to the matters relied upon by the claimant (bearing in mind the legal position set out in [82] of the interim relief judgment) or whether on a proper analysis of the decision documents she did so.

86. There is accordingly no good reason to grant permission on ground 5.

Ground 6

87. Ground 6 is that the Home Secretary failed to apply her policy. Now that the decision documents have been disclosed, the basis on which this ground is pursued is that "no adequate proportionality assessment was undertaken" (see para. 63 of the skeleton argument for the permission hearing), given in particular that (on the Home Secretary's own assessment) only three of PA's 385 actions would meet the statutory definition of terrorism.

88. The answer to this ground is the same as given under ground 5. In circumstances where the court will have to conduct its own assessment of the proportionality of the proscription order, there is nothing to be gained by adding this ground. If the proscription was a proportionate restriction of the Article 10 and 11 rights of the claimant and others, nothing would be gained by considering separately whether the Home Secretary's decision documents were deficient in this regard.

89. There is no good reason to grant permission on ground 6.

Ground 7

90. Ground 7 alleges a breach of the public sector equality duty in s. 149 of the Equality Act 2010. Since the interim relief judgment, the Home Secretary has disclosed the relevant decision documents. In the skeleton argument for permission, the claimant identifies two impacts which she says are not considered in the Community Impact Assessment or other decision documents: (i) a failure to have regard to the likely impact of the proscription on the Palestinian community (as distinct from the Muslim community more generally) and (ii) a failure to address the obvious discrimination and equality of opportunity impacts of proscription.

91. I do not consider that there is anything in this point.

92. As to the suggestion that the proscription is "prima facie discriminatory against persons… having a political opinion aligned with Palestinian cause and/or opposed to Israel's current conduct in Gaza" (Amended Statement of Facts and Grounds, para. 87D), the effect on groups with these beliefs was specifically identified and addressed in the Community Impact Assessment.

93. The Community Impact Assessment, together with other decision documents, drew attention to the likely effects on the Muslim community and "a range of smaller communities in the UK". I do not consider it can be reasonably argued that the decision documents were deficient for failing to identify specific effects on the Palestinian community, given that the effects on those who support the Palestinian cause (a more precise description of the group affected) was specifically considered.

94. In my view, ground 7 is not reasonably arguable.

Ground 8

95. Ground 8 challenges the proscription order on the ground that the Home Secretary should have consulted PA before making it and, by failing to do so acted in breach of natural justice and/or contrary to Article 6 ECHR. I explained the two answers available to the Home Secretary at [89]-[90] of the interim relief judgment.

96. As a matter of principle, I consider that it is reasonably arguable that a duty to consult arose, by analogy with *Bank Mellat v HM Treasury* [2013] UKSC 389, [2014] AC 700, [29]-[37] of the substantive judgment. Having considered the evidence, I also consider it reasonably arguable that there was no compelling reason why consultation could not have been undertaken here.

97. Ground 8 is therefore reasonably arguable.

## Conclusion

98. For these reasons, I grant permission to apply for judicial review on grounds 2 and 8, but refuse it on all the other grounds.