Judiciary of England and Wales

IN WESTMINSTER MAGISTRATES COURT

Westminster Magistrates' Court 181 Marylebone Road London NW1 5BR

Before:

SENIOR DISTRICT JUDGE GOLDSPRING

CHIEF MAGISTRATE FOR ENGLAND AND WALES

Rex

v

Liam Og O hAnnaidh

(Liam O'Hanna)

MICHAEL BISGROVE instructed by the CPS for the Prosecution

BRENDA CAMPBELL KC, JUDE BUNTING KC, BLINNE NÍ GHRÁLAIGH KC ROSALIND COMYN instructed by Darragh Mackin of Pheonix Law for the Defendant

Approved Judgment

1.The defendant faces a single charge contrary to section 13 of the Terrorism Act 2000; this offence is summary only and therefore can only be tried summarily.

2. On his behalf the jurisdiction of this court is challenged on the basis that the charge was not instituted within the statutory time limit because it was not accompanied by the necessary consent by or on behalf of the Attorney General as required by statute, or in the alternative , the charging decision was made by the Metropolitan Police rather than the CPS, again, it is said, contrary to the statutory scheme and the Director of Public Prosecutions' (DPP's) guidance.

3. The prosecution submits that the statutory requirements were met and that the court retains jurisdiction.

4. This ruling is not about the defendant's innocence or guilt rather only whether this court has jurisdiction to hear the case.

5. Therefore, this ruling is confined exclusively to the question of jurisdiction. It concerns whether these proceedings were lawfully instituted within the statutory time limit prescribed by section 127 of the Magistrates' Courts Act 1980 and, crucially, with the necessary consents as required by S 117 Terrorism Act 2000.

6. It is neither necessary nor appropriate for the Court, at this stage, to engage with the merits of the underlying allegation, or to determine whether the offence is in fact made out from the evidence.

7. Nothing in this ruling should be read or interpreted as expressing any view, endorsement, or rejection of the allegations themselves. The sole and discrete issue with which the Court is concerned is whether it has jurisdiction to deal with the prosecution.

8. The defendant faces a single charge, that: -

> *"on 21 November 2024, in a public place, namely the O2 Forum, Kentish Town, London, displayed an article, namely a flag, in such a way or in such circumstances as to arouse reasonable suspicion that he is a supporter of a proscribed organisation, namely Hizballah, contrary to section 13(1)(b) and (3) of the Terrorism Act 2000."*

9. The detail of the allegation is not necessary to determine the issue of jurisdiction and in any event the charge succinctly encapsulates the essence of the allegation against the defendant, no more is required at this stage.

10. In coming to my conclusions, I have read the skeleton arguments provided by the parties, considered the bundle of authorities provided by each of them and taken account of the oral submissions made at the hearing.

11. Following the hearing and during the settling of my ruling I brought to the attention of the parties one further authority which appeared to me to be relevant, (***DPP V MacFarlane [2019] EWHC 1895 (Admin)).*** I therefore invited further written submissions as to its relevance and application. I have considered those further submissions in my deliberations also.

12. I wish to extend my gratitude to all the advocates and lawyers involved for the careful and conscientious consideration they have given to the issues and the help they have provided the court in their comprehensive and helpful submissions.

The Submissions

13. In summary the defendant submits: -

i. *Pursuant to s.117(2A) Terrorism Act 2000, proceedings for a s.13 Terrorism Act 2000 offence, which appears to be partly connected with the affairs of a country other than the United Kingdom, can only be **"instituted"** with the consent of Director of Public Prosecutions (who, in turn, must have the permission of the Attorney General to do so). The relevant consent was neither sought nor granted until 22nd May 2025. Which was 1 day outside the statutory time limit provided by S127 MCA 1980.*

ii. *Further, or in the alternative, the Metropolitan Police was not authorised to make a charging decision in respect of s.13 Terrorism Act 2000. The Crown's Guidance on Charging (sixth edition, December 2020) provides that charging decisions in respect of cases which require the consent of the Director of Public Prosecutions ("the DPP") or of a law officer cannot be made by the police. The Metropolitan Police unlawfully departed from that statutory guidance in making a charging decision on 21st May 2025. For this additional reason, the Defendant was not lawfully charged within the six-month time limit.*

14. The Prosecution submits.

i. The requirement to seek institution of proceedings with the consent of the DPP, who in turn must have permission from the Attorney General, is not vitiated by the formal steps not being finally in place at the time of the issue of proceedings, that is in the production of the postal requisition, and that it is not therefore a nullity that at the time of the issue of the notice on the 21st May 2025 the formal steps to seek the consent and permission had not taken place.

ii. *The authorities relied upon by the crown make clear that the real nature of entering the charge on the register does not require permission or consent to be obtained before the formal process is involved or undertaken. In relation to either way offences that is when the court undertakes the jurisdictional decisions required within the plea before venue process, and in relation to indictable only offences is at the point of sending, both of which can be after the initial appearance of the defendant before the court. They further submit that although the authorities they rely upon relate only offences triable on indictment, the ratio applies equally to summary only offences. The institution of proceedings for the purposes of consent from the Attorney General is the point at which the defendant comes to court to answer the charge, not, as in this situation, the issue of the notice of requisition and charge under section 29 of the Act.*

And

iii. *The authorisation for making charging decisions was not, in fact, made by the Metropolitan Police, although they took the administrative steps in doing so, but as is evidenced in the chronology the* ***charging decision was in fact made by the Crown Prosecution Service under the delegated powers vested in the DPP by a crown prosecutor.***

The Chronology

15. The parties ended up landing on a broad agreement as to the facts of the case, with the Crown confirming (see below) that the relevant S29 /30 CJA 2003 notice is that dated the 21/5/25, and the material disclosed evidencing the involvement of the CPS in the decision to charge. It is therefore unnecessary for me to grapple with contentious factual findings in that regard and the timelines. I therefore take the chronology that follows as agreed and adopted from the defence skeleton.

16. On 21st November 2024, the Defendant performed as part of the rap group, Kneecap, at the O2 Forum, Kentish Town, in London. It is alleged that, as part of this performance, the Defendant displayed a Hezbollah flag in such a way or in such circumstances as to arouse reasonable suspicion that he is a supporter of a proscribed organisation.

17. On 21st May 2025, at 12:00, the Metropolitan Police purported to issue a "Notice of Criminal Charge". This notice required the Defendant to attend a hearing at the Westminster Magistrates' Court at 10:00 on 18th June 2025. In answer to this question, "Who issued this notice?" the following "Name of issuer" was given: "Detective Constable CEN2459". The "Date of issue" was said to be "21/05/2025". The notice continued:

> *"This notice is a 'written charge and requisition.' It has been issued under sections 29 and 30 of the Criminal Justice Act 2003 and rules 7.3 and 7.4 of the Criminal Procedure Rules."*

18. Detective Constable CEN2459 certified that s/he printed the notice and delivered it by first class post at 12:00 on 21st May 2025.

19. At 18.06 on 22nd May 2025, the reviewing lawyer and specialist prosecutor of the counter terrorism division of the CPS, emailed the Defendant's solicitor in the following terms: "…at 18:06 hours today I made the decision to re-issue the Postal Charge and Requisition. This relates to the same offence/allegation. A copy of this is attached for your information. You will be provided with some disclosure about why this has been done in due course."

20. Attached to that email was a new "charge" dated 22nd May 2025, entitled, "Written Charge and Requisition". This notice sets out as below.

You are receiving this document because you have as of today's date been charged with the offence specified below."

21. The written charge gives the "Charge date" as the "22 May 2025".

22. It indicated that the charge had been "authorised by [a Specialist Prosecutor] duly authorised by the DPP to institute proceedings on his behalf." This written charge required the Defendant to attend a hearing at the Westminster Magistrates' Court at 10:00 on 18th June 2025 "To answer the above charge", that being the new "charge" of 22nd May 2025.

23. The certificate of service for this written charge was signed on 23rd May 2025.

24. On 16th June 2025, the Crown provided the Defendant with a written note, entitled "Information to defence regarding postal requisition." This document sets out the following:

1. On 21st May 2025, the Police issued a Postal Charge and Requisition (PCR). This document contained the Police URN 01/MP/11581/25.

2. At the time when the above-mentioned PCR was issued a Law Officer had not given permission for the Director of Public Prosecutions (DPP) to consent to the institution of proceedings.

3. On 22nd May 2025, His Majesty's Solicitor General gave permission for the DPP to consent to the prosecution of the Defendant. Thereafter the DPP consented to the prosecution of the Defendant.

4. On 22nd May 2025 the Prosecution, after DPP consent had been given, issued a PCR which included the URN 84018992825.

25. At the same time, the Crown served two further documents:

a. A signed document ("Fiat") from the Solicitor General, dated 22nd May 2025, which states, "I HEREBY GIVE PERMISSION to the Director of Public Prosecutions to consent to the prosecution of [the Defendant] for an offence contrary to the Terrorism Act 2000."

26. This document does not specify the precise offence for which the Solicitor General was giving permission to consent to charge, and,

> b. A signed document from [a Crown Prosecutor], which is entitled "CONSENT OF THE DIRECTOR OF PUBLIC PROSECUTIONS", and which states, "I consent to the prosecution of [the Defendant] ... for an offence or offences contrary to the provisions of the said Act."

27. The Defendant appeared before this Court on 18th June 2025, to answer the "charge" instituted on 22nd May 2025. The Defendant indicated that he did not accept that the Court had jurisdiction to consider the matter.

28. The Crown advocate asserted in Court that the Crown relied on the "charge" of 22nd May 2025, which, it was said, was "in time".

29. The Court queried whether the Crown might seek to rely on the 21st May 2025 notice as an alternative. The Crown advocate indicated that he may seek to argue for jurisdiction on both bases.

30. On 8th July 2025, the Crown served a skeleton argument, in which it abandoned its reliance on the 22nd May 2025 "charge".

31. Instead, in its skeleton argument the Crown asserted that the notice sent on 21st May 2025 constituted a valid charge, sent within the time limit, and that the Crown,

> ***"intend[s] to proceed with the first written charge".***

The legal Framework

The Law

32. As will become obvious from my decision below, I am unpersuaded that prosecution's interpretation of the law is correct. In any summary of the law I would usually only set out the law as settled or as I believe it to be rather than the submissions on contentious issues but, out of deference to the legal arguments articulated by Mr Bisgrove, I briefly set out the legal framework as he argued it to be, noting, as he conceded, that the authorities he cites are all related to either way or indictable only offences and not to summary only offences. The crown relies on the following authorities to support the above submissions

33. In ***Trevor Elliott (1985) 81 Cr App R 115*** and ***Whale and Lockton [1991] Crim LR 692,*** the court confirmed that for the purpose of obtaining the consent of the Attorney General to the institution of proceedings, such proceedings were instituted when the defendant "came to court to answer the charge."

34. In ***Lambert [2009] EWCA Crim 700*** the Court confirmed that, for either way offences, the point at which the defendant came to answer the charge was the plea before venue hearing.

35. In **R v Welsh (Christopher) [2015] EWCA Crim 909,** the court considered that there were three occasions on which proceedings could have been, or were, instituted for an indictable only offence. The first was when the charge was entered on the court register (described later in the judgement as “first appearance, and thus entry on the court register”). If not at that point, then, second, on a sending. If not by that point, then, third, at the preliminary hearing. Any of those occasions would have been before consent was obtained on the facts of that case and so it was not necessary to decide which of the three applied.

36. In ***R v Welsh (Christopher) (Snr) [2015] EWCA Crim 1516*** the Court considered those three time points and concluded that, for an indictable offence, consent was not required at the point of charge, or by the first appearance, but was required at the point of sending under s51 CDA. The court noted the power to adjourn the s51 hearing under s52 to obtain consent, if consent had not by that point been obtained.

37. The Court in Welsh (Snr) noted that it was not possible to distinguish between the PBV proceeding on an either-way offence and the sending procedure on an indictable only offence: on both hearings, the defendant came to court to answer the change.

38. In relation to whether the definition of what amounts to the institution of proceedings under sections 29 and 30 applies to section 117 TA, the general rules of statutory interpretation confirm that a decision on the interpretation of 1 statute generally cannot constitute a binding precedent with regard to the interpretation of another statue (see Bennion 8th edition at paragraph 11.1).

39..

40. In the specific context of interpreting the meaning of instituted across different positions, the court in ***DPP v Cottier 1996*** *2 Cr App R 410*, at 416G, stated

> *The answer to the question when proceedings are instituted or begun depends on the context in which the words are used and the purposes of the provision*

41. For the purposes of section 117 Terrorism Act 2000 the charge of a defendant and the entry of the charge onto the register are formal and administrative steps that do not amount to the institution of proceedings. Proceedings are not instituted until at the very earliest a defendant comes to court and even then, if consent has not already been obtained, the hearing can be adjourned for the purposes of obtaining consent. (The crown say that this is clear from the line of authorities as above).

The law as the Defence say it is (and with which I agree)

42.The burden lies with the prosecution to prove, to the criminal standard, that the case was brought within the requisite time period: ***Atkinson v DPP [2005] 1 WLR 96***, §§18-19, and 21. The Crown must therefore prove, to the criminal standard, that a complete charge (containing "all relevant details" in the form needed for service) has been issued: ***Brown v DPP [2019] 1 WLR 4194***, §20. Here, the "relevant details" include the requisite consent.

43. Section 29 Criminal Justice Act 2003 is entitled, "Instituting proceedings by written charge." Section 29(1) provides, that a "relevant prosecutor ***may institute criminal proceedings against a person by issuing a document*** (a 'written charge') which charges the person with an offence".

44. Section 29(5)(a) provides that a "relevant prosecutor" includes "a police force or a person authorised by a police force to institute criminal proceedings."

45. Section 30(4)(c) Criminal Justice Act 2003 expressly distinguishes the power to institute proceedings by way of a written charge from "any power to charge a person with an offence whilst he is in custody."

46. Section 15(2) Prosecution of Offences Act 1985 explains when, "For the purposes of this Part, proceedings in relation to an offence are instituted". It gives the following examples:

> *(ba) where a relevant prosecutor issues a written charge and requisition for the offence, when the written charge and requisition are issued.*
>
> ...(c) where a person is charged with the offence after being taken into custody without a warrant, when he is informed of the particulars of the charge.
>
> *(d) where a bill of indictment is preferred under section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 in a case falling within paragraph (b) or (ba) of subsection (2) of that section, when the bill of indictment is preferred before the court; and where the application of this subsection would result in their being more than one time for the institution of the proceedings, they shall be taken to have been instituted at the earliest of those times.*

47. Section 117 Terrorism Act 2000 sets out how proceedings for an offence under s.13 Terrorism Act 2000 can be "instituted." Section 117(2)(a) provides, with emphasis added, that proceedings for such an offence "***shall not be instituted in England and Wales without the consent of the Director of Public Prosecutions***". Where it appears to the DPP that an offence "has been committed ... for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom", the DPP can only give consent to institute such proceedings "with the permission ... of the Attorney General.": s.117(2A)(a) Terrorism Act 2000.

48. A failure to comply with the mandatory statutory requirement that the necessary consent is provided before instituting proceedings renders invalid any subsequent proceedings instituted***: R v Lalchan (Nicholas Azam) [2022] QB 680***, §42.

49. In ***R v Bull (1994) 99 Cr App R 193***, the Court of Appeal also held, at 207,

> ***"When considering the question whether proceedings have been instituted by a specified person or by or with the consent of a specified person it is essential to have regard to the particular procedure adopted in the given case. Criminal proceedings in the magistrates' court are started either by arrest, charge, and production to court, or by the laying of an information followed by summons or warrant."***

50. This reasoning equally applies to ss.29-30 Criminal Justice Act 2003 and s.15(2)(ba) Prosecution of Offences Act 1985.

51. *R v Lambert (Goldan) [2010] 1 WLR 898* makes it clear that the procedure that has been adopted will be of crucial importance to deciding whether proceedings have been "instituted".

52. Lambert concerned the timing of consent under s.117 Terrorism Act 2000 in respect of an either way offence where the appellant was arrested, charged while detained with an offence contrary to s.12 Terrorism Act 2000, and released on bail (§1), all before consent from the DPP was obtained. Importantly, therefore, Lambert was not a case involving the issuing of a written charge by the police (or a s.29 Criminal Justice Act 2003 case at all).

53. The Court of Appeal held that there was "no warrant" in the language of s.15(2) Prosecution of Offences Act 1985 to conclude that the words "institution of proceedings" must have a wider meaning than the ordinary meaning of the term (§18).

54. The Court further ruled that the word, "institute" is "commonly used to mean commence; that is its ordinary meaning and there is ample authority to support that view." It added that, "In the context of the Terrorism Act 2000 it could well be that in the light of s.15(1) of the Prosecution of Offences Act 1985 and the ordinary meaning of the term institute, that proceedings were instituted when the appellant was charged" (§19).

55. Section 127(1) Magistrates' Court Act 1980 provides, so far as is relevant for these proceedings: "... a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose."

56. The word "information" is to be read as including a reference to the issue of a written charge pursuant to s.29(1) Criminal Justice Act 2003, as set out in s.30(5) of that Act. (See ***DPP v McFarlane [2019] EWHC 1895 (Admin) and Price v Humphries [1958] 2 QB 353***)

Decision and Reasons

Issue 1.

57. The statutory framework is clear. Section 29(1) of the Criminal Justice Act 2003 provides that criminal proceedings are instituted when a written charge is issued. This interpretation has been authoritatively confirmed by the Divisional Court in ***DPP v McFarlane [2019] EWHC 1895 (Admin)***, where it was held, at paragraph 23, that '[t]hat is what subsection (1) of section 29 plainly says'.

58. The Defendant's submissions accurately reflect the binding nature of that authority.

59.The Prosecution of Offences Act 1985, section 15(2) (ba), reinforces this position, confirming that where a relevant prosecutor issues a written charge and requisition, proceedings are instituted at that moment. Parliament, when introducing section 29 CJA 2003, deliberately amended related statutory provisions to ensure coherence and consistency across the statutory scheme.

60. I accept the defence submission that the term 'institute' cannot bear different and contradictory meanings across these statutes. The principle of coherence in statutory construction demands consistency.

61. The Defendant is also correct to rely upon the guidance of the Court of Appeal in R v Lambert (Goldan) [2010] 1 WLR 898, where section 15(2) was used as an interpretative aid in relation to section 117 of the Terrorism Act 2000. The Crown's contention that section 15(2) is irrelevant is unsustainable and inconsistent with Lambert (Supra).

62. The Defendant further relies on the decisions in ***R v Bull (1994) 99 Cr App R 193 and R v Welsh (Christopher) (Junior) [2016] 1 Cr App R 8***, both of which confirm that section 25 of the Prosecution of Offences Act 1985 does not and cannot save defective proceedings instituted without the requisite consent. I agree with that analysis.

63. The effect of section 25(2) is limited to enabling arrest and remand in overnight custody prior to consent, but it does not validate the ***institution of proceedings*** where consent is lacking. This principle applies here.

64. The authorities cited by the Defendant further reinforce the central proposition that proceedings are instituted at the moment a written charge and requisition is issued, not when a defendant first appears before a court or enters a plea.

65. I am fortified as to my conclusion by the decision in *Price v Humphries [1958] 2 QB 353* which remains binding authority and confirms that summary proceedings are instituted at the moment of the laying of the information and issue of a summons. The written charge procedure under section 29 CJA 2003 is the modern statutory equivalent of that mechanism.

66. In written submissions the Crown conceded that the authorities upon which they rely relate only to offences triable on indictment and not summary only offences. Their

submission that the same principles should apply is, in my view, flawed, it is significant that, unlike the defence, the Crown was conspicuously unable to point to any authority to support their submissions (See *DPP v McFarlane* and *Price* supra for defence authority)

67. Not only does the submission defy logic, asking the court to accept that one statutory interpretation in relation to the meaning of instituting proceedings bears different and contradictory meanings across different statutes, but it fails to recognise, as a long line of other authoritative decisions do, that there are legal, practical and public policy reasons for the distinction between the process involved in indictable offences and summary only offences. I agree with the analysis of the defence in this regard. So much is clear by Parliament's decision to enact s29 CJA 2003 and to amend consequential statutory provisions to enable its proper functioning in streamlining summary only cases.

68. As to the public policy rationale for a different approach when dealing with summary only offences, it is clear that in the indictable context, consent obtained after a first appearance but before the court engages with plea or jurisdiction is consistent with the statutory purpose, since such cases progress through staged hearings, including plea before venue and sending, with a view to being tried at a later stage. By contrast, summary proceedings are, as their name suggests, designed to be expeditious and straightforward.

69. They are instituted for the efficient administration of justice, here, by way of written charge and requisition, with no preliminary stage equivalent to plea before venue or a sending.

70. This position is underscored by the submission (adopted by the defence at the hearing) that the fact the accompanying documents to the written charge and requisition under section 29 of the Criminal Justice Act 2003 provide the defendant with an expectation that they should be in a position to enter a plea and potentially be tried and / or sentenced on the day of the first hearing.

71. Indeed, in respect to some cases the prosecution can serve its evidence in the form of section 9 CJA 1967 statements and seek to prove the case in the absence of objection at that first hearing, the court may proceed to trial if.

(i) The prosecution has served compliant section 9 statements.
(ii) The defence does not object. And
(iii) The court is satisfied that the case is ready and just to proceed.

72. This is not uncommon for very straightforward matters and underscores the distinction parliament has drawn between the regimes. In fact, in some less serious matters the defendant can enter a plea by post and the case disposed of without ever having to appear.

73. These procedural differences are not to be seen in the abstract; they are deliberate choices by parliament reflecting the different nature of the proceedings and the statutory

regime underpinning the institution of proceedings in respect of each complies with that rationale.

74. It is therefore entirely consistent with both statutory wording and legislative purpose that consent must be obtained at the point of institution of proceedings (or before) in summary only cases, rather than being deferred.

75. Thus, I am satisfied that proceedings against this defendant were instituted on 21st May 2025 when the written charge was issued. At that time, the necessary consent and permission required by law had not been obtained. As such, the proceedings were instituted unlawfully and are null.

76. I therefore hold that the Crown has failed to establish jurisdiction. The proceedings instituted in this case are invalid and the Court has no jurisdiction to hear them.

Issue 2

77. Given that my decision on the first challenge results in the court is without jurisdiction it is not necessary and of little utility to deal extensively with the second submission as it is now redundant.

78. However, for completeness and in case I am wrong on the first issue, I will briefly deal with the alternative challenge to jurisdiction

79. The Defendant contends that the charging decision was made by the police, and not the CPS, contrary to statute and to the provisions of the Director's Guidance on Charging.

80. That contention is, in my view, flawed and incorrect.

81. The chronology above makes clear that while the charge itself was issued by the police, the decision to charge was made by the Crown Prosecution Service (CPS), in full compliance with the Director's Guidance. That guidance as well as the statutory provisions that underpin it make clear that the focus is on the decision maker rather than the procedural or administrative steps taken in order to issue the notices.

82. The relevant provisions of the Guidance include:

> *3 a. Annex 1, paragraph 2: Prosecutors are responsible for making charging decisions in all cases not allocated to the police.*
>
> *3. b. Annex 2, paragraph 1: Where a case must be referred to a prosecutor for a charging decision, the referral must be made in accordance with the Guidance.*
>
> *3. c. Paragraph 4.29: In cases referred to a prosecutor, where the decision is to charge, the police must comply with that decision promptly, unless the matter is escalated for review.*

83. In this case, charging advice was sought by the police on 19th May 2025.

84. The CPS made the charging decision on 20th May 2025 and communicated that decision to the police.

85. On 21st May 2025, the CPS instructed the police to issue a postal charge and requisition.

86. Thus, **the charging decision** was not made by the police. It was made by the CPS in accordance with the Director's Guidance on Charging. The procedural steps taken thereafter are consistent with the Guidance and do not give rise to any procedural irregularity.

87. I therefore reject the challenge under this heading.

Orders

88. I find that these proceedings were not instituted in the correct form, lacking the necessary DPP and AG consent , within the 6 month statutory time limit set by S127 MCA 1980, that time limit requires consent to have been granted at the time of or before the issue of the postal requisition and charge pursuant to SS 29 /30 CJA 2003.

89. Consequently, the charge is unlawful and null, this court has no jurisdiction to try the charge.

Paul Goldspring
Senior District Judge (Chief Magistrate) for England and Wales
Westminster Magistrates' Court

26.9.25