Neutral Citation Number: [2026] EWHC 292 (Admin)

Case No: AC-2025-LON-002122

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/02/2026

Before :

PRESIDENT OF THE KING'S BENCH DIVISION
THE HON. MR JUSTICE SWIFT
THE HON. MRS JUSTICE STEYN DBE

- -

Between :

THE KING **(on the application of HUDA AMMORI)**	**Claimant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
- and -	
(1) UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM **(2) AMNESTY INTERNATIONAL UK** **(3) LIBERTY**	**Interveners**

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

Adam Straw KC and Rabah Kherbane (instructed by **Hickman & Rose Solicitors**) for the **First Intervener**
Tom Hickman KC, Jessica Jones and Rosalind Comyn (instructed by **Deighton Pierce Glynn**) for the **Second and Third Interveners (written submissions only)**

Hearing dates: 26-27 November and 2 December 2025

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OPEN JUDGMENT

PRESIDENT OF THE KING'S BENCH DIVISION :

1. This is the judgment of the court.

A. Introduction

(i) The decision, the claim and the proceedings

2. On 5 July 2025 the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025 ("the Order") came into force. The Order had been made on 4 July 2025, having been laid before Parliament by the Home Secretary on 30 June 2025, approved by the House of Commons on 2 July 2025 and by the House of Lords on 3 July 2025. The Order added the names of three organisations to the list of proscribed organisations at Schedule 2 to the Terrorism Act 2000 ("the 2000 Act"). One of those organisations was Palestine Action.

3. The decision to add Palestine Action to the list of proscribed organisations was made by the Home Secretary on 20 June 2025. On 23 June 2025, a week before the Order was laid before Parliament, she provided a statement to the House of Commons which included the following:

> "I have decided to proscribe Palestine Action under section 3 of the Terrorism Act 2000. A draft proscription order will be laid in Parliament on Monday 30 June. If passed, it will make it illegal to be a member of, or invite support for, Palestine Action.
>
> This decision is specific to Palestine Action and does not affect lawful protest groups and other organisations campaigning on issues around Palestine or the Middle East.
>
> The disgraceful attack on Brize Norton in the early hours of the morning on Friday 20 June is the latest in a long history of unacceptable criminal damage committed by Palestine Action. The UK's defence enterprise is vital to the nation's national security and this Government will not tolerate those that put that security at risk. Counter Terrorism Policing are leading the criminal investigation into this attack. It is important that this process is free from interference and the police are allowed to carry out their important work gathering evidence and working to bring perpetrators to justice.
>
> Since its inception in 2020, Palestine Action has orchestrated a nationwide campaign of direct criminal action against businesses and institutions, including key national infrastructure and defence firms that provide services and supplies to support Ukraine, the North Atlantic Treaty Organisation (NATO) 'Five Eyes' allies and the UK defence enterprise. Its activity has increased in frequency and severity since the start of 2024 and its methods have become more aggressive, with its members demonstrating a willingness to use violence. Palestine Action has also broadened its targets from the defence industry to

include financial firms, charities, universities and government buildings. Its activities meet the threshold in the statutory tests established under the Terrorism Act 2000. This has been assessed through a robust evidence-based process, by a wide range of experts from across government, the police and the Security Services.

In several attacks, Palestine Action has committed acts of serious damage to property with the aim of progressing its political cause and influencing the Government. These include attacks at Thales in Glasgow in 2022; and last year at Instro Precision in Kent and Elbit Systems UK in Bristol. The seriousness of these attacks includes the extent and nature of damage caused, including to targets affecting UK national security, and the impact on innocent members of the public fleeing for safety and subjected to violence. The extent of damage across these three attacks alone, spreading the length and breadth of the UK runs into the millions of pounds.

During Palestine Action's attack against the Thales defence factory in Glasgow in 2022, the group caused over a million pounds worth of damage including to parts essential to submarines. The Sheriff, in passing custodial sentences for the attackers' violent crimes, spoke of the panic among staff who feared for their safety as pyrotechnics and smoke bombs were thrown in the area where they were evacuating. He further recorded the extent of damage to legitimate business activities which included 'matters of nationwide security' and disputed the groups' claims its actions were non-violent. The attacks at Elbit Systems in Bristol and Intro Precision in Kent remain sub judice. To avoid prejudicing future criminal trials the Government will not comment on the specifics of these incidents.

Palestine Action has provided practical advice to assist its members with conducting attacks that have resulted in serious damage to property. In late 2023, Palestine Action released 'The Underground Manual'. The document encourages the creation of cells; provides practical guidance on how to carry out activity against private companies and government buildings on behalf of Palestine Action; and provides a link to a website which contains a map of specific targets across the UK. The manual encourages its members to undertake operational security measures to protect the covert nature of their activity.

Through its media output, Palestine Action publicises and promotes its attacks involving serious property damage, as well as celebrating the perpetrators.

Palestine Action's online presence has enabled the organisation to galvanise support, recruit and train members across the UK to take part in criminal activity and raise considerable funds

> through online donations. The group has a footprint in all 45 policing regions in the UK and has pledged to escalate its campaign.
>
> It is vitally important that that those seeking to protest peacefully, including pro-Palestinian groups, those opposing the actions of the Israeli government, and those demanding changes in the UK's foreign policy, can continue to do so. The right to peaceful protest is a cornerstone of our democracy. Should Parliament vote to proscribe, that right will be unaffected.
>
> What it will do is to enable law enforcement to effectively disrupt the escalating actions of this serious group. Only last month, Palestine Action claimed responsibility for an attack against a Jewish-owned business in North London where the glass-front of the building was smashed and the building and floor defaced with red paint including the slogan 'drop Elbit'. Such instances do not represent a legitimate or peaceful protest. Regardless of whether this instance itself amounts to terrorism, such activity is clearly intimidatory and unacceptable. It is one that has been repeated many times by this organisation at sites the length and breadth of the UK.
>
> I have considered carefully the nature and scale of Palestine Action's activity. Proscription represents a legitimate response to the threat posed by Palestine Action. The first duty of government is to keep our country safe, which is the foundation of our Plan for Change.
>
> Given significant public concern over recent activities by this group, including the incident in Brize Norton last week, and balancing the relevant considerations, I have decided to confirm this decision to proscribe to the House in advance of laying the relevant order."

4. The claimant, Huda Ammori, challenges the decision to proscribe Palestine Action. Ms Ammori was one of the co-founders of Palestine Action.

5. These proceedings were filed on 27 June 2025 and were issued on 30 June 2025. Permission to apply for judicial review was considered by Chamberlain J in a judgment handed down on 30 July 2025 ([2025] EWHC 2013 (Admin)) and by the Court of Appeal in a judgment handed down on 17 October 2025 ([2025] EWCA Civ 1311). The combined effect of the two judgments is that the claimant has been granted permission to apply for judicial review on four of the eight pleaded grounds of challenge. Those grounds are:

   (1) Ground 8: that the Home Secretary acted unlawfully by failing before deciding to lay the Order before Parliament to give Palestine Action the opportunity to make representations that it should not be proscribed;

(2) Ground 5: that when deciding to seek an order proscribing Palestine Action the Home Secretary failed to have regard to relevant considerations;

(3) Ground 6: that the decision to seek the Order proscribing Palestine Action was made by the Home Secretary in breach of her own policy on when she would exercise her discretion to seek an order proscribing an organisation; and

(4) Ground 2: that the decision to seek proscription was contrary to the Human Rights Act 1998 (the HRA) because it amounted to an unjustified interference with the rights protected by the European Convention on Human Rights (the Convention) under article 10 of the Convention, to freedom of expression and under article 11 of the Convention, to freedom of association and peaceful assembly; and further, amounted to discrimination contrary to article 14 of the Convention.

6. A preliminary issue raised in the proceedings was whether there was an alternative remedy to judicial review such that judicial review of the Home Secretary's decision to seek an order proscribing Palestine Action should, as a matter of discretion, be refused. The Home Secretary contended that the alternative remedy was the right of appeal to the Proscribed Organisations Appeal Commission (POAC) against a refusal to remove an organisation from the list at Schedule 2 to the 2000 Act (i.e. a decision to refuse to "deproscribe" that organisation). Chamberlain J and the Court of Appeal both concluded that the existence of the right to appeal to POAC did not have that consequence.

7. The decision of the Court of Appeal rested primarily on its analysis of the scheme established by Part II of the 2000 Act and its conclusion that a material distinction should be drawn between a decision by the Home Secretary in the exercise of her power under section 3(3) of the 2000 Act to proscribe an organisation as an organisation concerned in terrorism, and any subsequent decision by the Home Secretary to refuse an application to deproscribe that organisation in exercise of her power under section 4 of the 2000 Act. Where an application for deproscription is refused the applicant has a right of appeal to POAC under section 5 of the 2000 Act. Such an appeal must be decided by POAC applying "the principles applicable on an application for judicial review". There is then a further right of appeal from POAC to the Court of Appeal (see section 6 of the 2000 Act).

8. The Court of Appeal's conclusion was that the deproscription process in the 2000 Act was not intended to be a means of challenging the initial decision to proscribe. There was, therefore, no statutory procedure for challenging a decision to proscribe an organisation and no alternative remedy to judicial review of such a decision. The court summarised its reasoning at paragraph 56 of its judgment as follows:

> "In our judgment, the process of applying for deproscription, and an appeal against a refusal, is intended to deal with another situation. It is most obviously, though not exclusively, a means of bringing proscription to an end when circumstances have changed. An organisation may well have been an appropriate candidate for inclusion in the list of proscribed organisations at the time when the order adding it to the list of such organisations was made. However, circumstances may change, and the organisation may cease at some stage to be involved in terrorism.

> That explains why an organisation or an affected person may wish to apply for an order removing the organisation from the list of proscribed organisations. That explains why convictions may only be challenged in respect of the period on and after the date at which it should have been recognised that the organisation should no longer be proscribed. It may be that an applicant may advance the fact that the organisation should not have been proscribed in the first place as a ground for deproscription. The application is, however, for an order removing the organisation from the list. It is not an application challenging the order adding the organisation to the list. Put simply, the process in section 4 and 5 is concerned with whether an organisation should continue to be proscribed. It is not intended to be a means of challenging the initial decision to proscribe and does not provide for the removal of the consequences of an initial decision to proscribe an organisation."

(ii) The power to proscribe under the 2000 Act and the consequences of proscription

9. The consequence of the decision of the Court of Appeal is that the focus of this challenge is on the Home Secretary's use of her power to proscribe.

10. By section 3 of the 2000 Act the Home Secretary may proscribe an organisation if she believes the organisation is concerned in terrorism. "Concerned in terrorism" is defined at section 3(5) of the 2000 Act:

> "For the purposes of subsection (4) an organisation is concerned in terrorism if it –
>
> (a) commits or participates in acts of terrorism,
> (b) prepares for terrorism,
> (c) promotes or encourages terrorism, or
> (d) is otherwise concerned in terrorism."

11. "Terrorism" is defined at section 1 of the 2000 Act as the "use or threat of action" when the use or threat is "designed to influence the government … or to intimidate the public or a section of the public" and "is made for the purpose of advancing a political, religious, racial or ideological cause". "Action" is also a defined term. By section 1(2) of the 2000 Act (so far as is material for present purposes) action must involve either "serious violence against a person" or "serious damage to property".

12. Any decision to proscribe an organisation must be made by the procedure specified in section 123(4) of the 2000 Act. The Home Secretary must lay an order before Parliament which takes effect only when approved by resolution by each House of Parliament (pursuant to an affirmative resolution procedure).

13. Proscription under the 2000 Act is an event defined by its consequences. Three offences in Part II of the 2000 Act are a direct consequence of proscription. By section 11 of the 2000 Act it is an offence to belong, or profess to belong, to a proscribed organisation. By section 12 of the 2000 Act it is an offence to invite support for a proscribed organisation (other than the provision of money or property, which is not an offence

under section 12 but is an offence under section 15 of the 2000 Act). The offence under section 12 includes expression of "an opinion or belief that is supportive of a proscribed organisation" when what it is said recklessly "as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation". By section 12, it is also an offence to arrange a meeting that is to support a proscribed organisation, further its activities, or be addressed by any person who belongs or professes to belong to a proscribed organisation. By section 13 of the 2000 Act it is an offence to wear any clothing in public or display any article in public in such a way "as to arouse reasonable suspicion that [the person] is a member or supporter of a proscribed organisation".

14. There are further consequences of proscription in respect of property. Two definitions are important for this purpose. First, by section 1(5) of the 2000 Act, action taken "for the purposes of terrorism" includes "action taken for the benefit of a proscribed organisation". Secondly, by section 14 of the 2000 Act the definition of "terrorist property" includes "money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation)". Taken together these definitions ensure that the offence at section 15 of the 2000 Act concerning fundraising, the offence at section 16 of the 2000 Act relating to the use and possession of property for the purposes of terrorism, the offence at section 17 of the 2000 Act concerning arrangements for the provision of funding for the purposes of terrorism and the offence at section 18 of the Act which is headed "money laundering", and concerns retention or control of property on behalf of another when that property is terrorist property, all apply to the property of proscribed organisations.

(iii) Palestine Action

15. Although the claimant has filed several witness statements and exhibits in support of her application for judicial review, that evidence provides surprisingly little information about Palestine Action as an organisation.

16. Palestine Action was founded in 2020. The claimant was one of its co-founders. In her evidence, the claimant describes Palestine Action's purpose in a number of different ways. In her first statement she states that Palestine Action is:

> "…a direct action protest group aimed at preventing military targets in the UK from facilitating gross abuses of international law."

In her second statement the claimant says:

> "Palestine Action's aim is to take direct action against Israel's arms trade in Britain and to stop the complicity of corporate actors in atrocity crimes."

She also refers to a statement on Palestine Action's website which states:

> "Palestine Action targets corporate enablers of the Israeli military-industrial complex and seeks to make it impossible for these companies to profit from the oppression of Palestine."

The main target of Palestine Action's activities in the United Kingdom is Elbit Systems UK Limited ("Elbit"). The claimant states that "stopping Elbit" is Palestine Action's "main target".

17. Elbit is a defence technology company. With its subsidiaries, Elbit operates at 16 sites in the United Kingdom. Elbit is itself a subsidiary of Elbit Systems Limited, an Israeli-based defence contractor. Elbit Systems Limited is Israel's largest military manufacturer and is a major supplier of military equipment to the Israel Defence Forces. It is clear that Palestine Action takes its objective of "stopping Elbit" seriously and interprets it widely. Palestine Action's direct action is directed at Elbit's premises across the United Kingdom. It is also directed at any other company or organisation considered by Palestine Action to enable Elbit's business in the United Kingdom. Examples include banks, insurance companies and landlords. The National Police Co-ordination Centre is a cross-constabulary organisation which provides intelligence briefings to police forces. The information provided by that organisation is that Palestine Action has undertaken 385 direct actions since 2020. In substance, "stopping Elbit" is an attempt by Palestine Action to close the company down and prevent its parent company, Elbit Systems Limited, from operating in the United Kingdom or being assisted by any other business that operates here.

18. The extent and nature of Palestine Action's membership and organisation is largely unexplained. A page on Palestine Action's website is headed "Newsletter". The "Newsletter" invites people to "Join Palestine Action". The claimant's evidence explains Palestine Action's social media presence but does not explain how many have taken up the invitation to join Palestine Action unless this is the same cohort as the 20,000 people who are said to be on the organisation's mailing list. Those who do fill in the "Join Palestine Action" form are asked to state if they are "interested in taking direct action against Israel's arms trade" and whether they have "taken part in a Palestine Action direct action workshop". The claimant's evidence does not explain how many people have signed up to take direct action or to receive training.

19. Information about how Palestine Action is organised and run is also sparse. The claimant describes Palestine Action's organisation as "grassroots, non-hierarchical" and as having "no formal structure". The absence of a "formal structure" however is not the same as the absence of any structure at all. The claimant does not explain her own role in the organisation, other than as a spokesperson, nor does she explain the extent to which Palestine Action prepares for, co-ordinates, or assists the operations undertaken by its members. Some emphasis was placed on the fact that there is no need to be a member of Palestine Action to act in the name of the organisation. This is a point made on the website page that invites people to join the organisation and it is a point made in the "Underground Manual" published on the Palestine Action website. We refer further to this Manual and its contents at paragraph 24 and following below. It is possible, up to a point, that Palestine Action is a form of loosely structured organisation that permits people to act independently or as a "franchise" under cover of Palestine Action's "brand". It is not plausible that this is the whole story. It is entirely unlikely that an organisation committed to achieve an objective through direct action would do nothing to direct that action to its best effect and would have no structure to promote and guide its direct action.

20. A further matter linked to this concerns Palestine Action's finances. The claimant's evidence refers to Palestine Action raising funds through its website, from individual

donations, and from selling merchandise. She gives no explanation about how those funds are used. Given the objectives of the organisation however, it is a reasonable inference that the major part of its funds are directed to supporting direct action, adding further support to the point made above, that Palestine Action's organisation, even if "non-hierarchical", provides direction and support to its campaign of direct action.

21. The general form of Palestine Action's public actions is well known. What Palestine Action refers to as "direct action" comprises for the most part various types of criminality including acts of criminal damage such as spray painting, damaging buildings or other property and destroying or attempting to destroy property. The submission for the claimant is, in substance, that these actions amount to no more than acts of protest that are legitimate in a democratic society. In this vein, the claimant contends that Palestine Action's campaign of direct action prior to proscription was in the tradition (by way of example) of Gandhi's campaign against the Indian Salt Act 1882, or the civil rights movement in the United States of America in the 1950s and 60s. The submission rests on an assumption that direct action undertaken by Palestine Action was synonymous with civil disobedience. This is the premise for the general contention made by the claimant that the Home Secretary's decision to proscribe Palestine Action was an "extreme" decision "repugnant to the traditions of the common law".

22. The premise for this contention is false. In his judgment in *Cuadrilla Bowland Limited v Persons Unknown* [2020] EWCA Civ 9, [2020] 4 WLR 29, Leggatt LJ explained what civil disobedience was:

> "97. Civil disobedience may be defined as a public, non-violent, conscientious act contrary to law, done with the aim of bringing about a change in the law or policies of the government (or possibly, though this is controversial, of private organisations): see e.g., John Rawls, *A Theory of Justice* (1971) p. 364. Where these conditions are met, such acts represent a form of political protest, both in the sense that they are guided by principles of justice or social good and in the sense that they are addressed to other members of the community or those who hold power within it. The public nature of the act – in contrast to the actions of other law-breakers who generally seek to avoid detection – is a demonstration of the protestor's sincerity and willingness to accept the legal consequences of their actions. It is also essential to characterising the act as a form of political communication or address. Eschewing violence and showing some measure of moderation in the level of harm intended again signal that, although the means of protest adopted transgress the law, the protestor is engaged in a form of political action undertaken on moral grounds rather in mere criminality."

These observations resonate with what the courts have said on other occasions. See for example Lord Hoffman's observations in *R v Margaret Jones and others* [2006] UKHL 16, [2007] 1 AC 136 at paragraphs 84 to 89.

23. The core hallmarks of civil disobedience, namely the objective of seeking a change in the law or government policy, an approach to law breaking that is characterised by

restraint and acceptance of the legal consequences of their actions, are emphatically not the hallmarks of Palestine Action's campaign. Its campaign is intended to close down the operations of a company pursuing a lawful business. The campaign has not been pursued with restraint. The wide range of targets is significant. It lays bare that Palestine Action's campaign and pursuit of criminal damage is designed to intimidate the persons and businesses targeted so they end their commercial relationships with Elbit. Palestine Action is not engaged in any exercise of persuasion, or at least not the type of persuasion that is consistent with democratic values and the rule of law.

24. In this context, the content of Palestine Action's Underground Manual published on its website in late 2023 is revealing. The Palestine Action website provides opportunities for training, referring to "Direct Action Training Days" and to "Online Crash Courses". The claimant has provided no evidence of the nature of the training provided through these courses or the scale of Palestine Action's training programmes. The Underground Manual however provides an insight both into the nature of the direct action that Palestine Action promotes and the risks that are likely to arise in consequence. The Underground Manual is aimed at those who have signed up as members of Palestine Action and those who, though not "members", are attracted to the possibilities and opportunities this type of action presents. The Underground Manual emphasises the importance of covert action. Members of the public reading it are encouraged to form "cells" of "trusted people". They are encouraged and told how to take security precautions when communicating, when using the internet, and when surveying "target" sites. The Underground Manual includes advice on how to avoid being identified or arrested and how to destroy incriminating material. The Underground Manual is also a source of advice. Within it there is a link to a list of suggested targets. It also refers to "a list [on the Palestine Action website] of secondary and primary targets who enable and profit from the Israeli weapons industry in Britain". Under the heading "Plan your action" the Underground Manual advocates "creativity". It says:

> "If your inexperienced it's best to start simple and build your way up. Dream up crazy ideas in your cell, remember that your action is to destrupt, damage or destroy your target". [sic]

The Underground Manual then refers to paint spraying. It recommends "smashing stuff … with an efficient sledgehammer in your hand" as something that is "very quick" and can cause "quite a bit of damage". It suggests targeting expensive equipment or blocking drains with concrete and recommends "breaking in" and damaging contents as "obviously a very effective tactic". The Underground Manual encourages those involved to record their actions so Palestine Action can publicise them and then contact the cell again to suggest other targets and pass on "tips and tricks".

25. It is plain then that through the Underground Manual, Palestine Action encourages its members and others who align with it to plan and cause damage to property. There is no suggestion of restraint or proportionality. On the contrary, and entirely consistent with its objectives, Palestine Action encourages the causing of more, rather than less harm.

26. The claimant says in her evidence that the Underground Manual is written "in a deliberately dramatic and tongue-in-cheek way". That is as may be. The style in which the Underground Manual is written however neither hides nor diminishes its significance. It contains an unmistakable invitation to individuals to group together to

commit acts of criminal damage. This is not limited to symbolic acts. Palestine Action encourages those who read the Underground Manual to "be creative" and to "disrupt damage or destroy" targets without restraint.

27. This is significant. Anyone who follows the Underground Manual, and damages property, particularly if equipped with an "efficient sledgehammer", runs the risk that something worse will happen. That risk is all the greater, because the Underground Manual encourages everyone to take matters into their own hands.

28. There is a further point. As we have said, the evidence from the National Police Co-ordination Centre is that Palestine Action has conducted 385 actions. The claimant relies heavily on the fact however that by the time the Home Secretary made her decision to proscribe, only three incidents were assessed to have resulted in "serious damage to property" that amounted to "action" of the type referred to in section 1(1) of the 2000 Act, capable of comprising an act of terrorism. These incidents were the incident in 2022 at the premises of Thales SA in Glasgow; the incident in June 2024 at the premises of Instro Precision in Kent; and the incident in August 2024 at the Elbit premises in Bristol. All three incidents were referred to by the Home Secretary in her statement to Parliament on 23 June. The (implicit) suggestion appears to be that these three incidents were outliers both as to scale and extent, and were not therefore indicative of Palestine Action's activities. That is not an inference we are able to draw, having regard to the absence of evidence from the claimant about Palestine Action's organisation and structure or the way in which, or the extent to which Palestine Action planned these incidents or how this differed from the way in which it planned or executed any of its other actions. Absent such evidence it is difficult to know whether those three incidents were genuine outliers or whether they were events at the end of a spectrum of activities, the whole of which Palestine Action fully embraces.

29. The claimant in her case in these proceedings has sought to portray Palestine Action as a "non-violent" organisation. This is not a sustainable proposition. It rests on the premise that damage to property, regardless of extent, does not involve the use of violence. That is a view that many would struggle to comprehend, and we for our part are unable to accept, especially when such damage goes further than the merely symbolic. The proposition also ignores the real risk of injury (to members of the public) which may occur when individuals go equipped with sledgehammers to do damage to property as Palestine Action suggests they should do, and are intent at the same time on avoiding detection.

30. It follows from what we have said that the picture the claimant seeks to paint of an ordinary protest group engaged in activities that fall within the well-established tradition of peaceful protest is not an accurate picture. It also follows that the starting point for any consideration of the legality of the Home Secretary's decision to proscribe Palestine Action is significantly more complicated than the submission for the claimant would otherwise suggest.

(iv) The Home Secretary's decision to proscribe

31. The Home Secretary's statement to Parliament that she had decided to proscribe Palestine Action was made, as we have said on 23 June 2025, shortly after the incident in which three Palestine Action activists broke into RAF Brize Norton and damaged two military planes with spray paint. The Home Secretary's decision to proscribe

however, which appears from the documents to have been made no later than 20 June 2025, had been under consideration since the end of 2024.

32. Jonathan Sinclair is the Director, National Security in the Home Office's Homeland Security Group. In a witness statement made in these proceedings, he states that, on 9 December 2024, the Home Secretary received advice on organisations that could be considered for proscription, including Palestine Action. On 10 February 2025, the Home Secretary asked that the candidate organisations for proscription, including Palestine Action, be considered by the Proscription Review Group, a cross-departmental group. Those represented on the Proscription Review Group included "Counter Terrorism Policing" (CTP) which comprises specialist police officers from many police forces.

33. In anticipation of the Proscription Review Group meeting:

(1) The Joint Terrorism Analysis Centre (JTAC) produced a report dated 7 March 2025 (the JTAC assessment). JTAC comprises counter-terrorism experts from the United Kingdom intelligence agencies, police forces and government departments;

(2) CTP produced the "General Report – Palestine Action" (the CTP report) dated 5 March 2025 together with a letter dated 6 March 2025;

(3) The Foreign Commonwealth and Development Office provided an assessment dated 11 March 2025;

(4) A community impact assessment dated 6 March 2025 was prepared by the Department of Housing, Communities and Local Government, amongst others.

34. In summary, JTAC concluded that Palestine Action met the requirements under section 3(5) of the 2000 Act to be an organisation concerned in terrorism:

(1) Although most of its activity could not be classified as terrorism within the definition in section 1 of the 2000 Act, JTAC assessed that Palestine Action had "commit[ted] or participate[d] in acts of terrorism" to the extent of the attacks at Thales, Glasgow on 1 June 2022, at Instro Precision (a subsidiary of Elbit) in Kent on 17 June 2024, and at Elbit in Bristol on 6 August 2024. JTAC noted that those participating in the Bristol attack had "entered the [Elbit] warehouse, using weapons including sledgehammers, axes and whips" and "during the attack two responding police officers and a security guard were assaulted and suffered injuries. One police officer had been assaulted with a sledgehammer and sustained a serious back injury";

(2) Palestine Action prepared for terrorism by publishing the Underground Manual which JTAC concluded provided "… practical advice and advocates for serious property damage" and could "increase the capability of cells to conduct actions constituting preparation for terrorism";

(3) Palestine Action promoted or encouraged terrorism because it had "publicised the 6 August terrorist attack [at Elbit in Bristol] and celebrated its perpetrators" referring to them as the "Filton 18" and "as political prisoners" and encouraged the public to send messages of support to them. JTAC noted that Palestine Action had not published video footage of the assaults that had occurred, only of the damage to property "consistent

with its previous practice". JTAC also stated that Palestine Action had "shared media relating to further incidents of property damage which JTAC assesses to have been carried out in accordance with [Palestine Action's] political cause";

(4) Palestine Action continued to conduct direct action activities and in the next 12 months "… will conduct further activity constituting serious property damage in an act of terrorism".

35. The CTP report also referred to Palestine Action's direct action activity. Particular reference was made to the attacks at Bristol and in Kent, which at that time were the subject of ongoing police investigations. The report considered the "operational impact of proscription" by reference to what it referred to as the "limitations" of the legislation that applied absent proscription and the "benefit" of proscription, namely: the criminal offences under sections 11, 12 and 13 of the 2000 Act, stating that "… the availability of these additional … offences would increase prevention and disruption opportunities against those subjects who would continue to engage with [Palestine Action] post proscription"; and the provisions in the 2000 Act that defined terrorist property as including the resources of a proscribed organisation and defined action "for the purposes of terrorism" as including action for the benefit of a proscribed organisation.

36. The Proscription Review Group met on 13 March 2025. The evidence filed by the Home Secretary in these proceedings includes a note summarising the discussion on that occasion. So far as material for present purposes the following matters emerge. First, the Proscription Review Group considered whether Palestine Action was "concerned in terrorism" as defined in section 3(5) of the 2000 Act. It concluded that Palestine Action committed or participated in acts of terrorism relying on the JTAC assessment of the three attacks in Glasgow, Kent and Bristol. The Proscription Review Group also concluded, again by reference to the JTAC assessment of the Underground Manual, that Palestine Action prepared for terrorism. The Proscription Review Group further concluded, again by reference to the JTAC assessment, that Palestine Action promoted or encouraged terrorism.

37. The Proscription Review Group then considered the "exercise of discretion". By section 3(3) and (4) of the 2000 Act, if the Home Secretary believes an organisation is concerned in terrorism she has a power not a duty to proscribe. The Home Secretary has a long-standing policy in respect of the exercise of the power, first stated in Parliament when the 2000 Act was before it as a Bill. The present statement of that policy, so far as material, provides as follows:

> "What is a proscribed organisation?
>
> Under the Terrorism Act 2000, the Home Secretary may proscribe an organisation if they believe it is concerned in terrorism, and it is proportionate to do. …
>
> …
>
> What determines whether proscription is proportionate?
>
> If the statutory test is met, the Home Secretary will consider whether to exercise their discretion to proscribe the organisation.

> In considering whether to exercise this discretion, the Home Secretary will take into account other factors including:
>
> [1] the nature and scale of the organisation's activities
>
> [2] the specific threat that it poses to the UK
>
> [3] the specific threat that imposes to British Nationals overseas
>
> [4] the extent of the organisation's presence in the UK
>
> [5] the need to support other members of the International community in the global fight against terrorism."
>
> [numbers in square brackets added]

38. When considering discretionary factor [1], the Proscription Review Group considered (1) the matters that had led it to conclude that Palestine Action was an organisation concerned in terrorism; and (2) a further JTAC assessment that

> "…over the next 12 months [Palestine Action] will conduct further activity constituting serious property damage in an act of terrorism".

39. The Proscription Review Group then considered "additional discretionary factors" namely:

(1) that proscription would provide "significant disruptive benefits beyond the current policing powers";

(2) that proscription "would be proportionate to support police efforts to mitigate the threat posed and would discredit [Palestine Action's] brand and its aims to radicalise others to engage in serious high-level activity";

(3) the impact of Palestine Action's activity "on wider UK defence equities, including UK efforts to support Ukraine";

(4) that proscription could place a burden on the police to enforce the offences at sections 11-13 of the 2000 Act;

(5) that the severe penalties for the offences under sections 11-13 of the 2000 Act would "deter rather than embolden individuals"; and

(6) that proscription might undermine criminal proceedings arising from the attacks in Kent and Bristol.

40. The note of the meeting recorded the Proscription Review Group's recommendation as follows:

> "The PRG unanimously concluded that JTAC's assessment offers a basis on which the Home Secretary can hold a reasonable belief that based on its activity in the UK, Palestine Action is

> currently concerned in terrorism. The PRG concluded that the discretionary considerations weigh in favour of proscription and agreed that a robust comms strategy would be required to support a decision to proscribe, including sharing more detail on [Palestine Action's] terrorist activity in the public domain."

41. The recommendation of the Proscription Review Group was taken up in a written submission to the Home Secretary dated 26 March 2025, disclosed in these proceedings.

42. The submission first provided advice on the legal requirements for a decision to proscribe. The following was at paragraph 3 of the submission:

> "**Under section 3 of the Terrorism Act 2000 (TACT), you (Home Secretary) may proscribe an organisation if you believe it is concerned in terrorism.** That belief must be reasonable. You have discretion whether or not to proscribe (see Annex A for more detail)."
>
> [bold type as in the original]

So far as concerns the exercise of the discretion to proscribe, paragraph 3 of Annex A to the submission stated as follows:

> "**If you (Home Secretary) decide the statutory test is met (i.e. believe the organisation to be concerned in terrorism), you then need to consider whether to exercise your discretion to proscribe the organisation.** Having discretion means you are not required to proscribe an organisation that meets the statutory test and you may choose not to do so. In exercising your discretion, you should have regard to the following factors, which were set out to Parliament during the passage of TACT 2000, as well as any other relevant factors (including whether the circumstances justify the interference that proscription would have with the rights of those who are members of, or support the group, specifically ECHR Articles 10 (freedom of expression) and 11 (freedom of association)):
>
> - the nature and scale of an organisation's activities;
> - the specific threat that the organisation poses to the UK;
> - the specific threat that the organisation poses to British nationals overseas;
> - the extent of the organisation's presence in the UK; and
> - the need to support other members of the international community in the global fight against terrorism …."
>
> [bold type as in the original]

43. The submission document then considered, on the facts then known, the application of the "concerned in terrorism" test and the question of the Home Secretary's "discretion".

When dealing with the former, the submission followed the reasons and conclusions set out in the JTAC document and the note of the Proscription Review Group meeting, both of which were appended to the ministerial submission. The part of the ministerial submission dealing with the "discretionary considerations" included the following:

> "18. **The PRG unanimously agreed that the discretionary considerations weigh in favour of proscription**. [Palestine Action] is responsible for an escalatory campaign of direct action across the UK that has crossed the threshold into terrorism. Proscription would provide law enforcement with additional levers to disrupt [Palestine Action's] operations and critical infrastructure, operate overtly and use media platforms to project legitimacy and potentially radicalise people to its cause.
>
> …
>
> *Discretionary factors – detail*
>
> 21. **In discussing the nature and scale of [Palestine Action's] activity**, the PRG noted the evidence in JTAC's assessment … and CTP's report… that [Palestine Action's] intent and targets have broadened; its activity has increased in its frequency and seriousness.
>
> 22. **[Palestine Action] have been responsible for <u>at least</u> three incidents (Bristol, Kent, Glasgow) that involve serious damage to property amounting to terrorism**, and [Palestine Action] members have shown a willingness to use serious violence against individuals.
>
> 23. **Evidence collected through police investigations indicates [Palestine Action] members have intended to further escalate the seriousness of the activity**.
>
> 24. **The PRG also noted [Palestine Action's] intentions to radicalise certain individuals into their cause**. CTP highlighted that [Palestine Action] has openly promoted its cause and direct action methods on a podcast (which included promoting a strategy of extensive criminal damage in order to achieve a jury trial), and the police outlined their retrieval of investigatory evidence indicating an individual planned to enter prison on remand in order to radicalise the prison population.
>
> 25. [Palestine Action's] social media following is significant and there is a core of [Palestine Action] members that have, and are willing to, conduct what CTP reported [Palestine Action] themselves describe as '*high level*' action.
>
> 26. **The PRG also noted the impact of [Palestine Action's] activity on individuals, organisations and the UK Government's strategic defence aims.** Defence companies and

> Barclays have separately reported that individuals have experienced abuse, intimidation, and fear for personal safety while at work. Organisations have reported a financial impact from both the cost of damage and the cost of additional security measures. Discussions following the PRG with Ministry of Defence (MoD) officials have confirmed that while the total impact on the UK Defence Industry is low proportion, there is a risk that [Palestine Action] activity could reduce the attractiveness of working in the defence industry; defer [sic] foreign investment in the industry and inhibit the UK's ability to supply partners, including NATO and Ukraine.
>
> …
>
> *Operational impact*
>
> 30. **Proscription would enable operational partners to disrupt [Palestine Action's] activity and organisational infrastructure**. Proscription would provide law enforcement with additional levers to disrupt [Palestine Action's] operations and critical infrastructure, operate overtly and use media platforms to project legitimacy and potentially radicalise people to its cause.
>
> 31. **The PRG agreed that targeted financial sanctions against [Palestine Action] or individual members would not provide a sufficient level of disruption**. Proscription would set a stronger statement that the Government (and Parliament) consider [Palestine Action] to be terrorist and not a legitimate protest organisation as a result of its actions.
>
> 32. Without proscription, [Palestine Action] could continue to operate despite sanctions, with the ongoing risk that it radicalises more people to join and participate in acts of terrorism."
>
> [bold type as in the original]

44. Having considered the 26 March 2025 ministerial submission, the Home Secretary requested further information from CTP. That was provided in a further submission dated 2 April 2025 which noted that Palestine Action's activity had "escalated in seriousness" in the previous 18 months. A letter from the Permanent Secretary to the Home Secretary dated 14 May 2025 stated that the Home Secretary had accepted the recommendation to proscribe Palestine Action and wanted to proceed as soon as possible. However, an order for proscription was not sought as quickly as anticipated. The proscription process came to be paused when, at the end of May 2025, the Home Secretary requested information on Palestine Action's activities since the attack at Bristol in August 2024 and JTAC's opinion on Palestine Action.

45. That further information was provided in a further ministerial submission dated 4 June 2025 and documents attached to it. The submission reported that since August 2024 Palestine Action had been responsible for 158 "direct action events", 28 of which had

caused significant damage to property (i.e. either events where repair costs exceeded £50,000 or events that had required significant police presence). In the course of the direct action events 159 arrests had been made. The submission stated that the businesses affected by the direct action events were "consistent with [Palestine Action's] typical operating model", including Elbit, its subsidiaries, and companies that provided it with insurance or financial services. This conclusion was also reflected in the JTAC assessment annexed to the ministerial submission. That assessment referred to "coordinated direct action" i.e., attacks on a number of sites all on the same day, and noted that the tactics remained "typical of the group, including lock-ons, occupations, blockades and vandalism (most often damaging windows and spray paint)". On use of the power to proscribe the submission stated as follows (underlining and bold type as in the original):

> "11. As set out in the proscription advice of 26 March, the PRG unanimously agreed that [Palestine Action] is <u>currently</u> concerned in terrorism with three of the four criteria of the statutory test satisfied …. An organisation only needs to satisfy one criterion for you (Home Secretary) to reasonably believe it is concerned in terrorism. Not all of the groups on the list of proscribed organisations will have committed terrorist attacks, some may not have become involved in preparing for terrorism either having been proscribed solely for their involvement in promoting and encouraging terrorism. The PRG agreed that [Palestine Action] has been responsible for committing three terrorist attacks; [Palestine Action] is involved in preparing for terrorism (including through the distribution of its Underground Manual which provides practical advice to members on committing future attacks); and [Palestine Action] continues to promote and encourage terrorism (including through the glorification of the attacks it has committed and the perpetrators of those attacks).
>
> 12. **As was set out in the proscription advice (26 March), proscription would provide significant benefits to operational partners working to disrupt [Palestine Action's] activity**. Proscription would provide law enforcement with additional levers to disrupt [Palestine Action's] operation and critical infrastructure, operate overtly, and use media platforms to project legitimacy and potentially radicalise people to its cause."

46. On 20 June 2025, the Home Secretary confirmed her earlier decision to proscribe Palestine Action. On 23 June 2025 the Home Secretary made the written statement to Parliament set out above at paragraph 3 stating her intention to proscribe Palestine Action and the reasons for that decision. As stated above, the Order was laid before Parliament on 30 June 2025, was made on 4 July 2025, following approval by each House of Parliament, and came into effect on 5 July 2025.

B. Decision

(1) Ground 8. Procedural Fairness

47. The claimant's submission is that before laying the Order in Parliament the Home Secretary was required, at common law, to consult Palestine Action on her proposed decision. The claimant's case is that the obligation on the Home Secretary would have been met had she provided information to Palestine Action along the lines of that set out in the statement she made to Parliament on 23 June 2025. That information, so the submission goes, should have been provided to Palestine Action before any public announcement and the Home Secretary ought to have invited Palestine Action to respond and considered a response before deciding whether to go ahead and seek an Order for proscription.

48. The submission for the claimant that these requirements arose at common law rests in particular on the reasoning of the majority of the Supreme Court in *Bank Mellat v HM Treasury (No.2)* [2013] UKSC 39, [2014] AC 700.

49. In *Bank Mellat*, the court considered the legality of a direction made by HM Treasury in exercise of powers at section 62 of and Schedule 7 to the Counter-Terrorism Act 2008 ("the 2008 Act"). Under those powers the Treasury was permitted to issue directions to any United Kingdom business or person operating in the financial sector in relation to transactions or business relationships they had with people or entities based in a foreign state. Directions could be given only when activities of or in that foreign state gave rise to a risk of terrorist financing, or money laundering activities, or the risk of proliferation of nuclear, biological, or other weapons in that state. When the power to give a direction arises a direction to United Kingdom businesses may impose due diligence requirements, monitoring requirements, reporting requirements, or may require the relevant United Kingdom businesses to limit or cease business with the foreign person entities concerned. The form of the direction in exercise of the powers at Schedule 7 to the 2008 Act is a matter for the Treasury to decide depending on circumstances. Under the 2008 Act any direction given must be made by an Order and approved by affirmative resolution of each House of Parliament.

50. In *Bank Mellat* the Treasury had given a direction to United Kingdom businesses not to participate in any business with Bank Mellat, an Iranian bank. The complaint was that before the direction was made the Treasury ought to have given Bank Mellat the opportunity to respond to allegations that it provided banking services to companies involved in the Iranian Government's nuclear proliferation programme. The 2008 Act was silent on the matter of advance notice and whether opportunity should be given to make representations before a direction was made, but did provide (at section 63) a right of application to a court to set any direction aside.

51. The major part of the majority reasoning in *Bank Mellat* is in the judgment of Lord Sumption. Having referred to the speech of Lord Mustill in *R v Secretary of State for the Home Department ex p Doody* [1994] 1 AC 531, Lord Sumption observed (at paragraph 31) that:

> "…unless the statute deals with the point, the question whether there is a duty of prior consultation cannot be answered in wholly

> general terms. It depends on the particular circumstances in which each directive is made."

By "*deals with the point*" Lord Sumption was referring to whether the statute expressly or by necessary implication excluded the obligation to give prior notice and an opportunity to make representations (see his judgment at paragraph 32).

52. On the facts of that case Lord Sumption concluded first that the case was one where the obligation for prior notification and consideration of representations did arise because Bank Mellat was the target of the direction; that the direction "deprived" Bank Mellat of effective use of the goodwill in its English business, and use of its United Kingdom-based assets; that the decision to make the direction rested on matters which Bank Mellat could have disputed; and that there were no practical considerations standing in the way of the obligation. Secondly, and on consideration of the provisions in the 2008 Act (specifically, consideration of the right of access to a court under section 63 and the requirement that directions be made by Orders subject to Parliamentary approval), Lord Sumption concluded that nothing in the 2008 Act served to exclude the obligation to give prior notice and invite representations.

53. In the present case, the claimant further relies on paragraph 179 in Lord Neuberger's judgment in *Bank Mellat* where he said:

> "In my view, the rule is that, before a statutory power is exercised, any person who foreseeably would be significantly detrimentally affected by the exercise should be given the opportunity to make representations in advance, unless (i) the statutory provisions concerned expressly or impliedly provide otherwise or (ii) the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity. I would add that any argument advanced in support of impossibility, impracticality or pointlessness should be very closely examined, as a court will be slow to hold that there is no obligation to give the opportunity when such an obligation is not dispensed with in the relevant statute."

54. The claimant's overall submission is that in this case the obligation to give advance notice and the opportunity to provide representations was neither excluded by any provision in the 2000 Act nor excluded by any practical consideration.

55. By contrast the submission for the Home Secretary relies heavily on the judgment of the Court of Appeal in *Begum v Secretary of State for Home Department* [2024] EWCA Civ 152, [2024] 1 WLR 4269. That case concerned an order made under section 40(2) of the British Nationality Act 1981 by which the claimant was deprived of British nationality. So far as relevant for present purposes, the claimant contended that the order made was unlawful because she had had no opportunity to make representations before the deprivation decision was made. The Court of Appeal rejected that submission relying on two matters. The first was the legislative purpose of the deprivation power. On this the court said (at paragraph 106, emphasis as in the original):

> "at least a main purpose of section 40(2), if not the main purpose is to protect the public from a threat to national security".

The court was concerned that providing an opportunity to make representations before the decision was taken could frustrate that purpose. The second matter was the right of appeal to the Special Immigration Appeals Commission that arose when a deprivation decision was made on national security grounds. The court described that right of appeal as "distinctive" as it went beyond "merely a judicial review exercise": see generally at paragraph 109-112.

56. The thread that links both the reasoning and the outcomes in *Bank Mellat* and *Begum* is the six principles stated by Lord Mustill in *Doody*, at page 560D-G. Those six principles may be further distilled. Executive powers provided under statute will be exercised in a manner "fair in all the circumstances". What fairness requires must depend on the circumstances. The devil is in the detail. Regard must be had to all aspects of the nature and context of the decision being made. While, as Lord Mustill said, "fairness will very often require that a person who may be adversely affected by the decision will have the opportunity to make representations on his own behalf …", that is not an invariable rule. The requirements of fairness must be measured in specifics.

57. On consideration of the detail in this case, we do not accept the claimant's submission that fairness required the Home Secretary to give Palestine Action notice that she was minded to exercise her power to proscribe, to provide such reasons as she could, and to permit Palestine Action to have the opportunity to make representations.

58. The context in which this statutory power exists is a critical consideration. The power to proscribe an organisation rests on the Home Secretary's belief that it is concerned in terrorism and is, self-evidently, a power that engages the Home Secretary's responsibility to safeguard national security. A procedure for the exercise of this power is set out in Part II of the 2000 Act, requiring that an order be made by statutory instrument and requiring that the order must have the approval of both Houses of Parliament. The national security context means that a court should be cautious to supplement these procedural requirements. That is particularly so since any decision to require further procedural steps in this case would necessarily apply to all other occasions when the Home Secretary was considering use of the power to proscribe an organisation. There is nothing in section 3 of the 2000 Act to suggest that different procedural requirements could or should arise from case to case; and any such course would remove the certainty and clarity a decision-maker should have when it comes to knowing the conditions for the exercise of a statutory power.

59. In this respect, the present case is very different from the situation before the Supreme Court in *Bank Mellat*. In that case, the Treasury's power to make directions could arise in a range of circumstances not just circumstances touching on national security. Further, the matters on which directions could be made were broadly framed and concerned only business relationships and commercial transactions, and any direction likely to be made by the Treasury would be tailored to specific circumstances. All these matters no doubt informed Lord Sumption's conclusion that in that context the existence of an obligation to give prior notice and invite representations could not be answered "in wholly general terms".

60. A further respect in which the present case differs from the situation in *Bank Mellat* concerns the identity and nature of the person to be consulted. By the time the matter was considered by the Supreme Court it was apparent that the requirement contended for was one to consult a privately-owned commercial undertaking. When it comes to the power to proscribe under 3(3) of the 2000 Act, the situation is likely to be very different. By the time the obligation to give prior notice and seek representations arises the Home Secretary will already have formed, albeit provisionally, a reasonable belief that the organisation to be consulted is an organisation concerned in terrorism. Consultation with such an organisation is not an obvious or natural step. Various considerations might arise.

61. One issue could be the nature and extent of communication that would be consistent with the public interest. Any communication by any Home Secretary with such an organisation would necessarily be guarded. Even if the procedural obligation the claimant contends for existed there could be no question that any part of that obligation would require the Home Secretary to provide any information when it was contrary to the public interest to do so. However, even allowing for that derogation, the practical problem is that drawing the line between information that can be disclosed consistent with the public interest and information that cannot is always a matter of judgement and often a judgement that is very difficult. For this reason, it would be both expected and entirely permissible for any Home Secretary to adopt a precautionary approach were any communication to take place. Moreover, it is entirely conceivable in the context of a power to proscribe organisations considered to be concerned in terrorism that in some cases, and taking a precautionary approach, the Home Secretary might conclude that advance notice of a decision to proscribe could not to be given – i.e., that having regard to the public interest, there was no information that could be disclosed.

62. Another issue could be how the organisation (provisionally) believed by the Home Secretary to be an organisation concerned in terrorism might react to advance notice of proscription. Here too, given the range of situations in which exercise of the power to proscribe could arise, it is not difficult to imagine circumstances in which prior notification might cause the organisation concerned either to take steps to pre-empt the consequences of proscription or, for example, to bring forward activity that might be frustrated by proscription. These matters also weigh in favour of a precautionary approach to whether an obligation to give prior notice and seek representations should exist. In the course of submissions, it was suggested that little or no weight ought to attach to such possibilities because proscription is not (save in cases of urgency, see section 123(5) of the 2000 Act) an instantaneous process. This is not to the point. The fact that the procedure required by the 2000 Act takes some time and happens in Parliament in public, is not a reason to say that any passage of time is a matter of no importance at all.

63. Matters such as these, which arise on a comprehensive consideration of circumstances in which exercise of the power to proscribe an organisation could arise, weigh heavily against the existence of any procedural obligation beyond those on the face of Part II of the 2000 Act.

64. A further weighty practical consideration is how the proposed procedural requirement would work in practice. In *Bank Mellat* the position was relatively straightforward. Bank Mellat was a corporate entity with identifiable management both in Iran and in the United Kingdom. The position for any putative proscribed organisation is likely to

be very different. The power to proscribe is not limited to organisations either based in or with a presence in the United Kingdom, a point that is readily apparent from the list of proscribed organisations at Schedule 2 to the 2000 Act. Further, organisations that may be proscribed may come in many different shapes and sizes. By section 123 of the 2000 Act the term "organisation" is defined in a manner that is deliberately broad being stated to include "… any organisation or combination of persons". Any putative proscribed organisation may be less than forthcoming about how it should be contacted for the purpose of a consultation exercise. Further, it is plausible, again considering the range of circumstances in which the power to proscribe might fall to be used, to consider that in some circumstances such knowledge as the Home Secretary may have about an organisation's leadership and location may rest on sensitive intelligence material, the existence of which the Home Secretary might not wish to reveal. All these matters could affect the practice of consultation and for present purposes are therefore material to whether any such obligation exists.

65. Some indication of the practical difficulties that could arise are apparent in the circumstances of the present case, even though that case is a long way from the situation we have just suggested. How and to whom (on behalf of Palestine Action) prior notification could have been given is not clear. The claimant describes herself as a "co-founder" of Palestine Action but expressly states she is "not the leader". She provides no description of Palestine Action's organisation other than referring to the existence of "different working groups for different things". No doubt this lack of information about the leadership or organisation of Palestine Action is intentional and is consistent with the image of a covert organisation that is cultivated in the Underground Manual. Be that as it may, the circumstances of the present case, even if only on a small scale, indicate practical obstacles to any obligation to give prior notice of proscription and seek representations on the matter.

66. Drawing these matters together, comprehensive consideration of the nature and purpose of the power to proscribe and of the likely practical difficulties that would be consequent upon any general obligation to give prior notice and invite representations points only to the conclusion that no such obligation arises. This ground of challenge therefore fails.

67. We would add, only for the sake of completeness, that we have reached this conclusion without reference to the procedure in sections 4 and 5 of the 2000 Act for deproscription applications and appeals against refusals to deproscribe. Given the reasoning of the Court of Appeal at paragraph 56 of its judgment on the preliminary issue in this case, a challenge to a decision to proscribe is discrete from any issue of deproscription. Similarly, the availability of an appeal to POAC against a decision refusing a deproscription application is immaterial to the ground of challenge in this case.

(2) Ground 5. Failure to consider relevant matters

68. The claimant submits that four relevant considerations were disregarded by the Home Secretary:

(1) The Home Secretary "failed to have regard to the fact that [Palestine Action] sought to prevent conduct which it (and large sections of the British public) reasonably considered to constitute the aiding and abetting or facilitation of genocide and other serious violations of international law";

(2) The Home Secretary "failed to consider the adequacy of alternative criminal and civil measures to address any criminal conduct for which [Palestine Action] was responsible";

(3) The Home Secretary "failed to have regard to the fact that the proscription of [Palestine Action] would have a wider impact on freedom of expression including … speech in favour of direct action against arms companies supplying military equipment to Israel; and … acts of low-level direct action and civil disobedience against arms companies by persons not associated with [Palestine Action]";

(4) The Home Secretary "failed properly to consider the fact that the decision to proscribe [Palestine Action] amounted to differential treatment viz other protest groups using direct action".

69. As already stated, any decision to proscribe in exercise of the powers in Part II of the 2000 Act falls into two parts: first a decision that the organisation is concerned in terrorism (the condition at section 3(4) of the 2000 Act); and second, a decision to add the organisation's name to the list at Schedule 2 to the 2000 Act (the power at section 3(3) of the 2000 Act). The latter decision is taken by the Home Secretary in exercise of her discretion. As put, this ground of challenge goes only to the exercise of the discretion.

70. The legal principles relevant to this ground of challenge are well-established. In the exercise of a statutory discretionary power a decision-maker must have regard to any/all matters specified in the statute as relevant considerations. Beyond that, it is a matter for the decision-maker to decide what matters to take account of when exercising the discretionary power, subject to the usual public law requirements of relevance and rationality and subject to any requirement arising from any policy that the decision-maker has chosen to adopt. If, as in this case, the decision-maker has adopted a policy on relevant considerations, that policy should be followed absent good reason not to. The decision-maker must also have regard to matters that are "so obviously material" to the decision that to disregard them would be contrary to the intention of the statute: see *Re Findlay* [1985] 1 AC 318 per Lord Scarman at pages 333G to 334B.

71. This part of the claimant's case was not the focus of submissions at the hearing and is not the focus of her challenge. It is not a ground of challenge of any substance. As to Part (1) of the Ground it is obvious from the ministerial submissions that when taking her decision, the Home Secretary was well aware of the reasons Palestine Action relied on as justifying its campaign of direct action including damage to property. The remaining parts of this ground ((2) to (4)) collapse into repetition of arguments made in support of Ground 6 (that the Home Secretary failed to apply her policy) and Ground 2 of the challenge (that proscription was contrary to section 6 of the HRA). Each is simply a different way of contending that the claimant should succeed on Ground 2 or Ground 6 because the Home Secretary's decision amounted to an unjustified interference with Convention rights and was not made in accordance with her policy. Further, Parts (3) and (4) as formulated assume the validity of factual contentions the claimant relies on in support of her case under Ground 2. All this being so, this ground of challenge fails.

(3) Ground 6. The decision to proscribe was contrary to the Home Secretary's own policy

72. This ground of challenge also goes to the legality of the Home Secretary's exercise of discretion under section 3(3) of the 2000 Act. As stated above, the Home Secretary has adopted a policy in respect of the exercise of that discretionary power. The policy was first stated when the Terrorism Bill was before Parliament and has remained in materially the same form since. At the time the decision now under challenge was made, the policy on the exercise of the discretion appeared in a "policy paper" dated 27 February 2025 under the heading "What determines whether proscription is proportionate?". The policy is set out above at paragraph 37.

73. During the hearing two points arose on the meaning and effect of the policy. The first concerned the meaning of "proportionate". The policy states that the Home Secretary may proscribe an organisation if it is concerned in terrorism "… and it is proportionate to do", and also contains the section under the side-heading "What determines whether proscription is proportionate?". Both the claimant and the Home Secretary contended the reference to whether proscription was proportionate was a reference to "*Bank Mellat*-style" proportionality" – i.e. to paragraph 20 of Lord Sumption's judgment in that case and the passage in Lord Reed's judgment at paragraphs 68 – 82.

74. We do not consider that this submission properly captures the policy's meaning. The substance of the policy (under the heading "What determines whether proscription is proportionate?") is that the Home Secretary will decide whether to proscribe an organisation taking account of the five stated factors and/or other matters that are relevant. Four of the five factors stated on the face of the policy concern the characteristics of the organisation: its size, the activities it undertakes and the threat the organisation presents. The fifth stated factor engages consideration of foreign policy. In this context, taking those matters into account must mean weighing them against the consequences of proscribing the organisation. Since the objective of proscribing an organisation is that that organisation should cease to exist, the policy requires the Home Secretary to weigh the "benefits" that would achieve, by reference to the five stated factors or other factors of the same nature, against the "cost" of proscription. That cost is the impact of the proscription decision on others, for example in terms of interference with freedom of assembly and freedom of expression and speech and any other interests that are affected by the criminal offences that either arise on proscription or are otherwise brought into play (see above at paragraphs 13 and 14).

75. As a matter of common language this could be described as a consideration of proportionality, an evaluation of whether the objective sought justified applying the means that would achieve it. However, we hesitate to accept that this is, as the parties called it, "*Bank Mellat* proportionality".

76. In *Bank Mellat*, the Supreme Court considered both the application of section 6 of the HRA which imports the proportionality provisions written into each of the qualified Convention rights, including articles 10 and 11, and the application of paragraph 9(6) of Schedule 7 to the 2008 Act. The requirement for legality imposed by paragraph 9(6) is formulated simply by reference to the word "proportionate":

> "The requirements imposed by a direction must be proportionate having regard to the advice mentioned in paragraph 1(2) or, as

> the case may be, the risk mentioned in paragraph 1(3) or (4) to the national interests of the United Kingdom."

77. In that case the Supreme Court concluded that proportionality under the HRA required a four-step approach. At paragraph 74 of his judgment Lord Reed stated:

> "… it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter. … In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure."

78. When it came to paragraph 9(6) of the 2008 Act, Lord Reed concluded that three of these four steps had to be considered: see his judgment at paragraphs 77 – 82, in particular at paragraph 82:

> "In stipulating that the requirements must be proportionate having regard to the risk, paragraph 9(6) reflects a principle which has roots in the common law: there are a number of cases where administrative acts of an oppressive or penal character have been quashed as being disproportionate … In the context of legislation enacted in 2008, however, it seems to me that Parliament can be taken to have been aware of the development of a more structured approach to proportionality by United Kingdom courts, in particularly following *de Freitas*, and to have intended that that approach should be applied. I would therefore interpret paragraph 9(6) as stipulating that the requirements must be proportionate to the risk in the sense that they meet the second, third and fourth criteria listed in para 74 …"

79. However, it is important to note that when it came to paragraph 9(6) of Schedule 7 to the 2008 Act the court was identifying the test that the court itself should apply when scrutinising the legality of a decision. The context of a policy is very different. A policy is a guide a decision-maker provides for herself to inform and structure her own decision-making process. When a policy applies, compliance with that policy is a necessary condition of legality of the decision taken, but not a sufficient condition. Further, reading the reference to "proportionate" in this policy (or for that matter, any other policy) as requiring a decision that satisfied the test a court would apply (as *per* paragraph 82 of Lord Reed's judgment in *Bank Mellat*) tends to produce odd outcomes. One example is that the Home Secretary could only comply with her policy by reaching the substantive decision a court would consider to be lawful. Thus, compliance with the policy would collapse into a requirement for compliance with the general law and, to that extent the policy would contract-out the decision-maker's decision to the court. In

the present case, this would mean that Ground 6 of the claimant's challenge would largely collapse into the proportionality part of the Ground 2 HRA challenge. Another example is how, in order to reach her decision, the Home Secretary would go about affording herself the latitude a court could ordinarily afford a decision-maker when applying steps (2) – (4) of the *Bank Mellat* test?

80. Overall, we consider that the better approach is that the requirement in the policy to proscribe an organisation only if it is "proportionate" required the Home Secretary to approach the exercise of her discretion comprehensively: to appreciate the likely consequences of proscribing Palestine Action on its members/supporters and others; to understand the nature and significance of Palestine Action by reference to the five stated factors and/or other relevant considerations; and then to assess the need for proscription.

81. This is the approach we shall apply when considering this ground of challenge. However, even if we are wrong on this matter and the policy required the Home Secretary to apply the *Bank Mellat*-style approach that a court would apply when assessing legality, that would make no difference to the outcome of this case.

82. The second point on the meaning and effect of the policy is the meaning of "activities" as used in the first of the five factors stated on the face of the policy: "the nature and scale of an organisation's activities". The suggestion for the Home Secretary is that this was apt to refer to the totality of an organisation's activities rather than only such activities as amounted to terrorism within the definition in section 1 of the 2000 Act.

83. We disagree. As already said, a decision to proscribe under the 2000 Act requires two conclusions to be reached: the first is that the organisation is "concerned in terrorism"; the second is that as a matter of discretion the organisation should be proscribed. The policy applies at the second stage. Three reasons weigh against the Home Secretary's submission on this point. First, and since the policy is intended to inform use of the discretion at section 3(3) of the 2000 Act, the policy should be construed consistently with the Act. The power in the 2000 Act is to proscribe organisations because they act in ways that mean they are concerned in terrorism, not because of other activities that fall short of terrorism. The nature and scale of an organisation's activities ought therefore to concern only those activities that amount to terrorism. Second, the elements of the policy should be construed coherently. Each of the other four factors stated in the policy concerns the consequences of terrorist acts. The activities that comprise the nature and scale must be understood in the same way. Third, the purpose of the policy is clearly to constrain use of the discretion so that not all organisations that meet the concerned in terrorism requirement will be proscribed. This is apparent from the other four stated factors, and this too means that the activities referred to in the first factor are activities that amount to terrorism, not simply any activity that the organisation undertakes.

84. Drawing this together, the policy is an additional qualitative threshold to use of the power to proscribe. The policy requires the Home Secretary to assess the restrictions consequent on proscription of the organisation under consideration and determine whether they are, in a general sense, proportionate to the nature and scale of the threat presented by the organisation, to the extent that it is concerned in terrorism (and not by reference to other activities that it may undertake).

85. The claimant's case under Ground 6 is that the Home Secretary did not apply her policy because she failed to undertake a *Bank Mellat*-style proportionality assessment, failed properly to assess the effect of the five factors stated on the face of the policy, and relied on what were referred to as the "benefits of proscription".

86. For the reasons already given, the policy requires an exercise in proportionality to the extent that it requires a qualitative assessment of an organisation that meets the concerned in terrorism standard, to determine whether it is also an organisation that should be proscribed.

87. The remainder of the claimant's submission on this ground falls into two parts: the approach to consideration of the five factors stated on the face of the policy; and the approach taken as regards "other factors". There is no direct evidence of the Home Secretary's consideration of these matters. Rather, the court is invited to draw inferences from the contents of the documents the Home Secretary considered when making her decision. Two documents evidence consideration of the policy: the note of the Proscription Review Group meeting on 13 March 2025; and the ministerial submission dated 26 March 2025. (There were later ministerial submissions on 2 April 2025 and 4 June 2025. We have considered these documents but neither adds anything material so far as concerns the Home Secretary's consideration of the policy on the discretion to proscribe.)

88. The March 2025 documents show consideration of the five factors stated on the face of the policy. It is apparent that two of those factors were treated as pertinent: the nature and scale of Palestine Action's activities, and the extent of the threat the organisation posed in the United Kingdom. We are satisfied that this approach was appropriate and that the Home Secretary's assessment of those matters as weighing in favour of proscription was reasonably open to her. The submission for the claimant has emphasised that only three of Palestine Action's many actions were assessed to amount to acts of terrorism. That is so, but we are satisfied the Home Secretary was entitled to attach significant weight to any act occurring in the United Kingdom that came within the section 1 definition of terrorism. Similarly, the specific threat presented to the United Kingdom was a matter the Home Secretary was entitled to conclude weighed in favour of proscription. JTAC had assessed that in the 12 months following March 2025, further serious property damage amounting to an act of terrorism would occur in the United Kingdom. This was consistent with the evidence that from the latter part of 2024 the frequency and seriousness of Palestine Action's activities had increased. Further, on this point, the Home Secretary was entitled to attach weight to the risk that Palestine Action's activities would deter development of the United Kingdom defence industry and thereby cause prejudice to the United Kingdom's strategic defence objectives.

89. However, the Home Secretary's approach to "other factors" was not consistent with her policy. As regards "other factors" the theme starting in the CTP report dated 5 March 2025, and running through the documents that followed, was that proscription would be advantageous because it would mean that the offences at sections 11 to 13 of the 2000 Act could be used against any person supporting Palestine Action, and that the presumptions arising from the definitions of "terrorist property" and "for the purposes of terrorism" that adversely affect proscribed organisations could also be applied to Palestine Action. These consequences of proscription were referred to in the note of the Proscription Review Group meeting as providing "significant disruptive benefits beyond the current policing powers being utilised to deal with" Palestine Action. In the

26 March 2025 ministerial submission, the same matters were referred to as "additional levers to disrupt [Palestine Action's] operations". Both documents presented this as a key matter in favour of exercising the discretion to proscribe.

90. It is undeniable that the consequences of proscription are as described in the documents, are designed to disrupt proscribed organisations, and in the present case would have that effect on Palestine Action. But so far as concerns the lawful application of the Home Secretary's policy on the use of the discretion to proscribe, that is not a relevant consideration. That is so notwithstanding that on a proper construction of the policy the Home Secretary does have latitude to decide for herself which matters are appropriate "other factors". Although such latitude exists it is not unlimited. The Home Secretary's power to choose which matters are "other factors" must be used consistently with the usual *Wednesbury* principles, including that such "other factors" as are chosen must be consistent with the purpose of the policy.

91. The purpose of this policy is to limit use of the discretionary power to proscribe. Each of the five factors stated on the face of the policy has that effect. Any "other factor" considered when applying the policy must be of the same nature. To fit with the policy any "other factor" need not be unique to the organisation under consideration. Each of the five stated factors is generic, and relevant "other factors" could also be so. But whether generic, or specific to the organisation under consideration, the factor must contribute to explain the particular need to proscribe that organisation above and beyond the necessary belief that the organisation is one that is concerned in terrorism.

92. This conclusion may appear to rest on a very narrow basis – the Home Secretary had, after all, formed the belief that Palestine Action is an organisation concerned in terrorism and in these proceedings the claimant does not challenge that decision. However, this conclusion is a direct and necessary consequence of the policy the Home Secretary has applied to the exercise of her discretion to proscribe such organisations. The purpose of the policy is that not all organisations that meet the concerned in terrorism requirement should be proscribed.

93. Any decision-maker who adopts a policy for a particular purpose is at liberty to disapply or modify that policy in a particular case, but any such disapplication or modification must be express and must be for a sufficient reason. In this case, the Home Secretary's approach was to apply the policy (a policy of long-standing, dating back to the time the 2000 Act was enacted), without modification.

94. The operational consequences and advantages of proscription is not a factor consistent with the policy for the obvious reason that such consequences and advantages will apply equally to any organisation that could be proscribed – i.e. any and every organisation that meets the requirement to be an organisation concerned in terrorism. In principle the position could be otherwise if in a particular case, by reason of an organisation's structure, membership, activities or otherwise, the measures in the 2000 Act that are the consequences of proscription would be unusually effective. In such a case, it could be consistent with the policy to regard the operational consequences of proscription as an "other factor". But that is not the present case. There is no such evidence so far as concerns Palestine Action. Nor in the present case could it be contended that the reliance placed on the consequences of proscription was immaterial to the exercise of the discretion or the application of the policy. Both in the note of the meeting of the Proscription Review Group and in the 26 March 2025 ministerial submission, the

operational advantages are relied on as providing a clear case to use the discretion to proscribe. Each suggests that it is an important matter going to the exercise of the discretion, if not the central consideration in that exercise in that case.

95. The consequence and conclusion of this point is that, notwithstanding the latitude that the policy provides, the Home Secretary's decision to proscribe Palestine Action was not consistent with her policy. The closed material does not affect our conclusion on this ground.

96. The Home Secretary's further submission on this ground was that, applying section 31(2A) of the Senior Courts Act 1981, the court should not as a matter of discretion grant relief on the basis that it is "highly likely" that had the policy been properly applied the decision taken would have been the same. We will consider this submission at the end of this judgment.

(4) Ground 2. Conventions rights

(i) The claimant's case

97. The claimant contends that the proscription decision is unlawful because it is in breach of Convention rights, specifically, articles 10, 11 and/or 14. Article 10 provides:

> "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11 provides:

> "(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition

> of lawful restrictions on the exercise of those rights by members of the armed forces, of the police or of the administration of the State."

98. The claimant's pleaded case also referred to article 9 and article 1 of Protocol 1 to the Convention. However, the latter was removed by amendment and the former was not pursued at the hearing. The primary focus of the pleaded case and the parties' submissions has been articles 10 and 11, which we will address together, before turning to consider separately the alleged breach of article 14. There can be no room at all for doubt that this proportionality issue is to be decided following the *Bank Mellat* four-step approach.

(ii) Is proscription a specific measure or a general one?

99. There was debate before us as to whether we are concerned with the proportionality of a specific or general measure. The Home Secretary seeks to take advantage of the approach to general measures. In *Animal Defenders International v United Kingdom* [2013] EMLR 28, a case concerned with restrictions on broadcasting of paid political advertisements, the Grand Chamber observed:

> "108. … in order to determine the proportionality of a general measure, the court must primarily assess the legislative choices underlying it. … The application of the general measure to the facts of the case remains, however, illustrative of its impact in practice and is thus material to its proportionality ...
>
> 109. It follows that the more convincing the general justifications for the general measure are, the less importance the court will attach to its impact in the particular case…
>
> 110. The central question as regards such measures is not … whether less restrictive rules should have been adopted, or, indeed, whether the state could prove that, without the prohibition, the legitimate aim would not be achieved. Rather the core issue is whether, in adopting the general measure and striking the balance it did, the legislature acted within the margin of appreciation afforded to it ..."

In the same case in the House of Lords (*R (Animal Defenders International) v Secretary of State for Culture, Media and Sport* [2008] UKHL 15, [2008] 1 AC 1312), Lord Bingham observed at paragraph 33:

> "A general rule means that a line must be drawn, and it is for Parliament to decide where. The drawing of a line inevitably means that hard cases will arise falling on the wrong side of it, but that should not be held to invalidate the rule if, judged in the round, it is beneficial."

100. As Lord Reed explained in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32, [2023] AC 505, at paragraph 14:

> "… where there is an *ab ante* challenge to a legislative provision (that is to say, a challenge to the provision in advance of its application to any particular facts), the striking down of the provision is only justifiable if the court is satisfied that it is incapable of being applied in a way which is compatible with the Convention rights, whatever the facts may be. If the legislation is capable of being applied compatibly with the Convention, then it will survive an ab ante challenge."

Consequently, the court will not strike down a legislative provision if it is capable of being operated in a proportionate way in "all or almost all cases": see also *In re Abortion Services*, at paragraphs 12 – 18; and *Christian Institute v Lord Advocate* [2016] UKSC 51, SC (UKSC) 29.

101. When a decision to proscribe an organisation is made, it automatically follows that the proscription regime will apply. It is a fixed suite of prohibitions and criminal offences, not a list of options from which the Home Secretary had power to pick and choose. The "regime of proscription in Part II of the 2000 Act is integral to the measures that Parliament has considered necessary to combat organisations concerned with terrorism": *R v Choudary* [2016] EWCA Crim 61, [2018] 1 WLR 695, at paragraph 38. The offences in Part II "enable the state to counter and attack proscribed organisations, the influence that they have on third parties and, ultimately, the threat that they pose to society": *R v ABJ* [2024] EWCA Crim 1597, [2025] 1 WLR 1909.

102. However, this claim is not concerned with a challenge to any legislative provision. This is not an *ab ante* challenge to the compatibility of the Terrorism Acts, or any of the provisions in those Acts, with Convention rights. The challenge is to a specific, executive decision (albeit one required to be approved by Parliament by affirmative resolution) to proscribe Palestine Action. That is not a general measure. The interference (if any) with Convention rights consequent upon that specific decision is what is required to be justified. It follows that the focus is not primarily on legislative choices; and the importance of considering issues such as whether less intrusive measures could have been adopted without unacceptably compromising the objective is not diminished.

(iii) The interference with Convention rights consequent on the offences in the 2000 Act.

103. The starting point for this part of the claimant's claim is the extent of the interference with Convention rights as a result of the decision to proscribe Palestine Action. That interference is the consequence of the criminal offences that are either (a) expressly contingent on proscription (the offences under sections 11, 12 and 13 of the 2000 Act); or (b) the offences that will be more easily proved through acts undertaken in connection with a proscribed organisation, such as the property and funding offences where the *actus reus* requires proof that what was done was "for the purposes of terrorism" and that requirement is deemed to be met if the act was done for the benefit of a proscribed organisation. We have referred to such offences above at paragraphs 13 and 14 and we do not need to set them out in detail for the purposes of considering this part of the claimant's claim. The scope of some of those offences has been considered in other litigation. The conclusions in those cases are also material to identifying the extent of the interference with Convention rights. One example is the judgment in *R v*

Choudary (above). There the court considered the offence under section 12(1) of the 2000 Act of inviting support for a proscribed organisation and concluded that support encompassed not only practical or tangible support, but also "intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported": see the judgment at paragraph 46. Another example is the judgment in *R v ABJ* (also above). In that case the Court of Appeal, considering the offence under section 12(1A) of the 2000 Act of expressing an opinion or belief supportive of a proscribed organisation, concluded: (a) that the offence did not require proof that at the time the defendant expressed the opinion or belief he knew that the organisation in question was proscribed; and (b) that the ingredients of the offence satisfy the proportionality requirement so that if they are made out, conviction would not breach the defendant's rights under article 10.

104. We are satisfied that, taken together, the criminal law consequences of proscription are very significant.

105. So far as concerns article 11, the offence under section 11 of the 2000 Act is a clear interference with the right of freedom of association with others. A person cannot be or profess to be a member of Palestine Action. The section 12 offence on arranging etc. meetings, whether public or private is also an interference with article 11 rights. The section 13 offence that, among other matters, prohibits wearing or displaying articles in such a way as to arouse reasonable suspicion that the person is a member or supporter of a proscribed organisation is also directed to membership of a proscribed organisation and therefore limits the right of freedom of association. Overall, the interference with article 11 rights is very significant. Since the purpose of proscription is to eliminate the organisation concerned, it could hardly be otherwise. The interference that exists applies to everyone, anyone who might wish to associate with Palestine Action, and not just those who, at the point of proscription, were members or supporters.

106. The offences under section 12(1) and (1A) and (3) of the 2000 Act entail significant interference with the article 10 right to receive and impart information. A person cannot "invite support" for Palestine Action or express an opinion or belief "supportive" of Palestine Action if he is reckless whether the person hearing it will be encouraged to support Palestine Action. Nor can a person address a meeting to encourage support for Palestine Action or further its activities. The offence under section 13 of the 2000 Act also impinges on article 10 rights. These interferences too apply to everyone. Taken in the round, these comprise a very significant interference with the right to free speech.

(iv) Preliminary matters

107. As to the scope of interference with these Convention rights, two in principle submissions were made for the Home Secretary. The first was that violent protest does not fall within the scope of Convention rights; the second relied on article 17 of the Convention, the provision that makes clear that activity intended to destroy the rights and freedoms provided under the Convention cannot itself claim the protection of Convention rights.

108. As to the first of these points, it is settled law that Convention rights do not afford any protection to violent or non-peaceful protest. In *Attorney General's Reference (No 1 of 2022)* [2022] EWCA Crim 1259 [2023] KB 37, Lord Burnett CJ stated (at paragraph 102 of the judgment of the court):

> "This review of Strasbourg authority has concerned cases of protest or political expression aimed at governments and involving public property rather than private property. In the context of public property, damage inflicted in a violent or non-peaceful manner attracts no Convention protection against prosecution and conviction; and nor does causing significant damage because its infliction could not sensibly be thought of as peaceful, alternatively prosecution and conviction would necessarily be proportionate. Moreover, there is no "clear and constant" jurisprudence of the Strasbourg court that suggests that damaging private property during protest attracts the protection of the Convention in the first place or, in the second, that prosecution and conviction for damaging private property would be disproportionate even if it did. That is unsurprising because in addition to the usual questions about the applicability of a Convention right and then proportionality the A1P1 rights of the non-state owner are in play. We find it difficult to imagine that the Convention could ever be used to avoid conviction for damaging private property, even if very rarely it might be when considering damage to public property which is not significant. …"

109. However, that does not provide the Home Secretary with the answer to the claimant's claim. The interference with Convention rights that needs to be justified does not comprise the prohibitions so far as they affect Palestine Action's ability to persist (for example) in its campaign of undertaking and encouraging damage to property. Rather, what needs to be justified is the restriction on actions comprising peaceful protest, consistent with Convention rights, under the Palestine Action banner.

110. The position so far as concerns the article 17 submission is essentially the same. Article 17 provides:

> "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

111. In *Perinçek v Switzerland* (2016) 63 EHRR 6 the Grand Chamber stated:

> "113. In *Ždanoka v Latvia*, having reviewed the preparatory work on the Convention, the Court said that the reason why art.17 had been included in it had been that it could not be ruled out that a person or a group of persons would attempt to rely on the rights enshrined in the Convention to derive the right to conduct activities intended to destroy those rights.
>
> 114. However, art.17 is, as recently confirmed by the Court, only applicable on an exceptional basis and in extreme cases. Its effect is to negate the exercise of the Convention right that the applicant seeks to vindicate in the proceedings before the Court. In cases

> concerning art.10 of the Convention, it should only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention."

On the facts, which concerned a criminal conviction for denial of the genocide of Armenians in 1915 and the following years, the Court held there were no grounds to apply article 17.

112. In *Roj TV A/S v Denmark* (2018) 67 EHRR SE8 (an admissibility decision), the Second Section stated:

> "30. The purpose of art.17, in so far as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; 'therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms…' (see *Lawless v Ireland* (1979-80) 1 EHRR 15 at [7]). Although to achieve that purpose it is not necessary to take away every one of the rights and freedoms guaranteed from groups and persons engaged in activities contrary to the text and spirit of the Convention, the Court has found that the freedoms of religion, expression and association guaranteed by arts 9, 10 and 11 of the Convention are covered by art.17…
>
> 31. Speech that is incompatible with the values proclaimed and guaranteed by the Convention is not protected by art.10 by virtue of art.17 of the Convention … The decisive point when assessing whether statements, verbal or non-verbal, are removed from the protection of art.10 by art.17, is whether the statements are directed against the Convention's underlying values, for example by stirring up hatred or violence, and whether by making the statement, the author attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it…"

The applicant company had, via television programmes, for four years promoted the terror operation of the Kurdistan Workers' Party (the PKK), which was listed as a terrorist organisation by the European Union, Canada, the US, Australia and the UK. The Strasbourg Court stated:

> "46. … the one-sided coverage with repetitive incitement to participate in fights and actions, incitement to join the organisation/the guerrilla, and the portrayal of deceased guerrilla members as heroes, amounted to propaganda for the PKK, a terrorist organisation, and that it could not be considered only a declaration of sympathy. In addition, the applicant company had been financed to a significant extent by the PKK …

> 47. Consequently, the Court finds that, taking account first of the nature of the impugned programmes, which included incitement to violence and support for terrorist activity, elements extensively examined by the national courts, secondly, the fact that the views expressed therein were disseminated to a wide audience through television broadcasting and, thirdly, that they related directly to an issue which is paramount in modern European society – the prevention of terrorism and terrorist-related expressions advocating the use of violence – the applicant company's complaint does not, by virtue of art.17 of the Convention, attract the protection afforded by art.10."

113. The submission on behalf of the Home Secretary in this case is that in circumstances where Palestine Action has been designated a terrorist organisation by the order made pursuant to her decision, any expression of support for, or association with, Palestine Action amounts to the expression of support for or association with terrorist activity, and so falls outside the scope of articles 10 and 11 by virtue of article 17.

114. We reject this submission. The Home Secretary cannot rely on the fact of designation – the lawfulness of which is in issue – to establish that a statement, such as "I support Palestine Action", or a wish to associate with Palestine Action, aims to destroy Convention rights and values. In *Roj TV,* the PKK's designation as a terrorist organisation, including by the European Union, was not in issue and the repeated statements were incitement to violence. That is a very different case. Moreover, reliance on *Roj TV* for the contention that article 17 applies to *any* expression of support for a proscribed organisation is inconsistent with the judgment of the same Section in *Sabuncu v Turkey* (23199/17, 19 April 2021) in which it was said (at paragraph 222):

> "Freedom of political debate, which is at the very core of the concept of a democratic society, also includes the free expression by prohibited organisations of their views, provided that these do not contain public incitement to commit terrorist offences, or condone the use of violence."

115. In any event, this case is primarily concerned with the rights of individuals who have not acted unlawfully either before or since proscription, who would have wanted to express support for and associate with Palestine Action – whose stated aim is "to stop genocide and other atrocity crimes by causing disruption to corporate actors who aid, abet, facilitate and profit from those crimes" – and who wished to engage in peaceful protests under the banner of Palestine Action, but are stopped from doing so. It cannot sensibly be said that such persons are seeking to deflect the article 10 and 11 rights from their real purpose by employing them for ends contrary to Convention values. Nor could that be suggested in respect of others, such as journalists, academics and civil society organisations who are conscientiously seeking to abide by the law, and whose rights are impacted. The Home Secretary's article 17 submission fails.

(v) The claimant's evidence in this case

116. The claimant has relied on extensive evidence from witnesses explaining how they feel they have been or will be affected by the decision to proscribe Palestine Action. We were taken to much of this evidence in the course of the hearing and we have considered

it carefully. The assessment of the extent of any interference with Convention rights is a matter for the court, to be determined objectively.

117. Although as already stated, we accept the interference with article 10 and article 11 rights is very significant, we consider that various parts of the evidence the claimant relies on overstate the impact of proscription. *First*, proscription will not prevent continuing expressions of support through peaceful protest in support of the Palestinian cause or in opposition to actions undertaken in Gaza by the government of Israel and/or the Israel Defence Forces. The activities undertaken by Palestine Action against Elbit and other entities it regarded as associated with that company's business were very well known. However, it cannot be said that the role of Palestine Action was so dominant as to mean that any/all support for the Palestinian cause or opposition to actions of the Israeli government is synonymous with Palestine Action. *Second*, proscription of Palestine Action will not prevent any or all demonstrations targeted at Elbit. Elbit has been the particular focus of Palestine Action's activities but we do not consider it can reasonably be said that Palestine Action has a monopoly on opposition to Elbit. In principle, peaceful protest directed against Elbit can continue notwithstanding the decision to proscribe Palestine Action. The evidence before us is that protests at Elbit premises have in fact continued and have not been treated by the police as either a Palestine Action activity or expressions of support for Palestine Action. *Third*, we do not consider that particular forms of protest action (for example, "lock-ons", sit-ins, and blockades) are so closely or uniquely associated with Palestine Action that either undertaking such actions or advocating them could properly be considered to be support for Palestine Action.

118. There are two further points that also go to the general extent of the interference with Convention rights consequent on the proscription decision. One concerns the actions taken since proscription referring to Palestine Action that have led to many arrests. The various forms this action has taken are well known. Immediately following the proscription decision there were large protests. More than 2,000 people at these protests were arrested, primarily on suspicion of committing the offence under section 13 of the 2000 Act. The vast majority of those arrested had chosen to hold signs which read, "I oppose Genocide, I support Palestine Action". We attach little weight to this when it comes to assessing the extent of the interference with Convention rights in this case. All those holding such signs either did or ought to have realised that what they were doing was showing support for Palestine Action. It was or ought to have been obvious to all concerned that such "carefully worded" placards were carefully worded only to the extent of sending the message that the person holding the placard was expressing support for Palestine Action. What happened on these occasions was not evidence of difficulty or uncertainty in respect of what actions could be taken following the proscription of Palestine Action. Rather, it was evidence of calculated action.

119. The other general point made on behalf of the claimant is the risk that, following proscription, people may be wrongly identified by the police as supporters of Palestine Action or that the police might otherwise act in exercise of the powers available to them consequent on the proscription and that turns out to be wrong. The possibility for such errors is always present and mistakes will be made. We do not consider however there is any particular feature that arises in the context of a decision to proscribe (from the way in which the criminal offences consequent on proscription are formulated, or by reason of this decision to proscribe Palestine Action) which make the possibility for

such errors a particular feature of the interference with Convention rights in this case. The evidence here is to the effect that appropriate practical steps have been taken to reduce the likelihood of error. The version of a national guidance document provided to local police forces by CTP on 28 August 2025, part of the open evidence in this case, includes the following:

> "i. Be careful not to confuse supporting this proscribed organisation with protestors demonstrating general support for Palestine. The support must be directed towards the proscribed organisation itself.
>
> ii. It is important to note that being in support of de-proscribing Palestine Action would not necessarily be supporting Palestine Action.
>
> iii. The group themselves are proscribed, and not the activity or the cause, for example, saying 'shut down Elbit Systems', which is one of their aims, would not be supporting a proscribed organisation.
>
> iv. Saying 'stop genocide, free Gaza', or similar pro-Palestinian chants would not be supporting a proscribed organisation.
>
> v. Disagreeing with proscription is not supporting a proscribed organisation.
>
> vi. Sending money to support the deproscription fund would also not be an offence."

Thus, police forces have guidance that provides information necessary for them to act appropriately and to apply the relevant offences under the 2000 Act correctly.

120. Further, the likelihood of error is likely to reduce further over time, as the police become more familiar with the practicalities of assessing situations which give rise to the possibility that any of the offences under the 2000 Act have been committed, and those circumstances that do not – if necessary, with the assistance of guidance given by the criminal courts in specific cases.

121. Notwithstanding all these points, we accept that the fact of proscription and the heavy penalties for the offences under the 2000 Act will mean that it is reasonable to expect people to be risk averse, to adjust their behaviour and to avoid doing things that run any significant risk that they might commit any of those criminal offences. Since this is so, the interference with Convention rights in this case must be measured both by the restrictions required by the letter of the criminal offences; and by the further extent to which people will exercise self-restraint in terms of what they say and what they do. One example of this mentioned in the claimant's evidence is her fear that she will be "no-platformed" – that she will not be invited to speak at events because organisers will be concerned that if someone such as her, previously very closely associated with Palestine Action, does speak that will give rise to an offence under either section 11 or 12 of the 2000 Act.

122. We also accept that it is reasonable to assume that others who, like the claimant, were very closely associated with Palestine Action, will be particularly careful not to act in a way that might amount to commission of any of the criminal offences under the 2000 Act. This group of people may self-censor to a greater degree than others. This will likely be because, by reason of their past, how they act in future, at least in the foreseeable short-term, may give rise (or they might reasonably believe could give rise) to closer police scrutiny. Given the paucity of the evidence that we have about Palestine Action there is nothing that could reliably identify how large this class of person would be. Although it likely will include people like the claimant who were very closely associated with Palestine Action, it also seems likely that the number of people in this class will be small. It will certainly not extend to all those who have signed up through the Palestine Action website, whether for the newsletter, or because they wanted to get involved in direct action, or even to all those who have undertaken some form of direct action. The persons in this larger group of former members or supporters will lack the profile of persons such as the claimant.

123. The evidence for the claimant includes evidence that is specifically directed to the position of journalists, academics and campaigning groups such as Amnesty International and Liberty. It is said that each of these groups of people is at particular risk of falling foul of criminal offences such as those in section 12 of the 2000 Act. We accept that some weight attaches to the evidence of the position of journalists, but not significant weight. In large measure the journalism that is in issue here will be the reporting of things said and done by others. Most people will, and all ought to understand this and understand that journalists' opinions and preferences are not *per se* aligned to the news events they report. No doubt there could be hard cases, and no doubt too, some journalists will want to err on the side of caution. This will be the extent of the particular interference in such instances. The position for academics is likely to be quite similar. In most, if not all instances, the context provided by teaching will be important and will show that teaching that addresses a controversial subject (for example, about resort to direct action in a class about, say, politics or civil liberties) is a legitimate part of imparting information and testing general ideas through discussion and debate. In that context, reference to Palestine Action is not the same as expressing support for a proscribed organisation. No doubt here too there is a risk of self-censorship and those concerned may well be risk averse. Each of these matters is a foreseeable consequence of proscription. The evidence from campaigning/civil liberties organisations concerns how they are inhibited from campaigning against the fact of proscription and the risks that their members might face if they were to campaign, generally, against the use of the power to proscribe. We can see that this is an area where the section 12 offences could cause genuine problems, and care will need to be taken to ensure that any general campaign against the use of proscription does not inadvertently descend into a campaign against any particular use of the power to proscribe. The points here do carry weight, although here, as with many aspects of the evidence on interference with Convention rights the claimant relies on, it is important to think carefully about the true nature and extent of the interference.

124. Drawing these points together (both those immediately above, and those at paragraphs 103 – 106 above), the interference with article 10 and 11 rights is very significant. Nevertheless, there is a general correlation between the proscription of Palestine Action and the interference insofar as the adverse impacts are generally limited to those who

have or would support Palestine Action and do not have any widespread or general impact on expressions of support for the general Palestinian cause.

(vi) Is the interference prescribed by law?

125. We have concluded that the Home Secretary failed properly to apply her policy (see above at paragraphs 89 – 95). It follows that the interference with Convention rights consequent on proscription is not prescribed by law. This conclusion, without more, has the effect that the decision to proscribe Palestine Action was in breach of section 6 of the HRA.

126. The claimant puts forward an additional basis on which she submits the prescribed by law criterion was not met. She contends that the criminal offences which arise consequent on proscription are insufficiently certain. The claimant's pleading at least contends the "sanctions are unclear and their effects unforeseeable" (although there is no challenge to the lawfulness of any of the criminal law provisions in the 2000 Act).

127. We do not accept this submission. The criminal law offences are sufficiently certain to meet the "prescribed by law" standard. They have been interpreted by the courts, and their likely application from case to case is foreseeable with or without resort to legal advice.

(vii) The importance of the objective

128. The Home Secretary's pleaded case is that the purpose of proscription was to "disrupt and degrade PA so as to protect the rights of others and maintain national security". The submissions on behalf of the Home Secretary sought to define the objective as "controlling terrorism" or "controlling terrorist organisations" through proscription of organisations that engage in "terrorism" as defined in s.1 of the 2000 Act. It seems to us that the latter is a description of the means of obtaining the objective. The identified legitimate aims of the proscription decision are "the protection of the rights and freedoms of others" and "the interests of national security". Those aims appear in each of articles 10(2) and 11(2), respectively and are objectives that, in principle, are capable of warranting an interference with each Convention right.

(viii) Rational connection between proscription and the legitimate aims

129. Although the claimant raised the question whether there is a rational connection between the means chosen and the aim in view, no basis for suggesting there is not a rational connection was put forward. Proscription is rationally connected to the objective of disrupting Palestine Action so as to protect the rights of others and the interests of national security. That is so whether the objective was limited to curtailing actions by Palestine Action causing serious property damage within the meaning of section 1 of the 2000 Act, or extended more broadly.

(ix) Less intrusive measures

130. In *Bank Mellat*, Lord Reed made it clear both that the issue was whether there was a less intrusive measure that did not "unacceptably compromise the achievement of the objective", and that when applying this standard, the court could not step into the shoes

of the decision-maker but must allow a margin of appreciation (see his judgment at paragraphs 74 – 75).

131. The claimant's submission on less intrusive measures is that instead of proscription the Home Secretary ought: (a) to have encouraged those affected to seek civil remedies through the courts, such as injunctions; or (b) resorted to measures against individuals involved in undertaking action for Palestine Action, such as asset freezes or criminal behaviour orders or other similar orders; or (c) relied on prosecution for criminal offences available absent proscription. Having in mind the test set by Lord Reed (above), option (b) is not realistic. Even if individuals concerned could be identified, such measures would not address the collective impact of an order for proscription; they are measures that would be directed to a different objective. As to option (c), in this case this is not really a point about any alternative less intrusive measure but rather, one in favour of a *status quo* approach – i.e. that the Home Secretary ought to have done nothing. As such, this is something better considered at the next stage, fair balance.

132. As to option (a), we are not satisfied that the possibility to encourage those affected by Palestine Action's methods to seek civil remedies such as injunctions was an appropriate lesser alternative approach. There was evidence that one company, Teledyne, had taken this route. However, this type of self-help remedy may not be readily or reasonably available to many who might potentially be affected by Palestine Action's campaign. An application for an injunction must be supported by sufficient evidence of risk. For some companies, Elbit being the obvious example, that requirement would not be difficult to meet. However, Palestine Action's activities have been directed to a wide range of companies considered to support Elbit's operations in the United Kingdom and those targets have not always been obvious in advance. For such companies, a form of civil restraint would only be likely to become available after the event. In this regard it is telling that in the example given, Teledyne, the evidence for the claimant draws a distinction between no action being taken after the injunction had been obtained and Teledyne suffering a significant number of actions before the injunction was obtained. This is an important point going to the effectiveness of relying only on the availability of civil remedies. Reliance on this route would, unlike reliance on offences such as those at sections 11 - 13 of the 2000 Act, be likely to achieve little in terms of disrupting Palestine Action as an organisation.

133. The form that an injunction might take is also far from obvious. The consequence is that orders obtained might extend beyond Palestine Action and affect the general pro-Palestinian/anti-Israeli cause. If orders were in the form of general exclusion zones around premises they would go further than required: they would apply to all who wanted to exercise a right to protest regardless of any connection to Palestine Action. If orders were more specific – for example they sought to prevent persons accessing premises only if they were members of Palestine Action or only if they entered with an intent to cause criminal damage – those conditions would be very difficult if not impossible to enforce prior to any event occurring. Moreover, experience in other areas, such as injunctions aimed at protest groups such as Just Stop Oil, suggests that these types of orders tend to be self-perpetuating. Once granted, injunctions are often periodically renewed (annually or otherwise) on the basis that were the injunction to be discharged the protected premises or area would once again become an attractive and likely target. This makes it likely that any such injunctions obtained might remain in force for so long as Palestine Action was active.

134. Finally, a point of principle tells very heavily against the claimant's submission. Why or to what extent should it be appropriate for the state to promote self-help remedies rather than exercise the powers that are available to it, in the face of criminal and threatened criminal behaviour which, in some instances, has crossed the boundary into terrorist activity within the definition in the 2000 Act? In this case, the Home Secretary had concluded that Palestine Action was an organisation "concerned in terrorism", and that assessment is not challenged in these proceedings. In those circumstances we reject the notion that proportionality required the Home Secretary to resort only to encouraging those affected to take matters into their own hands through the civil courts.

(x) Has a fair balance been struck?

135. To the extent explained above (at paragraphs 103 – 106 and 116 – 124) the decision to proscribe Palestine Action has entailed a very significant interference with Convention rights. In submissions the focus for the claimant tended to be on article 10. However, the interference with article 11 rights is stark: the very purpose of proscription is to put measures in place that are designed to ensure that an organisation ceases to exist. This impact ought neither to be overlooked nor understated. Overall, there is a substantial interference that requires justification.

136. On the other side of the balance it is notable that there is no general mis-match between the impact of the proscription and Palestine Action as the target of the decision. We do not consider that the proscription of Palestine Action is likely to result in any general impact on expressions of support for the Palestinian cause or even opposition to Elbit. This provides some support for a conclusion that the proscription was proportionate.

137. Real weight must attach to the fact that Palestine Action has organised and undertaken actions amounting to terrorism as defined at section 1(1) of the 2000 Act. Those actions are small in number but they are still significant and it is also significant that these actions have happened in the United Kingdom. There is, obviously, a heightened public interest in eliminating the risk of any action amounting to terrorism as defined in the 2000 Act within the United Kingdom. Any such action is the antithesis to the notion of a democratic society that is the foundation of the European Convention on Human Rights. It is significant that Palestine Action has not suggested that its actions that have been assessed to comprise terrorism were either a mistake or an aberration. Rather, Palestine Action has lauded those who took part in those actions. It is, further, significant that the contents of the Underground Manual provide good evidence of Palestine Action's continuing intention to promote the use of violence regardless of the risk that this will result in serious damage to property or serious violence against members of the public.

138. Deciding where the balance should be struck in this case is difficult. When striking the balance between issues such as these the court must permit some latitude to the Home Secretary given that she has both political and practical responsibility to secure public safety. Nevertheless, we are satisfied that the decision to proscribe Palestine Action was disproportionate. At its core, Palestine Action is an organisation that promotes its political cause through criminality and encouragement of criminality. A very small number of its actions have amounted to terrorist action within the definition at section 1(1) of the 2000 Act.

139. For those actions, regardless of proscription, the criminal law is available to prosecute those concerned. If those involved are convicted they face the prospect of significant punishment, which would serve as a significant deterrent to others. For example, the CTP report noted that the ordinary criminal offences with which Palestine Action activists have been charged have most commonly included criminal damage (section 1 of the Criminal Damage Act 1971, for which the maximum sentence is 10 years' imprisonment), burglary (section 9 of the Theft Act 1968) and aggravated trespass (section 68 of the Criminal Justice and Public Order Act 1994). In respect of the two incidents in 2024, which the Home Secretary assessed fell within the definition of "terrorism" in section 1 of the 2000 Act, offences of aggravated burglary (section 10 of the Theft Act 1968, for which the maximum sentence is life imprisonment) and violent disorder (section 2 of the Public Order Act 1986, for which the maximum sentence is 5 years' imprisonment) were charged, as well as specific charges against certain individuals, such as a charge of committing grievous bodily harm with intent (section 18 of the Offences Against the Person Act 1861, for which the maximum sentence is life imprisonment) against one defendant involved in the Bristol incident.

140. Considering in the round the evidence available to the Home Secretary when the decision to proscribe was made, the nature and scale of Palestine Action's activities, so far as they comprise acts of terrorism, has not yet reached the level, scale and persistence that would justify the application of the criminal law measures that are the consequence of proscription, and the very significant interference with Convention rights consequent on those measures.

141. We have reached this conclusion on Ground 2 without attaching any weight to the submission made by the United Nations Special Rapporteur (an Intervener in the claim). That submission starts from the premise that a "consensus" existed in international law to the effect that the actions of Palestine Action assessed as amounting to terrorism within the definition at section 1(1) of the 2000 Act did not in fact amount to terrorism. The submission then continues that this opinion deriving from the international law consensus ought to be taken into consideration when deciding whether the Home Secretary's decision to proscribe was disproportionate.

142. We doubt that the consensus claimed exists: see and compare *R v Gul (Mohammed)* [2013] UKSC 64, [2014] AC 1260 per Lords Neuberger and Judge at paragraphs 44 – 51. In any event, this submission faces the further obstacle that, when taking her decision, the Home Secretary was entitled to rely on the definition of terrorism in the 2000 Act. Indeed, she was required to apply that definition. Had she purported to rely on any other definition for the purposes of her decision she would have acted unlawfully. A "consensus" in international law is not a trump card in English law; any such consensus cannot permit either disregard of or derogation from an English statute save to the extent permitted by statute.

(xi) Article 14

143. A further argument which was touched upon but not fully developed was that the proscription decision gave rise to a breach of article 14, read with articles 10 and 11. The contention was that proscription of Palestine Action gave rise to an unjustified difference in treatment compared to organisations such as Extinction Rebellion and Just Stop Oil, and on grounds of race/national origin and/or political opinion.

144. There is a short but decisive point in respect of any argument based on comparison with other organisations such as Extinction Rebellion or Just Stop Oil, and the argument based on political opinion. It is that there is nothing in the evidence before us to show that those organisations, through their members or supporters, have committed offences falling within the section 1 definition of terrorism. The fact that, like Palestine Action, they engage in direct action does not place them in an analogous position: the power to proscribe is unavailable if an organisation is not concerned in terrorism. Further, and in any event, the Home Secretary was entitled to consider the case for proscription of Palestine Action on its own merits.

145. Nor are we persuaded that the proscription of Palestine Action gives rise to a difference in treatment on grounds of race or national origin. The evidence does not show that Palestine Action drew members or supporters disproportionately from the Palestinian community in the UK. It is not obvious that is the case.

C. Section 31(2A) of the Senior Courts Act 1981

146. The Secretary of State invites the court to refuse relief under s.31(2A) of the Senior Courts Act 1981 if the claim succeeds on any ground other than Ground 2. We therefore consider this submission only in relation to Ground 6.

147. Section 31(2A) of the Senior Courts Act 1981 provides, so far as material:

> "(2A) The High Court –
>
> (a) must refuse to grant relief on an application for judicial review,
> …
>
> if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred."

148. In *R (Bradbury) v Brecon Beacons National Park Authority* [2025] EWCA Civ 489, [2025] 4 WLR 58, Lewis LJ stated (at paragraph 71):

> "In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision-making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision in order to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-maker would have approached matters, or what decision it would have reached, if it had not made the error in question, the requirements of section 31(2A) are unlikely to be satisfied."

He observed at paragraph 74 that this is "*a high test to surmount*".

149. We are not satisfied that the requirements of section 31(2A) are met. The Home Secretary's error on Ground 6 was significant: she exercised the discretion to proscribe taking account of a consideration inconsistent with her own policy, namely the advantages to be had, were Palestine Action to be proscribed, from the criminal offences consequent on proscription: see above at paragraphs 89 – 95. Therefore, it cannot be said that the same decision would have been reached had that irrelevant matter been disregarded. The court is not in a position to decide the matter – one of obvious difficulty and political sensitivity – to the standard necessary for section 31(2A) to apply. The strength of the case for proscription may need to be considered further by the Home Secretary.

D. Disposal

150. For the reasons given above, Grounds 5 and 8 of the claim fail and are dismissed, but the claimant succeeds on Grounds 6 and 2 of her claim. To this extent the claimant's claim is allowed. Subject to any further representations on relief, we propose to make an order quashing the Home Secretary's decision to proscribe Palestine Action.