IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

President of the King's Bench Division, Swift J and Steyn J
[2026] EWHC 292 (Admin)

B E T W E E N:

THE KING
on the application of
HUDA AMMORI

Respondent

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

-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

SECRETARY OF STATE'S OPEN SKELETON ARGUMENT

References are in the following form:

(i) the Core Bundle: [CB/page]
(ii) the Supplementary Bundle: [SB/page]
(iii) the Divisional Court judgment: *R (Ammori) v Secretary of State for the Home Department* [2026] EWHC 292 (Admin), 'the Judgment', and 'J, §#'
(iv) the Court of Appeal preliminary issue judgment (*R (Ammori) v Secretary of State for the Home Department* [2025] EWCA Civ 1311, "**CA Judgment 2**"
(v) the Secretary of State's Skeleton Argument: ASA §#
(vi) the Authorities Bundle [AB/Tab/page]

INTRODUCTION

1. The Secretary of State for the Home Department ("**Secretary of State**") decided to add Palestine Action ("**PA**") to the list of proscribed organisations in Schedule 2 to the Terrorism Act 2000 ("**TA 2000**") on 20 June 2025 ("**the Decision**") [CB/137]. The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025 ("**the Order**") [AB/7/216] came into force on 5 July 2025, giving effect to the Decision. The Respondent, one of the co-founders of PA, challenged the Decision.

2. Following a hearing in OPEN and CLOSED[1], the Divisional Court (Dame Victoria Sharp PKBD, Swift and Steyn JJ) handed down its judgment on 13 February 2026 ("**the Judgment**") [CB/84]. The lower court allowed the Respondent's claim on two grounds only: (i) the Decision to seek the Order proscribing PA was made by the Secretary of State in breach of her own proscription policy ("**Ground 6**"); and (ii) the Decision was contrary to the Human Rights Act 1998 ("**HRA**") because it amounted to a disproportionate interference with the rights protected by arts.10 and 11 of the European Convention on Human Rights ("**the Convention**") ("**Ground 2**") (reflecting the order in which they were addressed in the Judgment).

3. On 25 February 2026, the Divisional Court granted the Secretary of State's application for permission to appeal in respect of the following two grounds of appeal [CB/130]:
   a. **Appeal Ground 1**: in determining Ground 6, the Divisional Court erred in its interpretation and application of the Secretary of State's policy.
   b. **Appeal Ground 2**: in determining Ground 2, the Divisional Court erred in its approach and finding on the proportionality of the Decision under arts.10 and 11 ECHR.

4. The Respondent's application for permission to cross-appeal the dismissal of Ground 8 (that the Secretary of State acted unlawfully by failing to give PA the opportunity to make representations prior to its proscription) and Ground 2, insofar as the Respondent alleged an unjustified interference with art.14 of the Convention, was refused [CB/130].

[1] Chamberlain J ordered a Closed Material Procedure (CMP) on 18 July 2025. The Secretary of State has filed a CLOSED skeleton argument in support of her appeal.

STATUTORY FRAMEWORK GOVERNING PROSCRIPTION

5. The TA 2000 "*provides the measures considered by Parliament to be necessary to protect the citizens of the United Kingdom against terrorism, and to enable a democratic society to operate without fear. It also contains measures designed to prevent the United Kingdom from being used for the purpose of terrorism outside the jurisdiction*": *R v. ABJ* [2026] UKSC 8, at §18 [AB/49/1793].

6. Section 1(1) of the Terrorism Act 2000 ('TA 2000') [AB/6/26] defines 'terrorism' as:

   'the use or threat of action where—
   (a)the action falls within subsection (2),
   (b)the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
   (c)the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.'

7. By reason of s.1(2)(b), action done for the purposes set out in s.1(1)(b) and (c) can constitute terrorism if it '*involves serious damage to property*' even if it does not involve violence against any person or endanger life or create a risk to health or safety.

8. Section 3(3) [AB/6/28] gives the Secretary of State the power by order to proscribe an organisation by adding it to Schedule 2 to the Act. By s.3(4) and (5), the s.3(3) power may be exercised only if the Secretary of State believes that an organisation is '*concerned in terrorism*', which means that the organisation '*(a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism, or (d) is otherwise concerned in terrorism*'. Subject to satisfaction of one of those statutory criteria, Parliament conferred a broad discretion on the Secretary of State to exercise the power under s.3(3). Parliament afforded primacy to the Secretary of State's decision-making in this area, including the pursuit of national security and other public interest objectives sought as a consequence of proscribing an organisation. In *ABJ* at §106, Lord Reed observed:

   "Deciding where and how to balance the value of freedom of expression against the need to combat terrorism is a highly sensitive matter falling primarily within the responsibility of the elected national authorities. Judicial supervision, whether by domestic courts applying the Human Rights Act or by the European court applying the Convention, has to respect the institutional expertise and constitutional legitimacy

underlying the judgment made by those authorities by according them a correspondingly wide margin of appreciation. Although a strict approach is generally taken to restrictions on political speech, the European court has recognised that states must enjoy a wider margin of appreciation when countering terrorism: see, for example, Schwabe v Germany (2011) 59 EHRR 28, para 113, and Internationale Humanitäre Hilfsorganisation eV v Germany, para 89 ("the aims pursued by the prohibition of indirect support for terrorism as being contrary to the concept of international understanding are necessarily very weighty and states enjoy a wider margin of appreciation in that regard").” [AB/49/1821].

9. Orders under the 2000 Act must be made by statutory instrument (s.123(1)) [AB/6/102]. By s.123(4) and (5), an order under s.3(3) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.[2] In this case, a draft order was laid before Parliament on 30 June 2025, approved by the House of Commons (2 July) and the House of Lords (3 July), and came into force on 5 July 2025.[3]

10. Parliament has also provided that, once an organisation is listed in Schedule 2, certain criminal offences under the TA 2000 may be committed through conduct relating to that organisation: see IR Judgment, §§33-39 [AB/45/1639]. In *ABJ* at §29, Lord Reed held: “*Proscription is not an end in itself, but is the basis on which a number of other provisions apply. Those provisions are designed to prevent proscribed organisations from gathering support or financial aid, to counter their influence on susceptible individuals, and ultimately to reduce the threat which they pose to our democracy and to public safety. In particular, the Act creates a number of offences which are designed to inhibit activities associated with proscribed organisations, including the offences created by sections 11 to 13*” [AB/49/1796] (see also J, §§9-14). Parliament did not confer on the Secretary of State a power to tailor the specified criminal liability or relevantly limit the persons to whom, or the specific activities to which, it applies. Rather, a proscription order has the effect of

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[2] The exception is where the Secretary of State is of the opinion that it is necessary to proceed urgently, in which case the instrument ceases to have effect 40 days later, unless in the intervening period it has been approved by a resolution of each House (see s.123(5)). However, the urgency order was not invoked in this case.

[3] This followed Chamberlain J’s decision to refuse the Claimant’s application for interim relief on 4 July: [2025] EWHC 1708 (Admin) (“**the IR judgment**”) [AB/45/1629]; and the Court of Appeal’s refusal of permission to appeal that decision dated the same day: [2025] EWCA Civ 848 [AB/46/1655].

including an organisation in Schedule 2 to the TA 2000, triggering potential criminal liability in accordance with the provisions of the TA 2000.

11. The fact that individuals might commit offences under Part II TA 2000 by reason of acts that do not themselves meet the statutory definition of '*terrorism*', or only meet that definition in part, is squarely within the contemplation of the statutory scheme. Parliament intended for proscription to have the effect of stifling organisations concerned in terrorism and for members of the public to face criminal liability for joining or supporting such organisations. That serves to ensure proscribed organisations are deprived of the oxygen of publicity and support.

FACTUAL BACKGROUND

(a) The Divisional Court's findings concerning Palestine Action

12. The Respondent did not challenge the assessment that PA was an organisation "*concerned in terrorism*": see J, §§92 and 134. That was the key starting point and basis on which the discretion to proscribe fell to be exercised.

13. The Divisional Court addressed PA's structure, activities and membership at J, §§15-30. As a general observation, the Divisional Court noted that the Respondent's evidence "*provides surprisingly little information about Palestine Action as an organisation*" (J, §15) and "*... 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*" (J, §30). The following findings are particularly relevant.

14. **First**, the "*main target of Palestine Action's activities in the United Kingdom is Elbit Systems*" (J, §16). However, PA's activities are "*also directed at any other company or organisation considered by Palestine Action to enable Elbit's business in the United Kingdom*" (J, §17). The evidence was clear (on this basis and more generally) that it had a "*wide range of targets*" (J, §23).

15. **Second**, the Divisional Court noted that the "*extent and nature of Palestine Action's membership and organisation is largely unexplained*" (J, §18) and "*[i]nformation about how Palestine Action is organised and run is also sparse"* (J, §19). They held that: "*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" (J, §19). Indeed, they correctly inferred that "*the major part of its funds are directed to supporting direct action*" (J, §20).

16. **Third**, the direct action undertaken by PA was not synonymous with "*civil disobedience*", properly described (J, §§21-23). To the contrary, PA's activities were "*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*" (J, §21) undertaken with "*no suggestion of restraint or proportionality*" (J, §25). The Divisional Court further held that, "*Palestine Action encourages the causing of more, rather than less harm*" (J, §25), and in that context its own 'Underground Manual' encouraged those who read it "*to 'be creative' and to 'disrupt damage or destroy' targets without restraint*" (J, §26). The Divisional Court made reference to the Underground Manual's recommendation of causing damage with an *"efficient sledgehammer*" (J, §§24, 27, 29). This was in circumstances where JTAC's expert assessment of one of PA's attacks which had met the definition of terrorism was 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*"[4] (J, §34(1)).

17. **Fourth**, the Divisional Court recognised that three incidents were assessed to have met the definition of terrorism in s.1(1) TA 2000. However, the Divisional Court declined to infer that those three incidents meeting the threshold of terrorism were "*outliers … as to scale and extent, and were not therefore indicative of Palestine Action's activities*" (J, §28). Rather, the Divisional Court held that: (i) the conduct encouraged by the Underground Manual "*particularly if equipped with an "efficient sledgehammer", runs the risk that something worse will happen*" (J, §27); (ii) the risk was all the greater because the Underground Manual encouraged people to take matters into their own hands; and (iii) it was "*not a sustainable proposition*" to seek to portray PA as a "*non-violent"* organisation (J, §29). Such a proposition "*also ignores the real risk of injury (to members of the public) which may occur when individual go equipped with sledgehammers to do damage to*

[4] This quotation has been taken from the Divisional Court's judgment at §34(1)). The last sentence differs slightly from the wording in the JTAC report itself. The JTAC report reads: "*The officers were assaulted with a sledgehammer and one suffered a serious injury to their back*" [SB/162].

property as Palestine Action suggests they should do, and are intent at the same time on avoiding detection" (J, §29).

(b) Factual background to the Decision

18. The Secretary of State's decision-making process is set out in J, §§31-46. It can be summarised as follows.

Advice recommending proscription – 26 March *[SB/145]*

19. On 26 March, the Secretary of State was notified of the PRG's unanimous recommendation to list PA as a proscribed organisation in Schedule 2 to the TA 2000 ("**the 26 March Min Sub**"). The advice noted that PA had conducted direct action against a range of institutions that it considered facilitated the sale of arms to Israel. The direct action consisted mainly of criminal damage to property and CTP judged the cumulative criminal damage and loss of revenue caused by the group's direct action to be in excess of hundreds of millions of pounds. The following documents were annexed to the advice:

(1) JTAC assessment dated 7 March (Annex B) [SB/159]

20. JTAC's assessment was summarised in the 26 March Min Sub as follows:
    a. The volume and seriousness of PA's activity increased in 2024. There were two significant incidents that year, both resulting in property damage of more than £1 million. The Elbit Systems UK incident in Bristol involved the use of violence and weapons against security staff and responding police officers.
    b. PA commits or participates in acts of terrorism. The group had committed serious property damage with the aim of influencing both the Government and certain businesses it perceived to support Israel. Whilst some incidents involved serious violence against people, PA's activity met the statutory test based on the serious damage to property alone.
    c. PA was involved in preparing for acts of terrorism. JTAC referred to a PA guidance document, 'The Underground Manual', which provided members with practical advice and advocated for serious damage to property.
    d. PA has promoted terrorism. It had publicised the Bristol attack and shared media relating to further incidents of property damage carried out by the group.
    e. PA had a large social media following with more than 300,000 followers on Instagram and 220,000 followers on X. The JTAC assessment stated that PA frequently held

online training sessions which were highly likely intended to train members and supporters in the group's direct action strategy. The Group was also primarily funded by donations and the sale of merchandise.

(2) CTP policing report dated 5 March (Annex C) ("the CTP Report") [SB/172] & letter dated 6 March (Annex D) ("CTP Letter") [SB/181]

21. CTP's view was that *'operationally, existing legislation is seen as insufficient to address high-level offences, which meet the definition of terrorism (s.1 Terrorism Act 2000) concerning serious violence and/ or serious damage'* [SB/175]. The CTP letter reiterated that criminal charges failed to capture the organisational capability and high culpability of offending "*namely in the complexity of the planning, extent of preparations, severity of offending and intended impact, as well as the network as a whole, including its leadership, influence and funding*" [SB/181-2].

(3) FCDO's 5th discretionary factor assessment dated 11 March (Annex E) [SB/183]

22. The FCDO assessment considered the foreign policy implications of proscription. It did not identify *'any significant foreign policy factors in favour of proscription'* [SB/183].

(4) Community Impact Assessment ("CIA") dated 6 March (Annex F) [SB/191]

23. The CIA considered how the British public were likely to view proscription of PA.

(5) Record of the PRG's meeting on 13 March (Annex H) [SB/209]

24. The record of the PRG's meeting ("**the PRG meeting minutes**") noted that:

> *'Proscribing PAG would offer significant disruptive benefits beyond the current policing powers being utilised to deal with its activity. Proscription could impact PAG's recruitment, financial flows, and operating model and may also support the disruption of the technical and digital security of PAG.'* [SB/213].

25. The advice to the Secretary of State went on to note that the PRG unanimously agreed that the discretionary considerations weighed in favour of proscription. Those included:
    a. The nature and scale of PA's activity. JTAC and CTP both assessed that the group's intent and targets had broadened, and its activity had increased in frequency and seriousness.

b. PA was responsible for three incidents (Bristol, Kent, Glasgow[5]) which involved serious damage to property amounting to terrorism under s.1, TA 2000.
c. The group intended to radicalise individuals to its cause.
d. PA's activities had an impact on individuals, organisations and the Government's strategic defence aims.
e. PA's presence and activity was focused on the UK. The PRG recommended limiting any proscription of PA to the UK based organisation at this time.

26. Finally, the advice noted the risk that proscription would inhibit lawful protest by PA, including expressing pro-Palestine views. However, the PRG noted that proscription would not prevent former PA members participating in lawful protest or engaging in other activities to show support for Palestine. The PRG also considered whether, beyond limiting PA's proscription to the UK based organisation, it would be possible to proscribe a 'specific, high-harm component' of the group, but the Secretary of State was told there was no evidence that this would be possible at that time. Owing to the diffuse nature of regional cells and the hierarchical structure and co-ordination, further work was needed. As such, PA in the UK as a whole, rather than any sub-division of it, fell to be considered for proscription.

Supplementary advice – 2 April

27. On 2 April, the Secretary of State was provided with additional advice from CTP regarding the benefits of proscription in disrupting PA's organisational infrastructure and deterring future activity [SB/216]. Further advice regarding the feasibility of implementing proscription on different dates, and the impact of proscription on ongoing criminal proceedings, was provided on 9 – 10 April.

28. On 14 May, the Secretary of State agreed to the recommendation to proscribe PA and requested that the decision be implemented as soon as possible [SB/221]. However, the process of giving effect to the Secretary of State's decision was paused on 16 May in anticipation of the Secretary of State requesting further information on implementation, and that advice was sought on 30 May.

Supplementary Advice – 4 June

[5] This was a reference to an incident at the warehouse of Thales, a French weapons manufacturer, in June 2022, which caused more than £1 million of damage.

29. The Secretary of State was advised that since August 2024, PA had been responsible for 158 direct action events targeting 48 different business premises. 28 of those incidents were described as 'higher level' in that they had involved significant property damage (over £50,000) and/ or prolonged policing resources. 158 arrests had been made. The advice concluded that the benefits of proscription (as detailed in the 26 March Min Sub) continued to outweigh the risks [SB/222-229].

The decision to proscribe PA

30. At 2.14pm on 20 June 2025, the Secretary of State confirmed that she had retaken her previous decision and had again agreed with the recommendation to proscribe PA [SB/230]. The Secretary of State was aware of the attack on RAF Brize Norton when taking her decision.

31. On 23 June 2025, the Secretary of State made a written ministerial statement to the House of Commons regarding the events at RAF Brize Norton and the decision to proscribe PA: quoted at J §3. A draft proscription order was laid on 30 June 2025 accompanied by an Explanatory Memorandum. The Order was made on 4 July and came into force at 00:01 on 5 July 2025 [AB/7/216].

APPEAL GROUND 1: in determining Ground 6, the Divisional Court erred in its interpretation, and application, of the Secretary of State's policy

(a) The proper approach to the interpretation of policies

32. Policies are not to be read as statutes. An overly strict interpretation of a policy should be avoided. They are not to be read "*in a complicated or excessively analytical way*": *R v. Criminal Injuries Compensation Board, ex p K* [1998] 1 WLR 1458, 1461, per Dyson J [AB/9/261].

33. That this is the correct approach to the interpretation of policy statements is well-established by a long line of consistent authority: see e.g. Lord Steyn in *In re McFarland* [2004] 1 WLR 1289 (dissenting), "*This is not to say that policy statements must be construed like primary or subordinate legislation. It seems sensible that a broader and wholly untechnical approach should prevail*" (at §24) [AB/14/356]; Lord Reed in *Tesco Stores Ltd v Dundee CC* [2012] PTSR 983 (at §§18-19) [AB/20/578]: *"As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to*

be retained. … policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. … That is not to say that such statements should be construed as if they were statutory or contractual provisions."

34. The risks of adopting an overly strict or excessively analytical interpretation of policy statements were identified by the Court of Appeal in *R (Tesco Stores Ltd) v Stockport MBC* [2025] PTSR 1877 where Sir Keith Lindblom SPT held (at §§36-37):

> *"Interpreting a planning policy ought not to be a difficult task, but straightforward […][6]. It should not generally involve the kind of linguistic precision the court would bring to the interpretation of a statute or contract. Construing the language in the policy should not require it to be dismantled and reconstructed, or a gloss imposed upon it, or resort to paraphrase. One can expect the purpose of the policy to be clear from its own provisions, given their ordinary meaning and read in their context. Policies should be stated in plain terms, easy to understand for those affected by decisions made in accordance with them, and capable of being applied with realism and common sense. Mostly they are. […] As a general rule, the temptation to infer terms the policy-maker has not actually used should be resisted. The court will sometimes be able to conclude that the words of the policy mean exactly what they say, nothing more and nothing less. It should not hesitate to do this if it can.* […] *A more sophisticated approach has obvious risks. By going further than it needs in volunteering views of its own upon the meaning of a policy, the court may find itself drawn, unintentionally, towards the role of policy-maker. If a policy is ambiguous or incomplete, it is for the policy-maker to put that right, either by reformulating the policy when it can or by issuing guidance on its application. That is not a job for judges. …"*[AB/42/1515].

(b) The policy in issue here

35. The policy in issue here has been a longstanding and constant feature of the Secretary of State's decision-making in the proscription field. The policy is brief and open-textured. It was first articulated to Parliament in May 2000 by the then Parliamentary Under-Secretary of State for the Home Office, Lord Bassam, during a debate in the House of Lords on clause 1 of the Terrorism Bill[7], as follows:

> "*It has to be said that it would be excessive to proscribe every organisation in the world that is concerned with terrorism. However, I can give the noble Lord [some] idea of the factors that will be taken into account, which are fairly obvious. First, we would have to consider carefully the nature and scale of the group's activities; secondly, we would have to look at the specific threat that it posed to the United Kingdom and our citizens abroad, which is clearly a very important consideration, as well as the extent of its presence in this country. Indeed, the noble Lord drew our attention to one group which may, or may not, fall into that category. Thirdly, we would also have to consider our*

[6] Citing *Corbett v Cornwall Council* [2022] EWCA Civ 1069; [2023] JPL 126.

[7] Hansard, 16 May 2000, vol 613 col 252.

responsibility to support other members of the international community in the global fight against terrorism. That has to be very important." [AB/80/3218].

36. The policy has since been adopted and applied by the Secretary of State in every proscription decision, and without criticism or debate about its terms, including the breadth of discretion. See, for example, POAC's decision in the first appeal brought on behalf of the Tamil Tigers: "*It is common ground that there are two stages in any decision by the Secretary of State about proscription. […] The Secretary of State then has a discretion about whether or not to proscribe the organisation. It appears from Mr Toogood's statement [the Home Office witness] that in deciding whether or not to exercise the discretion to continue proscription, the Secretary of State considers all relevant factors. It appears that, as a matter of policy, those will usually include: [the five factors]*" (*Arumugam and Others v Secretary of State for the Home Department*, PC/04/2019, 18.02.21, at §5 [AB/28/940]; and see too the Home Office evidence to the same effect in *Arumugam v Secretary of State for the Home Department*, PC/106/2022, 21.06.24.at §15 [AB/38/1355]).

37. The Secretary of State's approach to the exercise of her discretion is now reflected in a policy paper, dated 27 February 2025, entitled, "*Proscribed terrorist groups or organisations*" [SB/306]. The policy paper is a 43-page document, the overwhelming majority of which comprises information listing and describing proscribed terrorist organisations and explaining the proscription process. Within the policy paper, the five 'discretionary factors' feature in the introductory section under the general heading "*Proscription criteria*", as follows (see too J, §37):

> *"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.*" [SB/308-309].

38. In this case, the policy was set out in §3 of Annex A to the Ministerial Submission dated 26 March 2026 [SB/156] ('**the March MinSub**') and Annex B to the Ministerial Submission dated 4 June 2025 [SB/227] ('**the June MinSub'**, together '**the MinSubs'**). On each

occasion, it was however augmented by an additional reference to the Convention rights of those "*who are members of, or support the group*". In the MinSubs, the five factors listed in the policy were repeated verbatim after the following introductory text (quoted at J, §42):

> *"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)) …*" [SB/156 and SB/227].

The policy was thereby given effect via, and subject to the additional terms of, the introduction to the MinSubs.

39. At no point in the policy paper or the MinSubs was the policy's purpose described as being "*to limit use of the discretionary power to proscribe*": c.f. J, §91.

(c) Submissions on the Divisional Court's approach

40. It is submitted that the Divisional Court (J, §§72-96) erred in both its interpretation and application of the Secretary of State's policy.

41. **First**, at J, §§73-80, the Divisional Court wrongly rejected the parties' common submission that "*proportionality"* in the context of the policy (as articulated in the MinSubs) was a reference to "*Bank Mellat-style proportionality"*. Thus, as both parties had submitted, there should be focus on the legitimacy and importance of the objective of the Decision, its rational connection to that objective, whether a less intrusive measure could have been used without unacceptably compromising the achievement of that objective, and fair balance (see *Bank Mellat* at §74 per Lord Reed [AB/22/723]). In so doing, neither party suggested that the policy "*would contract-out the decision-maker's decision to the court*": J, §79. The conclusion is overstated in suggesting that (and similar) consequences flowed from the parties' approach to proportionality.

42. The Divisional Court paid no regard to the introduction to the MinSubs, which referred expressly to the proportionality analysis required in respect of arts.10 and 11 ECHR – "*whether the circumstances justify the interference that proscription would have with the*

rights of those who are members of, or support the group" – as a relevant "*other factor"* bearing on the Secretary of State's discretion to proscribe. Had the Divisional Court recognised the substantive analysis indicated by the policy to be a balancing exercise to achieve a Convention-compliant outcome with reference to the enumerated, and other, factors set out in the policy, Ground 6 would properly have been recognised to overlap substantially with Ground 2 (*c.f.* J, §79)[8].

43. Further, the Divisional Court went on to hold (at J, §81) that the outcome of the claim was unaffected by its rejection of the "*Bank Mellat-style*" approach. Although the basis of this finding is not explained, it seems the Divisional Court reached this view in light of its conclusion on 'fair balance' at J, §140, by which Ground 2 succeeded. As such, if the Secretary of State's appeal were to succeed in relation to Ground 2 (J, §140) the Divisional Court's approach to proportionality would not operate as an independent bar to the Secretary of State's appeal on Ground 6.

44. **Second**, in any event, the Divisional Court erred in its interpretation of the policy.

45. The Divisional Court introduced the "*substance of the policy"* as being:

> *"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. … 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*" (J, §74).

46. The Divisional Court's broad description of the policy was then refined and substantively narrowed. The Divisional Court held: "*The purpose of this policy is to limit use of the discretionary power to proscribe*" (J, §91).[9] That conclusion rested upon a strict and legalistic interpretation of the five factors listed in the policy at J, §§83 and 91, whereby the Divisional Court held that "*Each of the five factors stated on the face of the policy has*

[8] That overlap had been the basis for Chamberlain J's initial refusal of permission to claim judicial review in respect of Ground 6: see [2025] EWHC 2013 (Admin), [88]: "*In circumstances where the court will have to conduct its own assessment of the proportionality of the proscription order, there is nothing to be gained by adding this ground. If the proscription was a proportionate restriction of the Article 10 and 11 rights of the claimant and others, nothing would be gained by considering separately whether the Home Secretary's decision documents were deficient in this regard.*" [CB/179Q].

[9] See also J, §83: "… *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.*".

that effect [i.e. of constraining the Secretary of State's discretion]. Any 'other factor' considered when applying the policy must be of the same nature." Such a strict and legalistic interpretation of the policy, as if it were a statute or a contract, was wrong.

47. As to the Divisional Court's identification of the purpose of the policy as being (under the *ejusdem generis* principle) to limit the Secretary of State's power to proscribe:
    a. The policy, both as it appeared in the policy paper and in the MinSubs, is notable for both its brevity and its open-textured formulation. On its natural and proper interpretation, the policy was drafted so as to guide not straitjacket the exercise of the Secretary of State's discretion to proscribe an organisation that is "*concerned in terrorism"*.
    b. Consistent with the policy being set out in the introductory section of a document designed to increase the general public's understanding of the proscription process and proscribed organisations (and its original articulation in Parliament), it made transparent some, expressly non-exhaustive, factors that would be considered by the Secretary of State when exercising her discretion. The repetition of those expressly non-exhaustive factors in the MinSubs demonstrated the Secretary of State's consistency of her approach with the public explanation of how her power to proscribe would be exercised.
    c. Applying the correct approach to the interpretation of policy statements, there was no proper textual hook on which to hang a conclusion that the policy's purpose was <u>to preclude</u> the Secretary of State from taking into account whatever factors seemed rationally appropriate to her, including the five expressly illustrative ones identified therein: *c.f.* J, §90. The policy recognised that not all organisations which meet the 'concerned in terrorism' requirement would necessarily be proscribed; but instead that discretionary considerations, of the kind non-exhaustively identified, might have that consequence.

48. **Third**, the Divisional Court found that each of the five listed factors in the policy "*must be of the same nature*" (J, §91). That was an unwarranted judicial gloss on the terms of the policy. It inserted restrictions that the Secretary of State had not elected to include.

49. As to the first 'discretionary factor' listed in the policy, the Divisional Court limited "*the nature and scale of the organisation's activities*" to only "*such activities as amounted to terrorism within the definition in section 1 of the 2000 Act*" (J, §§82-84) for three reasons

summarised at J, §83: (i) the policy should be construed consistently with the TA 2000; (ii) applying the *ejusdem generis* principle, the first factor in the policy had to be "*understood in the same way*" as the other four factors, which "*concer[n] the consequences of terrorist acts*"; and (iii) "… *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*". Each of those reasons was flawed. Point (iii) is addressed above.

50. As to (i), despite concluding that the policy should be construed consistently with the TA 2000, the Divisional Court did not adopt that approach itself. The Divisional Court erroneously conflated "*actions*" under s.1 TA 2000 with "*activities*" under the policy.
    a. Section 1(1) TA 2000 defines "*terrorism"* by reference to "*the use or threat of action*". In turn, "*action*" is defined in s.1(2) through an exhaustive list of terrorist conduct, and s.1(4)(a) confirms that "*action*" here *"includes action outside the United Kingdom*". As such, the formulation of the first factor in the policy with reference to "*the organisation's activities*" - *cf.* "*actions*" - differs materially from the statutory language of TA 2000. The term "*activities*" in the policy is materially broader.
    b. Properly interpreted, "*the nature and scale of the organisation's activities*" includes "*activities*" which have not yet met the statutory definition of "*terrorism"* but rationally bear on the Secretary of State's power to proscribe, as well as other activities not malign in themselves (e.g. recruitment, fundraising) which may be relevant to the risk to national security an organisation presents. For example, an organisation's activities that demonstrate a course of conduct escalating in frequency and seriousness (not least in the context of prospective assessments of the organisation's future activities meeting the threshold of "*terrorism*") are highly relevant to the Secretary of State's exercise of her power of proscription, which takes effect prospectively. The Secretary of State ought properly to be able to turn her mind to those activities of an organisation "*concerned in terrorism*" which currently fall below the "*terrorism*" definition in the context of escalation, or which expert advisors assess might come to meet that definition. Here, the Divisional Court's own findings were that PA was an organisation with such a course of conduct (and the attack at RAF Brize Norton demonstrated further escalation in the time between the MinSubs and the proscription decision on 20 June 2025) but the lower court nevertheless held that the Secretary of State was precluded by her own policy from having any regard to that when exercising her proscription power. There is no good reason in principle why "*activities*" of an

organisation "*concerned in terrorism"* which are not themselves terrorist in nature (but are for example criminal) should be treated, or should have been intended by Parliament to be treated, as irrelevant to the exercise of the discretion to proscribe.

c. Upon the first factor listed in the policy being properly interpreted, it follows that operational consequences and advantages of proscription in disrupting those "*activities*" were capable of being - and were - rationally (and therefore lawfully) considered by the Secretary of State with reference to the full nature and scale of PA's activities and not only those meeting the definition of "*terrorism*" (*cf.* J, §90).

51. As to (ii), the Divisional Court erred in construing the policy so that each and every provision - including "*other factors*" - was to be read as operating, necessarily, to confine the Secretary of State's discretion to proscribe. For example, to require the fifth factor ("*the need to support other members of the international community in the global fight against terrorism*") to operate exclusively as a restriction on the Secretary of State's proscription power, rather than being a neutral factor or even a factor supportive of proscription of an organisation "*concerned in terrorism*" would fundamentally impede the Secretary of State's ability to take steps in support of international partners and allies. The fifth factor cannot be reconciled with the Divisional Court's approach that every provision of the policy constrains the Secretary of State's discretion. That being so, the basis for the Divisional Court's finding that "*[e]ach of the five factors stated on the face of the policy has that effect [of limiting use of the discretionary power to proscribe]*" falls away, and so too does the basis for its strict and uniform construction of the first factor and "*other factors*" in the policy as being exclusively to constrain the Secretary of State's discretion.

52. As to the relevance of the disruptive effects flowing from the proscription regime, the Divisional Court addressed that issue in the context of the policy's reference to "*other factors*", and required it to "*be of the same nature*" as the listed illustrative factors: see J, §§89-94. As above, that analysis further reflected the lower court's erroneous interpretation of the purpose of the policy and the proper approach to its terms.

53. **Fourth**, the Divisional Court's interpretation of the policy had the perverse (and surprising) effect that the Secretary of State was precluded from consideration of the intended and beneficial disruptive effects of the proscription regime when considering whether to apply that proscription regime to an organisation "*concerned in terrorism*". The operational value of proscription (in terms of enabling enforcement / disruption actions in the UK) is though

plainly relevant to a decision whether to proscribe an organisation that has indisputably met the statutory definition of being "*concerned in terrorism*".

54. **Fifth**, the Divisional Court failed to have any regard to the fact that the MinSubs referred expressly to the proportionality analysis required in respect of arts.10 and 11 ECHR as a relevant "*other factor"* bearing on the Secretary of State's discretion to proscribe. Yet J, §121 provides: "*... the interference with Convention rights in this case must be measured ... by the restrictions required by the letter of the criminal offences ...*". Were the Divisional Court's construction of the policy correct, the Secretary of State would therefore be precluded from considering the general consequences of the proscription regime on Convention rights. The Secretary of State's policy, as adopted and applied in the MinSubs, would prevent her from considering one of the key metrics identified by the Divisional Court for assessing interferences with Convention rights.

55. **Finally**, in seeking to mitigate these perverse consequences of its interpretation of the policy, the Divisional Court held that "*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"*." (J, §94). In adopting that approach, the Divisional Court materially re-drafted the policy:
    a. The policy contains no reference to the disruptive effects of the proscription regime in the TA 2000 being a relevant consideration only when "*unusually effective*". There is no basis in the policy for regarding proscription of one organisation "*concerned in terrorism*" as turning on the actions of other organisations: no such comparison is required under the policy.
    b. The "*unusually effective*" test is unexplained by the Divisional Court, save that the lower court found that PA did not meet it on the facts. Given the range of organisations "*concerned in terrorism*" (i.e. their ideology, actions, nature, scale and geographic location, etc), the factors by which reliance on the disruptive effects of the proscription regime in the TA 2000 may be identified as "*unusually effective*" is both unclear and unworkable. That is unsurprising given that the policy does not introduce, let alone explain, that test.

c. No doubt many organisations may satisfy the statutory definition of being "*concerned in terrorism*", but the operational value of proscribing them may be limited - because, for example, almost all of the organisation's members and sympathisers are located abroad. This is no doubt why "*the extent of the organisation's presence in the UK*" is expressly identified as a factor. In circumstances where the consequences and advantages of proscription will depend upon many factors, including the organisation's 'footprint' in the UK, the Divisional Court's conclusion at J, §94 that the "*consequences and advantages*" of proscription "*will apply equally to any organisation that could be proscribed*" is wrong. (And the observation that the "*consequences and advantages*" of proscription "*will apply equally to any organisation that could be proscribed*" is clearly at odds with an "*unusually effective*" test.)

d. In any event, when the expert advice to the Secretary of State as to the inadequacies of the general criminal law to disrupt PA is read together with the Divisional Court's findings summarised at paragraphs 12-17 above, the Divisional Court's conclusion that the operational consequences of proscription were not "*unusually effective*" in the context of PA was not open to it on the evidence (J, §94). Where the TA 2000 permits organisations "*concerned in terrorism*" to be proscribed when their activities are merely preparatory (see s.3(5)(b) TA 2000) and the organisation's actions take place exclusively overseas (see s.1(4)(a) TA 2000) - so the disruption caused by proscription may in those cases be limited, the operational consequences of proscribing PA given its established course of terrorist conduct ought to have been characterised as "*unusually effective*", especially given the expert assessments on the advantages of proscribing PA provided to the Secretary of State when making her Decision.

56. It is submitted that the correct starting point here should have been the broad discretion that has been conferred on the Secretary of State by Parliament. The policy's evident purpose is to guide the exercise of discretion, and to render transparent some, expressly non-exhaustive, factors that will be considered in this context. That is consistent with the well-established principle that policy is "*not a rule but a guide*": *First Secretary of State v. Sainsbury's Supermarkets Ltd* [2005] EWCA Civ 520, *per* Sedley LJ giving the judgment of the Court of Appeal at §16 [AB/15/368] (and ultimately an application of the rule in *British Oxygen Co Ltd v. Minister of Technology* [1971] AC 610). The policy's purpose was never stated to preclude - and nor did it preclude - the Secretary of State from taking into

account whatever factors she considered appropriate (subject only to rationality), including the five expressly illustrative ones identified in the policy. The policy recognises that not all organisations which meet the 'concerned in terrorism' requirement will necessarily be proscribed; discretionary considerations, of the kind non-exhaustively identified, might have that consequence. However, the recognition of that fact does not limit or preclude matters that the Secretary of State is entitled to take into account or reduce the weight she is entitled to give to the facts underpinning the conclusion that an organisation is 'concerned in terrorism', which could themselves justify proscription without more.

57. Properly approached, there was no error in the Secretary of State's application of her longstanding policy in this area. The Court is invited to allow the Secretary of State's appeal of the lower court's decision on Ground 6.

APPEAL GROUND 2: in determining Ground 2, the Divisional Court erred in its approach to the proportionality of the Decision under arts.10 and 11 ECHR

58. In resolving Ground 2 against the Secretary of State (J, §§72-96), the Divisional Court erred in three respects: (i) its rejection of the Secretary of State's submission that "*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*" (J, §§113-114); (ii) its decision that the interference with Convention rights was not prescribed by law by reason of the Secretary of State's failure to apply the policy (J, §125); and (iii) when considering whether a fair balance had been struck, the decision that "*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*" (J, §140).

(a) Article 17 and the scope of arts.10 and 11

59. The Divisional Court recognised that PA was an organisation "*concerned in terrorism*": see J, §§92 and 134. In that context, the Divisional Court held: (i) "*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*": (see J, §23); and (ii) "*Any such action is the antithesis to the notion of a democratic society that is the foundation of the European Convention on Human Rights*" (J, §137). At J, §108, the Divisional Court further

concluded: "… *it is settled law that Convention rights do not afford any protection to violent or non-peaceful protest.*"

60. The test for determining whether statements are removed from the protection of arts.10 and 11 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 (objectively assessed) 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: see *Roj TV A/S v. Denmark* (2018) 67 EHRR SE8 at §31 [AB/65/2459], *Perinçek v. Switzerland* (2016) 63 EHRR 6 and *Attorney General's Reference (No 1 of 2022)* [2023] KB 37 at §102 [AB/33/1217]. The Divisional Court's findings as to PA's conduct at J, §§23 and 137 meet that threshold and so it ought to have held that art.17 of the Convention applied.

61. The application of art.17 is further bolstered by the unchallenged finding that PA is an organisation "*concerned in terrorism*" for the purposes of TA 2000. The instant case is materially similar to *Roj TV*, in which it was also not in issue that the PKK was a designated terrorist organisation. Further, the ECtHR in *Sabuncu v Turkey* (23199/17, 19 April 2021) at §222 [AB/68/2593-4] (quoted at J, §114) held that free expression by a prohibited organisation is not protected speech where it "*contain[s] public incitement to commit terrorist offences or condone the use of violence*" (emphasis added). The importance placed by the ECtHR on domestic terrorism offences is consistent with the wide margin afforded by the ECtHR to domestic authorities in matters of terrorism and national security: see *Schwabe v Germany* (2011) 59 EHRR 28 at §113 [AB/56/2036], *Internationale Humanitäre Hilfsorganisation eV v Germany* (2013) 57 EHRR 21 at §89 and *ABJ* at §108 [AB/49/1821]. The fact that PA met the domestic statutory threshold of an organisation "*concerned in terrorism*" and that expressions of support for PA constitute a domestic terrorism offence accord, rather than conflict, with *Sabuncu*.

62. Relatedly, the Divisional Court erred in distinguishing the conduct of PA that was "*the antithesis to the notion of a democratic society"* from the conduct of individuals expressing support for, or association with, PA. Of the latter, it held: "*[i]t 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*" (J, §115). As a matter of

substance, persons expressing support for, and associating with, PA should not have been treated as undertaking peaceful protest; rather, they were supporting a terrorist group, the activities of which were inconsistent with democratic values and the rule of law. The Supreme Court recognised in *ABJ* at §103 that "*there is clearly a strong public interest in preventing the spread of terrorist ideology through propaganda or public encouragement*" [AB/49/1820], to which the support and membership offences under TA 2000 are directed. As such, the interference with arts.10 and 11 rights was limited only to situations in which individuals acted in support of a terrorist organisation. Where individuals were genuinely undertaking peaceful protest without a statutorily relevant link to an organisation "*concerned in terrorism*", they did not fall in scope of the proscription regime at all: see J, §§117 and 136. In those circumstances, art.17 of the Convention applied, failing which arts.10 and 11 did not extend to such expression and association: see *R v Hallam* [2025] 4 WLR 33 at §36 [AB/43/1531], *Cuadrilla Bowland Ltd v Persons Unknown* [2020] 4 WLR 29, at §§94-95, and *R v Trowland* [2024] 1 WLR 1164 at §75 [AB/39/1411].

(b) Prescribed by law

63. Further to Appeal Ground 1 above, the Divisional Court erred in finding that the alleged interference with Convention rights was not "*prescribed by law"* at J, §125.

(c) Fair balance

64. For the following reasons, the Divisional Court's approach to the fair balance assessment under arts.10 and 11 of the Convention was flawed. Applying the approach in *Shvidler v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] 3 WLR 346, at §160 [AB/44/ 1593] and *R (BYL) v. Chancellor of the Exchequer* [2026] EWCA Civ 170 at §§50-55, the Court of Appeal should make its own fresh proportionality assessment, rather than confine itself to a "*review*" of the Judgment. The context in which that assessment is to be carried out is analogous to that considered by Lord Sales and Lady Rose in *Shvidler* at §213 ("… *the main point, as Singh LJ rightly emphasised (para 210), is that sanctions often have to be severe and open-ended if they are to be effective. The object of the designation in relation to Mr Shvidler is that he should so far as possible be disabled from enjoying his assets and pursuing his wealthy lifestyle. The designation contributes to the cumulative effect of the sanctions regime. If the strategy of imposing sanctions on individuals is to have any hope of being effective, designation has to hurt those who are subject to it. In our opinion, in light of the importance of the policy objective in issue and*

the connection between the designation of Mr Shvidler and that objective, the issue of fair balance in relation to his designation is, again, straightforward." [AB/44/1605])[10]

65. **First**, the Divisional Court failed to accord the Secretary of State the proper degree of margin in a context in which the protection of national security and of the public from terrorism was central and the matters under consideration were particularly apt for judgement by the Secretary of State (for example, the effectiveness of proscription as compared to other options such as simply leaving control to the *ex post*, and blunter, instrument of the criminal law; but also the extent of the impact on the ability of people to exercise freedom of expression and assembly). While the Divisional Court made reference to according the Secretary of State "*some latitude … given that she has both political and practical responsibility to secure public safety*" (J, §138), the Judgment does not indicate to how that "*latitude*" played into the balance to be struck, and ultimately it did not. Instead, the Divisional Court substituted its assessment of the evidence of the "*level, scale and persistence*" of PA's activities meeting the threshold of "*terrorism*" for that of the Secretary of State at J, §140.

66. The approach taken by the Divisional Court was fundamentally at odds with the approach mandated by an unbroken line of authority, very recently affirmed at the highest level: see *Secretary of State for the Home Department v. Rehman* [2003] 1 AC 153 [AB/13]; *R (Lord Carlile of Berriew) v. Secretary of State for the Home Department* [2015] AC 945 [AB/24]; *R (Begum) v. Special Immigration Appeals Commission* [2021] AC 765 [AB/29]; *U3 v SSHD* [2025] AC 1510 [AB/40]; and *ABJ* at §106 [AB/49/1821] . Those authorities establish that a wide margin ought to have been accorded to the Secretary of State when the Divisional Court considered the proportionality of an interference with a qualified Convention right, and particularly so in the context of the legislative response to terrorism in light of the institutional expertise and constitutional legitimacy underlying the Secretary of State's Decision. The Divisional Court ought to have respected the Secretary of State's judgements, supported by detailed expert advice, and only intervened if the Decision was not one that could reasonably have been reached, particularly where it had recognised that the proscription power "*engages the Home Secretary's responsibility to safeguard national*

[10] Similarly, as observed by POAC in *Arumugam v Secretary of State for the Home Department (1)* (PC/04/2019) at §117: '*… it is hard to see how, if the statutory test is met, and discretionary factors favour proscription, it could be disproportionate to maintain proscription'.* [AB/28/974].

security" (J, §58). In *R (FTDI Holding Ltd) v. Duchy of Lancaster* [2025] EWHC 1922 (Admin), §112, the Divisional Court held: "*the difference between a rationality review and an assessment of fair balance in this context is conceptually sound but in practice small*" [AB/41/1496]. A striking feature of the Judgment is that there is no reference at all to any of these cases.

67. Contrary to the proper approach to margin, on the Divisional Court's own analysis it substituted its assessment of the fair balance for that of the Secretary of State, despite recognising that "*where the balance should be struck in this case is difficult*" (J, §138). The difficulty in identifying where the balance should be struck was itself an indication that the Secretary of State's assessment was well within the margin to be accorded to her in this context and ought, for that reason, to have been accorded considerable respect. The failure to afford proper margin to the Secretary of State's judgement is evident from the following features of the lower court's analysis.

    a. The Divisional Court placed central reliance on the fact that only "*[a] very small number of its actions have amounted to terrorist action*" (J §138) within the statutory definition in TA 2000. However, it was uncontested that PA met the statutory threshold of an organisation "*concerned in terrorism*". The weight to be accorded to the number of terrorist actions was a matter for the Secretary of State's judgement in circumstances including: (i) PA had "*pledged to escalate its campaign*" (see the Ministerial Statement dated 23 June 2025, quoted at J, §3); (ii) JTAC had assessed that "*in the next 12 months "[PA] will conduct further activity constituting serious property damage in an act of terrorism*"" (J, §34); (iii) JTAC's prospective analysis of likely future activity was borne out by the RAF Brize Norton attack, just four months after its assessment; (iv) the March MinSub recorded "*Evidence collected through police investigations indicates [PA] members have intended to further escalate the seriousness of the activity*"; (v) the Proscription Review Group "*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"* (J, §40) and noted PA's "*intentions to radicalise certain individuals into their cause*" (J, §43) [11]; and (vi) it was assessed that

[11] See *ABJ* at §§52-55 [AB/49/1806], which records the operational utility of s.12(1A) TA 2000 in reducing radicalisation. Following PA's proscription, it has not been recorded as having conducted any

proscription would "*enable law enforcement to effectively disrupt the escalating actions of this serious group*" (J, §3). Moreover, those assessments were made in the context of PA's targets being wide,[12] its organisation and funding opaque, its footprint being across the United Kingdom, and its encouraging those who read the Underground Manual to act "*without restraint*": see §§12-17 above. Moreover, many of its activities were criminal, with the line between 'merely criminal' and terrorist under the TA 2000 blurred in any event. The Divisional Court was not justified in diminishing the significance of the number of terrorist action incidents in this way.

b. The Divisional Court found that the decision to proscribe was disproportionate because "*[a]t its core, Palestine Action is an organisation that promotes its political cause through criminality and encouragement of criminality*" (J §138). That is not a factor suggesting that the Secretary of State's judgement that proscription was appropriate was unreasonable: see ***Begum*** and ***U3*** [AB/29 and AB/40]. The line between criminality - sometimes violent criminality (J, §29) - and terrorism is not a bright one. The fact that PA engaged in such criminal activity, that this was its *modus operandi*, and that its actions amounting to terrorism were neither a mistake nor an aberration (J/§137), are significant factors in favour of, not against, the proportionality of proscription. That is particularly so in circumstances where the organisation's actions were assessed to be escalating. The RAF Brize Norton attack occurred on the day that the proscription was announced.

c. Further, in the context of the fair balance assessment (rather than the assessment of whether less restrictive measures in order to achieve the same result as effectively) the Divisional Court held: "*For those [criminal] actions, regardless of proscription, the criminal law is available to prosecute those concerned*" (J, §139). The Divisional Court further noted the "*significant deterrent*" of convictions for "*ordinary criminal*

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further terrorist actions: see Sinclair W/S 2, §21 ("… *proscription does appear to have had a positive effect in that Palestine Action's pattern of escalatory conduct has been disrupted. For example, there have been no incidents of the seriousness of the incident at RAF Brize Norton since Palestine Action was proscribed*.") [SB/42].

[12] Although the "*main target*" of PA was recognised to be Elbit Systems UK Ltd at J, §16, the Ministerial Statement dated 23 June 2025 recorded: "*Only last month, Palestine Action claimed responsibility for an attack against a Jewish-owned business in North London …*", with the JTAC assessment at Annex B to the March MinSub recording at §50: "*PAG has also conducted direct action against other targets in the UK which are not linked to the Israeli defence trade, but are considered symbolic to its wider pro-Palestinian cause. On the anniversary of the Balfour Declaration on 2 November 2024, the group conducted actions at universities, charities and lobby firms.*" [SB/167].

offences" (J, §139). However, the Secretary of State - acting well within the margin accorded to her in relation to the judgements about whether other courses would as effectively meet the objective - assessed that the criminal law offences identified at J, §139, either in isolation or in combination, did not meet the purpose of proscription, which is why Parliament has created the bespoke proscription regime. That assessment of the Secretary of State was ignored by the Divisional Court at J, §§138-139; *a fortiori* that the Secretary of State was specifically advised by CTP that the existing criminal options for addressing PA's activities were insufficient (J, §35) and PRG's expert view was that proscription would offer *"significant disruptive benefits beyond the current policing powers being utilised to deal with its activity"* (J, §39(1)) and by the date of the Decision had demonstrably failed to prevent further escalation (see RAF Brize Norton). The PRG had advised the Secretary of State that, absent the restrictions consequent upon proscription, people would be allowed to become members and express their support for PA openly, which would risk presenting it as a legitimate organisation and creating a permissive environment (J, §43). Consistent with that concern, the Ministerial Statement dated 23 June 2025 noted PA's success in recruitment and training of its members, and fundraising, despite the general criminal law. At §5.8, the Explanatory Memorandum - to which the Judgment makes no reference - noted that proscription would enable law enforcement effectively to disrupt PA, help to undermine its covert methods, and reduce the risk that PA radicalises people wishing to demonstrate legitimate support for the Palestinian cause into becoming members or supporters of the organisation. In those circumstances, the lower court ought to have accorded due margin to the Secretary of State's judgement that the general criminal law was not able to achieve the same result as effectively as proscription, rather than failing to engage entirely with the advice to the Secretary of State and her consequent judgement of the efficacy of the general criminal law at J, §§138-139.

d. The statutory scheme established by Parliament does not require the Secretary of State to find that an organisation's "*core*" activities meet the statutory definition of "*terrorism*" for it to be proportionate to proscribe that organisation, as the Court appears to have assumed (J §138). The power to proscribe an organisation arises where it is "*concerned in terrorism*" and, where that definition is met and the Secretary of State so decides, Parliament has legislated for severe consequences to follow. The fact

that an organisation engages in a range of activities, only some of which are terrorism, is irrelevant: see *ABJ* at §107 [AB/49/1821].

68. The vital purpose of the proscription regime was described by the Supreme Court in *ABJ* at §29: proscription is not an end in itself, but a gateway to other provisions which Parliament considers necessary "*to prevent proscribed organisations from gathering support or financial aid, to counter their influence on susceptible individuals, and ultimately to reduce the threat which they pose to our democracy and to public safety*". [AB/49/1796].

69. The proper operation of that regime is a matter for which the Secretary of State is constitutionally and institutionally responsible. Parliament has legislated to control terrorism through the proscription of organisations that engage in conduct within the definitions that Parliament has considered appropriate by a robust scheme of general prohibitions that operate to disrupt and degrade a proscribed organisation's activities as effectively as possible. As Parliament has recognised in the enactment of the scheme, this justifies the limitation of fundamental rights in principle.[13] PA engaged in terrorism, as the Secretary of State was advised and concluded. The objective of proscription was to deal with the organisation on that basis; and to do so in precisely the manner authorised by Parliament.

70. **Second**, the Divisional Court's analysis of fair balance was too narrow. At J, §140, the Divisional Court's analysis was expressly limited to the "*level, scale and persistence*" that PA's activities had "*yet reached*" (J, §140), without having regard to assessments of their escalation in frequency and seriousness and the organisation's likely future conduct. The risks that informed the Secretary of State's judgement and as to which she had received expert advice were therefore left out of account by the Divisional Court.

71. **Third**, the Divisional Court's finding that the "*level, scale and persistence*" of PA's activities – where those activities had repeatedly crossed the "*terrorism*" threshold in a context of the organisation continuing to escalate its activities and JTAC had assessed that

[13] In *Purcell v Ireland* (15404/89), 16 April 1991, even where Sinn Fein (a registered political party) had not been designated as a proscribed organisation, a challenge to a prohibition on broadcasting or reporting interviews with Sinn Fein members on art.10 grounds was dismissed as manifestly ill-founded. Those facts are *a fortiori* the instant case.

PA would cross that threshold again ("*over the next 12 months, JTAC assesses that PAG will conduct further activity constituting serious property damage in an act of terrorism*") – was insufficient to permit the proportionate exercise of the Secretary of State's proscription power runs contrary to Parliament's assessment of the efficacy of the fixed suite of criminal offences triggered by proscription in disrupting organisations "*concerned in terrorism*". Parliament intended the proscription regime to be available even where only some of the activities of an organisation are "*concerned in terrorism*". Similarly, there is no requirement that activities "*concerned in terrorism*" occur at a certain frequency or tempo for the Secretary of State's exercise of her proscription power to be proportionate.

72. **Fourth**, the Divisional Court's particular findings as to the scale of interference with arts.10 and 11 of the Convention were such that the overall description of the interference at J, §135, as "*very significant*", and outweighing the importance of proscribing PA, was overstated and wrong. Whilst the proscription of PA in principle has the limited and specific effects that the TA 2000 makes provision for - in which context prohibited activities relating to an organisation "*concerned in terrorism*" are not just chilled but are prohibited in accordance with that legislation - the relevant chilling of expression and association ought to have been recognised to be limited when assessing the fair balance.

73. At J, §121, the Divisional Court held that ".. *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*". In that context, the Divisional Court held that "… *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"*(J, §115). In that context, the Divisional Court noted the importance of "*think[ing] carefully about the true nature and extent of the interference*" (J, §123). The Divisional Court's findings as to the scope of interference were summarised at J, §124: "… *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".

74. However, the Divisional Court's particularised findings included:
    a. PA's proscription (i) "*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*",[14] (ii) "*will not prevent any or all demonstrations targeted at Elbit*"; and (iii) will not prevent "*particular forms of protest action*": see J, §§117 and 136.
    b. PA's actions meeting the threshold of terrorism were *"the antithesis to the notion of a democratic society that is the foundation of the European Convention on Human Rights*" (J, §137). Further, PA's campaign was "*intended to close down the operations of a company pursuing a lawful business*" (J, §23).
    c. The number of people who were "*very closely associated with Palestine Action*", such that they would be careful not to commit the criminal offences under TA 2000 or may self-censor, was "*small*" (J, §122).
    d. "*Little weight*" was attached to the interference with Convention rights of those who "*did or ought to have realised that what they were doing was showing support for Palestine Action*", e.g. holding signs expressly support for PA (J, §118).
    e. The possibility for policing errors was also not a "*particular feature"* of the interference with Convention rights, not least given the "*appropriate practical steps … taken to reduce the likelihood of error*" and its reduction over time (J, §§119-120).
    f. No "*significant weight*" was attached to the evidence of the position of journalists or academics. In contrast, s.12 TA 2000 offences "*could cause genuine problems*" for "*campaigning/civil liberties organisations*": see J, §123.

75. Those findings ought to have been critical in very significantly reducing the weight given to the effects of the interferences on the arts.10 and 11 rights of a limited number of individuals "*who would have wanted to express support for and associate with Palestine Action … and who wished to engage in peaceful protests under the banner of Palestine Action, but are stopped from doing so*" (J, §115). Whilst no doubt some people would self-

[14] See also J, §136, and similarly, *ABJ* at §§60-61 [AB/49/1808]: "*Expressing an opinion or belief which coincides with the aims or beliefs of the organisation is not sufficient. … A person can express support for Palestinian statehood without expressing support for Hamas.*"

censor and the restrictions imposed by the criminal offences were significant to the extent of their specific scope, the Divisional Court failed to accord proper weight to Parliament's decision that a fixed suite of criminal offences were the consequences considered to be both effective and appropriate in the context of proscription. Self-censorship is the concomitant - people should respect the criminal law as set by Parliament (J, §118).

76. In any event, as *ABJ* recognises, proscription is a gateway to criminal offences whose application turns on a highly fact-sensitive consideration of the individual facts and circumstances of individual actions. As with the sanctions regime considered in *Shvidler* at §213 [AB/44/1605], the severity of the proscription regime is a function of Parliament's having recognised the importance of proscription in disrupting and preventing activities of, and in support of, organisations that are concerned in terrorism. Moreover, a range of other rights fell to be set against those limited arts.10 and 11 rights: they include the public interest (and the rights of others) in the protection of national security, as well as the rights of those whose property is damaged by PA. The consequences of proscription on a limited number of individuals' arts.10 and 11 rights are justified in that context.

CONCLUSION

77. The Court is invited to grant the Secretary of State's appeal. Should the appeal be refused, the Secretary of State invites the Court to make directions for further submissions on the issue of relief.

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