IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE (KBD)

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-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

REPLACEMENT RESPONDENT'S OPEN SKELETON ARGUMENT

References in the form J/§ are to paragraphs of the judgment of the Divisional Court; to the Core Appeal Bundle in the form* **{CB/tab/page}***; to the Agreed Supplementary Bundle in the form* **{ASB/tab/page}***; to the Unagreed Supplementary Bundle in the form* **{USB/tab/page}***; and to the Authorities Bundle in the form* **{AB/tab/page}**

A. INTRODUCTION

1. The decision of the Appellant ("**SSHD**") (the "**Decision**") to proscribe the direct-action protest group Palestine Action ("**PA**") is *"unprecedented"*.[1] The far-reaching proscription power under s.3 Terrorism Act 2000 ("**TA 2000**") has never been exercised in relation to: (i) any other protest group engaged in direct action on conscientious grounds;[2] or (ii) any other organisation solely because it is determined to have caused "*serious damage to property"* (per s.1(2)(b) TA 2000), but does not advocate for nor engage in serious violence against persons (per s.1(2)(a) TA 2000)[3].

2. The consequences of PA's proscription are severe. It has caused – as intended – the total destruction of a protest group with considerable popular support, which seeks to prevent atrocity crimes by Israel against Palestinians, while those crimes are ongoing and extensive. It has also given rise to severe restrictions on the fundamental free speech and assembly rights of vast numbers of people which have been curtailed and chilled in relation to a matter

[1] As the SSHD recognised: 7 March 2025 JTAC Assessment §10 **{ASB/10a/161}**.
[2] Ammori 1 §29 **{ASB/5/49}**.
[3] ASFG §32 and 65L **{CB/20/156K, 156Z}**; see also Home Office Policy Paper, Proscribed terrorist groups or organisations, updated 28 January 2026, gov.uk.

of current, critical importance. It has led to the mass arrests of thousands of people, giving rise to record numbers of annual "terrorism" – related incidents and "terrorism" arrests.[4] The SSHD's assessment that *"proscription would deter individuals rather than embolden them given the high penalty for membership/support"*[5] – like much of her predictions regarding the impact of proscribing PA – has proven wrong.

3. The unprecedented nature of the proscription is evident from the breadth and depth of concern expressed by authoritative voices across the national and international community including, e.g.: leading civil liberties and human rights organisations, the UN Commissioner for Human Rights, UN Special Rapporteurs across all relevant portfolios, the Council of Europe Commissioner for Human Rights, the Independent Commission on UK Counter-Terrorism Law, Policy and Practice and the MI6 former Director of global counter-terrorism operations.[6]

4. The Divisional Court ("**DC**") was right to conclude that the Decision was unlawful, because: (**i**) the reasoning in support of proscription was inconsistent with the SSHD's policy **[J/§§72-96]**; and (**ii**) proscription was incompatible with Arts 10 and 11 of the European Convention on Human Rights ("**ECHR**") **[J/§§97-145]**. The SSHD's appeal should be dismissed.

B. BACKGROUND

B.1. The Respondent

5. The Respondent ("**R**"), of Palestinian heritage, is one of the co-founders of PA **[J/§4]**.[7] She is a "*longstanding campaigner for human rights"* whose adult life "*has been devoted to campaigning for a future where Palestinians can live in freedom and peace"* and whose "*mission has always been to protect people and preserve life"*.[8] Her commitment to seeking to prevent violations of international law against the Palestinian people is informed by her family's experiences which – in common with many others' – has been marked by dispossession, forced displacement, political

[4] Home Office Accredited official statistics, Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes, and stop and search, Great Britain, quarterly update to September 2025, 18 December 2025, gov.uk; Ost 7 §23 **{USB/54/958}**; Exhibit AO7/4 **{USB/54a/1005-1008}**.

[5] 13 March 2025 PRG Minutes p.5 **{ASB/10f/213}**.

[6] Deshmukh 2 **{USB/56/1024-1033}**; Grant 2 **{USB/57/1034-1043}**; AO5/1 **{USB/26a/609-613}**; AO7/1 **{USB/54a/960-962}**; BS/2 **{USB/58a/1066-1069};** BS3/3,4 **{USB/58a/1070-1078};** AO7/5 {**USB/54a/1009-1012**}.

[7] Ammori 1 §1 **{ASB/5/43}**.

[8] Ammori 1 §2 **{ASB/5/44}**.

violence, repression, and racial discrimination.[9] R considers direct action protest to be critical to bringing an end to the ongoing complicity of UK-based corporate actors in violations of international law against Palestinians, other forms of protest activity which she had long organised and engaged in (including marches, petitions, street theatre and Boycott, Divestment and Sanctions campaigns,) having proven ineffectual.[10]

B.2. Palestine Action

6. PA was a direct action protest group, the founding of which was "*inspired by the long tradition of direct action in this country: from suffragettes to anti-apartheid activists to Iraq war activists.*"[11] It comprised a network of individuals who: (**i**) through research and public education, exposed the role of corporate actors in the UK, including arms companies, in aiding, abetting, and facilitating Israel's violations of international law against Palestinians;[12] and (**ii**) in the face of continuing inaction and complicity by the UK Government, used direct action to seek to prevent those serious violations of international law (including by targeting relevant premises in order to disrupt and prevent the continuing supply of weaponry from the UK to Israel).[13] PA enjoyed significant public support prior to proscription, with hundreds of thousands of followers on social media.[14]

7. Numerous PA activists, including R, have been arrested and prosecuted on charges *e.g.*, of criminal damage, encouraging criminal damage, possession of articles with intent to cause damage, and conspiracy.[15] Some have been acquitted; others have been convicted following plea or trial. As was common ground before the DC: (**i**) only three of 385 actions by PA[16] had been considered by the SSHD to meet the definition of terrorism (under s 1(1)(b) TA 2000;[17] and (**ii**) PA did not advocate unlawful violence against the person.[18]

B.3. The context to proscription

8. PA was proscribed in July 2025, 21 months into Israel's latest large-scale military onslaught

[9] Ammori 1 §§5-13 **{ASB/5/44-46}**.
[10] Ammori 1 §§15-27 **{ASB/5/46-49}**.
[11] Ammori 1 §29 **{ASB/5/49}**.
[12] Ammori 2 §2 **{ASB/6/54}**; Exhibit HA1 **{ASB/6a/65-71}**; Ammori 4 §§11-21 **{ASB/8/120-122}**.
[13] Ammori 1 §§25-30 **{ASB/5/48-49}**; 2 §§2-6 **{ASB/6/54-55}**; 3 §5 **{ASB/7/104-106}**.
[14] Ammori 2 §13 **{ASB/6/56}**; Ost 1 §§7-14 **{USB/5/303-305}**; 3 §§6-9 **{USB/21/525-526}**.
[15] Ammori 4 §8 **{ASB/8/120}**.
[16] Ammori 4 §8 **{ASB/8/120}**.
[17] This assessment was not shared in the devolved jurisdictions: see e.g. Scottish CONTEST Review Board in May 2025, Exhibit CL/01 **{USB/36a/685-722}**.
[18] Ammori 3 §13 **{ASB/7/109}**; 7 March 2025 JTAC Assessment §36 **{ASB/10a/164}**; and NPoCC December 2024 briefing **{ASB/21/268}**.

against Gaza. Between October 2023 and July 2025, Israel had killed a documented 56,156 Palestinians in Gaza, including 17,121 children – approximately one every hour, with experts estimating the true numbers to be in the hundreds of thousands.[19] Israel had also injured over 132,329 Palestinians in Gaza, displaced over 90% of Gaza's population (an estimated 2.1 million people), and destroyed or damaged an estimated 78% of Gaza's infrastructure, including most of its hospitals, and caused widespread famine.[20] As stated by the UN Secretary-General, the situation "*challenges the global conscience*",[21] and demands urgent action.[22]

9. By September 2024, the British Government had assessed there to be a serious risk of weapons and components being exported from the UK being used to commit or facilitate serious violations of international law in Gaza, and had therefore cancelled around 30 export licences: see *R (Al-Haq) v SSBT* [2025] EWHC 1615 (Admin) at §§32-36[23]. However, Israel's own official documentation demonstrates that the value of UK arms imported by Israel reached a record *high* in June 2025, nine months after the announced cancelling of certain licences and immediately before PA's proscription: the value of monthly imports of UK-produced munitions to Israel was recorded as being the highest ever on record.[24]

10. Those exports to Israel are continuing notwithstanding the consensus across the international human rights and humanitarian community – and amongst genocide scholars in Israel and worldwide – that Israel is committing war crimes, crimes against humanity and genocide in Gaza.[25] That consensus is reflected in repeated pronouncements by international courts and UN bodies. By way of illustration: (**i**) the International Court of Justice ("**ICJ**") has held – in three separate rulings – that there is "*a real and imminent risk that irreparable prejudice will be caused*" to the plausible "*rights"* of the Palestinian people in Gaza to be protected from acts of genocide by Israel in the context of Israel's military assault on Gaza;[26] it has also determined that Israel has "*severely restricted, and at times completely blocked, the entry of humanitarian aid and development assistance to the Gaza Strip*",[27] contrary to its obligations under

[19] Ost 6 §6 **{USB/51/884}**; Shalan 1 §10 **{USB/17/495}**.
[20] Ost 6 §§7-8 **{USB/51/884-885}**.
[21] Ost 5 §12 **{USB/26/606}**.
[22] *Cf, e.g.* Shalan 1 §21 **{USB/17/498}**.
[23] See also Ost 6 §11 **{USB/51/885}**.
[24] Ost 6 §11 **{USB/51/885}**.
[25] E.g. the reports of Amnesty International, Human Rights Watch, and B'tselem at Shalan 1 §14 **{USB/17/496}**; Exhibit SG/1**,** and Ost 5 §15 **{USB/21/607}**.
[26] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Measures, 26 January 2024) §§54, 66, 74 **{AB/76/3103, 3106, 3108}**; also 28 March 2024 Order §25, and 24 May 2024 Order §47 **{AB/77/3130}**.
[27] *Advisory Opinion on the Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied*

international law; **(ii)** the International Criminal Court ("**ICC**") has issued arrest warrants for Israel's Prime Minister and former Minister of Defence for war crimes and crimes against humanity, including starvation and persecution;[28] and **(iii)** the UN Human Rights Council's Commission of Inquiry on the Occupied Palestinian Territory has concluded unequivocally that Israel is committing genocide.[29]

11. Israel's attacks against Gaza which PA was protesting are occurring in the context of Israel's 20-year siege of Gaza, its prior massive military attacks on the territory, and its longstanding and ongoing unlawful occupation of the West Bank and Gaza, which the ICJ has determined violates "*fundamental principles of international law*"; including, *inter alia* the *jus cogens* right of Palestinians to self-determination and the *jus cogens* prohibitions of annexation and racial segregation and/or apartheid,[30] which crimes PA was also seeking to prevent.[31]

12. As determined by the UN Special Rapporteur on the situation of human rights in the Palestinian territories since 1967, "*[i]nternational partnerships providing weaponry and technical support have enhanced Israel's capacity to perpetuate apartheid and… to sustain its assault on Gaza*".[32]

B.4. The companies that PA protested

13. The primary UK-based companies targeted by PA – Elbit Systems, Teledyne, Leonardo and Arconic – are all widely reported to have produced communication systems, targeting mechanisms, wings and composite materials for the F-35 aircraft used in Gaza since October 2023.[33] By way of illustration, Elbit specifically markets itself as the backbone of the Israeli army, on the basis "*there is hardly a place where there isn't some sign of Elbit* […] *from the systems in the air to the last soldier on the ground*".[34] Similarly, Rafael asserts that it makes a *"crucial contribution to the IDF and the entire* [Israeli] *security establishment"*,[35] and the company has used real footage of its weaponry being used to kill an unarmed, fleeing man in Gaza as marketing material.[36]

14. PA also targeted corporate entities providing goods and services to the above corporations and other bodies facilitating and profiting from Israel's violations of international law,

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Palestinian Territory (22 October 2025) §§63, 94 and 109.

[28] ICC Arrest Warrants, 21 November 2024.

[29] UN Doc A/HRC/58/CRP.6 at §178; UN Doc A/HRC/60/CRP.3 §§252, 254 **{AB/78/3207}**.

[30] *Advisory Opinion on the Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (19 July 2024) §§173, 229, 261-264 **{AB/75/3041, 3058, 3067-3068}**.

[31] ASFG §6 **{CB/20/156B}**; Ammori 2 §§2-6 **{ASB/6/54-55}**.

[32] UN Doc A/HRC/59/23 at §32.

[33] Alanouq 1 §17 **{USB/50/879-880}**.

[34] Ammori 3 §5(i) **{ASB/7/104-105}**.

[35] Ammori 3 §5(ii) **{ASB/7/105-106}**.

[36] Ammori 3 §5(ii) **{ASB/7/106}**; Exhibit HA3/1 **{ASB/7a/113-114}**.

including financial institutions with ties to Elbit Systems.[37] The SSHD's assertion – including in Statement to the House of Commons in advance of its vote on proscription – that PA targeted companies because they are Jewish is utterly refuted.[38]

15. The three PA actions assessed in March 2025 – three months ahead of proscription – to have met the threshold for "serious damage" pursuant to s.1(2)(b) TA 2000, and on which the decision to proscribe was premised were at: (**i**) Thales in Glasgow on 1 June 2022; (**ii**) Elbit Systems UK in Filton on 6 August 2024; and (**iii**) Instro-Precision[39] in Kent on 17 June 2025.

16. By way of illustration of the errors and discrepancies in the SSHD's decision-making leading to proscription, in relation to the action at Thales in Scotland in June 2022: (**i**) that action had not previously been deemed to amount to terrorism, it being the SSHD's assessment as of April 2023 (10 months after the action) that "*Palestine Action does not meet the threshold for proscription as they do not commit, participate in, prepare for, promote, encourage, or otherwise be concerned with acts of terrorism;*"[40] the same conclusion was reiterated in a May 2024 report by the Government's Independent Adviser on Political Violence and Disruption;[41] (**ii**) the Scottish authorities themselves – Police Scotland and the Scottish CONTEST Review Board – had determined in May 2025 that PA's actions in Scotland (which included the Thales action) had "*not been close to meeting the statutory definition of terrorism*", despite PA being "*extremely active*" in the country;[42] this assessment by local authorities postdated by two months the Joint Terrorism Analysis Centre's contradictory assessment that the Thales action met the statutory definition; and (**iii**) the level of damage at Thales in the underlying assessment was overstated at £1 million rather than £189,782.[43]

B.5. A's decision-making process

17. The SSHD's decision-making is summarised at **[J/§§31-46]**.

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[37] Ammori 3 §2 **{ASB/7/104}**; Feinstein 1 §15 **{USB/4/261}**.

[38] Ammori 3 §8 **{ASB/7/107}**; Feinstein 1 §18 **{USB/4/261}**; Exhibit AF/10 **{USB/4a/294-296}**.

[39] A subsidiary of Elbit Systems UK.

[40] Ammori 2 §35-6 **{ASB/6/61-62}**; Exhibit HA3 **{ASB/6c/92}.** Notably, this meeting was with the Policing Minister, the Chief Constable of Staffordshire Police, representatives of the National Police Coordination Centre, the Home Office, and representatives from the arms manufacturers Thales and Elbit, evidencing discussions with those manufacturers regarding the possible proscription of PA going back over two years.

[41] ASFG §20(ii) **{CB/20/156I}**.

[42] Exhibit CL/01 **{USB/36a/685-722}**.

[43] 7 March 2025 JTAC Assessment §25 **{ASB/10a/163}**; Dewar 1 §4 **{USB/32/665}**: further loss of £941,000 was attributable to revenue loss due to the site closure, not to damage caused.

18. The 7 March 2025 Joint Terrorism Analysis Centre ("**JTAC**") assessment that PA was *"concerned with terrorism"*[44] is of central relevance. JTAC determined that three of the four statutory tests for proscription were satisfied. Notably: (**i**) its assessment PA "*commits or participates in acts of terrorism"* was premised exclusively on actions causing serious property damage contrary to s.1(2)(b) TA 2000 (not violence against the individual); further (as above) it found that just three PA actions had met that threshold, noting that the majority of PA's actions would not meet the s.1(2)(b) definition, given "*typically minor criminal damage, involving petty vandalism, graffiti, occupations, and lock-ons*";[45] (**ii**) its assessment that PA was involved in "*preparing for terrorism*" was premised on training workshops for activists, and on the "Underground Manual" publication (previously assessed not to amount to a criminal offence, and to be little more than "*basic ideas around operational security"*[46]); and (**iii**) its assessment that PA had *"promoted or encouraged terrorism"* was based on the bare facts that PA had "*celebrated"* the "*perpetrators"* of the Filton action, "*present[ing] them as 'political prisoners'"* (though had not shared or celebrated any assault on individuals), and had joined common cause with a leading human rights organisations and the UN, "*shar[ing] statements from Amnesty International and the United Nations which express concern regarding the use of TACT legislation to detain"* PA suspects;[47] and (**iv**) it found that PA was not *"otherwise concerned in terrorism"* for the purposes of the fourth statutory test.[48]

19. That assessment was subsequently adopted by the Proscription Review Group ("**PRG**"), which recommended (on 13 March 2025) that the SSHD should exercise her discretion in favour of proscription. The PRG made that recommendation, despite recognising that the proscription would be "*relatively novel and unprecedented"*, as there was no known precedent for the proscription of an organisation solely for serious damage to property.[49]

20. It is of particular note that the Government's overall assessment, as recorded in a meeting between the Ministry of Defence, the Home Office and the police in March 2025, was that, while PA's impact on individual arms companies was "*large"*, its impact on the UK defence industry was "*low by proportion"*.[50] Notably, the OPEN material does not evidence any national

[44] 7 March 2025 JTAC Assessment **{ASB/10a/159-171}**.
[45] 7 March 2025 JTAC Assessment §7 **{ASB/10a/160}**. See also Feinstein 1 §11 **{USB/4/259}**.
[46] 27 June 2025 CTP General Report **{ASB/17/231-327}**.
[47] 7 March 2025 JTAC Assessment §35 **{ASB/10a/164}**.
[48] 7 March 2025 JTAC Assessment §42 **{ASB/10a/165}**.
[49] 26 March 2025 Min Sub §10 **{ASB/10/147}**.
[50] 18 March 2025 MOD/HO/Police email exchange p.2 **{ASB/23/305}**.

security case for proscription distinct from the damage to the property of the companies targeted.

21. Moreover, those advising the SSHD repeatedly assessed that the limited number of PA demonstrations involving violence against the person were not "*the norm*" for PA. By way of illustration: (**i**) a June 2024 Counter Terrorism Policing ("**CTP**") report titled 'Palestine Action and CPS Meeting' identified PA's primary objective as being to "*critically disrupt the business operations of Elbit Systems UK"*; it noted, in relation to a particular PA action alleged to have involved violence against a security guard, that "*[t]his is a step up from PA's previous activities which very rarely involve offences against the person and are mostly confined to Criminal Damage* [sic]*"*;[51] (**ii**) a September 2024 National Police Co-ordinating Centre ("**NPoCC**") briefing on PA noted, *inter alia*, that it was "*one of a small number of groups in the UK who, as a whole, utilise* ***non-violent*** *direct action"*, and that, to the extent that two recent incidents were alleged to involve violence towards security guards, such incidents were "*not the norm for PA action, and any harm or injuries historically are assessed to be the result of unintentional or misjudged action through trying to evade capture"*;[52] (**iii**) a further NPoCC report in December 2024 noted *inter alia* that there had been 56 further PA actions between September and December 2024, none of which included violence against persons, consistently with NPoCC's assessment that "***violence is not the norm tactic*** *used by PA despite isolated incidents in 2024 that provoked arrests under TACT legislation"*;[53] and (**iv**) a June 2025 Min Sub provided to the SSHD[54] reported that, of the 158 direct actions PA was assessed to have undertaken since August 2024, *none* were alleged (**a**) to involve violence against persons or (**b**) "*serious damage"* to property, within the meaning of s.1(2)(a) and (b) TA 2000. This was significant, as it indicated a *diminution* in PA's protest activity following the arrests of activists involved in the Filton protest, which was alleged to have caused "serious damage".[55]

22. The catalyst for the SSHD's decision to proscribe PA appears to have been PA's direct action at RAF Brize Norton on 20 June 2025, when PA activists broke into the base and spray-painted two fighter jets. Her decision was communicated by her Private Secretary that afternoon.[56] It is of note that: (**i**) the Prime Minister's own contemporaneous

[51] 27 June 2024 CTP General Report **{ASB/17/231-327}**.
[52] September 2024 NPoCC briefing (emphasis added) **{ASB/18/238-253}**.
[53] December 2024 NPoCC briefing (emphasis added) **{ASB/21/265-287}**.
[54] 4 June 2025 Min Sub Annex A-B **{ASB/14-15/222-228}**.
[55] September 2024 NPoCC briefing p.4 **{ASB/18/241}**.
[56] 20 June 2025 HO email **{ASB/16/230}**.

characterisation of the incident was that it was "*vandalism*", not terrorism;[57] (**ii**) the two planes in question returned to service within days;[58] and (iii) the SSHD did not purport to rely on the incident as 'terrorism' before the DC.[59]

23. The SSHD made a formal written statement announcing her decision to proscribe PA three days later, on 23 June 2025.[60] Seven days after that, on 30 June 2025, a draft SI to that effect was laid before Parliament,[61] accompanied by an Explanatory Memorandum.[62] The SI sought the proscription of PA alongside two fascist groups: the Maniacs Murder Cult and the Russian Imperial Movement. The draft SI was approved in the House of Commons on 2 July 2025, and the House of Lords on 3 July 2025, both votes being on all three groups. The SI, once introduced, was not capable of amendment, such that Members could not vote to proscribe the other two groups without also voting to proscribe Palestine Action.

C. GROUND 1: Incompatibility with policy

24. The DC was right to find that: **(i)** the SSHD's policy (quoted at J/§37) required her to assess whether there was a "*particular need to proscribe*" PA "*above and beyond the necessary belief that* [PA] *is concerned in terrorism*" (J/§91); **(ii)** the mere fact that the consequences of proscription would apply to PA if proscribed was "*not a relevant consideration*" in respect of whether there was such a particular need (J/§90), "*for the obvious reason that such consequences and advantages will apply equally to any organisation that could be proscribed*" (J/§94); and **(iii)** the SSHD wrongly took the Decision in a manner inconsistent with her policy, by treating that fact as "*a key matter in favour of exercising the discretion to proscribe*" (J/§89).

C.1. The DC's interpretation and application of policy

25. The DC made the following key observations as to the **requirements** of the policy. **First**, the policy requires the SSHD to make (at least) two distinct assessments when considering whether to exercise her proscription power:

25.1. The SSHD must first consider whether she believes the organisation is "*concerned in terrorism*", as required by s.3(4) TA 2000 (the "**First Question**"). Answering this question

[57] C's 26 June 2025 PAP Letter §8, see also ASFG §13 **{CB/20/156E}.**
[58] McEvoy 3 §7 **{USB/45/800}**.
[59] SSHD DC Skeleton, §59 {**CB/27/278**}.
[60] 23 June 2025 Written Statement **{CB/18/137-138}**.
[61] OPEN ADoR §3 and 36 **{CB/25/181, 190-191}**.
[62] OPEN ADoR §3 and 36 **CB/25/181, 190-191}**; The Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025 (S.I. 2025/803) and Explanatory Note **{AB/7/216-219}**; Explanatory Memorandum to the Order {**USB/59/1079-1081**}.

requires only a factual assessment of the organisation's conduct, by reference to the statutory tests at ss.1 and 3(5) TA 2000. This is a definitional question.

25.2. Only once the SSHD has formed a belief that the relevant organisation is "*concerned with terrorism*" will she turn to the second assessment, to consider whether she should exercise her discretion to proscribe that particular organisation (the "**Second Question**"). This is a normative question.

26. This two-stage approach is clear on the face of the policy: it is only "***[i]f** the statutory test is met*" that the SSHD will turn to consider "*whether to exercise* [her] *discretion to proscribe the organisation*". The DC therefore rightly concluded that the purpose of the policy—in regulating the Second Question—is "*clearly to constrain use of the discretion so that not all organisations that meet the concerned in terrorism requirement will be proscribed*": J/§83; see also J/§§91, 92. As the SSHD herself accepts, *"[t]he policy recognised that not all organisations which meet the 'concerned in terrorism' requirement would necessarily be proscribed"* (ASkel §§47(c); 56).

27. It is unsurprising that the SSHD has sought to constrain her s.3 discretion with such a policy given the breadth of the s.1 TA 2000 definition of terrorism.[63] In *R v Gul* [2014] AC 1260, the Supreme Court recognised that that definition was "*very wide*" (at §30 **{AB/23/776}**) and that, absent any limit, the direct application of the definition would have perverse results, e.g. covering "*military or quasi-military activity aimed at bringing down a foreign government, even where that activity is approved (officially or unofficially) by the UK Government*" or "*activities by the victims of oppression abroad, which might command a measure of public understanding, and even support in this country*" (§§28-29 **{AB/23/776}**).

28. **Second**, the Second Question requires the SSHD to "*assess the need for proscription*" (J/§80), and, in particular, to consider whether any given factor "*contribute*[s] *to explain the **particular***

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[63] The SSHD relies at ASkel §35 on Hansard, quoting the Parliamentary Under-Secretary of State's interpretation of the policy during debate on the Terrorism Bill in the Lords. As the SSHD herself averred orally before the DC, such reliance is impermissible. In any event, the quoted passage is consistent with the rationale of the DC's two-stage approach: "*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.*"

The SSHD has also selectively failed to quote the earlier announcement of the policy on 14 December 1999 in the Commons by Mr Charles Clarke MP (Minister of State, Home Office): "*We acknowledge that the power to proscribe is an extreme and significant one.* [The Minister states the five policy factors, and continues:] *However, I emphasise that proscription is a heavy power; it will be used only when absolutely necessary. It is part of the balance that I mentioned earlier.*" See HC Deb 14 December 1999, vol 341, col 227 **{AB/79/3211-3212}**.

need *to proscribe that organisation above and beyond the necessary belief that the organisation is one that is concerned in terrorism*" (J/§91, emphasis supplied). The policy accordingly directs the SSHD to consider whether proscription is "*proportionate*"—that is, whether the severe consequences that could otherwise be visited upon all and any organisations that satisfy the s.3(4) TA 2000 test are commensurate with the "*benefits*" of proscription: J/§74. To this end, the SSHD must assess "*the need for proscription*" in the particular case by weighing both **(i)** the "*likely consequences*" of proscription and **(ii)** the "*nature and significance*" of the relevant organisation: J/§80.

29. **Third**, in answering the Second Question, the SSHD is directed to consider certain non-exhaustive factors: **(i)** whether or not the nature and scale of the organisation's activities justify proscription in the particular case; **(ii)** whether or not the organisation poses a specific threat to the UK or **(iii)** to British Nationals overseas; **(iv)** whether or not the organisation has a material presence in the UK; and **(v)** whether or not proscription of the organisation would fulfil a particular need in supporting the global fight against terrorism.

30. The policy's purpose is to direct the SSHD to consider factors which may (or may not) give rise to a particular need for proscription in respect of those organisations which fall within the s.1 definition, and thereby to constrain the circumstances in which the proscription power may be exercised.

31. **Finally**, the policy permits the SSHD to identify and consider "*other factors*" that may assist her in answering the Second Question, on the basis that, in certain cases, a particular need for proscription may arise out of other facts. Any other factors "*must be of the same nature*" as the five specified factors (J/§91), as the SSHD's latitude to choose "*other factors*" is limited by "*the purpose of the policy*" (J/§90). If it were otherwise, then the policy would do no more than direct the SSHD to consider any factor, without regard to the assessment of "*particular need*" required by the Second Question. Such a wide-ranging interpretation would fail to read the policy as a whole or in light of its purpose.

32. As for **the policy's application**, the DC rightly found that the SSHD fell into error by considering (indeed placing central reliance on) a factor which did not assist her in answering the Second Question. The "*other factor*" the SSHD identified was that "*the offences at sections 11 to 13 of the 2000 Act could be used against any person supporting Palestine Action*": J/§89. The DC found that this factor was "*a key matter*" the Home Secretary adopted "*in favour of exercising the discretion to proscribe*" (J/§89) and "*an important matter going to the exercise of the discretion, if not the central consideration in that exercise in that case*" (J/§94). As that factor was incapable of

contributing to explain why there was a particular need to proscribe PA, it was irrelevant to the Second Question. The SSHD was accordingly wrong to consider it for that purpose.

33. In simple terms, the Second Question cannot be answered by the First Question.

C.2. The SSHD's submissions

34. **First**, the SSHD complains that **(i)** the DC failed to recognise *"the substantive analysis indicated by the policy to be a balancing exercise to achieve a Convention-compliant outcome"*, that **(ii)** the Court failed to treat this as a *"Bank Mellat-style"* analysis, and relies on the fact that **(iii)** the MinSub refers to whether proscription is a proportionate interference with Article 10 and 11 rights as an "*other factor*" (ASkel §42). These contentions are without merit:

34.1. Even if the SSHD concludes that proscription is a justified interference with Convention rights, she must still properly apply her policy. Answering the Second Question and assessing HRA 1998 compliance are distinct exercises. This was recognised by the Court of Appeal earlier in these proceedings. See *Ammori v Home Secretary* [2026] 1 WLR 1000 at §106 {**CB/24/179AAA**}: "*Whether the Secretary of State has complied with her policy is not simply a question of proportionality which can be considered when considering the allegations of breach of Convention rights.*"[64] Convention-compliance cannot be relied upon to point to a particular need for proscription, where the listed factors do not point to such a particular need.

34.2. The DC made no finding (because it was not asked) as to whether or not the SSHD's assessment that proscription is HRA-compliant is a lawful "*other factor*" relevant to the Second Question. In any event, this is academic on the facts of this case: on Ground 1, the error identified by the DC was not that the SSHD treated her (wrong) assessment that the proscription was a justified interference with Article 10 and 11 rights as an "*other factor*" in answering the Second Question.

34.3. The *"Bank Mellat"* point also goes nowhere. The SSHD breached her policy because she wrongly took into account a consideration irrelevant to the Second Question. That error vitiated her Decision, whether or not the policy envisaged *Bank Mellat*-style proportionality. Thus, the DC noted that, even if the policy did require "*the Bank Mellat-style approach*", "*that would make no difference to the outcome of this case*": J/§81. Contrary to ASkel §43, the DC plainly did not find that, if a *Bank Mellat*-style assessment of proportionality were required, the rest

[64] The submission at ASkel §54 that the DC's construction of the policy precludes the SSHD from considering the consequences of proscription on Convention rights is plainly incorrect.

of its findings on the policy ground would fall away.

35. **Second**, the SSHD contends that the DC's interpretation of the policy is "*strict and legalistic*": ASkel §§46-47. That contention is without merit. The mere fact that a policy is broadly framed does not excuse the SSHD from applying it in a manner consistent with its purpose and language, objectively ascertained. See *Tesco Stores Ltd v Dundee CC* [2012] PTSR 983 (SC) at §§18-19 **{AB/20/578-579}** (quoted selectively at ASkel §33):

> *"[T]he meaning of the [policy] is [not] in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, […] in principle […] policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. […] [M]any of the provisions of [policies] are framed in language whose application to a given set of facts requires the exercise of judgment. […] Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the [policy] mean whatever they would like it to mean."*

36. Further, the SSHD does not attempt to explain what the effect of the policy is if not to direct the SSHD to consider matters that tend to identify a particular need to proscribe an organisation, notwithstanding her conclusion on the First Question. The suggestion that the purpose of the policy is merely to "*guide*" the exercise of the SSHD's discretion (ASkel §§47(a), 56) begs the question of what the discretion to be guided is (and how, in so being guided, the exercise of discretion is not thereby constrained), especially given that the SSHD herself accepts that *"The policy recognises that not all organisations which meet the [statutory definition] will necessarily be proscribed"* (ASkel §§47(d), 56). The DC gave a complete (and correct) answer to that question: the purpose of the policy is to direct the SSHD's assessment of whether there is a "*particular need*" to proscribe an organisation which she believes falls within the broad s.1 TA 2000 definition.

37. **Third**, the SSHD challenges the DC's conclusion that any "*other factors*" must be "*of the same nature*" as the five listed factors: ASkel §§48-52. Given that the particular question the SSHD must address, it would be a surprising result if all the factors (including any "*other factors*") were not uniformly directed to assisting her to answer it. To that end, it is well-established that the purpose of the policy should drive its interpretation, particularly where an overly literal interpretation would frustrate that purpose: see *Shala v Home Secretary* [2003] EWCA Civ 233 at §21 (Schiemann LJ) **{AB/11/286}**; *R (Dabrowski) v Home Secretary* [2003] EWCA Civ 580 at §17 **{AB/12/292-293}**.

38. The SSHD attempts to gloss the first and fifth factors in order to avoid this result.

38.1. ASkel §§49-50 addresses the DC's finding (at J/§83) that the word "*activities*" in the first factor refers only to acts meeting the s.1 TA 2000 definition of terrorism. However, this finding played no material role in the DC's reasoning. The SSHD's error (in relation to Ground 1) was not that she took into account the activities of PA that were not deemed by the SSHD to meet the s.1 TA 2000 definition, but that she considered the mere fact that PA and its supporters would be subjected to the proscription regime as a "*key matter*" supporting proscription. Further and in any event, the Court was right to conclude that, whatever the scope of the concept of "*activities"* elsewhere in the TA 2000, for the purposes of the policy, the function of which is to regulate and constrain the exercise of the proscription power in relation to organisations which are "*concerned in terrorism"*, the question of whether the organisation should be proscribed must be answered by reference to the nature and scale of its activities insofar as those activities meet the definition of terrorism in s.1 TA 2000. It would be odd, to say the least, for the proscription of an organisation to be justified by reference to a desire to disrupt or otherwise address activities which do not constitute "*terrorism*" on s.1 TA 2000's expansive definition.

38.2. Likewise, in respect of the fifth factor, the SSHD must consider whether, in particular cases, proscription would meet a particular need to support the global fight against terrorism; that is a proper and relevant consideration when answering the Second Question.[65] Moreover, and contrary to ASkel §51, the DC's interpretation does not mean that the SSHD is precluded from concluding that proscription would achieve that end.

39. **Fourth**, the SSHD contends that the DC erred because its interpretation would preclude consideration of "*the intended and beneficial disruptive effects of the proscription regime*": ASkel §53. That is wrong. Consideration of the mere effects of proscription, without more, would not assist the SSHD in answering the Second Question, since those effects would, by definition, apply to all organisations which meet the statutory threshold. Where (as here) the SSHD does not regard the listed factors as pointing to a particular need to proscribe, she cannot rely on the effects of proscription, without more, as doing so. This was the Court's unequivocal finding at J/§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*

[65] In the present case, the FCDO's view was that it would not support that global fight; indeed "*acting in this way may be interpreted as an overreaction by the UK:"* 11 March 2025 FCDO assessment **{ASB/10d/183}**.

that could be proscribed – i.e. any and every organisation that meets the requirement to be an organisation concerned in terrorism."

40. Of course, the SSHD may consider whether or not the consequences of proscription may achieve some particular advantage in the particular facts of the case. That is because such a particular advantage may inform whether or not there is a particular justification for proscribing that organisation. The DC did not suggest otherwise. On the contrary, it confirmed at J/§94 that, where "*the consequences of proscription would be unusually effective*", then "*it could be consistent with the policy to regard the operational consequences of proscription as an "other factor'*"": where those general consequences are unusually effective in the particular case, they will be apt to supply the particular need to proscribe, which is the focus of the Second Question. Contrary to ASkel §55(a)-(b), this approach is correct and follows from an objective reading of the policy as a whole in its statutory context.

41. **Finally**, the SSHD fails properly to challenge the DC's findings on the application of the policy on the facts of the case. The full extent of her challenge is to assert briefly (at ASkel §55(d)) that it "*was not open to* [the DC] *on the evidence*" to conclude that the operational consequences of proscription were not "*unusually effective*" on these facts. This contention does not assist the SSHD:

41.1. The DC did not find (and did not have to find) that the consequences of proscription were in fact not "*unusually effective*". It was sufficient to vitiate the Decision that the SSHD wrongly took into account those operational consequences without also assessing whether something special in this case meant those consequences gave rise to a particular need for proscription.

41.2. The DC found that the SSHD took account of the irrelevant consideration as "*a key matter*" in her decision-making (J/§89) or as "*an important matter going to the exercise of the discretion, if not the central consideration in that exercise in that case*" (J/§94). The SSHD does not challenge those factual findings; the DC was right to make them, and this Court should not disturb them.

41.3. The SSHD nevertheless asserts that the DC should itself have deemed proscription to be "*unusually effective*" against PA. This misunderstands the Court's role in the context of a claim that the SSHD has acted incompatibly with her own policy; the Court should not step into the shoes of the primary decision maker.

41.4. This complaint is in any event unsubstantiated. The only matters on which the SSHD relies are various findings of the DC identified at ASkel §§12-17 (as to the target of PA's

activities, its organisational structure, its criminality, and that three PA actions were assessed to meet the s.1(1) TA 2000 definition). None of these provide any explanation for why proscription would be "*unusually effective*" in this case.

42. None of the SSHD's challenges establish that the DC's approach was wrong. Ground 1 of the Appeal should be rejected.

D. GROUND 2: Breach of Articles 10 and 11 ECHR

43. The Divisional Court was right to conclude that the proscription of PA was incompatible with Arts 10 and 11, for the reasons which it gave **[J/§§97-145]**. R also relies upon different and additional reasons for upholding that decision **[RN/§6]**.

44. The proper starting point for the Court's analysis is that the right to freedom of expression as guaranteed under Art 10 is "*an essential foundation of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment*".[66] It protects not only the substance of views expressed but also the form in which they are expressed.[67] The right to freedom of assembly as guaranteed under Art 11 is likewise a "*fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society*".[68] Restrictions on those rights must accordingly be "*narrowly interpreted*" and "*convincingly established*",[69] *a fortiori* in the context of political expression on issues of public importance,[70] including " *about acts which may amount to war crimes or crimes against humanity*".[71] Criminal conviction constitutes one of the *"most serious forms of interference with the right to freedom of expression"* requiring particular justification[72], although arrest, prosecution and sentencing (each constituting distinct interferences with Arts 10/11) must each also be proportionate.[73] Similarly, where a measure will cause the outright dissolution of an association, it may only be taken "*in the most serious cases*", where "ex*ceptionally justified*" by "*relevant and sufficient reasons*".[74] Notably, an association should be "*giv*[en] *it a prior hearing or warning notice or some other opportunity to be heard and to remedy*

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[66] *Steel v UK* (1999) 28 HRR 603 §10.
[67] Cf, eg., *Oberschlick v. Austria (no. 1)*, 23 May 1991, §57, Series A no. 204.
[68] *Ziliberberg v Moldova* (App. No. 61821/00, 5 May 2004) §2.
[69] *Sunday Times v UK (No 2)* (1992) 14 EHRR 229 §50(a).
[70] *Lindon v France* (2008) 46 EHRR 35 [GC] §48; *Novaya Gazeta v Russia* (App. No. 11884/22, 11 February 2025) §109 **{AB/74/2888-2889}**; *Sabuncu v Turkey* (App. No. 23199/17, 10 November 2020) §221 **{AB/68/2593}**.
[71] *Novaya Gazeta* §117 **{AB/74/2891-2892}**.
[72] *Perinçek* §273 **{AB/60/2252}**.
[73] *Ziegler* [2022] AC 408 §57 **{AB/32/1147-1148}**.
[74] *Association Rhino v Switzerland* (App. No. 48848/07, 11 October 2011) §62 **{AB/58/2093}**; *Adana Tayad v Turkey* (App. No. 59835/10, 21 July 2020) §35.

shortcomings", unless to so would render the measure "*void, ineffective or unenforceable*".[75]

D.1. The approach of the appellate court

45. The approach of an appellate court to a first-instance assessment of proportionality depends upon the nature and subject matter of the case before it.[76] The "*appropriate provisional starting point"* is that a review approach, rather than a fresh assessment approach, will be appropriate.[77] The adoption of the fresh assessment approach "*requires to be justified by special factors as being constitutionally appropriate in the public interest and to uphold the rule of law"*.[78]

46. Such an approach is not appropriate here, *cf* **[ASkel/§64]**. Having regard to the factors identified by the Court in *Shvidler* (at §162 {**AB/44/1594}**): (**i**) this is not a case where determination of the lawfulness of the decision will provide "*guidance*" for other similar cases, since it concerns a one-off executive decision directed towards a particular organisation; (**ii**) there is no challenge to primary legislation, and the challenge to secondary legislation is limited to the inclusion of a particular organisation on the schedule of proscribed groups under TA 2000 (rather than comprising a challenge to secondary legislation of general effect); (**iii**) there is no devolution issue; (**iv**) the claim does not allege incompatibility between primary legislation and ECHR rights; and (**v**) there are no "*divergent strands of authority"* for this Court to reconcile. Whilst the claim raises an issue of significant political and public interest, it does not raise fraught questions of social policy nor any challenge to primary legislation, *per* the examples given by the Court in *Shvidler* (*viz.* assisted dying and internment without trial).

D.2. The Court was right that the Decision engages Article 10 and 11 ECHR

47. The DC was right to reject the SSHD's submission that any expression of support for, or association with, PA falls outside the scope of Arts 10 and 11, by reason of Art 17 ECHR **[J/§§113-114]**, *cf* **[ASkel/§§59-62]** and/or on the basis that some PA actions have been deemed to be "violent".

48. **First**, the threshold for the application of Art 17 is exceptionally high. "[E]*xpressive*" conduct can fall outside the scope of Art 10 only "*on an exceptional basis and in extreme cases*" where Art 17 applies, in respect of expression "*aimed at the destruction*" of Convention rights.[79] It must

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[75] *Internationale Humanitare Hilfsorganisation eV v Germany* (App. No. 11214/19, 10 October 2023) at §100 {**AB/73/2861-2862**}.

[76] *Shvidler v SSFCDA* [2025] 3 WLR 346 (SC) §§142-165 {**AB/44/1587-1595**}; *R (BYL) v Lord Chancellor* [2026] EWCA Civ 170 §§50-55.

[77] *Shvidler* §161 {**AB/44/1593-1594**}.

[78] *Shvidler* §162 {**AB/44/1594**}.

[79] *Paksas v Lithuania* (2014) 59 EHRR 30 [GC] §87 {**AB/57/2063**}.

be "*immediately clear*" that the relevant expression "*deflect[s] this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention*"[80] Only the gravest forms of hate speech engage Art 17 (and even incitement to violence may not be excluded from Art 10 protections).[81] The same high threshold applies in respect of the right to freedom of assembly under Art 11.[82]

49. **Secondly**, the mere fact that a form of expression gives rise to a criminal offence under domestic law – including an offence involving serious damage to property – does not remove it from Convention protections.[83] Indeed, this Court has recently recognised that it is "*wrong*" to regard direct action protects involving even "*significant*" damage to property as entirely outwith the protection of Arts 10 and 11.[84] Notably, it is "*where there has been incitement to violence against an individual or a public official or a sector of the population*", *i.e.* against *persons*, that *"States authorities enjoy a wider margin of appreciation"* in relation to restrictions on Art 10/11 rights.[85]

50. **Thirdly**, the scope of Art 17 is an issue of Convention law, not dependent on the divergent definitions of "terrorism" under the domestic law of States parties. The SSHD's conclusion that PA has been "*concerned in terrorism"* under the UK's exceptionally broad TA 2000 definition of "*terrorism"* is consequently not determinative *cf* **[ASkel/§61]**. Further and in any event, it is well-established in both ECHR[86] and domestic[87] caselaw that the fact that expression or protest may be in support of, or even by or on behalf of, members of a

[80] *Perinçek v Switzerland* (2016) 63 EHRR 6 [GC] §114 **{AB/60/2210}**.
[81] *Lilliendahl v Iceland* (App. No. 29297/18, 12 May 2020) §§25, 35 {**AB/67/2519-2520, 2522-2523**}; *Forstater v GCD Europe* [2022] ICR 1 §70; *Osmani v Macedonia* (App. No. 50841/99, 11 October 2001) §3; *Stomakhin v Russia* (App. No. 52273/07, 8 October 2018), §§106-7, 128-9 {**AB/66/2492-2493, 2498**}.
[82] *Ekrem Can v Turkey* (App. No. 10613/10, 8 March 2022) §§69-75 {**AB/72/2828-2829**}.
[83] *Hallam* [2025] 4 WLR 33 (CA) §§34-36 {**AB/43/1531**}; *Murat Vural v Turkey* (App. No. 9540/07, 21 October 2014) §56; *Ibrahimov and Mammadov v Azerbaijan* (App. No. 63571/16, 13 February 2020) §§110, 166-167; *Genov v Bulgaria* (App. No. 52358/15, 30 November 2021) §§57-60 {**AB/71/2797-2798**}; *Kudrina v Russia* (App. No. 34313/06, 6 April 2021) §§46-47; *Bumbeș v Romania* (App. No. 18079/15, 3 May 2022) at §§11, 48-49.
[84] *Hallam* §38 {**AB/43/1531-1532**}; see also in relation to "*serious*" disruption, *Trowland* [2024] 1 WLR 1164 (CA) §74 {**AB/39/1411**}.
[85] *Schwabe v. Germany* (Applications nos. 8080/08 and 8577/08*, 1 March 2012)* §113 {**AB/56/2036**}.
[86] *Gül v Turkey* (2011) 52 EHRR 38 §44 {**AB/53/1967**}; *Kiliç and Eren v Turkey* (App. No. 43807/07, 29 February 2012) §§28-29 {**AB/54/1977-1978**}; *Ekrem Can v Turkey* §§69-75{**AB/72/2828-2829}**; *Herri Batasuna v Spain* (App. No. 25803/04, 30 June 2019) §52; *Sabuncu v. Turkey,* §22 **{AB/68/2532}**.
[87] *Choudhary* [2018] 1 WLR 695 (CA) §66 {**AB/27/930**}; *Pwr v DPP* [2022] 1 WLR 789 (SC) §60 {**AB/30/1043**}; *ABJ* [2026] UKSC 8 §87 {**AB/49/1815**}.

proscribed "*terrorist*" organisation does not, either (**i**) deprive that speech of the protection of Arts 10 and 11; or (**ii**) of itself engage Arti 17[88]. *Roj TV A/S v Denmark* (2018) 67 EHRR SE8 **[ASkel/§61]** does not assist the SSHD in this regard (J/§114): the ECtHR concluded that Art 17 applied in that case to particular television broadcasts supportive of the Kurdistan Workers' Party (the "PKK", then an active, armed organisation, the lawfulness of the proscription of which was not in issue before the Court), which included repetitive incitement to participate in *"fights and actions"* and to join the guerilla (see §§46-47 **{AB/65/2462}**). In other cases involving other – non-violent – statements supportive of the PKK, the same Section of the ECtHR has reached a different conclusion: *e.g.* in *Sabuncu v Turkey* (App. No. 23199/17, 19 April 2021) §222 **{AB/68/2593-2594}** (quoted at J/§114).[89] It is the nature and *substance* of the impugned expression which is determinative in each case.[90]

51. **Fourthly**, the contention at **[Askel/§62]** that all those "*expressing support for, and associating with, PA"* (whatever their individual speech/conduct) should be regarded as "*supporting a terrorist group, the activities of which were inconsistent with democratic values and the rule of law"* is unsustainable in law, fact, and principle, and contrary to the UK' long-standing approach to direct action protest:

51.1. It is **unsustainable in principle** because of its circularity, in circumstances where the very issue in dispute is the lawfulness of the proscription, and by extension the question of whether PA is properly characterised as a "*terrorist group"*: as held by the DC, the SSHD "*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"* **[J/§114]**.

51.2. It is **unsustainable in law** because of the well-established principle that a person does not lose the protections of Art 11 because of the violent action of others in their

[88] See *Kiliç and Eren* (App. No. 43807/07, 29 February 2012), §§28-29 {**AB/54/1977-1978**} and *Ekrem Can* at §§69-75 {**AB/72/2828-2829**}.

[89] See also *eg.*. *Nedim Sener v Turkey* (App. No. 38270/11, 8 July 2014) at §§115-116; *Sik v Turkey (No 2)* (App. No. 36493/17, 24 November 2020) at §§177-178 {**AB/69/2679**}; and *Ahmet Hüsrev Altan v Turkey* (App. No. 13252/17, 13 April 2021) at §§215-216 {**AB/70/2761**}.

[90] *Hizb ut Tahrir v Germany* (App. No. 31098/008, 12 June 2012) §73; *Internationale Humanitäre Hilfsorganisation EV v Germany* (App. No. 11214/19, 10 October 2023) §89 (in which the applicant organisation was found to provide "*indirect support"* for terrorist acts abroad) {**AB/73/2859**}.

organisation.[91] That is precisely the case advanced by the SSHD, that all those expressing support for (or simply "*associating with,"* as stated in the SSHD's appeal ground 2) PA should be deprived of Convention protections, irrespective of their own individual expression/conduct.

51.3. It is **unsustainable in fact** because the DC was right to distinguish the conduct of PA activists causing significant property damage from others simply supporting or associating with PA (or opposing its proscription) who are not *ipso facto* expressing support for such (limited) conduct of PA as may be considered to satisfy the definition of "*terrorism"* under s.1(2)(b) TA 2000 **[J/§115]**.

51.4. The assertion that protest action involving property damage is *"inconsistent with democratic values"* is wholly out of step with the recognition by the Courts of the "*long and honourable history"* in this country of "*civil disobedience on conscientious grounds"*.[92] Such **civil disobedience**, including actions by groups such as the Suffragettes[93] whose protests caused serious and extensive property damage,[94] has not hitherto been classed as "terroristic", the Suffragettes instead being officially fêted, including by the SSHD herself.[95]

D.3. The Court was correct that the Decision is not prescribed by law

52. For the reasons given under **Ground 1**, above, the Decision was unlawfully incompatible with the SSHD's policy **[J/§§72-96]**. On that basis, the DC was right to conclude that the Decision was not "*prescribed by law"* for Art 10 and 11 purposes **[J/§125]**, *cf* **[ASkel/§63]**.

D.4. The Court was right that the proscription of PA is not ***"necessary in a democratic society"*** for one of the legitimate aims of Arts 10/11

D.4.1 Less restrictive means of achieving the aims pursued by the SSHD

53. The DC's conclusion that the Decision constituted a disproportionate restriction of Art 10/11 rights (see further D.4.2 below) was correct for the different and additional reason

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[91] *Primov v Russia* (App. No. 17391/06, 12 June 2014) §155; approved domestically in *Ziegler* [2022] AC 408, §69 **{AB/32/1152}** and *A-G's Reference No 1 of 2022* [2023] KB 37 §84 {**AB/33/1213**}. See also: *Shmorgunov v Ukraine* (App. Nos. 15367/14 et al, 21 January 2021) §§491-492 and 501; *Barabanov v Russia* (App. Nos. 4966/13 and 5550/15, 30 January 2018) §74 and *Gülcü v Turkey* (App. No. 17526/10, 19 January 2016) §§116-117 {**AB/59/2145-2146**}; see also *Isikirik v Turkey* (App. No. 41226/09, 14 November 2017) §68 {**AB/62/2362**} and *Imret v Turkey (No 2)* (App. No. 57316/10, 10 July 2018) §56.

[92] *R v Jones (Margaret)* [2007] 1 AC 136 §89 {**AB/17/519**}.

[93] As named by Lord Hoffmann in *Jones* (*supra.*), §89 {**AB/17/519**}.

[94] Ammori 1 §29 **{ASB/5/49}**.

[95] Exhibit JM/04, Hallward 1 §§26-27 **{USB/46/810}**.

that the proscription of PA was not the least restrictive measure available to the SSHD **[RN/§6]** to achieve the aims pursued.

54. In addressing the question of whether there were less restrictive alternative means available to achieve such aims,[96] the SSHD wrongly conflated the *"means"* of obtaining such aims [J/§128] with the aims themselves, orally contending below that the aim of proscription was to "*control terrorist organisations and this terrorist organisation in the manner specifically envisaged by Parliament"*, and suggesting in her ADGoR (at §§59-61 **{CB/25/198-199}**) that the purpose of the proscription was "*to disrupt and degrade PA so as to protect the rights of others and maintain national security"*. This amounted to a serious misdirection. As identified by the DC, the legitimate aims in question were in fact *"the protection of the rights and freedoms of others"* and/or *"the interests of national security"* [J/§128].

55. Even accepting, in principle, that the protection of the property and rights of the companies targeted by PA from damage deemed to meet the s.1(2)(b) TA 2000 threshold was a legitimate aim and/or that serious damage to such property was capable of engaging national security considerations, less restrictive alternative measures were available to the SSHD to prevent such actions by PA. They included:

55.1. **Civil injunctions**, capable of being sought against a direct action group,[97] and/or against "*persons unknown"*,[98] including on a precautionary *quia timet* basis, and *ex parte*. The scope can be extremely broad. By way of illustration, such injunctions have covered entire strategic road networks, or all Shell petrol stations across England and Wales[99]. As demonstrated in the evidence, imposition of an injunction in relation to Teledyne[100] in December 2024 had had the practical effect of essentially eliminating PA's actions at that site.[101]

55.2. **Criminal prosecutions for ordinary criminal law offences**, including prosecutions for property damage (s.1, Criminal Damage Act 1971), aggravated trespass (s.68, Criminal Justice and Public Order Act 1994), public nuisance (s.78, Police, Crime, Sentencing and Courts Act 2022), breaches of public order (Public Order Act 1984 offences), and burglary/aggravated burglary (s.9 and 10 Theft Act 1968). Organisers of direct action protest

[96] *Abortion Services,* §119 {**AB/35/1279**}; *Bank Mellat* §74 {**AB/22/677-678**}.
[97] *Heathrow Airport v Garman* [2007] EWHC 1957 (QB) §§72-73.
[98] *Wolverhampton CC v London Gypsies and Travellers* [2024] AC 983.
[99] Blowe 2 §2 **{USB/27/621}**.
[100] A manufacturer of technology used in military equipment.
[101] Blowe 2 §§4-5 **{USB/27/621}**.

are also in principle liable for prosecution for conspiracy, as an accessory at common law (i.e., for aiding and abetting an offence), for inchoate offences under Part 2 of the Serious Crime Act 2007, and/or for participation in the activities of an organised crime group (s.45 Serious Crime Act 2015; ss.44-46 Serious Crime Act 2007). As noted by the DC, these offences carry severe penalties of up to life imprisonment **[J/§139]**.

55.3. **Criminal prosecutions for non-proscription terrorism offences.** A range of existing terrorism offences apply independently of the proscription regime, including: encouragement of terrorism (s.1 TA 2006), dissemination of terrorist publications (s.2), preparation of terrorist acts (s.3), training for terrorism (s.6), and the making and possession of devices and materials (s.9). Conduct falling within s.1 TA 2000 is already liable for prosecution for such offences, irrespective of proscription.

55.4. **Disruption by policing powers**, including ordinary powers of search and seizure and terrorism policing powers under TA 2000,[102] in relation to actions meeting the s.1 TA 2000 definition.

55.5. **Quasi-criminal behaviour orders**, including Criminal Behaviour Orders, Serious Crime Prevention Orders, Serious Disruption Prevention Orders and Restraining Orders.

55.6. **Asset forfeiture**, pursuant to the Proceeds of Crime Act 2002 ("**POCA**"), which provides for a range of relevant financial powers capable of impacting an organisation's fundraising capacity, including freezing and forfeiture of any property "*intended by any person for use in unlawful conduct*".[103]

56. In light of the above, the SSHD erred in concluding that there were no less restrictive measures available to her to achieve the aim of preventing serious property damage meeting the s.1(2)(b) TA 2000 threshold:

57. **First**, the SSHD failed even to identify (still less properly assess the effectiveness of) various alternative means identified above, including: (**i**) the possibility of affected organisations (or public authorities) seeking civil injunctions; (**ii**) the full range of quasi-criminal behaviour orders; or (**iii**) the possibility of disrupting fundraising by seeking asset forfeiture under

[102] Including the power to prohibit persons from entering "*cordoned areas*" (ss.33-36 TA 2000 {**AB/6/51-55**}); search and seizure warrants (s.37 and Schedule 5 TA 2000 {**AB/6/56, 112-113**}); disclosure orders (s.37A and Schedule 5A TA 2000 {**AB/6/57**}); financial information orders (s.38 and Schedule 6 TA 2000 {**AB/6/58, 158**}); account monitoring orders (s.38A and Schedule 6A TA 2000 {**AB/6/59, 172**}).

[103] See, e.g., s.298(1) POCA (in relation to the forfeiture of cash) and s.303Z14(4) (in relation to forfeiture of funds in a bank account).

POCA. **Secondly**, such limited assessments as were undertaken by the SSHD of alternative means available contain obvious errors of law. By way of illustration, CTP erroneously considered that two forms of behaviour orders (Criminal Behaviour Orders and Serious Crime Prevention Orders) were only available post-conviction;[104] when in fact they may be made without conviction.[105]

58. **Thirdly,** the asserted inadequacy of existing criminal offences is unevidenced and unexplained.[106] In fact, the evidence was that pre-proscription arrests and prosecutions of PA activists *had* reduced the frequency and seriousness of PA actions.[107] Further, as correctly noted by the DC, *"the prospect of significant punishment"* for activists, if convicted, *"would serve as a significant deterrent to others"* **[J/§139]**. Notably, the CTP's dismissal of the effectiveness of prosecutions, *inter alia* on the basis that PA "*employ[ed] legal defence teams to hold law enforcement to a strict liability of proof*", purportedly seeking to "*stifle"* an "*already strained criminal justice system"*"[108] evidences a troubling attempt by the CTP to instrumentalise proscription powers to circumvent fundamental fair trial and rule of law guarantees in protest-related trials.

59. The above errors and failures substantially attenuate the deference properly owed to SSHD's assessment of the availability and/or or effectiveness of less restrictive measures. In this regard, the DC was overly generous according the SSHD a general *"margin of appreciation"* in respect of matters that she assessed erroneously, insofar as she assessed them at all (cf. **J/§130**).

60. The DC itself was wrong to conclude that civil injunctions were not "*an appropriate lesser alternative approach"* **[J/§132]** for the following reasons:

61. **Firstly,** the DC's reasoning that injunctions were not effective because they were primarily retrospective, given that PA's targets "*have not always been obvious in advance"* **[J/§132]**, ignored: (**i**) its own conclusion that PA's "*main target"* was Elbit Systems UK **[J/§16]**; (**ii**) that other targets (as identified by the Court) were other corporate entities involved in the manufacture and export of weaponry to Israel, or other companies associated with them or in their supply chain – all of which are readily identifiable in advance; and (**iii**) injunctions have repeatedly

[104] 7 March 2025 CTP Report **{ASB/10b/176}**.
[105] Serious Crime Act 2007, s.1(1).
[106] E.g. the CTP assessment that "the criminal prosecution route has failed or is simply unavailable under existing legislation:" 7 March 2025 CTP Report **{ASB/10b/178}**.
[107] E.g. the September 2024 NPoCC briefing, noting a reduction in the number and scale of direct action protests since the Filton arrests **{ASB/18/241}**.
[108] CTP Report, Annex C to March 2025 MinSub **{ASB/10b/177}**.

been sought (and obtained) including on an *ex parte* and/or *quia timet* basis to restrain direct action protests, and have proven effective at restraining such behaviour, against companies and their broader supply chains: see §55.1 above.

62. **Secondly**, the DC's suggestion that "self-help" remedies such as injunctions "*may not be readily or reasonably available to many who might potentially be affected by [PA's] campaign"* **[J/§132]** is difficult to reconcile with the DC's own conclusion that the "main target" of PA's direct action is Elbit **[J/§16]**. Plainly, insofar as PA's actions target large multinational arms companies, and those who finance or support such companies, they are precisely the kind of litigants for whom the 'self-help' remedy of an injunction will typically be available: they are sophisticated, well-resourced companies, which are plainly capable of safeguarding their own interests (as, indeed, Teledyne has done **[J/§132]**). Further, the DC's concern that injunctions of that kind *"might extend beyond [PA] and affect the general pro-Palestinian/anti-Israeli cause"* **[J/§133]** is, with respect, unfounded. The High Court is perfectly able to frame specific injunctions targeted at particular types of protest activity (such as those capable of causing serious damage to property) and/or the actions of particular protest groups[109].

63. The DC further erred in concluding that use of quasi-criminal behaviour orders and asset freezes was *"not realistic"* because such measures *"would not address the collective impact of an order for proscription; they are measures that would be directed to a different objective"* **[J/§131]**. This wrongly presupposes that a *"collective impact"* is required to achieve the legitimate aims identified. Moreover, there was no assessment by the SSHD to the effect that orders against key individuals or centrally raised funds would have been ineffective.

64. Further and in any event, the SSHD and the DC were wrong to focus on the effectiveness of each of the measures identified above, considered in isolation. The question is not whether a single alternative measure would achieve the SSHD's legitimate aims, but rather whether the SSHD could adopt a different approach, drawing on the suite of powers and remedies available to her, that would achieve her legitimate aims, without the corresponding sweeping interference with fundamental rights entailed by PA's proscription.

D.4.2. The Court was right to conclude that the Decision does not strike a fair balance

[109] *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB); *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (QB).

65. The DC was right to conclude that proscription of PA failed to strike a fair balance between the Art 10 and 11 of those affected by it, and the general interests of the community, including the property rights of the companies concerned **[J/§§135-140]**. That conclusion is also supported by different and additional reasons to those adopted by the lower Court **[RN/§6]**.

66. **First**, the approach the assessment of proportionality must be considered in light of the TA 2000 legislative framework as a whole (see **[J/§§9-14]**):[110]

66.1. A significant feature of the statutory scheme is the expansiveness of the definition of 'terrorism' under s.1 TA 2000. That definition is so broad as to capture conduct very far removed from the 'core' or "*essence*"[111] of the concept of terrorism, as widely understood. Thus, "*activities which might command a measure of public understanding, if not support, may fall within* [the statutory definition]: as cited at § 27 above.[112] It could lead to the proscription as terrorist of any and all protest activity giving rise to serious damage to property.

66.2. The proscription of an organisation under s.3 TA 2000 gives rise to liability for serious terrorism offences in relation to that organisation including (**i**) "*belong[ing] to"* that organisation (s. 11 {**AB/6/44**}), (**ii**) recklessly expressing support for it (s.12(1A) {**AB/6/46-47**}), (**iii**) displaying or publishing an image or article if it could arouse reasonable suspicion that the individual supports the organisation (even if that is not the individual's intention) (s.13 {**AB/6/48**}), (**iv**) assisting in arranging, or to address, a meeting to support or further the activities of the organisation (s.12(2), (3) {**AB/6/46-47**}), and (**v**) offences related to funding and property (ss.14-18)[113]. Some of those offences carry sentences of up to 14 years' imprisonment. Proscription therefore subjects those who are deemed or profess to belong to an organisation and those supporting it to the full range of terrorism offences (including encouragement, dissemination of terrorist publications, and preparation: sections 1 to 3 TA 2006) and counterterrorism powers (including searches, arrest without warrant, and terrorism prevention and investigation measures, as well as notification requirements under Counter-Terrorism Act 2008 Part 4)[114]. The impact for some racialised communities is particularly severe: as noted by the Supreme Court, conviction for a ss.11 or 12 offence gives rise to a presumption that a refugee "*constitutes a danger to the community of the United Kingdom, justifying*

[110] See also: CA Permission Judgment §§11-15 {**AB/46/1657-1658**}; ASFG §§39-59 **{CB/20/156N-156U}**.

[111] *Al-Sirri v SSHD* [2013] 1 AC 745 §39 {**AB/21/622**}.

[112] *Gul* [2014] AC 1260 §§26-29 {**AB/23/775-776**}, see also §§61-64 {**AB/23/783-784**}.

[113] See also ASFG §§54-57 **{CB/20/156T-156U}**.

[114] See also Peirce 1 **{USB/20/513-523}**.

expulsion from the United Kingdom".[115]

66.3. This has at least two significant analytical consequences: (**i**) the SSHD's obligation to act compatibly with the ECHR (and the Court's role in reviewing compliance with the ECHR summarised at §71 below) under the HRA 1998 operates as a critical constraint on the exercise of the proscription power. Indeed, the role of the ECHR and HRA 1998 as an important constraint on the breadth of the s.1 TA 2000 definition was expressly acknowledged as part of the Parliamentary debate;[116] and (**ii**) the bare conclusion that PA was *"concerned in terrorism"* – on which the SSHD relies heavily **[ASkel/§§12, 59, 61, 62, 67, 71, 72**] – is of limited analytical assistance, given the breadth of the statutory definition. That is *a fortiori* in circumstances where the lawfulness of the proscription is precisely what is in issue. While, contrary to the SSHD's assertion, the DC did not (*cf* **[ASkel/§67(d)]**) "*assume[]"* that an organisation must be within the 'core' of the definition of terrorism in order for proscription to be proportionate, it is obviously correct that the further an organisation is from that 'core', the more compelling the justification required for its proscription to be proportionate.

67. **Secondly**, the DC was correct to find that the proscription of PA "*has entailed a very significant interference with Convention rights"* **[J/§135,** see also **§§103-104 116-124]**. The SSHD's submission that the Court's conclusion was "*overstated and wrong"* **[ASkel/§72]** is obviously incorrect. Indeed, the true impact of the proscription of PA was <u>more severe</u> than recognised by the Court, including because, contrary to the DC's findings, the class of persons affected by the chilling effects of proscription is not "*small*" (*cf* **[J/§122]**). In summary, at least the following categories of impact are of considerable relevance:

67.1. **Impact on PA.** The DC was right to find that the extent to which proscription interferes with Art 11 rights is "*stark"*, because "*the very purpose of proscription is to … ensure that an organisation ceases to exist"* **[J/§135]**. The effect of proscription was indeed that PA, as an organisation – with a mailing list of approximately 20,000 people, more than 248,000 followers on X (formerly Twitter), 413,000 followers on Instagram, and 28,000 followers on TikTok,

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[115] <u>*Pwr v DPP*</u> [2022] 1 WLR 789 (SC) §65 {**AB/30/1044**}.

[116] HC Deb 14 December 1999, vol 341, col 160-1 (emphasis added): *"we have put in place another profound safeguard against the disproportionate use of the powers that we are discussing, and that is the Human Rights Act 1998… Leaving aside whether or not successive Governments will have the same concern to balance liberty and the fight against terrorism as this Government have,* ***the Human Rights Act will provide powerful control over the use of the powers that are set out in the Bill***" {**AB/79/3214**}.

and 2,000 followers on YouTube[117] – ceased to exist. Notwithstanding the fundamental principle of the non-retroactivity of the law, those associated with PA prior to proscription have experienced particularly adverse treatment within the criminal justice system post proscription, including through the imposition of harsher bail conditions (with proscription expressly cited as the reason),[118] and a marked deterioration in their treatment in prison on remand.[119]

67.2. **Impact on R.** The impact of the proscription of PA on R has also been severe, leading to the destruction of much of her life's work, and seriously restricting her exercise of her Art 10/11 rights. As rightly accepted by the DC, R and others in a similar position, "*will be particularly careful not to act in a way that might amount to the commission of any of the criminal offences"* under the TA 2000, and "*may self-censor to a greater degree than others"*, because they are subject to "*closer police scrutiny"* **[J/§122]**; R has indeed had to self-censor, due to fears she may inadvertently fall foul of terrorism legislation in her advocacy.[120] Further, and as noted by the DC, there is a real risk of R being deplatformed from events because of organisers' fears of offences under ss.11 or 12 TA 2000 (J/§121). Notably, and importantly proscription has resulted in her being labelled the co-founder of a terrorist organisation, including by the media (which regularly conflates R with PA, publishing her name and personal details),[121] creating significant fears for her safety from far right, pro-Israel groups and impacting her ability to travel, to the Middle East in particular.[122]

67.3. **Impact on individuals opposing proscription**: There have been mass protests against the proscription of PA, at a scale entirely unforeseen by the SSHD.[123] By 6 November 2025, over 2,000 people had been arrested and many charged for holding signs reading "*I oppose Genocide, I support Palestine Action"*, most on the basis of s.13 TA 2000.[124] People have also been arrested for, *inter alia*: being in the vicinity of others holding signs saying "*I oppose Genocide, I support Palestine Action"*;[125] holding placards with slogans such as: "*I do not support the*

[117] Ammori 2 §13 **{ASB/6/56}**; Middleton 1 §11 {**USB/14/472-473**}.
[118] Southwell 1 §§7-11 {**USB/30/659-660**}.
[119] Potter 1 §§12-15{**USB/49/865-867**}; Exhibit RP/01, 04 {**USB/49a/869-871, 873-874}**.
[120] Ammori 1 §40 **{ASB/5/51}**.
[121] Ammori 1 §32 **{ASB/5/50}**.
[122] Ammori 1 §35 **{ASB/5/50}**; Ammori 2 §§22-28 **{ASB/6/58-60}**.
[123] As is clear from Annex F, Community Impact Assessment {**ASB/10e/193-195**}, and the CTP Briefing April 2025 {**ASB/12/218**}.
[124] Ost 6 §14 **{USB/51/886}**; White 1 §§9-14 {**USB/35/680-681**}; Hinton 1 §§2-10 {**USB/39/766-767**}; Evans 1 §20 {**USB/53/947-978**}; Godlee 1 §§9-12 {**USB/52/941-942**}; Manson 1 §§25-30 {**USB/38/731**}.
[125] Evans 1 §§16-17 {**USB/53/947**}.

proscription of Palestine Action",[126] *"those who take ACTION against genocide in PALESTINE are NOT the terrorists",*[127] and/or "*Palestine needs action not fine words, stop the genocide"*; [128] holding a sign saying "*WE ARE ALL PALESTINE ACTUALLY*" while wearing a red boiler suit;[129] wearing a t-shirt saying "*Genocide in PALESTINE – Time to take ACTION";*[130] holding up a cover of a magazine with a photograph of a placard on it;[131] and displaying a sign in the window of a private home which said "*Support Palestine Action, Free Palestine".*[132] The DC was wrong to attach "*little weight"* to the Art 10/11 rights of such individuals **[J/§118]**. It is not to the point that such persons "*ought to have realised that what they were doing was showing support for Palestine Action"* **[J/§118]**. These were self-evidently acts of civil disobedience, designed to express individuals' opposition to the Decision, and to protest against the restriction of fundamental rights in relation to protests against Israel's violations of international law against Palestinians. The criminalisation of expressive conduct of that kind – indeed, its criminalisation as a *strict liability terrorism offence*, typically without any fact-sensitive proportionality defence,[133] where it plainly can pose no risk to any person (much less, to national security) – is highly material to the fair balance assessment; so too are the draconian consequences faced by such individuals. These extreme consequences reach every aspect of a person's life, from employment, study, immigration status, travel, referrals to Prevent, and even a person's ability to hold a bank account.[134] CTP guidance on the enforcement of the proscription – which has in any event not been made public[135] – does not decrease the chilling effect of the breadth of speech potentially caught by the proscription, and in any event overbroad legislation touching on liberty cannot be saved by policy.[136]

67.4. **Impact on campaigning organisations:** the DC rightly took into account the impact of proscription on "*campaigning/civil liberties organisations",* noting that "*they are inhibited from*

[126] Ost 6 §55 **{USB/51/893}**.
[127] Ost 5 §8 **{USB/21/605}**, Photograph of placard AO5/3 **{USB/26a/616-617}**.
[128] Campbell 1 §§2-19 {**USB/43/786-788**}.
[129] Ost 5 §9 **{USB/21/605}**, Photograph of placard AO5/4 **{USB/26a/618-619}**.
[130] Ost 5 §7 **{USB/21/605}**, Photograph of t-shirt AO5/2 **{USB/26a/614-615}**.
[131] Jacobs 1 §§2-8 {**USB/33/667**}.
[132] Morton 1 §§7-9 {**USB/47/850-851**}.
[133] Depending upon the application of the principles in *Pwr v DPP* [2022] 1 WLR 789 (SC) {**AB/30/1026-1049**} to these cases.
[134] Peirce 2 sets out consequences for British nationals and foreign nationals {**USB/25a/602A-602F**}; Ost 2 illustrates the impact on individuals' employment, study and immigration status **{USB/6/420-427}**; Ost 3 §30 addresses the freezing of bank accounts **{USB/21/531-532}**.
[135] Guidance was considered by DC at **[J/§119]**, Sinclair 2 exhibit PA Guidance 28.08.25 {**USB/61/1090-1096**}.
[136] See *e.g., A v Home Secretary* [2005] 2 AC 68 at §33 (per Lord Bingham) {**AB/16/406-407**} and *R v Gul* §36 (per Lord Neuberger {**AB/23/778**}; Guidance was considered by DC at **[J/§119]**, Sinclair 2 exhibit PA Guidance 28.08.25 {**USB/61/1090-1096**}.

campaigning against the fact of proscription", and that their members face "*risks… if they were to campaign, generally, against the use of the power to proscribe"* **[J/§123]**. The breadth of the s.12 TA 2000 offence, in particular, was recognised as being capable of causing "*genuine problems"* for their **[J/§123]**, creating an undoubted chilling effect. There was extensive evidence to that effect, including from Amnesty International UK[137] and Liberty[138] (who intervened below[139]).

67.5. **Impact on those campaigning against Israel's violations of international law.** The proscription of PA has impacted not only upon PA's ability to advocate against the ongoing complicity of UK-based companies in atrocity crimes, but on the ability of other organisations to do the same (whether or not by direct action). On the evidence, that impact arises in at least three ways:

(a) The proscription of PA has **created a "*culture of fear*"** among those campaigning for Palestinian rights.[140] Many responsible individuals and organisations, concerned to avoid the serious criminal consequences associated with the proscription of PA, are self-censoring, and refraining from engaging in lawful advocacy relating to these issues. There was extensive evidence before the Divisional Court of such concerns from, among others, the European Legal Support Centre, the Network for Police Monitoring (Netpol), and the Campaign Against the Arms Trade (CAAT).[141]

(b) There are numerous examples, following the proscription of PA, of **police surveilling, stopping, questioning, and arresting pro-Palestinor**s (often based on an erroneous understanding of the legal consequences of proscription), regardless of whether the individuals in question have any association with PA (for example, simply for wearing keffiyahs, or clothing or insignia indicating solidarity with Palestinian people).[142] The DC was wrong to conclude that there was no "*particular feature that arises in the context of a decision to proscribe … which make the possibility for such errors a particular feature of the interference with Convention rights in this case"* **[J/§119]**. With respect, those "*features*" are obvious: (**i**) the breadth of the proscription offences, and their focus on expressive conduct (wearing or displaying signs or articles, organising or addressing meetings, expressing support, etc.) make them particularly liable to misinterpretation and uncertain or over-broad application; and (**ii**) those risks are

[137] Deshmukh 2 **{USB/56/1024-1033}**.
[138] Grant 2 **{USB/57/1034-1043}**.
[139] **{USB/55/1013-1023}**.
[140] Shalan 1 §26 **{USB/17/499}**.
[141] Ost 3 §§31, 35 **{USB/21/532-533}**; Peirce 1 {**USB/22/513-523**}.
[142] Ost 3 §§11-13 **{USB/21/527}**; Ost 6 §§41-42, 78, 80 **{USB/51/890, 898-899}**; Exhibit AO6/01 {**USB/51a/902-937**}; Graham 1 §12 {**USB/41/775**}; Nedelec 1 §§4, 13 {**USB/37/724, 726**}; Beardon 1 §§13-16 {**USB/42a/783**}.

especially acute in the context of a direct action protest group such as PA, which did not have any 'membership' as such and instead comprised a loose network of activists which (on the evidence before the Court was strongly associated with the broader Palestinian solidarity movement in the UK.[143] The risk of 'over-policing' was and remains an inevitable consequence of PA's proscription, *cf* **[J/§120]**.

(c) There are also examples, of private organisations and individuals taking adverse action against pro-Palestinian organisations following the proscription of PA, even though they are not in any way affiliated with PA (for example, by freezing their bank accounts or expressly calling them terrorists).[144]

67.6. **Impact on Palestinians in Britain.** The proscription of PA is impacting particularly severely on Palestinians in Britain, whose conduct and expression have been chilled and criminalised at precisely the moment when their communities in Palestine are being annihilated. There was extensive (uncontested) factual evidence before the DC which spoke powerfully to those impacts,[145] including (by way of illustration only) evidence that *"[t]he ban will discourage [the Palestinian diaspora] from speaking out and acting in solidarity with their own people out of a fear of falling foul of broadly defined terror offences which carry custodial sentences of up to 14 years*."[146]

67.7. **Impact on journalism.** The evidence before the DC established that journalists are likely to, and have in fact, self-censored and modified their reporting – on a matter of real and immediate public interest – to avoid the appearance of support of PA,[147] creating a significant chilling effect. While the DC accepted that the chilling impact upon journalists was entitled to "*some weight"* **[J/§123]**, the impact carries substantial weight, not least in circumstances where responsible journalists were being prevented from reporting or editorialising on the proscription, lest such reporting proscription give the appearance of support for PA[148].

67.8. **Impact on culture and the arts.** The proscription of PA also has a chilling effect on

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[143] Ost 3 §6-9 **{USB/21/525-526}**, AO3/1 **{USB/21a/537-552}**, Ghalayini §6 **{USB/7/430}**.

[144] Ost 6 §48, 80 **{USB/51/891-892, 899}**; Exhibit AO3/14, AO6/1 (Tadhamon singers) **{USB/51a/905-907}**, Ost 3 §30 **{USB/21/531-532}**, Ost 4 §14 **{USB/24/576-577}.**

[145] Dabbagh 1 §14 **{USB/12/464-465}**; Alnaouq 1 §14 **{USB/50/879}**; Shalan 1 §§24-28 **{USB/17/499-500}**; Shalan 2 §§3-18 **{USB/18/502-505}**; Ghalayini 1 §§5-7 **{USB/7/429-430}**; Ost 6 §§63-64, 70-71 **{USB/51/894-896}**.

[146] Exhibit AO10 **{USB/5a/347}**.

[147] McEvoy 1 §5 **{USB/10/437-438}**; Landin 1 §§8-10 **{USB/36/684}**; England 2 §§3-6 **{USB/22/567-569}**; Hallward 1 §§21-22 **{USB/46/809}**; Alnaouq 1 §20 **{USB/50/881}**.

[148] See e.g. *Novaya Gazeta v Russia* (App No. 11884/22, 11 February 2025) §118 **{AB/74/2892}**.

arts and cultural institutions, by reason of their association with, or support for, PA. That chilling effect was clearly established in the evidence before the DC,[149] and yet was not addressed by the Court, despite the particular deprecation by the ECtHR of constrains on the protection of artistic expression.[150]

67.9. **Impact on academia**. The DC rightly accepted the evidence of the chilling impact of proscription in academia,[151] affording "*some weight*" to the "*risk of self-censorship*" **[J/§123]**. This factor should have been given significant weight in light of the far reaching consequences for academics, students and academic institutions, having *regard inter alia* to referral obligations to Prevent, as well as long-term career and employment consequences.[152]

68. **Thirdly**, it is highly material to the Court's assessment of proportionality that PA's actions were aimed at seeking to prevent ongoing serious violations of international law, which have been recognised and authoritatively established by international judicial bodies and UN institutions. The proscription of PA chilled expression and protest *precisely* the time when the need to speak out was most acute (see **section B.3** above.)

69. **Fourthly**, the "*very significant*" **[J §104]** impact of PA's proscription on the Art 10 and 11 rights of a substantial number of people cannot be justified by any countervailing asserted *"general interest of the community"*. That is because:

69.1. The SSHD's assessment that PA was "*concerned in*" terrorism was based solely on the conclusion they satisfy the "*serious damage to property*" limb of s.1(2) TA 2000. The public interest in curtailing property damage is inherently (and substantially) more limited than the public interest in curtailing violence against persons, endangering life, or creating a serious risk to the health or safety of the public, per the other limbs.

69.2. Even in relation to property damage, the SSHD's assessment was that the vast majority of PA's actions would not satisfy the statutory threshold for terrorism (i.e., "*serious damage*"): of 385 PA actions over a period of five years, she assessed just three to have met the "*serious*

[149] Ost 6 §79 **{USB/51/898-899}**; Morton 1 §8 {**USB/47/851**}; Rogers 1 §42 {**USB/29/656**}; Rooney 1 §§10-13 {**USB/11/441-442**}; Rooney 2 §8 {**USB/48/857**}.

[150] *Müller and Others v. Switzerland* (App.No 10737/84) 24 May 1988 §§ 27 et seq; *Lindon, Otchakovsky-Laurens and July v. France* [GC], (App. Nos 21279/02 and 36448/02) 22 October 2007 §47.

[151] Hallward 1 §§15-19 {**USB/46/808-809**}; Mead 1 §30 {**USB/28/632**}; Rogers 1 §43 {**USB/29/656**}; Jacobs 1 §§11-14 {**USB/33/668**}.

[152] As set out in Pierce 2 {**USB/25a/602A-602F**}, exemplified in the case studies set out in Ost 2 **{USB/6/420-427}**, and outlined in Hallward 1 {**USB/46/806-811**}.

damage" threshold.[153] Indeed, on her own evidence (as above), property damage caused by PA was "*typically minor, involving petty vandalism, graffiti, occupations and lock-ons"*.[154] Accordingly, the DC was correct in its assessment that only "*[a] very small number of [PA's] actions have amounted to terrorist action within the definition at section 1(1) of the 2000 Act"* **[J/§138]**.

69.3. The "*main target"* of PA's activities is Elbit Systems UK ("**Elbit**") **[J/§16]**, together with Teledyne, Leonardo and Arconic, all of which are widely reported to have produced materials used in Israel's assault on Gaza since October 2023 (see **section B.4** above)[155] Those organisations were alleged to have been involved in serious criminality: aiding and abetting, facilitating and profiting from serious violations of international law **[J/§16]**.[156] That is plainly relevant to the proportionality of proscription, as is the apparent failure by the SSHD and/or the police – over the course of over five years – to investigate those allegations [157] of what would constitute domestic crimes contrary to the International Criminal Court Act 2001.[158]

69.4. As set out above, the proscription of PA itself impacts "*the general interests of the community"*, including in restricting the rights of large numbers of people. Those broad rights are being balanced against the property rights of a limited number of corporate entities, alleged to be facilitating or profiting from atrocity crimes by Israel against Palestinians.

69.5. The SSHD's own evidence indicated that any national security interests engaged by PA were limited, and were linked to their targeting of the UK-based operations of international arms companies.[159] There is no indication in OPEN of any evidence-based assessment of the impact of PA's actions on the wider UK defence industry and/or UK defence capabilities.

69.6. Contrary to the impression given by the SSHD [**ASkel/§§67(a), (b), 70**], the DC was aware of, and had regard to the SSHD's assertion that PA's actions had "escalated" over a period of time leading up to the August 2024 Filton protest **[J/§44**, see also the material quoted at **§§3, 43**]. However, that assessment (and the spectre of "*escalation*") can only take the SSHD so far, in circumstances where SSHD had <u>also</u> assessed that: (**a**) PA actions

[153] 7 March 2025 JTAC Assessment §§7-8 and 47 **{ASB/10a/160-161, 166}**; 13 March 2025 PRG Minutes **{ASB/10f/210}**; <u>*Ammori v SSHD*</u> [2025] EWHC 2013 §87 **{CB/23/179Q}.**

[154] 7 March 2025 JTAC Assessment §7 **{ASB/10a/160}**. See also Feinstein 1 §11 **{USB/4/259}**.

[155] Alnaouq 1 §17 {**USB/50/879-880**}.

[156] Ammori 2 §§2-6 **{ASB/6/54-55}**.

[157] As late as 18 March 2025, the Home Office were unaware of what was produced at the sites targeted by PA and where they were exported: 18 March 2025 MOD/HO/Police email exchange {**ASB/23/304-305**}.

[158] S52, s55 and Articles 6-8 Schedule 8 International Criminal Court Act 2001; see also s1 Geneva Conventions Act 1957**.**

[159] 18 March 2025 MOD/HO/Police email exchange {**ASB/23/304-305**}.

involving "*serious damage to property*" were not "*the norm*";[160] (**b**) there had been a "*reduction in direct action*" by September 2024 following the arrests of persons associated with Filton;[161] (**c**) there had been no further incidents of violence or injury since the previous JTAC report as of June 2025[162]: and (**d**) in any event, whatever the escalation, the SSHD had assessed that PA was "*highly unlikely [to] explicitly advocate for violence against persons*".[163]

70. **Fifthly**, the contention (at ASkel §65) that the DC failed to accord the SSHD "*the proper degree of margin*" is without merit. The DC made clear that, in considering fair balance, "*the court must permit some latitude to the Home Secretary given that she has both political and practical responsibility to secure public safety*" (J/§138). All the authorities cited at ASkel/§66 were cited below,[164] and ventilated in oral argument.[165] The contention that Sharp P and Swift and Steyn JJ proceeded in ignorance of the well-established principles in this area is meritless. It is also inconsistent with the principle that judgments should not be read like statutes, and that judicial reasons "*should be read on the assumption that, unless he has demonstrated to the contrary, the judge knew how he should perform his functions and which matters he should take into account*".[166] The SSHD has failed to identify any relevant misdirection in the DC's reasoning. In reality, the SSHD disagrees not on any point of principle – the principles being clear and well-established – but with the DC's overall judgment and the weight which it afforded to different considerations in reaching the conclusion that the Decision was disproportionate. That is not a proper basis on which to interfere with the DC's decision on appeal.

71. If anything, the Court was overly **generous** to the SSHD by according her latitude irrespective of the quality of her contemporaneous assessment (or lack thereof) of the justification for proscription and the proportionality of the interference with ECHR rights it entailed. The correct analysis is as follows:

71.1. Under s.6 HRA 1998, Parliament has allocated to the Court the legal and constitutional

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[160] NPoCC December 2024 briefing {**ASB/21/268**}.
[161] September 2024 NPoCC briefing {**ASB/18/241**}.
[162] 4 June 2025 Min Sub Annex B {**ASB/14-15/222-228**}.
[163] 7 March 2025 JTAC Assessment §36 **{ASB/10a/164}**.
[164] *SSHD v Rehman* [2003] 1 AC 153 {**AB/13/302-345**}; *R (Lord Carlile of Berriew) v SSHD* [2015] AC 945 {**AB/24/785-855**}; *Begum v SSHD* [2021] AC 765 {**AB/29/976-1025**}; *U3 v SSHD* [2025] AC 1510 {**AB/40/1416-1463**}; *R (FTDI) v Chancellor of the Duchy of Lancaster* [2025] EWHC 1922 (Admin) {**AB/41/1464-1502**}. See also SSHD DC skeleton argument §§38-39 {**CB/27/272**}.
[165] *Inter alia,* DC Transcript 27 November 2025 pp.116-117.
[166] *Piglowska v Piglowski* [1999] 1 WLR 1360 (at p.1372) {**AB/10/277**}.

responsibility to act as the final arbiter of the human rights balance, and to determine for itself the compatibility of any given proscription decision with the Convention.[167]

71.2. The tenor of the SSHD's submissions is that, provided that she has (rationally) concluded that an organisation is "*concerned in terrorism*" within the meaning of s.1 TA 2000, that is close to the end of the inquiry. That is wrong. Precisely because the criteria for proscription are so broad, and because the consequences of proscription are so draconian, the responsibility of the Court to scrutinise the compatibility of any decision with the ECHR operates as a critical constraint on the exercise of the proscription power in any given case. Accordingly, where s.6 HRA 1998 is engaged, satisfaction of the statutory criteria under s.1 TA 2000 is only the beginning of the inquiry.

71.3. Whilst the SSHD is in principle entitled to a margin of deference in matters in relation to which she has institutional expertise or constitutional responsibility, that entitlement does not apply to all aspects of the proportionality analysis. Most significantly for present purposes, the SSHD is not entitled to any special deference in respect of the impact of the proscription and the nature or extent of interference with ECHR rights to which it has given rise. That is because the SSHD "*do[es] not have any special claim by reference to [her] constitutional responsibilities and institutional competence to be in a superior position than the court*" to assess that impact.[168] In parallel, the Court is particularly well-placed to assess the availability and efficacy of alternative judicial mechanisms (such as civil injunctions or criminal remedies) in addressing the risks of property damage posed by PA for the purposes of the less restrictive measures limb of the proportionality analysis.

71.4. In respect of the matters in relation to which the SSHD would in principle be entitled to deference, the degree of deference is significantly attenuated in this case:

(a) The extent to which a decision maker is entitled to deference depends in part on whether the decision maker has analysed the proportionality of the interference with ECHR rights, and the soundness of the supporting justifications.[169] There is no evidence that the SSHD conducted such an analysis in relation to the proscription of PA.[170] The exorbitant deference for which the SSHD now contends has therefore not

[167] *R (AAA) v SSHD* [2023] 1 WLR 4433 (SC) §§55-56; *Begum v SSHD* [2021] AC 765 §§57, 58 {**AB/29/1003**}.

[168] *Shvidler* §126 {**AB/44/1582-1583**}.

[169] *Belfast City Council v Miss Behavin' Ltd* [2007] 1 WLR 1420 (SC) §§26, 37, 47, 91 {**AB/18/532, 535, 537, 547**}.

[170] The SSHD's evidence, which asserted that it was "*plain*" that such an analysis had been conducted, cross-referred to a passage of the

been earned.[171]

(b) In any event, the DC had before it substantially more information and evidence (including CLOSED evidence) than was available to the SSHD when taking the Decision. Any contemporaneous assessment by the SSHD of the impact of proscription would necessarily have been forward-looking and speculative. By contrast, the DC had before it detailed and wide-ranging evidence as to the actual impact of the proscription and the profound interference with rights of freedom of expression and assembly to which it has in fact given rise. The Court was well-placed to adjudicate upon the force of that evidence.[172]

(c) As to the contention (at ASkel §65) that the SSHD is entitled to substantial deference because the case concerns "*the protection of national security and of the public from terrorism*", to the extent that this case engages "*national security*" interests at all, those interests are essentially limited to the vindication of property rights. Any perceived threat to national security is (on the SSHD's own evidence and analysis) at the less serious end of the spectrum.[173] The proscription of PA does not engage 'core' national security concerns (i.e., the protection of large sections of the public from a risk of violence). The outworkings of the SSHD's approach would be that, in any case involving a factual matrix capable of falling within the broad s.1 TA 2000 definition, wherever on the spectrum it may fall, the deference to be afforded to the executive is so extensive as to render proportionality review functionally indistinguishable from rationality review.[174] The SSHD's analysis is wrong in principle. Its practical effect would be to subvert Parliament's intention in conferring upon the SSHD a broad discretionary power the exercise of which is subject to a critical fact-sensitive legal constraint in the form of s.6 HRA 1998.

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26 March 2025 Min Sub which had been entirely redacted: Farrant 1 §45 {**ASB/1/20**} {**ASB/10/157-158**}. That is of no assistance to the SSHD (particularly in circumstances where a core part of her case on ECHR compatibility seemingly rests on the erroneous contention that the engagement of Articles 10 and 11 is extremely limited in light of Article 17).

[171] As noted at **section D.4.1.** above, the SSHD is also entitled to little deference in respect of her analysis of less restrictive measures, in light of the various errors and shortcomings in that analysis.

[172] *Shvidler* §§120, 124 {**AB/44/1580-1582**}.

[173] See, e.g., {**ASB/10a/160**}, {**ASB/21/268**}, {**ASB/23/304-305**}.

[174] *R (FTI Holding Ltd) v Duchy of Lancaster* [2025] EWHC 1922 (Admin) §112 {**AB/41/1496-1497**}.

(d) As to the relevance of the fact that the Order was laid before Parliament,[175] it is significant that statutory instruments receive limited scrutiny and cannot be amended.[176] Here, as the SSHD would have been well-aware in drafting the Order and choosing to include two fascist organisations alongside PA, Parliament could not reject the proscription of PA without *also* rejecting the proscription of the other two organisations.[177] Limited weight can therefore be placed on this consideration.

72. For all these reasons, the Divisional Court was right to conclude that the proscription of PA failed to strike a fair balance between the Art 10 and 11 rights of those affected by it and the general rights of the community, including the property rights of others.

73. Ground 2 of the Appeal should be rejected for the reasons set out above, and the DC's determination that the decision to proscribe Palestine Action was in violation of Arts 10/11 upheld.

E. CONCLUSION

74. For the foregoing reasons, the SSHD's appeal should be dismissed.

RAZA HUSAIN KC
BLINNE NÍ GHRÁLAIGH KC
PAUL LUCKHURST
OWEN GREENHALL
AUDREY CHERRYL MOGAN
TIM JAMES-MATTHEWS
MIRA HAMMAD
RAYAN FAKHOURY
ROSALIND BURGIN
GRANT KYNASTON
31 March 2026
(With references 17 April 2026)

[175] It nonetheless remains an executive measure: *Bank Mellat v HM Treasury* [2014] AC 700 §§42, 54 {**AB/22/672, 673**}.

[176] *R (PLP) v Lord Chancellor* [2016] AC 1531 §§22-24 {**AB/25/866-867**}.

[177] Erskine May §31.13.

Appeal No. CA-2026-000583

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE (KBD)

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-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

ERRATUM (RESPONDENT'S SKELETON ARGUMENT)

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1. Paragraph 15 of the Respondent's Replacement Skeleton Argument dated 17 April 2026 refers to an action at "*Instro-Precision in Kent on 17 June 2025*". This should be a reference to 17 June 2024. The Respondent apologises for this error.

23 April 2026