

IN THE CROWN COURT AT PRESTON

BETWEEN:

REX

-v-

**BRENDAN O'HAGAN
AMANDA KELLY
HUMEERA ATIQ NISAR
MOHAMMED MALIK
ALMA YANIV**

**RULING ON APPLICABILITY OF
SECTION 69 OF THE SENTENCING ACT 2020**

Introduction

1. On 15 June 2026, all five defendants were convicted of criminal damage following a trial before HHJ Parry. The case arose from an incident at a branch of Barclays Bank in Burnley town centre on 5 August 2024. I need only briefly set out the facts underpinning the convictions. The Crown's case was that all five defendants attended the premises shortly after 2.00 am. They wore face coverings and carried hammers during the incident, in the course of which many of the bank's windows were damaged. Large quantities of red paint were thrown over the building. The total cost of the damage amounted to £177,337 (a little over £200,000 including VAT).
2. Following the convictions, the matter was adjourned by the trial judge for sentence on 4 September 2026.
3. On 22 June 2026, the trial judge emailed the parties, directing them to provide submissions as to whether section 69 of the Sentencing Act 2020 applied to the case. Following a request from the defence for more time, the trial judge indicated that a strict deadline needed to be observed so that the case could be referred to me, as Resident Judge, and to the Presiding Judge of the Circuit for consideration as to which judge should hear the argument and pass sentence.
4. Both the prosecution and the defence have provided helpful written submissions. The prosecution submission is dated 8th July 2026. An initial written submission ("the first joint submission") on behalf of all Defendants was served on 10th July 2026. That has been supplemented by a further written submissions

dated 18th August 2026 (“the second joint submission”) from Mr Weatherby KC and Mr Mcoll. I have also received and read a submission from Mr Summerfield dated 18th August 2026 in relation to the particular position of Ms Yaniv.

5. I have heard additional brief oral argument. At the request of the defence I have watched the video footage at J13 on the DCS.
6. This hearing is to determine the question of whether section 69 Sentencing Act 2020 applies to this case.
7. The trial judge is not authorised to hear terrorist cases. Accordingly, following referral of this matter to me by the trial judge and in consultation with the Presiding Judge, it has been determined that I should hear this application.
8. I remind myself that, although there are joint submissions on behalf of the defendants, this matter must be considered separately for each defendant. In practical terms, all defendants are in precisely the same position on the point save for Ms Yaniv in respect of whom there is a factual issue to be resolved before sentence. That point is made in the helpful written separate submission served on her behalf.

The Facts

9. It was always clear that the defendants’ purpose in causing damage to the building arose from concerns relating to the conflict in Palestine. They sought to argue at trial that they were protecting property in Palestine and were acting in defence of the Palestinian people. At an early stage this was identified by the Crown as a case of protest and direct action. However, at no stage for the purposes of trial did the Crown seek to allege that this was anything other than action by an isolated group. The Crown did not seek to allege that there was any connection between these defendants and Palestine Action (which at the time of the incident was not a proscribed organisation).
10. The Crown did not seek a preparatory hearing nor did it seek any determination before trial as to whether this case had a terrorist connection.
11. During the trial, all five defendants gave evidence. All except Ms Yaniv asserted that they were members of, or affiliated with, Palestine Action at the time of the offending and had received training from Palestine Action. Those four defendants gave evidence to the effect that this incident formed part of a wider Palestine Action campaign concerning Barclays Bank.
12. The Crown say that they had not sought to put any evidence of these factors before the jury. I am told that this is because there was “no admissible evidence” to that effect. The Crown submit that these matters were introduced solely from the defendants’ evidence. Whatever evidence the Crown may have had about

such matters (admissible or not), the court and the trial judge had no means of knowing that these actions had been set in this much wider context until that evidence was given by the defendants.

13. The defence seek only very recently to challenge some of what was said at trial. The Crown's summary was given in their document of 8th July. It was unchallenged by the first and second joint submissions.
14. The defence sought to place a gloss on this by serving a document only yesterday in breach of my order as to the service of documents in this case. The Crown, whilst not taking vehement issue with the document, have been put in a difficult position. They cannot agree it in its entirety. This is a good illustration as to why directions are made and need to be complied with.
15. I have also seen the response served on 19th August on behalf of Mr Malik to the which raises disputes about precisely what was said at trial. However, there is enough which is agreed, including the political nature of the offending, for me deal with this matter today.

The Legal Framework

16. Section 69 of the Sentencing Act 2020 provides as follows:

(1) This section applies where a court is considering the seriousness of an offence specified in Schedule 1 (offences where terrorist connection is to be considered) within subsection (4) or (5).

(2) If the offence has a terrorist connection, the court-

- (a) must treat the fact as an aggravating factor, and
- (b) must state in open court that the offence is so aggravated.

(3) For the purposes of this section, an offence has a terrorist connection if the offence -

- (a) is, or takes place in the course of, an act of terrorism, or
- (b) is committed for the purposes of terrorism.

For this purpose, 'terrorism' has the same meaning as in the Terrorism Act 2000 (section 1 of the Act).

17. Section 1 of the Terrorism Act 2000 states:

(1) In this Act, 'terrorism' means the use or threat of action where -

- (a) The action falls within the subsection (2),

- (b) The use or threat is designed to influence the government (or an international government organisation) or to intimidate the public or a section of the public, and
- (c) The use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) Action falls within this subsection if it -

- (a) Involves serious violence against a person,
- (b) Involves serious damage to property,
- (c) Endangers a person's life, other than that of the person committing the action,
- (d) Creates a serious risk to the health or safety of the public or a section of the public, or
- (e) Is designed seriously to interfere with or seriously disrupt an electronic system.

18. Since the defence raises issues concerning alleged procedural unfairness arising from the Crown's failure to seek a preparatory hearing, I set out the relevant parts of section 29 of the Criminal Procedure and Investigations Act 1996, which provides:

(1) Where it appears to a judge of the Crown Court that an indictment reveals a case of such complexity, a case of such seriousness or a case whose trial is likely to be of such length, that substantial benefits are likely to accrue from a hearing—

- (a) before the time when the jury are sworn, and
 - (b) for any of the purposes mentioned in subsection (2),
- he may order that such a hearing (in this Part referred to as a preparatory hearing) shall be held.

.....

(1C) An order that a preparatory hearing shall be held must also be made by a judge of the Crown Court in every case which (whether or not it falls within subsection (1) or (1A)) is a case in which -

- (a) At least one of the offences charged by the indictment against at least one of the persons charged is an offence carrying a maximum of at least 10 years' imprisonment, and

(b) It appears to the judge that evidence on the indictment reveals that conduct in respect of which that offence has been charged had a terrorist connection.

(2) The purposes are those of -

(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during trial,

(b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them,

(c) determining an application to which s.45 of the Criminal Justice Act 2003 applies,

(d) assisting the judge's management of the trial,

(e) considering questions as to joinders or severance of the charges.

The Crown's Position

19. Following receipt of the trial judge's email of 22 June 2026, the Crown submitted (on 8 July 2026) their document arguing that this case has a terrorist connection within the meaning of section 69 Sentencing Act 2020.

20. Anticipating that the defence would challenge the timing of the Crown's submissions on this point, the Crown's document asserts that the matters which it now says should result in a finding that this case has a terrorist connection were either unknown to it or were not the subject of admissible evidence until the defendants gave evidence. The Crown's submission does not explain why it did not, of its own motion, raise section 69 Sentencing Act 2020 upon conviction. Nonetheless, it now submits that the acts of these defendants fall within the definition of terrorism contained within section 1 of the Terrorism Act 2000. The Crown asserts that, in all the circumstances, the damage caused was "serious", the offence was designed to influence the government or intimidate the public or a section of the public and was undertaken for the purpose of advancing a political or ideological cause.

21. In terms of what the Crown knew before the Defendants gave evidence, I have been directed to a statement at I52 on the DCS. This statement sets out that other similar incidents had happened at other Barclays Branches.

The Defence Position

22. In the first joint submission dated 10 July 2026, the defence makes four broad points. Firstly, it argues that the damage does not amount to "serious damage"

within the meaning of section 1 of the Terrorism Act 2000. This argument is developed in the second joint submission.

23. This second joint submission asks me to consider a single page extract from Hansard setting out some comments made by the then Home Secretary at the introduction of the act in the House of Commons. I have not found this helpful. The conditions in *Pepper v Hart* [1993] AC 593 are not met in this case. The definition of terrorism is neither ambiguous nor obscure. It does not lead to absurdity.
24. The second joint submission asks me to consider a statement from the UN Special Rapporteur on the Protection of Human Rights. This seeks to import into the definition of serious damage concepts of “extensive damage”, “major economic loss” and “extensive destruction”. A passage in this statement tells me that the Security Council’s Counter-Terrorism Executive Directorate considers that:

“mere property damage, without endangering life or limb, should not be categorized as terrorism.”

The status of that statement within these proceedings is not clear to me. In any event I have not found any justification for importing these additional concepts into a clear definition in the act.

25. The second joint submission invites me to consider the “quality of the act” as distinct from its consequence. I am asked to consider that, had these not been high security widows, the damage could have been “a few thousand pounds” and the Defendants may not have appreciated the full monetary extent of the damage they were causing.
26. I am also asked to consider the quality of the act in the sense that, it is argued, this act was not intended to cause widespread fear or serious economic disruption or damage. It is argued that, in the timing and the manner of the offending, it was designed to avoid such consequences.
27. In the first joint submission I am asked consider the definition of “serious damage” within the context of terrorism legislation. I agree that this issue must be judged within that context.
28. The second broad argument is that the evidence does not support a conclusion that the defendants’ actions were designed to influence government or

intimidate a section of the public. There is some tension on this point between the first and second joint submissions. In the second joint submission it is conceded that the offending was “politically motivated”. Nonetheless, the second joint submission draws my attention to the detail of the statutory definition pointing out that a terrorist act must be:

“designed to influence the government or an international governmental organisation”

or:

“to intimidate the public or a section of the public”.

It is argued that this attack was not intended to influence government. Accordingly, it is argued, this could only be a terrorist attack if it was designed to “to intimidate the public or a section of the public”. It is argued that Barclays is not the public or a section of the public.

29. The third broad argument is that a determination under section 69 Sentencing Act 2020 that this offence has a terrorist connection would be “procedurally unfair”. It is said that the Crown did not charge the defendants with a terrorist offence nor assert a terrorist connection prior to trial. The defence points out that the trial judge did not raise the issue at any stage, including after the close of the evidence or after the verdicts were returned. The matter was first raised by the trial judge one week later, following consideration of *R v Head and Others*.
30. It is argued that, had the Crown requested such a preparatory hearing pursuant to section 29(1C) Criminal Procedure and Investigations Act 1996, the defendants would have had notice that this case might have had a terrorist connection and would thereby have benefited from “procedural safeguards”.
31. The defence therefore submits that it is wrong in principle, as a matter of procedural fairness, for the defendants now to be sentenced on the basis of a terrorist connection. The first joint submission relies upon *Canavan* [1998] 1 Cr App R (S) 243 to the effect that a person cannot be sentenced for an offence more serious than the one for which he was convicted.
32. The second joint submission submitted on 18th August seeks to develop these arguments. This new document boldly states that the Crown’s assertion that these matters arose during the trial as “manifestly not correct” on the basis that the extent of the damage was always known as was the fact that the incident was politically motivated. This, it is argued, meant that a preparatory hearing was

mandatory and this failure both deprived the Defendants of a procedural safeguard but also meant that they were not able to assess or be advised of the extent of their legal peril.

33. This argument is further developed in the second joint submission on the basis that, were s.69 Sentencing Act 2020 be found to apply this would increase the punishment because it will be treated as an aggravating feature. It is said to be analogous to a judge determining that a defendant should be sentenced for a racially aggravated offence where no racial aggravation was not found by the jury.

34. The fourth broad argument is that a determination under section 69 Sentencing Act 2020 would breach section 6 of the Human Rights Act 1998 and Article 7 of the Convention. In summary, it is submitted that:

- the application of section 69 Sentencing Act 2020 would result in greater punishment and therefore constitutes a penalty;
- the defendants could not reasonably have foreseen the application of section 69 because:
 - the Crown did not charge any terrorist offence;
 - the definition of terrorism in section 1 of the Terrorism Act 2000 is “notoriously broad and lacks any international consensus as to its meaning”; and
 - neither the court nor the Crown invoked the procedure under section 29(1C) Criminal Procedure and Investigations Act 1996.

Ruling

35. Given that the third and fourth submissions raised by the defence may, if correct, preclude the court from making a determination under section 69 Sentencing Act 2020 on its factual merits, I deal with those submissions first.

36. The third submission (of procedural unfairness) is without merit. I accept that the Crown did not assert that this was an offence connected to terrorism prior to trial because, as it asserts, it did not have admissible evidence capable of establishing that proposition. The statement indicating that there had been previous similar incidents would not have been enough for the Crown reasonably to regard this as necessary.

37. For the same reason, the Crown could not properly have sought a preparatory hearing on the basis that this was a case with a terrorist connection. The court was in the same position. The matters which led the trial judge to raise the issue only came to light because of evidence given by the defendants during the trial. It would have been open to the defendants to raise those matters in interview and/or in their defence statements. They chose not to do so.
38. I regret that the defence, in the second joint submission, chose to accuse the Crown of putting forward a position which is “manifestly not correct”. Mr Weatherby KC has apologised for any “clumsy wording”. The answer to this allegation levelled at the Crown comes from the defence’s own second joint submissions. Whilst it is right to say that the Crown always knew the monetary value of the damage and that it was (as conceded in the second joint submission) “politically motivated” and that there had been other similar incidents, they are entitled to take into account (just as the defence say I should) the “quality of the act”. The quality of the act must include its context. During the course of the trial the Defendants chose to give evidence that this was not just the breaking of windows in Burnley as a politically motivated but isolated act but part of a much wider campaign orchestrated by a national organisation by whom they had, in four of their cases, been trained. As I understand the Crown’s position, it is this which caused their alteration in approach. I accept that their position has changed for that reason.
39. Furthermore, there is no procedural unfairness where defendants remain silent on matters which they later choose to deploy in evidence. They cannot then complain that it is unfair for the Crown not to have acted upon information which it did not possess in admissible form. Equally, the court cannot convene a preparatory hearing without being in possession of the information which would trigger the need to do so.
40. Even if a preparatory hearing ought to have been held, which is not the case here, no procedural safeguards have been identified of which the defendants have been deprived.
41. Nor is there merit in the suggestion that the defendants are being sentenced for a more serious offence than that of which they were convicted. Section 69 does not create a separate offence. It merely identifies a terrorist connection as an aggravating feature of the offence proved. The statutory maximum sentence remains unchanged. It is often the case that an aggravating feature emerges in evidence during a trial where that aggravating feature is not an ingredient of the offence and upon which the jury cannot, by their verdict, make a finding. It cannot be unfair for the sentencing judge to take account of that aggravating feature, especially where it was introduced by the defendants in their evidence.

42. The suggestion that unfairness arose because the trial judge invited submissions seven days after the verdicts were returned is likewise without merit. There is nothing which the defendants have done, or failed to do, to their disadvantage. The trial judge's consideration of potentially relevant sentencing factors following conviction demonstrates nothing more than that the judge was giving careful consideration to the factors relevant to sentence.
43. The fourth argument is equally without merit. Had the defendants told their counsel of the matters which formed the basis of their evidence at trial, counsel would have been able to advise them of the possibility that section 69 Sentencing Act 2020 might apply. If they were told, it would have been open to, and incumbent upon, their advisers to advise them of the consequences of doing so including in relation to the potential application of section 69 Sentencing Act 2020.
44. Having rejected the third and fourth submissions, I turn to the merits of whether section 69 Sentencing Act 2020 applies to this case.
45. For section 69 to apply, the damage must constitute "serious damage" within section 1 Terrorism Act 2000. I agree with the first joint defence submission that the term must be interpreted in its statutory context, namely terrorism legislation. The threshold is therefore a high one. I also agree that the quality of the act must be considered. To that end I have watched the footage of the incident.
46. It is common ground that the damage caused in this case was considerable. The cost of repairs and cleaning was approximately £177,000, or more than £200,000 including VAT. The defence contrasts this with the damage caused in *R v Head and Others*, which exceeded £1 million.
47. I agree with the submissions of the defence that monetary value is not the only relevant factor. Damage of relatively modest financial value may nonetheless be serious if, say, it affects infrastructure upon which large numbers of people depend. The nature and sensitivity of the property damaged are also relevant considerations.
48. The defence has sought to draw a distinction between this case and *R v Head and Others*. Of course, I consider this case on its merits. Where an assessment is fact-specific, as here, distinctions from or similarities to another set of facts are of limited assistance. Nonetheless, I accept that in *R v Head and Others* the building targeted was an arms factory. It was therefore a site of particular political significance. Drones and technical equipment were targeted. The damage caused was far greater.

49. In the present case, the building targeted was a bank. Personal financial records and reserves of cash could reasonably have been expected to be held there. As a bank, it plainly had significance for local residents who relied upon it for banking services.
50. Whilst the damage was undoubtedly significant, I am not satisfied that it amounted, in the context of the statutory definition, to “serious damage” for the purposes of section 1 Terrorism Act 2000.
51. The assessment of seriousness necessarily depends upon the facts of the particular case. Those who engage in direct action of this nature should not assume that the same conclusion will follow in other cases where the value of the damage is the same or even less. I decide the issue only on the facts presently before this court.
52. It follows that I need not determine whether the defendants’ actions were intended to influence government or intimidate a section of the public and whether it for the purpose of advancing a political or ideological cause.
53. Had it been necessary to decide these points, I would have noted that, whilst Barclays Bank is not a section of the public, its customers who might be anxious about entering the premises in case it was attacked in business hours, is a section of the public as are the people who use the high street in Burnley going about their lawful business.
54. That this action was for the purpose of advancing a political or ideological cause is conceded.
55. However, in light of my finding on serious damage I need not decide these matters.
56. Section 69 of the Sentencing Act 2020 does not apply in this case.

HHJ Altham
21 August 2026