JUDICIARY OF
ENGLAND AND WALES

In the Crown Court at Woolwich
Indictment No: T20117593

The Queen

-v-

Mohammed Chowdhury & Others

Sentencing Remarks of Mr Justice Wilkie

9 February 2012

Introduction

1. This is a difficult and complex sentencing of 9 offenders arising out of what the Crown says, and I accept, is a novel factual matrix namely, the commission of terrorist offences by fundamentalist Islamists who have turned to violent terrorism in direct response to material, both propagandist and instructive, issued on the internet by Al Quaeda in the Arabian Peninsula, (AQAP). It gives rise to a number of issues of principle and has a high profile. I have, therefore, prepared these remarks in written form and they will be immediately available on the Judicial Website when this hearing has finished.

2. All of these defendants fall to be sentenced after pleading guilty to specific counts on the indictment, (counts 9, 10, 11 and 12) on specific bases of plea which the Crown says are acceptable to them.

3. All the defendants, save for Mohibur Rahman, have pleaded guilty to the offence of engaging in conduct in preparation for acts of terrorism contrary to Section 5 (1) of the Terrorism Act 2006. The particulars recited in respect of counts 9, 10 and 12 are different from each other. In Count 9, the particulars, in respect of Usman Khan, Mohammed Shahjahan, and Nazam Hussain, are that they were engaged in conduct namely: travelling to and attending operational meetings, fund raising for terrorist training, preparing to travel abroad, or to assist others to travel abroad, to engage in training for acts of terrorism. In Count 10, the particulars in respect of Mohammed Chowdhury, Shah Rahman, Abdul Miah and Gurukanth Desai are that they engaged in

conduct with the intention of committing an act of terrorism: namely preparing to produce and detonate an explosive device in the London Stock Exchange. In Count 12, in respect of Omar Latif, the particulars are that, with the intention of assisting others to commit an act of terrorism, he engaged in conduct namely travelling to and attending meetings on 7th November and 12th December 2010.

4. Mohibur Rahman has pleaded guilty to possession of an article for a terrorist purpose contrary to Section 57 of the Terrorism Act 2000 namely, that on the 20th December 2010, he was in possession of "Inspire" magazine, Summer and Fall 2010 in circumstances which gave rise to a reasonable suspicion that their possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism.

5. Originally, all these defendants faced an 8 count indictment which included, as against all of them, Count 1 - alleging a breach of Section 5 (1), the particulars being compendious and general in content and Count 2 – alleging conspiracy to cause an explosion in the United Kingdom. The circumstances by which the Defendants, respectively, have pleaded guilty to Counts 9, 10, 11 and 12 will be returned to later.

The Defendants and the basic facts

6. Save for Chowdhury and Usman Khan, who at the material time were 20 and 19 years respectively, all the Defendants were in their middle to late twenties at the relevant time in the late autumn 2010. They all either had been born in the United Kingdom or had been born in Bangladesh and come to this country a number of years before these events. The five defendants who were based in London or Cardiff and 2 of the Stoke based offenders were Bangla Deshi in origin. Of the 4 who lived in Stoke 2, Usman Khan and Nazam Hussain were Pakistani in origin and their families came from the same village in Kashmir. Chowdhury, Omar Latif, Usman Khan, Mohibur Rahman and Nazam Hussain have no previous convictions. Shah Rahman has one only, which was committed during the period covered by this indictment. Desai has minor convictions, Shahjahan has previous convictions and Abdul Miah had a significant history of criminal convictions between 2004 and 2007 involving, amongst other things, possessing two prohibited weapons for the discharge of noxious liquid gas in 2005, threatening behaviour, also in 2005, theft from a person and false imprisonment for which, in 2007, he served a sentence of 18 months imprisonment and a recent offence of fraud. Both Miah and Desai, who are brothers, have had a number of aliases and have changed their names by deed poll.

7. In each case, according to their defence case statements, there came a time, about a year or more before these events, when the offenders became actively engaged in the Muslim faith. They were attracted to and espoused radical versions of Islam which are rejected by the vast majority of Muslims in the United Kingdom and elsewhere as illegitimate and a perversion of that faith. Be that as it may, it is clear, from a meticulous survey of the evidence by the prosecution that, in becoming so attracted, they fell under the influence of

radical or extremist clerics who preached an obligation, by way of Jihad, to engage in struggle including not only fighting non-Muslim occupiers of Muslim lands, but also extending the fight to attack civilians within the United Kingdom. This particular doctrine, which rejects the concept of the "covenant of security," that if you live in a western country you should not attack your host country directly, is espoused by Al Quaeda based in the Arabian Peninsular (AQAP) and is associated with a radical preacher known as Anwar Al Awlaki, now dead, whose aims include attacking Western Countries by any means possible.

8. Each of these defendants, in their different ways, engaged actively in proselytising their radical Islamism in public by preaching, a process known as Da'wah. By so doing, as they were fully aware, they came to the attention of the security services.

9. I accept the contention of the Crown that, through a network of meetings held across the country for the purposes of Da'wah, some of the offenders, in Stoke, Cardiff and London came to know, or to know of, some of the others and there came a time, in late autumn 2010, when these defendants, in their separate locations, began to associate with one and other for a purpose which, as far as 8 of them is concerned, went beyond preaching or missionary work or proselytising. They took the step of deciding to engage in, and engaging in, conduct in preparation for terrorist violence as advocated by AQAP and Anwar Al Awlaki in particular. In the summer and autumn 2010 AQAP published on the internet magazines known as "Inspire". There was a summer and an autumn edition as well as another publication "39 ways to serve and participate in Jihad". The avowed purpose of Inspire was to reach out to those in distant lands, who might support the AQAP view of the world, to encourage them, independently and of their own initiative, to engage in violent acts wherever they might be.

10. It is the Crown's case, which I accept, that the lynchpin of the coming together of the defendants from their various geographical locations was Mohammed Chowdhury who acted as a sort of convenor or conduit. I also accept from the evidence that, whilst he had that role, and that, as between him and Shah Rahman, his fellow Londoner, he took the lead, he was by no means the leader of the group which then coalesced. I also accept that he was an obsessive self publicist. I accept on the evidence, which I have been taken through at length by the prosecution in opening, that, of the three groups, the Stoke group was, and was considered to be, pre-eminent. They had a longer term view, were focussed, among other things, on fundraising for their plans to establish and recruit for a terrorist military training facility under the cover of a madrassa on land owned by Usman Khan's family, where there was already a mosque, and looked to the others to supply them with substantial quantities of cash. They eschewed, having briefly considered it, the taking of immediate action, as untrained novices, such as bombing certain pubs in Stoke. Rather, they intended to proceed on a more long term and sustained path, to establish and operate that terrorist military training facility, at which Usman Khan and Nazam Hussain would train, which would make them, and others whom they would recruit to be trained there, more serious and effective terrorists. They

would initially operate in Kashmir but later may return to the UK and may commit acts of terror in this jurisdiction, though it was not a plan that they should do so. I also accept that, within the Stoke group, Shahjahan was the leader but that Usman Khan and Nazam Hussain were very close to him in the hierarchy. I also accept that, of the Cardiff and London groups, Miah was pre-eminent by force of his personality, as evidenced in the role he took in meetings and discussions, and from the fact that he was experienced in the ways of crime and, in particular, on the use of aliases and false identities. He was one of the London/Cardiff group whom the Stoke group appeared to take seriously as a potentially useful recruit. I also accept that Miah's brother, Desai, was also well regarded by the Stoke group but I also accept, as is common ground and clear from the monitored discussions, that he played a subordinate role to Miah. I accept that Shah Rahman was not highly regarded by Miah and was not allowed to attend an important meeting in Cardiff on 12 December. I also accept that, even on that day, he managed to draw attention to himself by being arrested for a minor public order offence in London. I accept that Latif, though a well regarded member of the Cardiff group who attended the 7thNovember and 12th December meetings, in fact never participated in the preparation of any specific action.

11. The events relied on by the crown include meetings of members of all three groups in parks in Cardiff and Newport on the 7th November and 12th December, attended by most of the Offenders. There was also a visit by Desai and Miah to London where they spent significant time with Chowdhury and Shah Rahman driving around various parts of London and engaging in pointed discussions in which a number of possible terrorist actions were discussed including sending 5 letter bombs through the post or by DHL. In fact that idea was soon abandoned as impracticable. A Mumbai style attack, which was briefly mentioned in passing by members of the London/Cardiff group was, it is accepted by the crown, never seriously considered.

12. There was also monitoring of conversations in various properties and vehicles in London, Cardiff and Stoke, the fruit of which has been very helpfully dealt with by Mr Edis in his extensive and meticulous opening of the case

13. The Crown's case, which is not now disputed by the defendants, is that the purpose of these meetings and the subject of many of the monitored discussions, was discussion of possible ways for them, either in their separate geographical areas or together, to start engaging in terrorist violence.

14. It is clear from the wide ranging discussions that the groups were considering a range of possible actions. They included fund raising for the establishment and operation of the terrorist military training madrassa in Pakistan, undertaking training there and recruiting others to undertake terrorist training there, sending letter bombs through the post, attacking pubs used by British racist groups, attacking a high profile target with an explosive device and a "Mumbai" style attack by terrorists. As I have indicated the only ideas which the crown say crystallised as intentions, which were the subject of any preparatory acts, were in respect of the madrassa and the placing of a small,

but potentially lethal, explosive device, a pipe bomb, in a toilet in the London Stock Exchange and are the subject, respectively, of counts 9 and 10.

15. By the time of the period covered by the indictment, the 1st November to the 21st December, the Security Services had become aware of the emergence of this group as a possible source for terrorist activity and it is clear that they embarked on a resource intensive and highly sophisticated process of monitoring and surveillance. So successful was it that, on the evening of 19th December, Chowdhury and Shah Rahman were overheard going through, in some detail, instructions to construct a pipe bomb contained in the Inspire 1 magazine under the heading "Make a bomb in the kitchen of your Mom" which had been downloaded onto Shah Rahman's computer at 19:43, some 18 minutes before the conversation began. As it seemed that an act of violence by using a pipe bomb was imminent, the Security Services intervened early the following morning and all the defendants were arrested.

16. Great praise is due to the Security Services both for the thoroughness and the sophistication of their monitoring and their surveilling of these defendants, as well as their alertness to intervene at the optimum time before any harm could be done by the offenders. As a consequence these nine have pleaded guilty to very serious offences

The Indictment and the Pleas of Guilty

17. The indictment, as originally drawn, included, as count 1, a Section 5 offence. The particulars read as follows "Between 1st November and 21st December 2010 with the intention of committing an act or acts of terrorism or assisting others to do so engaged in conduct in preparation for giving effect to that intention namely travelling to and attending operational meetings, discussing methods, materials, targets for a terrorist attack, carrying out reconnaissance on and agreeing attack targets, downloading researching and discussing electronic files containing practical instruction for a terrorist attack, obtaining the means and materials for such an attack."

18. That is a compendious list of all the activities observed and monitored by the Security Services during the relevant 7 weeks or so. If it had been contested and tried it would have involved a trial of many months and, on a finding of guilt, such a finding in respect of all of the facets of the activities of the group to which I have referred, including the wide ranging discussions about different forms and sites for attacks.

19. The jury for this trial was sworn on 24th January. The prosecution needed a few days to put the finishing touches to its opening to reflect its final view on certain disputes about the accuracy about certain transcripts of conversations. During that period the prosecution and the defence embarked on discussions about the defendants' pleading guilty on specific bases. The first defendants to plead guilty were 3 of the Stoke defendants, Usman Khan, Shahjahan and Hussain who pleaded guilty to count 9. The basis of that plea was as follows: first, they were trying to raise funds to build a Madrassa beside an already existing Mosque in Kashmir: second, the long term plan included making the

Madrassa available for men who would be fighting to bring Sharia to Kashmir in Pakistan: third, the plan included some, including at least one of the Stoke defendants, being able to have fire arms training in or around the Madrassa; fourth, they did not intend to participate in an act of terrorism in the UK in the immediate future. Fifth, they contemplated that, once trained, they might return to the UK and engage in some sort of terrorist activity but there was no timetable, no targets identified, nor any method agreed. The Crown on its part agreed that it would not allege that those defendants were criminally liable as participants, either primary or secondary, in the planned attack on the London Stock Exchange, and would not allege that any defendant was party to a plan to carry out any other attack in the UK in the immediate future. It has emerged in the course of this hearing that both Nazam Hussain and Usman Khan agree that they intended to travel to the Madrassa in January 2011.

20. The Crown's position was that these three defendants were part of the group of 9 formed in October 2010 to decide how best to further the Jihadist cause including planning for acts of terrorism. Meetings on the 7th November and 12th December were intended to further this and were conducted within Section 5. Different proposals were considered, but in the event two plans emerged, the attack on the Stock Exchange and the plan of the Stoke defendants identified in their basis of plea. Each part of the group was aware of the plan of the other and the matters were discussed freely. The group continued to function until the arrests as a forum for discussion of possible courses of action. The Crown accepted that Mohammed Shahjahan did not intend to travel to the Madassa to train. The Crown contended that these defendants contemplated that some of those trained would commit their acts of terrorism abroad but that others might return to the UK and commit them here but accepted that nothing had been agreed as to timetable, target or method. Further the Crown accepted that, after going to Kashmir, experiences there might mean that no such activity would have actually taken place in the UK.

21. Two defendants Mohammed Chowdhury and Shah Rahman sought a Goodyear direction on the basis of a draft count 10 and they were supported in this request by the Crown. Having been given an indication as requested on the morning of 31st January, some hours later, first Mohammed Chowdhury and Shah Rahman and then Desai and Miah pleaded guilty to the new count 10 which particularises the Section 5 offence in the following terms: "Between the 1st day of November and 21st day of December 2010 with the intention of committing an act of terrorism, engaged in conduct in preparation for giving effect to that intention namely preparing to produce and detonate an explosive device in the London Stock Exchange". The basis of plea for Mohammed Chowdhury included the following: "There was a plan to place a live explosive device of a type that was capable of causing death or serious injury in the Stock Exchange in London. The intention was that it should be exploded but not that it should cause death or serious injury. The intention was that it should cause terror, property damage and economic damage. It was, however, a clear risk that it would in fact cause death or serious injury. It was the intention that this plan would be carried out in the near future but at the time of arrest no materials had been obtained with a view to constructing an explosive device nor had any firm date been set for carrying it out. Meetings

and discussions relied on by the prosecution were in part in furtherance of this plan. Various other projects were also considered during this time. The role of Mohammed Chowdhury was as the lynchpin of the group playing a significant role in the researching and selection of the target and researching the construction of a device on 19th December 2010 by reading Inspire 1".

22. Shah Rahman's written basis of plea was that early discussions on the 28th November identified the objective of causing economic damage and disruption. In due course he became party to a plan with Chowdhury to place a live explosive device in the Stock Exchange in London. The intention was that it should be exploded, but not cause death or serious injury, but that it should cause terror, disruption and financial damage. However, there was a clear risk that it would cause death or serious injury. He and Chowdhury were involved in target selection and the planning for the construction of a device on 19th December, when both researched the construction of a device by reading Inspire 1.

23. Abdul Miah's written basis plea repeats the same elements but says his role was limited to discussing the plan and carrying out research on the London Stock Exchange. Desai's written basis of plea was essentially the same though he stated that he was party to a plan to place an explosive device in a toilet in the London Stock Exchange of a kind capable of causing death or serious injury.

24. The Crown accepted and agreed those bases of plea but reserved the right to refer to the wider spectrum of discussions as placing the events the subject of that new count and the agreed basis of plea into context.

25. Count 12 is the final Section 5 count and concerns Omar Latif only. The particulars are that between the 1st November 2010 and 21st December 2010, with the intention of assisting others to commit an act of terrorism, he engaged in conduct in preparation for acts of terrorism by travelling to and attending meetings on 7th November and 12th December 2010. The written basis of plea records that on the 7th November he arrived at the meeting late and left on a number of occasions, returning to central Cardiff by car. He was not present for much of the time the others were together. He attended the meeting of the 12th December, being driven there by car by Abdul Miah. He was aware that conversations concerning terrorist activity were likely to take place and such conversations did take place. He did not participate in the development of any plans of a terrorist nature, including those relating to the Stock Exchange or terrorist training in Pakistan.

26. Finally, Count 11 is an offence of possession of an article for a terrorist purpose contrary to section 57 of the Terrorism Act 2000. The particulars are that on the 20th December Mohibur Rahman was in possession of articles, namely Inspire magazine Summer and Fall 2010, in circumstances which gave rise to a reasonable suspicion that their possession was for a purpose connected with a commission, preparation or instigation of an act of terrorism. His written basis of plea is that he had in his possession Inspire magazine summer 2010 recovered from a hard drive. He had been in possession of it

since 15th October. It was last accessed on the 16th October and was never shared with any of his co-defendants or any other 3rd party. Second, he had in his possession Inspire magazine Fall 2010 recovered from the same hard drive. He had been in possession of that publication since 25th September. It was last accessed on the 16th October. He had never shared that with any of his co-defendants or any other 3rd party.

Dangerousness

27. It is common ground that both the Section 5 offences and the offence under Section 57 of the 2000 Act are specified offences and that they are serious offences for the purposes of Section 224 of the 2003 Criminal Justice Act. In order for an offender to be dangerous I have, in addition, to be of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences. I have regard to the fact that, in their defence statements, none of these defendants resiled from any of the views which they have held. Some of them, notably Chowdhury, Shah Rahman, Usman Khan, Shahjahan and Nazam Hussain have written to me that they now repent of those views and Desai has, through his counsel, expressed the wish to go on a deradicalisation programme whilst in custody. That is welcome, but the sincerity or long term nature of that stated contrition is more relevant for those who will have to manage their sentences than for me in passing them. I also have regard to the fact that, though each one of them, other than Mohibur Rahman, has pleaded guilty to a Section 5 offence on a specific basis, I also have to have regard to all the other surrounding circumstances whereby it is clear that their discussions related not just to a single imminent incident at the London Stock Exchange, but also to a range of possible types of attack and targets, as well as to the plans of the three Stoke offenders to engage in long term plans to finance, construct and operate a terrorist military training facility, to recruit trainees to receive training and, in the cases of Usman Khan and Nazam Hussain, to avail themselves of that training. I am satisfied that, in the cases of each of the offenders who have pleaded guilty to a section 5 offence there is such a significant risk as triggers the dangerousness provisions. That includes Omar Latif. He attended both the meetings of the group of 9 and was regarded as a member of the Cardiff group. I am satisfied that this would not have been the case had he not shared the core intentions of the group that each geographical group, whether on its own or in combination with another, would prepare to engage in some form of violent terrorism,. As such I am satisfied that he poses the necessary risk for him to be regarded as dangerous. In addition, as the terms of imprisonment I am minded to impose on each of these 8 would be at least 4 years, I am satisfied that all the statutory requirements of dangerousness are met for each of them.

28. Dangerousness in their cases having been established, I have to consider whether, in each case, an indeterminate sentence of imprisonment for public protection or a determinate or an extended, sentence would be the appropriate disposal in the light of my finding that each offender poses a significant risk of serious harm to the public. I remind myself of the decision of the Court of Appeal in ***C, [2009] 1 WLR 2158 CA,*** where the Court of Appeal said that a

court may only impose an indeterminate sentence if satisfied that the risk to the public would not be adequately protected by a determinate sentence with an extended licence period under Section 227. I also remind myself that, in the case of a conviction for a terrorism offence there are now strict requirements that an offender keep the police notified of various personal details, including address, or change of name, travel plans for a period of 30 years, where the sentence is 10 years or more, or 15 years when the sentence is between 5 – 10 years or 10 years when the term of imprisonment is under 5 years. (***The Counter Terrorism Act 2008)*** I also remind myself that in the most serious of the cases to which I have been referred as relevant for the purpose of sentencing namely ***Jalil and others [2009] 2 CR. App. R. (S) 40 and Karim [2011] EWCA Crim 2577,*** where the terrorist activity involved, or potentially involved, was described as about as grave as it could be, the trial judges imposed, without any appellate criticism, extended sentences rather than an indeterminate sentence which, in each case, was available, under the CJA 2003 regime in ***Karim*** and its predecessor in the case of ***Jalil.***

29. I have in each case to consider the nature and extent of the risk posed, in the light of the offence of which the offender is guilty and I have to consider the extent to which the public may be adequately protected by the conditions of licence in the event that, at a fixed point, the offender would be released from prison and fall to serve the rest of his sentence being supervised in the community, though at risk of return to prison to serve its entirety if he were to break his conditions of licence or commit a further offence of any sort..

30. I have reached different conclusions in respect of Shahjahan, Usman Khan and Nazam Hussain to that which I have reached in respect of the other 5.

31. In the case of those three, in my judgment, the nature of the offending and the nature of the commitment of the offenders to long term terrorist aims is different to that of the other 5. They were about the long term business of establishing and operating a terrorist military training facility in Pakistan, on land owned by the family of Usman Khan to which British recruits whom, they would recruit, would go to receive training. Usman Khan and Nazam Hussain were to obtain that training and were, thereafter, to obtain first hand terrorist experience in Kashmir. Furthermore it was envisaged by them all that ultimately they, and the other recruits may return to the UK as trained and experienced terrorists available to perform terrorist attacks in this country, on one possibility contemplated, in the context of the return of British troops from Afghanistan. These three were happy to engage with the other groups, whom they knew were intending, in the short term, to commit terrorist attacks in the United Kingdom. They contemplated, however briefly, such an attack themselves but it is clear that their focus was not distracted by that from the serious long term plan to which I have referred.

32. It is also clear from conversations they had on 12th December, and from the structure document prepared by Shahjahan, that these three judged themselves to be operating at a higher level of efficacy and commitment than the rest, save that they expressed some admiration for Miah and Desai. They thought it proper that Shahjahan should be addressed as “ameer” by Miah. In my

judgment it is proper to infer that they regarded themselves as more serious jihadis than the others. In my judgment, having considered the evidence, that was a conclusion they were entitled to reach. In my judgment they are more serious jihadis than the others. They were working to a long term agenda, no less deadly in its potential than the potential for damage and injury the subject of the short term intentions of the others. They were intent on obtaining training for themselves and others whom they would recruit and, as such, were working to a more ambitious and more serious jihadist agenda. In my judgment, these offenders would remain, even after a lengthy term of imprisonment, of such a significant risk that the public could not be adequately protected by their being managed on licence in the community, subject to conditions, by reference to a preordained release date. In my judgment the safety of the public in respect of these offenders can only adequately be protected if their release on licence is decided upon, at the earliest, at the conclusion of the minimum term which I fix today

33. I have formed the conclusion that the cases of the other 5 do not require an IPP but that they may be managed adequately upon release within the community at a point in their sentence fixed by me today. As with all determinate sentences Parliament has provided a means of managing risk which involves the offender being released after half his sentence has been served, having being given credit for time on remand. Upon release, however, and particularly in terrorist cases, that release is subject to the most stringent conditions. First, there are the onerous notification requirements to which I have already referred which will run for 30 years. Second, and for the lengthy period to be identified in the extended sentence, the offender must serve the sentence in the community subject to the most onerous of licence conditions. They will, inevitably, include a requirement of residence, a curfew, and may well include restrictions on activities, restrictions on movement, restrictions on contacts and other conditions designed to manage the threat they pose. The approach to the imposition of conditions and their policing will be multi agency based and will include the involvement of the security services, whose efficacy in monitoring and controlling these offenders has already been admirably demonstrated.

34. In my judgment it is unrealistic to suppose, and the crown does not seek to persuade me, that any of these 5 has shown any sign of having a long term or strategic perspective so as not to be capable of being adequately monitored and controlled by the agencies to whom I have already referred. It is clear that they were determined to carry out some high profile violent terrorist action even though untrained and, in effect, complete novices and without any meaningful consideration of how they might avoid the security at their chosen target to make good their attack. Chowdhury is a compulsive self publicist and is incapable of masking his true intentions. Shah Rahman failed to impress even the Cardiff members of the group to the extent that he was not invited to the 12th December meeting and, in fact, on that same day, drew attention to himself by committing a minor, jihadist inspired, public order offence. Miah, though criminally experienced, has singularly failed on many occasions to conceal his wrong doing, resulting in a series of criminal convictions and Desai, his brother, it is agreed by all and from a proper study of the product of

the probes, is very much subordinate to his brother Miah. Latif's involvement does not come close to requiring an IPP.

35. I have, in considering IPP, had regard to the relative youth of Usman Khan but, in my judgment, having had regard to all the evidence I remain of the view that for him, despite his youth, a sentence of IPP is necessary.

36. I have also had regard to the fact that the Stoke 3 had come to the attention of the authorities by virtue of their da'wah activities. It is, however, their ability to act on a strategic level and to consider the long term at the price of eschewing immediate spontaneous action that persuades me that the risk they pose is so significant that it can only be adequately met by an IPP.

37. Mohibur Rahman has pleaded guilty to an offence under section 57 of the 2000 Act. Although it is a specified offence no case has been cited to me in which a finding of dangerousness has been made in respect of such an offence. In light of the basis of plea which is accepted by the crown, even taking into account the context, to which I will return later, I am not satisfied that the statutory requirements for dangerousness are made out in his case. Accordingly the sentence on him will be a determinate sentence.

Discount for a Plea of Guilty

38. As with all defendants who plead guilty they are entitled to a discount in sentence for having done so. In most cases a plea of guilty on the outset of the trial results in a discount against sentence of the order of 10%. This is a trial of unusual complexity and length. Had it fought it was estimated that it could have lasted up to 5 months at huge further public expense. Furthermore, the offences to which these defendants have now pleaded guilty are very serious and, by pleading guilty, each offender has exposed himself to a lengthy prison sentence. Having regard to these factors, in my judgment the appropriate discount for a plea of guilty in this case is of the order of 20%. I observe that in the case of ***Jalil*** the pleas of guilty at the commencement of the trial in the circumstances of that case, attracted discounts of between 15% and 20%.

Determination of Length of Sentence.

Introduction

39. The Crown submits, and I accept, that sentencing in respect of the Section 5 offences is highly fact specific and that there is only a limited number of cases from which guidance by way of useful comparison can be obtained.

40. Of those cited to me in my judgment there are three which are particularly salient. The first is ***Jalil and others [2008] EWCA Crim 29 10*** where there was a plea of guilty to conspiring to cause explosions of a nature likely to endanger life. The highest of the sentences imposed in that case was, in the judgment of the Court of Appeal, based on a sentence, after a trial, of just over 30 years.

41. The conspiracy in that case was of 4 years duration. It involved, at one stage, detailed written descriptions and plans for the destruction of the buildings of 4 key American financial institutions, prepared for the consideration of the Al Qaeda leadership, in the form of a professional or corporate presentation. It also involved plans for similar attacks on British targets and involved detailed proposals of several different possible methods of destruction. One involved packing stretch limousines with propane gas cylinders and explosives and detonating them in the underground car parks beneath target buildings. Other proposals were for a dirty, or radioactive, bomb using many thousands of an item of domestic equipment containing some radioactive material. The plan also involved the sabotage of a major rail artery, perhaps in a tunnel under the River Thames, and the hi-jacking of a petrol tanker for use to ram a building. The plan was for all or some of those attacks to be synchronised on the same day. The Court of Appeal, in upholding the sentences, said, amongst other things, that the potential for mass injury and loss of life was very substantial. It involved projected attacks on different buildings in urban places and radioactivity as well as explosions.

42. The second is ***Karim [2011] EWCA Crim 2577***. In that case the offender received a total of 30 years imprisonment for the commission of a number of offences pursuant to Section 5. The most serious of those offences were contested, so the offender did not have the benefit of a plea of guilty. He was a graduate in electronics and micro-electronic systems, having graduated from an English university in 2002. By that stage he had been involved for a couple of years in a fundamentalist grouping. By the end of 2006 he came to this country to live and work and, by that time, had formed the view that Jihad involved an obligation to commit offensive actions against unbelievers. He had been offered various employment positions but had opted to be employed by British Airways as a graduate trainee and from then, until his arrest, for a period of 3 years and 3 months, he worked incessantly to further terrorist purposes whilst managing to keep his real opinions concealed behind a quiet and unobtrusive lifestyle, such concealment involving heavily encrypted email correspondence. In the course of those activities he was in direct contact with Anwar Al Awlaki and made three specific proposals to him for ways in which he could, himself or with the assistance of others, commit a terrorist attack. First a physical attack on BA's IT servers which would cause huge financial loss and jeopardise its very existence. Second, an electronic attack to disable BA's IT and cause, at least, a temporary cessation of operations, the cost being estimated at £20 million a day. Third, getting a bomb on board a plane bound for the US. Al Awlaki responded to this by discouraging an electronic attack for fear of blowing his cover, but Al Awlaki told him to explore the idea of the bomb. All the offender needed was the go ahead from Al Awlaki himself to act on his intentions. The learned sentencing Judge described the aggravating features of the 3 counts of which he was convicted as being: his direct contact with Al Awlaki and the nature of the proposals put forward by him, some of which were, as he described, about as grave as can be imagined and that, taken together, were matters of the utmost gravity.

43. At the other end of the spectrum, in the case ***Tabbakh [2009] EWCA Crim 464***, the offender received a sentence, after a trial and a conviction, which was based on a starting point of 8 years. The offender had compiled a set of bomb making instructions and had gone some way towards assembling the ingredients. He had not yet succeeded, in part because the ingredients, though of the right substances, were of poor grade and because he had yet to make, or obtain, a detonator, though reference to electric wires were contained in the diagrams he had prepared.

44. The offender was 39 years of age and had no previous convictions. The Court concluded that, for an offender, doing his best to make a bomb in this country with a view to a terrorist act, but which was, as yet, not viable for want of a detonator and the right grade of ingredients, a sentence of 8 years was not outside the range available to the Judge.

Comparing the seriousness of Counts 9 and 10.

45. Counsel for the three Stoke offenders have urged on me that the count 9 offence is not as serious as the count 10 offence. It does not involve any intention in the short term to make any violent attack in the UK. It is focussed on fundraising and the providing, or obtaining, of training, the primary aim of those trained being to operate in Kashmir. They have pointed out that there are specific statutory offences concerning fundraising, and the provision, or obtaining, of terrorist training which could have been charged on the admitted conduct and which carry maximum sentences of the order of 10 or 15 years imprisonment, and reflected in lower sentences passed by the courts for those guilty of such offences.

46. The crown says that counts 9 and 10 are of equal seriousness. They are different because they reflect different conduct. Whereas the conduct alleged in count 10 is very serious and immediate in its potential impact, the conduct alleged in count 9 is also very serious and reflects a long term and calculated threat to the UK and elsewhere.

47. In my judgment the crown is right so to characterise these offences as of equal seriousness. The crown has obtained pleas of guilty to section 5, not to specific lesser statutory offences. The particulars of count 9 place at the forefront attendance at the operational meetings of the group on more than one occasion. I have already indicated that the crown has emphasised the involvement of the Stoke three in the larger group, in its free discussion of the plans of all of them, including plans for immediate terrorist action in the UK and its continuing function for discussion of possible course of action. I have already referred to the fact that, within the Stoke group, there was some consideration of a violent terrorist attack by way of bombing certain pubs in the UK. In my judgment it would be artificial to separate off the madrassa project from the gravamen of the section 5 charge namely planning and intending to pursue that project from within and with the support of the larger group which was coalescing and of which I am satisfied there was an emerging structure with the Stoke offenders in the pre-eminent position.

48. Accordingly I will determine the length of sentence for each of counts 9 and 10 on the footing that they are of equal seriousness and that the individual levels of sentence must reflect the positions of the offender within and across the three groups.

Count 9

49. The conduct particularised in this count is that, with the intention of committing an act or acts of terrorism or assisting others to do so, the three offenders engaged in conduct in preparation to give effect to that intention namely attending operational meetings, fund raising for terrorist training, preparing to travel abroad, or assisting others to travel abroad to engage in training for acts of terrorism.

50. The written basis of plea is that they were fund raising to build a Madrassa next to an already existing Mosque in Kashmir in Pakistan. The plan was to make that Madrassa available for men who would be fighting to bring Sharia to that region. Such people would receive firearms training at the Madrassa. It is now clear that the plan would involve Usman Khan and Nazam Hussain attending the Madrassa from early January for that purpose.

51. The Crown's position, which I accept, is that, whilst the Madrassa was in the early stages of construction, terrorist training there was already possible. The Crown accepts that Shahjahan did not intent to travel to train but that Usman Khan and Nazam Hussain did as they were about to travel to Pakistan. Further, although it was contemplated that some of those trained would commit their acts of terrorism abroad, none the less, it was also contemplated others might return to the UK and commit them in the UK though in the light of experiences in Kashmir this might not have actually occurred.

52. It is clear to me from the conversations within the group that Shahjahan was the leader, not only of the Stoke group, but was recognised by his own, and the other, groups as the leader of the larger group and to whom members of the other components deferred as "ameer". It is also clear that the Stoke group saw itself as pre-eminent. Shahjahan regarded the three Stoke offenders as almost on a par with him.

53. It is clear to me that Usman Kahn and Nazan Hussain were to attend the Madrassa and were themselves keen to perform acts of terrorism in Kashmir and that it was envisaged that when they and others, who had been recruited, had also trained in the Madrassa and had experience in Kashmir, they may return to the UK and perform acts of violent terrorism here. The long, monitored, discussions of Usman Khan about the madrassa and his attitudes towards it and terrorism are highly eloquent of the seriousness of their purpose. It is clear that this was a serious, long term, venture in terrorism the purpose of which was to establish and manage a terrorist training facility at the Madrassa, to fundraise for its construction and operation by the use of various means, including fraud, and to recruit young British Muslims to go there and train, thereafter being available to commit terrorism abroad and at home. Added to this is the dimension of all of this being the subject of discussion at,

and their participation in, the larger group in which they were pre-eminent and of which Shahjahan was regarded as the ameer.

Mohammed Shahjahan

54. I have already indicated that in my judgment this offence is on the same level of seriousness as count 10. Placing it within the range of sentences in the cases to which I have already referred, in my judgment the starting point for Shahjahan as the leader of the Stoke group, which was the lead group of the three, is 22 years after a trial. In his case, whilst his previous convictions are relevant showing a disposition to commit serious crime, I do not regard them as an aggravating factor. Applying a 20 % discount for a guilty plea the determinate sentence would be 17 years 8 months. I am sentencing him to an IPP so I must fix a minimum term which is 50% of that sentence. Accordingly he will not be considered for release on licence until 8 years 10 months have elapsed less days served on remand.

Usman Khan

55. In the case of Usman Khan, in my judgment he was marginally more central to the project than Nazam Hussain and marginally below Shahjahan. In addition, I must make a small reduction to reflect his youth. This results in a sentence after a trial of 20 years from which must be deducted 4 years as a discount for his plea of guilty. Thus the determinate sentence for him would be 16 years. I am imposing an IPP upon him and must fix the minimum term before which his release on licence cannot be considered. That is one half of the notional determinate sentence namely 8 years less time served on remand.

Nazam Hussain

56. In the case of Nazam Hussain, in my judgment the starting point having regard to his place in the hierarchy, but without any reduction on the ground of his age, is 20 years after a trial. As with Usman Khan he is entitled to a 20% discount for his guilty plea. Thus the notional determinate sentence is 16 years. I have to fix a minimum term for him before which he may not be considered for release on licence from this sentence of IPP. That will be 8 years less time served on remand.

Count 10

57. It is a fundamental principle that a Court, in sentencing an offender, following a guilty plea, may only sentence him for the conduct of which he has pleaded guilty. Count 10 particularises the offence as “preparing to produce and detonate an explosive device in the London Stock Exchange”. The Crown, in opening the case, accepted that the device was to be a pipe bomb and that it was to be exploded in a toilet in the London Stock Exchange. The Crown also accept the offenders’ bases of plea that it was not their intention to cause death or serious injury but that it was their intention to cause terror, property damage

and economic damage. The offenders also accept that they were reckless as to whether it would in fact cause death or serious injury.

58. The written basis of plea also accepts that it was the intention of the offenders that the plan would be carried out in the near future. There is no dispute but that, in the course of conversations and discussions relied on by the Crown, other projects of a similar nature were being considered but that only this one had reached the stage that there was an intention to commit it and work of preparation had commenced. In effect the others had been abandoned as impracticable (the letter bombs) or had never been considered beyond being mentioned in passing.

59. Whilst it is true that no materials had yet been obtained with a view to constructing the explosive device, and that no firm date had been set, the ingredients for such a device are simple and easily obtainable and, although the device requires some dexterity to construct, it does not require any expert knowledge or training other than basic manual dexterity and a familiarisation with basic electronic principles.

60. The Crown points out that this is the first case in which a case falls for sentencing where the involvement of Al Qaeda is in the form of inspiring the offenders through the medium of Inspire magazine. These offenders have no training. Their involvement in violent terrorism, it seems, is limited to a few weeks. They are, in effect, “lone wolf” terrorists, operating alone or in small groups without direct contact with, or logistical support from, Al Qaeda centre. The information provided on line by Al Qaeda is designed so as to be used by such untrained people. This reduces the potency of the device involved but also reduces the chances of detection and increases the chances of success. The device in question is designed to be made within a few hours and with the use of little skill, using materials that can be acquired without suspicion and must, to achieve its terrorising purpose, be capable of causing death. In order to have impact, a relatively small device such as this, must be placed in a high profile target and that was what was planned here.

61. The Crown acknowledges that inevitably, with this new Al Quaeda tactic, this plan lacks the usual features of a serious terrorist plot that is, large, complex bombs, involvement in an established terrorist organisation, complex advanced planning. This is of necessity, because spontaneity and practicality are part of the new tactic.

62. I have, therefore, to attempt to place sentence for this particular offence at a point on a spectrum which runs from 30 years (***Karim & Jalil***) to as low as 8 (***Tabbakh***). I have to have regard to the fact that these offenders were only engaged in discussing and planning for terrorist activities for a relatively brief period before the security forces intervened and that they intended to plant a small explosive device, with lethal potentiality, in a toilet at the London Stock Exchange, a high profile target chosen to maximise the terrorising effect and economic impact. I also have to have regard to the fact that none of the offenders are trained and were, in fact, novices who had not devised or,

apparently, considered any strategy to gain entry to the London Stock Exchange with the device.

63. On the other hand I have to reflect the fact that they were determined to embark on violent terrorist action and had given serious consideration to a number of options before homing in on this one. They had deliberately chosen a high profile target and they were reckless as to the damage and/or death and or injury which might be caused. They were responding to a specific new tactic being deployed by Al Qaeda in the Arabian Peninsular and were steeped in the philosophy of that organisation.

64. In my judgment, for all these reasons this offence is not as grave as the offences in ***Jalil*** and ***Karim.*** But is of a different order of seriousness to that of ***Tabbakh.***

Abdul Miah

65. In formal terms, Abdul Miah was the leader of the Cardiff group and so, in the structure chart, put on a par with Chowdhury. However, it is clear to me, as it was to the Stoke group, that he was a more serious jihadi than Chowdhury. It is clear from his contribution to discussions on 28th November, and on other occasions, that he was, by virtue of his maturity, criminal nowse and experience, and personality, the one who was setting the agenda and applying an analytical mind to the feasibility of the various projects being discussed. He also took the lead in discussing fundraising by use of frauds which particularly impressed the Stoke group. He was also advising the others on security with his own experience to the fore and was their spokesman when dealing, on 28th November, with a third party. In addition, it is clear that, by the 12th December, he had impressed the Stoke contingent with his seriousness and capabilities as a jihadi and he had already mastered the elements of making the pipe bomb. Abdul Miah is a man of previous convictions. He has a number of convictions and has served a significant custodial sentence. Some of his convictions evidence him as a person with an inclination towards violence towards people, notably his convictions in respect of noxious gases and false imprisonment. In addition he has a recent conviction for fraud which is apposite to his contributions to discussions about fundraising using fraud. Those previous convictions, in my judgment, constitute a significant aggravating element. Having regard to all of these matters, in my judgment, the appropriate starting point after a trial for this offender is one of 21 years imprisonment. From that must be deducted 4.2 years in respect of a discount for his plea of guilty. This results in a sentence of 16 years and 10 months to which will be added a 5 year extended term. Accordingly, the sentence I pass is an extended sentence of 21 years and 10 months of which the custodial element is 16 years and 10 months.

Mohammed Chowdhury

66. He was 20 years old at the time of this offence of no previous conviction. He was however, he accepts, the lynchpin, bringing the groups together and arranging for the meetings in Cardiff and Newport. He was one of the four who discussed, on the 28th November, and eventually fixed on, this particular act and he was taking the lead on 19th December in explaining and going through the Inspire article with Shah Rahman. After a trial and giving him a small discount for his youth in comparison to the others a sentence of 17 years would have, in my judgment, been appropriate given his role and position within the London group and across the three groups. Giving him credit for his guilty plea of 20%. a sentence of 13 years and eight months would, in my judgment, be appropriate. However, in view of my assessment of him as dangerous, the sentence I pass upon him is an extended sentence of 18 years 8 months, of which the custodial sentence element is 13 years 8 months.

Shah Rahman

67. I take into account that Shah Rahman is accepted as not being the leader of the London element of this group. Nor does his minor offence, committed during the time of this indictment, aggravate his guilt His involvement was less prominent than that of Chowdhury and it was clear that he was a follower, not a prime mover, when they were together on the 28th November, and when they were discussing recipes on the 19th December. To reflect that element, in my judgment the starting point for him is 15 years after a trial. Giving him a discount for his plea of guilty the sentence I would have passed, but for the issue of dangerousness, is one of 12 years imprisonment, to which I add an extended sentence element of 5 years. Accordingly, the sentence on him is an extended prison sentence of 17 years of which the custodial sentence element is 12 years.

Gurukanth Desai

68. It is agreed that Desai is not a leader of the Cardiff group. He played a subordinate role in that group. He has previous convictions but they are long ago and trivial and so I do not regard hem as an aggravating feature. His contribution is, in my judgment, no greater than that of Shah Rahman. In his case the starting point after a trial would be a sentence of 15 years which, giving a discount for his plea of guilty, reduces to 12 years, added to which must be a 5 year extended term which results in his case in an extended sentence of 17 years of which the custodial element will be 12 years.

Count 12

Omar Latif

69. The particulars of this count are that Omar Latif, with the intention of assisting others to commit an act of terrorism, engaged in conduct in preparation for an act of terrorism by travelling to and attending meetings on 7th November and 12th December.

70. I have already referred to his basis of plea. He was present at those meetings. He was aware that conversations concerning terrorist activity were likely to take place and that such conversations did. But he did not participate in the development of any plans of a terrorist nature including those relating to the Stock Exchange or terrorist training in Pakistan.

71. In my judgment, the gravamen of the offence committed by Latif is that on more than one occasion he travelled to and attended such meetings well knowing the nature of the conversations to take place. That is to say, their wide ranging nature, the number of possible terrorist activities which would be discussed and the intention of their participants that they would crystallise into a plan or plans to carry out at least one, if not more, terrorist acts of the type of severity being discussed.

72. Whilst his conduct with the intention of assisting others to commit an act of terrorism did not involve participation in the planning of or development of either of the plans which crystallised during those and other meetings, none the less, by his presence at those meetings, he was contributing by encouraging the others to form the intention to commit those terrorist acts and to prepare for them. As such, I accept that his culpability is not as great as theirs. But, he was a trusted member of what was, to an extent, a self consciously exclusive group who, by his plea to count 12, shared their intention that an act or acts of terrorism should be planned and prepared. I do not accept that the authorities he relies on are, save for ***Tabbakh,*** to which I have already referred, relevant to this case. The gravamen of this case is the operation of the group and his membership of it even though to a limited extent.

73. In my judgment, therefore, and in the particular context of this case, the starting point for Omar Latif is a sentence of 13 years imprisonment which, after a discount for his plea of guilty, results in a custodial term of 10 years and 4 months to which must be added a 5 year extended term giving a total extended sentence of 15 years 4 months of which the custodial term element is 10 years 4 months.

Count 11

Mohibur Rahman

74. This charges Mohibur Rahman that on the 20th December 2010 he was in possession of articles: namely Inspire magazine Summer and Fall 2010, in circumstances which gave rise to a reasonable suspicion that their possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism. His plea of guilty is on the basis that he did indeed have these magazines on a hard drive in his possession for several months since September 2010, though they were not accessed on that hard drive after the 16th October 2010. The Crown say that this possession by him of these articles must be seen in the context of his attendance at the Cardiff meeting on the 7th November along with the other Stoke defendants, his being referred to

by other defendants at the 12th December meeting, though he was not present, and his presence in discussions about a pub bomb on the 14th December with Usman Khan and Shahjahan, though no plan in respect of that discussions ever crystallised.

75. The potency of these two magazines, which were on his hard drive, is best illustrated by the direct use to which the London and Cardiff offenders put it in respect of Count 10.. The prosecution say that the context of his, albeit limited, involvement in the group makes the possession of such articles all the more significant and serious.

76. The maximum sentence for the Section 57 offence is now 15 years having been raised from 10 years in 2006. There have been a number decisions of the CACD in connection with this offence to which I have been referred, though in this area of offending cases are highly fact specific.

77. In my judgment the commission of this offence by this offender, in the context of the activities of this group and his connections with it, places his offence at a significant level of seriousness. Had there been a trial and he been convicted the appropriate sentence would have been one of 6 1/2 years imprisonment. Giving credit of 20% for his plea of guilty, that sentence is reduced to one of 5 years.

78. I do not accept the argument that he was pleading guilty to a new allegation so as to attract a greater discount for a plea of guilty. The allegation was already on the indictment in the form of count 8, a section 58 offence. He never offered to plead guilty to that offence. His late plea to the same facts recast as a section 57 offence cannot, in my judgment, constitute a plea of guilty at the first available opportunity. In his case he will be released after he has served half of that term less time served on remand and for the balance of the sentence will be at risk of recall if he were to breach he terms of his licence or were to commit a further offence.

79. Finally I have considered all the personal mitigation and references urged on me. I am afraid that in this case they are very marginal to my task and none of it has affected my sentences to any significant degree.

SUMMARY:

MOHAMMED SHAHJAHAN: Imprisonment for Public Protection. Minimum term 8 years 10 months less 408 days on remand. Terrorism notification period 30 years.

USMAN KHAN : Imprisonment for Public Protection. Minimum term 8 years less 408 days on remand. Terrorism notification period 30 years

NAZAM HUSSAIN: Imprisonment for Public Protection. Minimum term 8 years less 408 days on remand. Terrorism notification period 30 years.

ABDUL MIAH: extended prison sentence 21 years 10 months. Custodial element 16 years 10 months. Time spent on remand 408 days. Terrorism notification period 30 years

MOHAMMED CHOWDHURY: extended prison sentence 18 years 8 months. Custodial element 13 years 8 months. Time spent on remand 408 days. Terrorism notification period 30 years

SHAH RAHMAN: extended prison sentence 17 years. Custodial element 12 years. Time spent on remand 408 days. Terrorism notification period 30 years

GURUKANTH DESAI: extended prison sentence 17 years. Custodial element 12 years. Time spent on remand 408 days. Terrorism notification period 30 years

OMAR LATIF: extended prison sentence 15 years 4 months. Custodial element 10 years 4 months. Time spent on remand 408 days. Terrorism notification period 30 years

MOHIBUR RAHMAN: prison sentence of 5 years. Time spent on remand 408 days. Terrorism notification period 15 years

In each case an order for forfeiture under s 143 of the powers of the Criminal Court (Sentencing) Act 2000 in respect of the exhibits set out in the schedule appended to the prosecution note of 8th February 2012.