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201201451A2, 201201453A2, 201201445A2

Neutral Citation Number: [2013] EWCA Crim 468

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WOOLWICH
The Hon Mr Justice Wilkie
T20117593

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2013

Before :

LORD JUSTICE LEVESON
MR JUSTICE MITTING
and
MR JUSTICE SWEENEY

- -

Between :

	USMAN KHAN **MOHIBUR RAHMAN** **OMAR SHARIF LATIF** **ABDUL BOSHER MOHAMMED SHAHJAHAN** **NAZAM HUSSAIN**	**Appellants**
	- and -	
	THE QUEEN	**Respondent**

- -
- -

Joel Bennathan Q.C. for Usman Khan
Brian O'Neill Q.C. for the Mohibur Rahman
James Wood Q.C. and **Hossein Zahir** for Omar Sharif Latif
Andrew Hall Q.C. and **Frida Hussain** for Abdul Bosher Mohammed Shahjahan
Jim Sturman Q.C. for Nazam Hussain
(all instructed by the Registrar of Criminal Appeals)
Alison Morgan (instructed by the Crown Prosecution Service) for the Crown

Hearing date : 22 March 2013

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Judgment**Lord Justice Leveson :**

1. On 31st January 2012, at the Crown Court at Woolwich before Mr Justice Wilkie, Usman Khan (then nearly 21 years of age), Abdul Bosher Mohammed Shahjahan (one month short of 28) and Nazam Hussain (26) pleaded guilty to engaging in conduct in

preparation for acts of terrorism contrary to s. 5(1) of the Terrorism Act 2006 (Count 9); Omar Sharif Latif (28 years of age) pleaded guilty to a similar offence (Count 12); and Mohibur Rahman (27) pleaded guilty to being in possession of articles for a terrorist purpose contrary to s. 57 of the 2006 Act (Count 11). On the 9th February 2012, Khan was sentenced to detention for public protection with a minimum custodial term of 8 years; Rahman was sentenced 5 years imprisonment; Latif was sentenced to an extended sentence of 15 years 4 months with a custodial term of 10 years imprisonment and an extension period of 5 years. Shahjahan and Hussain were both sentenced to imprisonment for public protection with minimum custodial terms of 8 years 10 months for Shahjahan and 8 years for Hussain. In each case, the time spent on remand was ordered to count towards the sentence and all were subject to terrorist notification periods imposed pursuant to the provisions of Part 4 of the Counter Terrorism Act 2008 of 30 years (save for Rahman whose period was 15 years). With the leave of the single judge, each appeals against sentence.

2. In order to understand the background and part of the basis for these appeals, it is also necessary to record that Mohammed Chowdhury (aged 21), Shah Mohammed Lutfar Rahman (29), Gurukanth Desai (30) and Abdul Malik Miah (25) were charged in the same indictment. They each pleaded guilty to engaging in conduct in preparation for acts of terrorism (Count 10) and were each sentenced to extended sentences of 18½ years, 17 years, 17 years and 21 years 10 months respectively, the custodial terms being 13½ years, 12 years, 12 years and 16 years 10 months, in all cases with an extension period of 5 years. Again, time spent on remand was ordered to count towards the sentence and all were subject to terrorist notification periods of 30 years.

3. For the purposes of this appeal and the grounds advanced, the facts alleged by the prosecution and the contentions of the appellants require analysis along with a detailed account of the circumstances in which the guilty pleas came to be tendered. By way of introduction, at the time of the offences concerned, the appellants Khan, Shahjahan, Mohibur Rahman and Hussain were each born in the UK although of Pakistani and Bangladeshi origin and lived in Stoke; they are referred to as the Stoke defendants. Latif, born in London, lived in Cardiff as did his co-accused Desai and Miah (the latter two are brothers, Miah having been born in London): they are Bangladeshi in origin and referred to as the Cardiff defendants. Chowdhury and Shah Rahman who are not appellants were also Bangladeshi in origin and lived in London: the London defendants. At some time, the accused each became a committed Islamic fundamentalist, believing in jihad, that is to say, they wished to support and commit acts of terrorism in furtherance of their religious beliefs. They came to the attention of the security services who monitored them using covert surveillance techniques and devices and were able to effect their arrest prior to advanced steps having been taken to implement their plans.

4. Although from different parts of the country, the three groups met together. Also by way of overview, on the 7 November 2010, they were recorded meeting in a Cardiff park. Although limited material was available as to precisely what transpired, the meeting was alleged to have covered ideological discussion and general ambitions concerning

terrorist activity. On the 28 November 2010, the defendants from Cardiff and London met, this time in London, where discussions for targets for attack and methodology took place. On the 28, 29 November and 10 December, the brothers Desai and Miah were recorded discussing the construction of explosive devices. On the 12 and 14 December, the Stoke defendants were recorded discussing jihad overseas. Also on the 12, the three groups met in a Welsh country park where discussion was said to include how to advance plans for an attack. On the 14 December, the Stoke defendants were monitored discussing locations in Stoke that may be targeted. On the 15 December, Khan was monitored in conversation about how to construct a pipe bomb from a recipe referred to in the Al-Quaeda publication "Inspire 1". Finally, on the 19 December, the London defendants were engaged in experimentation using the pipe bomb recipe. It was this development that, on 20 December 2010, prompted the arrest of the group.

5. The result was that all nine men faced an indictment the principal counts of which were a joint charge of engaging in conduct in preparation for acts of terrorism and conspiracy to cause an explosion likely to endanger life or cause serious injury to property in the UK. There were substantial pre-trial hearings before Wilkie J in September and December 2011 (described by Mr Andrew Edis Q.C., who led Ms Morgan at the trial and prepared a detailed skeleton argument for this court, as a "long and abrasive disclosure battle") with the notional trial date being fixed for 16 January 2012. In the event, the trial did not then commence; there was further pre-trial argument and negotiation and a jury was not sworn until 24 January.

6. Discussions between the Crown and the appellants then continued as the impact of further disclosed evidence was appreciated. One of the issues related to a separation of the allegations against the Stoke defendants and the London defendants based upon their different activities, intentions and aspirations. During the course of those discussions, the London defendants, by their counsel, sought a *Goodyear* indication as to sentence. On 31 January, Wilkie J acceded to the request and provided such an indication (which did not involve an indeterminate term). Thereafter, all the defendants (including those who had not sought an indication of sentence) pleaded guilty to specific offences which identified their involvement as opposed to involvement in the activities of others discussed in the joint meetings.

7. The defendants provided bases of plea which were not challenged by the Crown it being accepted that the facts (not inconsistent with the bases of plea) would be opened in full. Those who had not received *Goodyear* indications (i.e. all but the London defendants) used the facts which formed the basis of the offence to which those defendants pleaded guilty as providing a template or fixed tariff against which to make submissions as to the sentences which should be imposed on them on the grounds that their criminality was less culpable. In the event, Wilkie J took the opposite view and imposed indeterminate sentences on the three Stoke defendants; he also imposed lengthier determinate terms on the two others (not being the London defendants) than was submitted could be justified or extrapolated from the *Goodyear* indications.

8. In the circumstances, this judgment will deal with the case under the headings of the underlying facts; the *Goodyear* indication; the general bases of plea; the opening; the approach of the judge; the assessment of dangerousness and the indeterminate terms; and the appropriate determinate terms, dealing first with Khan, Shahjahan and Hussein, then Latif and, finally Mohibur Rahman.

The Facts

9. Although it is not said that any of the appellants belonged directly to Al Qaeda (AQ), it was alleged that they were inspired by that ideology which encouraged them to carry out acts of terrorism. This radicalisation was through the internet, inspired by the ideology and methodology of Anwar Al Awlaki (the now deceased Yemini based extremist) and the AQ magazine "Inspire" which he wrote, copies of which were found on computer equipment seized from the homes associated with many of the defendants. This magazine was repeatedly referred to as a source of inspiration and guidance in relation to the construction of an improvised explosive device, in the form of a pipe bomb. Of particular significance was the rejection of the "Covenant of Security" which generally protects countries where Muslims live but was said not to apply in Britain because the British had broken it. A communication to this effect was sent by Chowdhury to Rahman, Shahjahan and Rahman on 22 and 23 November: it is only of interest to jihadis who are deciding whether to attack the country in which they live. A considerable body of extremist ideological material (with lectures by Anwar Al Awlaki) were found in the possession of the men when they were arrested.

10. On 7 November 2010, the men, from different parts of the country, met together in Roath Park, Cardiff. This meeting was arranged Chowdury who was described by the Crown as the 'linchpin' for the organisation of the meeting but, Mr Edis emphasised, not the leader or most influential defendant.

11. Those who attended the meeting (the appellants Latif, Khan, Shahjahan and Mohibur Rahman, along with Chowdhury, Miah and Desai) were subject to covert surveillance but were clearly alive to the possibility of such surveillance; they were careful about what was said near buildings and in cars; they walked around the park talking. They were observed in prayer and in discussions about (particularly in relation to the London defendants) what might be done. Copies of Inspire 1 and Inspire 2 were created by Chowdhury having been provided by the Cardiff defendants and, in relation to Miah, Inspire 1 was opened. The bomb making recipe in Inspire 1 assumed significance in relation to the bomb plot later developed by the London defendants.

12. On 28 November, some of the London and Cardiff defendants met to consider potential targets and develop a plan to launch an attack with explosives in the UK. The following day, in Cardiff, Miah and Desai further discussed making purchases of equipment for use in the manufacture of an explosive device.

13. On 4 and 5 December 2010, conversations were recorded in Stoke. Usman Khan was heard seeking to radicalise another male (not prosecuted) making clear his intentions to travel abroad to a training camp which outwardly appeared to be 'a normal Madrassah' to train to fight jihad. The Stoke group were to fund the camp and recruit men for it: Khan expected only victory, martyrdom or imprisonment. He and Hussain were to attend the camp the following month. What was said made clear the large scale nature of the operation and the express contemplation of terrorist operations in the UK to be perpetrated by some graduates of the training camp at some future date: the imposition of Sharia in Kashmir was not the limit of the group's aspirations.

14. On 11 December 2010, three of the Stoke defendants (Khan, Shahjahan and Hussain) met and Shahjahan spoke to Chowdhury on the telephone. They needed money to buy weapons; they wanted people who had been radicalised. They spoke of a meeting arranged for the following day, with Khan commenting that they did not want to risk something petty like extremist posters: they had a higher priority. The priority was not dawah (the preaching of Islam) but they wanted to talk about jihad.

15. That meeting took place in a large country park in Wales. The appellants (except for Mohibur Rahman) attended with Chowdhury, Miah and Desai. The case for the prosecution was that, by this time, a plan had been formed in which all defendants had committed themselves to acts of terrorism although the precise plan of action was not settled. The London and Cardiff groups wanted to act quickly to carry out some explosive attack in London; the Stoke group were committed to undertaking training abroad and were keen to recruit men to go with them and train in terrorism abroad with the aim of further acts of terrorism in the future. One of the purposes of the meeting (as transpired) was for the Cardiff and London defendants to hand over £2,850 in cash to the Stoke appellants to assist in funding the camp.

16. It is unnecessary to set out the full detail of what was discussed. Chowdhury and Miah discussed the Stockholm bomb and a 'Mumbai-style' attack. Miah reported that the Amer (or leader) has given instructions about two funds, one for 'here' with £2,850 'designated: a matching conversation took place in the Stoke car after the meeting. The three Stoke defendants discussed 'Abdul's plan to use Royal Mail to post something' and also the risk of surveillance. When they met, they were observed praying but there is reference to training and the mujahideen with Hussain and Shahjahan talking about a plan to get terrorist contacts in Bangladesh, with the brother to teach them training.

17. The Stoke appellants also discussed a person who 'will get training there; he's the main military guy here' and how that person had mastered the making of a timing device from Inspire. They discussed Miah and Desai ('good at the scam' meaning credit card fraud), observing that the main asset is "the Pakistani link" and assert that the two groups are to be linked financially in the future. Hussain commented that Shahjahan is referred to as Ameer (leader). Shahjahan says to Khan and Hussain that "you guys probably will be the next level flipping learners", "experts of experts". There is a reference to AKs which Mr Edis submitted refers to the UK because of the ready availability of such weapons in

Pakistan. He also submits that the fact that the Cardiff and London group is funding the future operations of the Stoke group is an indication of the relative hierarchy and who was thought to be operating at the most significant level.

18. On 12 December, Kahn, Shahjahan and Mohibur Rahman met and discussed targeting pubs and clubs in the Stoke area by leaving devices in toilets. It is not suggested that this discussion was advanced to become a plan but did involve active consideration of using a bomb to kill and descended to the detail of who could plant the bomb and the need for a timer. Khan spoke in such terms as demonstrated that he was radicalised and described kuffars as 'dogs'. Mr Edis submitted that this discussion was not pursued because it was clear that the Stoke appellants had other, larger, plans.

19. On 15 December, Khan was engaged in conversation with another male about the Al Qaeda publication Inspire, discussing the pipe bomb recipe (which he appeared to have memorised) and the possibility of using the device to attack the English Defence League. He explained how Inspire could be obtained from the internet. Four days later, two of the London defendants also discussed how to make a pipe bomb using the recipe from Inspire.

20. Given that it is possession of the Inspire editions 1 (Summer), 2 (Fall) and 3 (Special) that form the basis of the offence to which Rahman pleaded guilty, their contents require some elaboration. Suffice to say that they celebrate the activities of Al Qaeda in the Arabian Peninsula, celebrate the activities of a number of terrorists and their attacks (including Umar al-Faruq Al Nigir who travelled with a bomb on a plane, attempts with parcel bombs including a bomb found in a printer at East Midlands Airport targeting synagogues in America) and publicise material about Osama Bin Laden, and articles by Ayman al Zawahiri. They provide information about bomb making, use of encrypted e mails, joining the jihad, use of 4x4 vehicles with guns to attack pedestrianised areas in the West. All those prosecuted either possessed these publications, were proved to have viewed them on line or were familiar with their contents.

21. In the early hours of the morning of 20 December, the nine men were arrested. Dealing with these appellants, nothing of significance was found at the home of Nazam Hussain; extremist material and 'Inspire' material was found at the homes of Shahjahan and Rahman. A mobile phone seized from the address linked to Omar Latif contained material relating to protests organised by Al Muhajiroun (Anjem Choudhury and Omar Bakri). At the home of Usman Khan was a document bearing notes on the structure, roles and responsibilities of individuals: it bore his fingerprints and those of Shahjahan. There was strong support expressed by a handwriting expert for the proposition that Shahjahan had written it, placing himself ('me') at the top of the structure in charge in the UK). There were references in the document (which set out a cell structure for security) to Chowdhury, Miah, Khan and Hussain. Lines of communication were limited: it was said that this was to maximise security in relation to terrorist training.

22. Interviews at the police station were not productive of any information. Most made no comment; those who did speak did not make comments of significance although it should be noted that Omar Latif claimed to have been asleep in the car during the significant conversations on 12 October 2010.

The Goodyear Indication

23. During the course of the discussions prior to the commencement of the trial (albeit after the jury had been sworn), an approach was considered which recognised that, although there were common meetings and, potentially, a common purpose among all nine defendants, the activities of the London defendants and the Stoke defendants were different and had different plans. On the basis that the indictment was split to reflect this different criminality, Mohammed Chowdhury and Shah Rahman sought a *Goodyear* indication as to sentence. It is important to underline that the judge had well in mind the observations of Hughes LJ in *Jalil* [2009] 2 Cr App R (S) 40 page 276 when he said (at para 12):

> "The defendants generally had sought a *Goodyear* indication from the judge. He declined to give one. His principal reason was that in a multi-handed case in which each defendant had detailed submissions to make about not only his own role but his role in comparison with that of others, it was not possible to give useful prior indications of what his conclusions were likely to be about their relative positions. In that, he was, if we may say so, plainly right, and the complex competing bases of plea advanced by the various defendants both before him and now only serve to confirm his position."

24. Wilkie J then set out the two bases of plea to a new count alleging breach of s. 5 of the Terrorism Act 2006 relating to the production and detonation of a live explosive devise to be in the Stock Exchange. The terms of the document had been agreed with the Crown (on the basis that the prosecution would be at liberty to open all relevant facts not inconsistent with it).

25. In relation to Mohammed Chowdhury, the basis was as follows:

> "i. That the section 5 offence included a plan to place a lvie explosive device of a kind which 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 of the defendant 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.

> ii. It was the intention of this defendant this plan would be carried out in the near future. However, 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 out what had been discussed.
>
> iii. The meetings and discussions on which the prosecution rely were, in part, in furtherance of this plan. The detailed target developed during the indictment period. Various other projects were also considered during this time.
>
> iv. The role of this defendant, in particular, was: (a) He was the linchpin of the group (see phone schedules). He played a significant role in researching and selecting the target and researching the construction of a device on 19 December 2010 by reading Inspire 1. (b) There were three people present at all relevant face to face meetings between different groups (7/11, 28/11 and 12/12: he was one of them."

26. The basis upon which Shah Rahman offered to plead guilty to the same offence was:

> "1. The defendant met with Mohammed Chowdhury and others on 28 November when there were early discussions in which the defendants considered acting together and identified an objective of causing economic damage and disruption.
>
> 2. 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 that it should cause death or serious injury. The intention was that it should cause terror, disruption and financial damage. However there was a clear risk that it would in fact cause death or serious injury.
>
> 3. Rahman was Chowdhury's close associate in Lodnon and involved with him in target selection and the planning for the construction of a device. This he did on 19 December when both researched the construction of a device by reading Inspire 1."

27. The Crown submitted a note which identified that *Jalil* had been decided under a different sentencing regime both in respects of indeterminate sentences and release provisions but that the proper comparison was with *Jalil* type cases rather than other s. 5 offences. The note made a number of other points about the gravity of the offending. These included the use of explosive devices in this context had novel features; the significance of using the internet to encourage attacks by 'lone wolf' terrorists and messages such as Inspire with methods of attack that were easy to achieve, quick to implement and capable of causing death; the necessary profile of the target; the difference between this offending and usual terrorist plots, spontaneity and practicality

being part of the tactic; the risk of death in relation to a target such as the Stock Exchange as to which consequence the offenders were indifferent. Mr Edis accepted that these two defendants did not intend to cause death: it is submitted that this could not be said of a person who receives training in the use of firearms for terrorist purposes.

28. In his ruling, Wilkie J made it clear that he was only focusing on these two defendants and, thus, the London aspect of this offending. He was not purporting to give general guidance in relation to other aspects of the case. He said:

> "It is to be observed that those two written bases of plea do not involve any dispute as between those two defendants as to their respective roles. Furthermore, the activities of those two defendants upon which their agreed bases of plea are focused are activities which involve them and only involve others very tangentially, at any rate in respect of the actual preparation for the production and detonation of a live explosive device."

29. The same is so in relation to his consideration of dangerousness (and thus the question of indeterminate sentence). Speaking only about "these two defendants … their own histories and their thought processes and attitudes", he was able "to form a more or less definitive view on the issue of dangerousness though of course without prejudice to that issue being revisited if either chose to do so". Having concluded that, in relation to the indication he was giving, he would proceed on the footing that the statutory test for dangerousness set out in the Criminal Justice Act 2003 had been established, he went on to say that "this is a case which is appropriate for an extended sentence rather than an indeterminate sentence" and specified minimum terms in line with the sentences finally passed.

The Bases of Plea

30. Prior to this indication, the Stoke defendants had also approached the prosecution with an offer to plead guilty to a substantive offence reflecting the activities which they admitted committing or planning. This was incorporated into a single basis of plea reflecting the roles of Usman Khan, Mohammed Shahjahan and Nazam Hussain and provided:

> "The defendants plead guilty to [what became count 9] on the following basis:
>
> 1. They were trying to raise funds to build a madrassa by a mosque that already existed in Kashmir.
>
> 2. The long-term plan included making the madrassa available for men who would be struggling and fighting to bring sharia to the Kashmir region of Pakistan.

3. That plan included such people, including at least one of the Stoke defendants, being able to have firearms training in or around the madrassa for that purpose.

4. They did not intend to participate in an act of terrorism in the UK in the immediate future. They contemplated that some of those trained might return to the UK and engage in some sort of terrorist activity, but there was no time table, no targets identified, nor any method agreed. It may have been that their experiences after going to Kashmir might have meant no such activity, in the event, would ever actually have taken place in the UK".

31. The prosecution took the unusual step of responding to this proposed basis of plea (which did not form the basis of a request for a *Goodyear* indication and thus did not require the prosecution's agreement) in some detail as follows:

"The 3 Stoke Defendants concerned (MS, UK, and NH) will have to accept that the prosecution will open the case as follows, and that the Crown is free to make allegations which are not inconsistent with the basis of plea. The defendants are not required to accept all allegations made, and, since no Goodyear indication is sought, the Court can resolve any issues which are material to sentence.

The language in the Basis of Plea is not intended to be comprehensive and it may be helpful to set out the Crown's position as to what it entails.

THE FUNDAMENTALS OF THE AGREEMENT BETWEEN THE PARTIES

The Crown will not allege that these defendants are criminally liable as participants (either primary or secondary parties) in the planned attack on the London Stock Exchange.

The Crown will not allege that any defendant was party to a plan to carry out any other attack in the UK in the immediate future.

EXPLANATION

However, it will be alleged that these defendants were part of a group of 9 people which was formed in October 2010 with a view to deciding how best to further the jihadist cause, which meant planning for acts of terrorism. The meetings of the group on 7/11 and 12/12 were intended to further this enterprise and were conduct within section 5 of TACT 2006. Various different proposals were considered during the indictment period, none of which became a planned attack except that on the London Stock

Exchange, see above.

In the event, as a result of those meetings, two different plans emerged: the attack on the Stock Exchange, and the plan of the Stoke defendants identified below. Each part of the group was aware of the plan of the other, and they were discussed freely between them. The group continued to function until the arrests as a forum for discussion of possible courses of action. This does not mean that every member had become a participant in every, or any, particular plan.

These defendants were in discussion with the London/Welsh group in November/December 2010 in the course of which they became aware that at least some members of that group intended to carry out attacks in the UK. The discussions included terrorist funding, and terrorist training in addition to the plans of the London/Welsh group.

THE PLAN OF ACTION OF THE STOKE GROUP

They were funding a proposed madrasah abroad which was to be a place of terrorist training in that firearms training would be provided there. The madrasah was in the very early stages of construction, but terrorist training was already possible (conversation of 4th/5th December).

Mohammed Shajahan did not intend to travel to train, but Usman Khan and Nazam Hussain (among others) did. Mohammed Shajahan's Defence Case Statement correctly alleges that UK and NH were about to travel to Pakistan. He does not there concede the purpose of that travel, but it is now clear.

The purpose of attendance for the purpose of training was the acquisition of skills to enable the commission of acts of terrorism in furtherance of the jihad. The recruitment and funding of such activity is section 5 conduct because it is intended to result in the commission of acts of terrorism.

The precise place where they would fight jihad at that later stage had not been decided, but the discussions revealed by the evidence demonstrate that they contemplated that some of those trained would commit their acts of terrorism abroad but that others might return to the UK and commit them there. No timetable, target, or method for these acts of terrorism had been agreed. Their experiences after going to Kashmir might have meant no such activity, in the event, would actually have taken place in the UK".

32. The Prosecution then received basis of pleas from Abdul Miah and Gurukanth Desai to the Count 10 allegation. In relation to Miah, this asserted that he would plead guilty to an offence contrary to s. 5 of the Terrorism Act on the following basis:

> "1. That he was party to a plan to place an explosive device of a kind capable of causing death or serious injury in the Stock Exchange in London. The intention was that it would explode but not that it should cause death or serious injury. The intention of the defendant was that it should cause terror, property damage and economic damage. The defendants realised that there was a risk of death or serious injury to persons.
>
> 2. At the time of the formulation of the plan, it was the intention that the plan would be carried out in the near future. However, at the time of arrest, no material had been obtained with a view to constructing an explosive device, nor had any firm date been set for carrying out what had been discussed.
>
> 3. Abdul Miah was fully involved in the plan. His role was limited to discussing the plan and carrying out research on the London Stock Exchange.
>
> 4. The meetings and discussions on which the prosecution rely were, in part, in furtherance of this plan. The detailed target developed during the indictment period. Various other projects were also considered during this time".

33. The basis of plea (to an identical offence) in relation to Gurukanth Desai was in these terms:

> "He was a 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.
>
> His intention was to cause terror, property damage and economic harm, not to cause death or serious injury.
>
> He realised that there was a risk that the explosion might cause death or serious injury.
>
> Although his intention was that the plan would be carried out in the near future, no materials had been obtained and no firm date had been set for carrying out the plan by the time of his arrest. The preparatory acts were limited to talk and research by others.
>
> The meetings and discussions upon which the prosecution rely were in furtherance of the plan. The target of the London Stock Exchange developed during the indictment period. Various other

projects were considered as well but were abandoned".

34. These bases of plea were accepted by the Prosecution with the result that Miah and Desai sought a short *Goodyear* indication limited to the level of sentencing that would be adopted in Desai's case, by comparison to other defendants and whether Miah's previous convictions (which were numerous but not of a terrorist nature or approaching the gravity of this offence) would lead to the possibility of a sentence of imprisonment for public protection, rather than an extended sentence, being imposed. In response, the Prosecution indicated that it considered that the role of Miah could be compared to that of Chowdhury, and the role of Desai could be compared to that of Shah Rahman.

35. The Judge declined to give any indication of sentence in the cases of Miah and Desai except to say to Miah's counsel:-

> "[Miah's] previous record is in contradistinction to everybody else's and the basis on which I have been giving indications or hints as to level of sentence have been on the basis that they were of previous good character. Obviously your client cannot claim that and in my judgment it would properly go towards length of a custodial sentence rather than moving it from one category to the other because I agree with Mr. Edis that the focal point of dangerousness and its management effectively is the terrorism offence and what pertains to him would pertain no more or less so to the others."

36. Mohibur Rahman then offered a plea to an offence under section 57 of the Terrorism Act 2000 in relation to his possession of Inspire 1 and 2. A short basis of plea was submitted which set out the circumstances of his possession. This was not disputed, although no basis of plea was tendered which set out the purpose for the defendant's possession of the items. The Prosecution applied to amend the indictment to add Count 11 in those terms.

37. Finally, a basis of plea was then received from Omar Latif then offered to plead guilty to an identical offence as to the Stoke and London defendants but cast in different terms and on this basis:

> "He attended a meeting in Cardiff on 7.11.10 at which the defendants from Stoke, and Chowdhury, Miah and Desai were present. He arrived 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 in Cwm Carn on 12.12.10, being driven there in the car of Abdul Miah. He attended the meeting aware that conversations concerning terrorist training activity were

likely to take place. These conversations did in fact take place.

Thereafter Omar Latif 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".

38. In the event, each of the defendants pleaded guilty to an offence on the basis which had been advanced. The prosecution did not seek to proceed in relation to any of the allegations and the jury (which had been waiting to start the trial) were discharged from returning verdicts on the remaining counts of the indictment.

The Opening

39. Mr Edis for the prosecution then opened the facts of the case, summarised above. During the course of the opening, however, there was a discussion about the dangerousness provisions of ss. 225-227 of the Criminal Justice Act 2003, relevant to any consideration of a sentence of imprisonment for public protection or an extended sentence. Wilkie J read into the opening "the Crown's view ... that of the three geographical elements, the Stoke people regarded themselves and the Crown regard them as much the more serious offenders". There followed this exchange:

> Mr Edis: "What I think I've said is that we will not accept that they were any less serious as has been published in some press reports of the earlier part of these proceedings; that they are different offences, a different kind of offence, the bomb plot being generated and to be carried out in a fairly short period of time, but involving a live device in a populated building. The Stoke offence being a rather longer term and perhaps more sophisticated plan which involved the creation also of a very significant risk to public safety. We would certainly submit that that is a very serious terrorist offence."
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> Wilkie J: "Right. I think, reading their conversations, they do regard themselves as significantly more advanced, both in terms of experience, technique, ambition, facility than the people from Cardiff or London, given the rather (inaudible) raw recruits ... only one of them seeming to pass muster by their exacting standards .... You are not suggesting that they're wrong-headed in that assessment?"
>
> Mr Edis: "Not at all."

40. These remarks caused concern in those representing the defendants who had clearly proceeded on the premise that the more immediate threat to the Stock Exchange was more serious than what they contended were the rather fanciful plans to build a terrorist training camp for which there was, at that stage, no proven funding (save for the £2,850

which the London defendants had provided) by persons who had no terrorist training themselves in an area strictly controlled by Pakistani security services.

41. The following day (in language clearly approved by Mr Edis who was not himself then in court), his junior, Ms Morgan, made clear:

> "We have been asked overnight to reflect on and to indicate the Crown's position in relation to the seriousness of Count 9 and Count 10 as they compare to each other ... They are, of course, quite different offences in the way in which they have been particularised and reflect different conduct. It is therefore difficult to draw direct comparison between them. However, balancing the immediacy of the threat in Count 10 namely the attack on the Stock Exchange, as against the potentially less immediate threat posed by Count 9, however with potentially very serious consequences in the long-term and involving calculated activity on the part of the Stoke defendants, we submit that the two counts should be viewed as being equally serious; in other words, neither being more serious or less serious than the other. ... We have also been also been asked to clarify out position on dangerousness. May I reiterate that we submit in this case that all nine defendants can properly be considered to be dangerousness within the definition of the 2003 Act, principally because of the commitment that they all showed to the Jihadist ideology."

42. These are, of course, extremely important observations from the prosecution which, as Ms Morgan made clear, were based on instructions from the police and the security services. During the course of the hearing before this court, she confirmed that this remained an accurate reflection of the stance adopted by the Crown.

Sentence

43. When passing sentence, Wilkie J provided a thorough and extremely detailed analysis of the case which deserves the very greatest of respect. He noted that all of the defendants were in their mid to late twenties at the relevant time, save Chowdhury and Khan. Chowdhury, Latif, Khan, Mohammed Rahman and Hussain had no previous convictions. Shah Rahman had one previous conviction from during the indictment period, Desai had minor convictions, Shahjahan had convictions and Miah (his brother) had a significant history of offending. He made it clear that he had considered the personal mitigation and references for all accused but concluded that their influence was marginal and had no effect on the sentences to any significant degree.

44. He started by observing that these young men had each become actively engaged in the

Muslim faith and had fallen under the influence of radical or extremist clerics who preached an obligation to Jihad which extended to attacking civilians in the United Kingdom. They then engaged actively in proselytising radical Islamism by preaching and knowingly came to the attention of the security services. Some of the defendants from London, Cardiff and Stoke became known to each other. There came a time when they began to associate with each other and as far as eight of the defendants were concerned, their intent went beyond proselytising and they began to engage in preparation for terrorist violence.

45. As to their respective role, he accepted that the linchpin of the different geographical groups was Chowdhury who was a self publicist but was not the leader as such. Rather, of the three groups, his assessment was that the Stoke group was considered to be pre-eminent: they had longer term views to raise funds and to establish a military training establishment overseas. They dismissed immediate action in the UK as untrained individuals and intended that Khan and Hussain should attend the training establishment once set up and operate initially in Kashmir. He concluded that Shahjahan was the leader of the Stoke defendants with Khan and Hussain closely behind.

46. He went on to decide that Miah was the pre-eminent force of the London and Cardiff groups; the Stoke group took him seriously as a potential recruit. Desai was also well regarded by the Stoke group although subordinate to Miah. Shah Rahman was not well regarded. Latif was well regarded but never participated in preparation for any specific action.

47. Turning to the facts, the events relied upon by the Crown included meetings of members of all three groups in parks in Cardiff (7 November) and Newport (12 December) attended by most of the defendants. Desai and Miah visited London where with Chowdhury and Shah Rahman, they drove around London discussing venues for possible terrorist actions. The undisputed allegation was that the purpose of these meetings and the subject of many monitored discussions were the possibilities, either in their separate geographical areas or together, of engaging in terrorist violence.

48. The groups were clearly considering a range of possibilities including fundraising for the establishment of a military training madrassa in Pakistan, where they would undertake training themselves and recruit others to do likewise, sending letter bombs through the post, attacking public houses used by British racist groups, attacking a high profile target with an explosive device and a Mumbai-style attack. The judge accepted that the only ideas which crystallized as intentions were in respect of the madrassa (Count 9) and the placing of a pipe bomb, in a toilet in the London Stock Exchange (Count 10). When, on 19 December, Chowdhury and Shah Rahman were overheard discussing instructions from the Inspire 1 magazine on how to construct a pipe-bomb which had been downloaded on to Shah Rahman's computer, the authorities decided to act and the defendants were all arrested.

49. Turning to the issue of dangerousness, none of the defendants had resiled from the views expressed in their defence case statements although Chowdhury, Shah Rahman, Khan, Shahjahan and Hussain had written letters of repentance and Desai had shown an interest in attending a de-radicalisation programme while in custody. The judge also had regard to their guilty pleas and the bases of plea and all of the other circumstances; he was, however satisfied that each defendant who had pleaded guilty to a s. 5 offence presented a significant risk of causing serious harm and were dangerous within the provisions of the 2003 Act.

50. As for the consequences of such a finding, following *C* [2009] 1 WLR 2158 CA, Wikie J recognised that an indeterminate sentence should only be imposed should the public be insufficiently protected by other sentences available. He also had regard of the reporting requirements that were to be imposed, citing *Jalil and others* [2009] 2 Cr App R (S) 40 and *Karim* [2011] EWCA Crim 2577 where extended sentences had been endorsed as appropriate.

51. The judge went on to consider the risk that each defendant posed and the extent to which the public required protection. In respect of the Shahjahan, Khan and Hussain, he concluded that the public could only be protected by the imposition of an indeterminate sentence. Their commitment to long term terrorist aims had been different from the others. They had serious long term plans whereby they intended to send Khan, Hussain and other British recruits for training and terrorist experience. Should they return to the UK they would do so trained and experienced in terrorism. They engaged with the others who were contemplating short term attacks in the UK but rightly considered themselves to be more serious jihadis than the others. He had also taken into consideration the relative youth of Khan. In respect of the others, none had shown any long term or strategic perspective and their risk could be controlled by multi agency involvement from the onerous reporting requirements coupled with stringent licence conditions. He accepted that they had been determined upon a high profile and violent terrorist action but outlined the weakness perceived in each of these defendants. He did not find that Mohibur Rahman was dangerous.

52. Wilkie J recognized that the trial would have been complex and lengthy and that by pleading guilty the defendants had exposed themselves to substantial sentences of imprisonment: he decided that the appropriate discount for pleas entered at the outset of trial in this case was 20%. As regards length of sentence, he accepted that sentencing in s. 5 cases was fact specific and there was limited case guidance: he noted *Jalil* [2008] EWCA Crim 2910, [2009] 2 Cr App R (S) 40, *Tabbakh* [2009] EWCA Crim 464 and the first instance sentencing remarks of Calvert Smith J in *Karim*, 18 March 2011.

53. He found that Counts 9 and 10 were of equal seriousness; Count 9 involved attendance at operational meetings of the group. The defendants were involved in the larger group and the discussions had included plans for immediate terrorist action in the UK; it would be artificial to separate the madrassa from the gravamen of the s. 5 charge. The length of

sentence should reflect the position of the offender across the groups.

54. Turning to the position each defendant, in relation to Count 9, it was clear from the conversations in the group that Shahjahan was the leader not only of the Stoke group but of the larger group and others deferred to him as Emir. The Stoke group saw itself as pre eminent. Shahjahan considered Khan and Hussain as almost on a par with himself. The starting point as leader of the Stoke group which was the lead group (in accordance with the range of sentences above) was 22 years after trial. His previous convictions showed a disposition to commit serious crime and were relevant but not an aggravating feature. Applying a 20% discount for his guilty plea the starting point for the determinate part of the sentence would be 17 years and 8 months.

55. Khan and Hussain were to attend the madrassa and were keen to perform acts of terrorism in Kashmir. It was envisaged that when they, and others recruited, had gained experience they may return to the UK. The long monitored conversations of Khan show his serious long term attitude to establishing, funding and recruiting British Muslims to attend the madrassa and to then be available to commit terrorism abroad and at home. Added to this was the dimension of their involvement in discussions in the larger group.

56. Khan was marginally more central to the project and marginally below Shahjahan in the hierarchy. There was a small reduction to reflect his youth. The starting point for conviction after trial would be 20 years from which he deducted 4 years for his guilty plea. The determinate sentence would be 16 years. For Hussain the starting point was 20 years after trial. Applying his discount for plea, the notional determinate sentence was 16 years.

57. It is also appropriate to outline the judge's reasons for the sentences passed on those who pleaded guilty to Count 10, notwithstanding that there is no challenge to them but because of the submissions to this court that the Count 9 defendants were unfairly treated by way of comparison. In their cases, the judge reiterated that the intention was to plant a pipe bomb in the toilets of the Stock Exchange in the near future; preparation had commenced albeit that the intention was not to cause death or serious injury. The offenders had no training. Their involvement in violent terrorism was seemingly limited to a few weeks, operating without direct contact or logistical support from Al Qaeda. Their information was provided on line by Al Qaeda which was designed for use by untrained people. A pipe bomb required no specialist knowledge to construct, and could be made within hours from easily obtainable items which would draw no attention on procurement. The plan lacked the usual features of a serious terrorist plot but was part of a new tactical approach.

58. He recognized that the accused had not devised a means of entry to their intended target and were novices; however, they were determined to embark on violent terrorist action and had considered a number of alternatives to do so. They had selected a high profile target to maximize the terrorist effect and economic impact; and were reckless as to

death or serious injury resulting. The offence was not as serious as *Jalil* and *Karim* but was of a different order to *Tabbakh*.

59. In the case of each of these defendants, a determinate term would be passed (in each case the starting point being reduced by 20% for the guilty plea) but each sentence would be subject to an extension of 5 years to reflect the finding of dangerousness. Miah was the leader of the Cardiff group and on a par with Chowdhury. He set the agenda and applied an analytical mind to the projects being discussed. He had impressed the Stoke group and had mastered the elements of making a pipe bomb. His convictions were a significant aggravating element. The starting point was 21 years imprisonment. Chowdhury was the linchpin of the groups and had arranged the meetings. He allowed a small discount in respect of his youth. The starting point was 17 years. Shah Rahman was a follower and less prominently involved than Chowdhury. His starting point was 15 years. Desai was not a leader of the Cardiff group. His convictions were not an aggravating feature. His contribution was no greater than Shah Rahman and the starting point was 15 years.

60. Turning to Court 12, Wilkie J reiterated that Latif was present at the two meetings and aware that terrorist activity was likely to take place: it was important to underline that he had neither participated nor taken part in the development of the plans but his presence encouraged the others to prepare and commit the acts particularised. His culpability was not as great as the others but he was trusted by the exclusive group and shared their intentions. *Tabbakh* was the only relevant authority. The gravamen of the offence was the membership and operation of the group. In his case also, the judge concluded that he was dangerous within the terms of the Criminal Justice Act 2003: the starting point in his case was 13 years imprisonment discounted for plea and extended by 5 years.

61. Finally, in relation to Count 11, the judge identified the particulars of the offence and the basis of Mohibur Rahman's guilty plea. He accepted that Rahman's possession of the relevant material should be seen in light of his attendance at the November meeting, the reference to him by others at the 12 December meeting and discussions with Khan and Shahjahan about a bomb in a public house on 14 December; which made his possession of it more serious. In context of the activities of the group his offending was of significant seriousness. Wilkie J rejected the argument that Rahman had pleaded guilty to a new offence and should have a greater discount for his plea: Count 11 was re-cast from the allegation already on the indictment contained within Count 8. The starting point was a determinate term of 6½ years with a 20% discount for his plea.

The Indeterminate Term

62. The primary ground of appeal pursued by Khan, Shahjahan and Hussain is that the judge wrongly characterised the conduct of the Stoke defendants as having a level of sophistication such that they were more dangerous than the London defendants and, thus, albeit said to be "equally serious" (to quote the prosecution) criminality, justified an

indeterminate sentence (whether of imprisonment for public protection or, in Khan's case, detention for public protection).

63. Mr Bennathan put the matter on behalf of Khan in this way. At the time of the offence, he was a 19 year old, whose ambition was to bring Sharia law to Pakistan controlled Kashmir, his ancestral home. The madrassa had not been built (and there was no evidence that there was any real funding to build it); he had no access to terrorist training and it was highly unrealistic to suppose that the authorities in Pakistan would allow a teenager from Stoke to impose Sharia law or run a training school for terrorists.

64. Conversation about bombing public houses in Stoke (in any event, not included within the allegation in the indictment) was no more than angry talk within some 4 minutes of young men responding to racist incidents in Stoke, all of which was over in a day and it would be speculative to use snatches of recorded conversation as showing a high level of sophistication: it was equally consistent with admiration for the superior motivation and determination of the London defendants who, at one stage (as described by Mr Edis) were "being held in a degree of reverence by the Stoke defendants". Although Khan and other were intent on going to Pakistan the following month, there was no basis for concluding that they were in a position to put any plan (let alone terrorist training) into place. Overheard assertions were no more than this young man 'bigging up' what they intended to do in the hope of recruiting assistance.

65. Mr Hall pursued the same point on behalf of Shahjahan. He submitted that an immediate plan, actively pursued, to destroy the London Stock Exchange by the deployment of an explosive device (with access to a recipe for the creation of such a device known to work and a tested timer), carrying with it a very high risk of death and personal injury (even if not intended) was clearly more serious than the Stoke plan. The madrassa was, at best, in the very early stages of construction with very little, if any, cash having been raised and no decision as to where any graduate might fight jihad in the future. It was argued:

> "No timetable, target or method for these acts of terrorism had been agreed. Their experiences after going to Kashmir might have meant that no such activity, in any event, would actually have taken place in the UK."

66. As for sophistication, Mr Hall argued that financial enquiries pursued by the prosecution confirmed that there was no source of income to pursue the plan and the only prospect of raising money came from Abu Hassan who had agreed to teach them how to undertake money-making scams. Furthermore, each of the Stoke defendants was well known to the authorities, publicly expressing their views in a stall in Stoke shopping area. An earlier visit to Pakistan had led to Shahjahan and his associates being questioned both by British and Pakistani intelligence services so the prospect of them being able to return, unnoticed and uninterrupted, to set up a camp did not bear scrutiny.

67. Mr Sturman, on behalf of Nazam Hussain, repeated the argument that no training camp had been built, no men had been recruited and only minimal funding obtained; there was no evidence Hussain was going to Pakistan (although, that month, he was due to attend a wedding in Morocco) and there were no firm details as to the plan. He went further and made the point that it had been contended by leading counsel who appeared before Wilkie J that Hussain was not dangerous.

68. The prosecution challenge these submissions and, in particular, the attempt to portray the Stoke defendants as less dangerous than the London defendants. In its skeleton argument, Mr Edis submitted:

> "The Judge was required to decide whether an extended sentence would adequately protect the public and decided that it would do for those whose involvement in terrorism appeared to be of lesser duration and lesser sophistication, namely the Stock Exchange Bomb plot defendants. They had not, so far as the evidence reveals, devised any plan at all for actually getting their device into the Stock Exchange and in reality this would have presented a major problem for them, given the security precautions in place and the probable conspicuousness of these defendants. It is quite likely that the plan would have failed at that stage, probably to be replaced by another plan to attack a softer target. However, the naivety of this sub-group would have presented an obstacle to any success being achieved. This contrasts with the Stoke group who were not naive at all. They themselves appreciated (as evidence by their conversations) that they were dealing with an inexperienced and hot headed group who might get them all arrested despite their own well developed field craft. In this they were right.

69. Mr Sturman counters this submission by pointing out the Crown had contended that the probe evidence showed that those involved in the plot were, at the very least, working their way through the recipe in Inspire and that one of their number had experimented with the construction of some part of the electrical circuit and had achieved some success.

70. Dealing first with the question of dangerousness, at the time that these appellants were sentenced, in our judgment there is no doubt that anyone convicted of this type of offence could legitimately be considered dangerous within the meaning of the legislation: that includes Hussain and Latif to whom we refer below. Furthermore, given that it is difficult to identify the extent to which those who have been radicalised (perhaps as a result of immaturity or otherwise) will have modified their views having served a substantial term of imprisonment and there is an argument for concluding that anyone convicted of such an offence should be incentivised to demonstrate that he can safely be released; such a decision is then better left to the parole board for

consideration proximate in time to the date when release becomes possible.

71. On the other hand, the extent to which the evidence demonstrated that the threat of a terrorist attack had progressed beyond talk (however apparently determined) is relevant to the risk posed by the offender and the need to protect the public. The judge certainly concluded that the London planning had not progressed so far as to demonstrate such a risk that imprisonment for public protection was necessary and although we recognise that training terrorists in the use of firearms could only lead to potential loss of life, whereas the intention of the London defendants did not encompass death or serious injury (while recognising the serious risk that such would result), on any showing, the fulfilment of that goal was further removed and there were other obstacles (not least as a consequence of the fact that their activities had come to the attention of the security services in Pakistan). Furthermore, there is no suggestion that any of the Stoke defendants had, in fact, been trained, let alone that they would be in a position to activate, operate or participate within a training facility not then built, however keen they might have been to do so and however much they might have talked up their prospects between themselves or to others whom they sought to influence.

72. Notwithstanding the considerable respect that the conclusion reached by Wilkie J merits, we have come to the conclusion that if, as he concluded, the plans of the two groups were "equally serious", the risk posed to the public could not be greater from those who were very much further away from realising their apparent goal than those who were far closer to doing so.

73. Although potentially highly relevant both to culpability and potential harm (and, thus, of importance for the purpose of fixing the punitive part of any sentence), in our judgment, when assessing the future risk to the public, too much weight should not be placed on conversations for the purpose of ascribing comparative sophistication: it is not implausible that some self-publicists will talk 'big' and other, more serious plotters, may be more careful and keep their own counsel. Suffice to say, on the question of comparative risk, we do not consider that a distinction can safely be drawn between the London and Stoke defendants. In those circumstances, we quash the sentences of imprisonment and detention for public protection and will impose, in their place, determinate terms, in each case with an extension of five years. To that extent, we place the Stoke defendants in the same position as the London defendants.

The Determinate Term

74. It is not the purpose of this judgment to seek to set out guidelines or indicative sentences for terrorism which comes in many different forms. Offences range from murder, attempted murder and conspiracy to murder, through causing explosions likely to endanger life or cause serious injury to property (s. 2 of the Explosive Substances Act 1883), conspiracy or possession with intent to cause explosions likely to endanger life or cause serious injury to property (s. 3 of the 1883 Act) to engaging in conduct in

preparation for or assisting in committing acts of terrorism contrary to s. 5 of the Terrorism Act 2006. This last offence is particularly wide covering acts just short of an attempt to conduct that only just crosses the line into criminality.

75. A number of principles, however, can properly be emphasised. First, as with any criminal offence, s. 143 of the Criminal Justice Act 2003 directs the sentence to consider culpability and harm: in most cases of terrorist offences, the former will be extremely high. Second, the purpose of sentence for the most serious terrorist offences is to punish, deter and incapacitate. Rehabilitation will play little, if any part: see *Martin* [1999] 1 Cr App R (S) 477. Third, the starting point for sentence for an inchoate offence is the sentence that would have been imposed if the objective had been achieved with an attempt to commit the offence being more serious than a conspiracy: see *Barot* [2008] 1 Cr App R(S) 31. Fourth, sentences that can be derived from *Martin* – or, indeed, any cases before the impact or effect of Schedule 21 of the Criminal Justice Act 2003 identifying minimum terms for murder – are of historical interest only and do not provide any assistance as to the approach which should now be adopted: for the impact of Schedule 21 in uplifting determinate sentences, see *AG's Reference Nos 85-87 of 2007* [2008] 2 Cr App R (S) 45 and, in relation to terrorism, *Jalil* [2009] 2 Cr App R (S) 40 at paras. 22 and 24.

76. Finally, because of the enormous breadth of potential offences (and, consequently, the differing potential assessment of culpability and harm depending on the precise facts), we do not consider it appropriate to seek to provide guidelines based on these cases alone (or a combination of these cases and those in *Jalil*). If guidelines are needed, a better course would be for the offences to be considered by the Sentencing Council for England and Wales although we readily accept that breadth of s. 5 of the Terrorism Act 2006 would make the task of providing guidelines extremely difficult.

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77. We take these three cases together because Wilkie J structured the sentences which he imposed around his assessment of the comparative responsibility of all the defendants, treating the Stoke defendants as guilty of "equally serious" terrorist offences as the London defendants. He drew inferences from a document recovered from 4 Persia Walk said to have been written by Shahjahan which bore his fingerprints placing himself ("me") at the top of the structure and was careful to seek to differentiate the position of each man, making allowance for age, prior character and (to a necessarily limited extent) personal mitigation.

78. We recognise that the sentences imposed on the London defendants are more readily comparable with other sentencing decisions (whether by reference to conspiracy to cause an explosion or otherwise): those sentences have not been the subject of appeal. Thus, the critical decision which the judge made, accepting the proposition advanced by the prosecution, was to the effect that the position of the Stoke defendants was "equally

serious". In our judgment, bearing in mind the detailed consideration which he had given to the probe and other evidence, he was fully entitled to reach that conclusion and its implementation in the sentencing decisions reached for these three men cannot, in our judgment, be impeached. The position of a defendant on the indictment (to which reference was made by a number of counsel) is irrelevant.

79. In the circumstances, we quash the indeterminate sentences and pass determinate terms as follows. In the case of Mohammed Shahjahan, the substituted sentence is an extended sentence of 22 years 8 months of which the custodial term is 17 years 8 months with an extension period of 5 years. For both Usman Khan and Nazam Hussein, the sentence is an extended sentence of 21 years of which the custodial term is 16 years imprisonment, in each case with an extension period of 5 years. In all three cases, the notification provisions of the Counter-Terrorism Act 2008 will continue to apply for 30 years.

Omar Latif

80. Mr Wood Q.C., on behalf of Latif, challenged the sentence root and branch. First, he argued that the finding of dangerousness was not justified: given the nature of the offence to which he pleaded guilty and the reasons set out above, we reject that submission. His second proposition was that, even if dangerous, an extended sentence was not appropriate or necessary in his case, particularly bearing in mind the onerous reporting conditions imposed as a matter of law by the Counter Terrorism Act. Third, he submitted both that the starting point of 13 years imprisonment was too long and that insufficient credit had been given for his guilty plea on the basis that he was only offered the opportunity to plead guilty to this very much reduced formulation of a s. 5 offence during the discussions after the jury had been sworn.

81. In support of the second and third submissions, Mr Wood underlined the terms of the count to which Latif pleaded guilty: he admitted attending two meetings but, unlike his co-defendants in the London Welsh group, had not embarked on any activity. The conversation about a Mumbai-style attack was never seriously considered. On the other hand, his admission involved an admission that his attendance was preparatory to an act of terrorism and with the intention of assisting others to commit such an act of terrorism. The seriousness of that intention can be inferred from the facts that he was part of the group that provided money to the Stoke defendants, he was the recipient of one of three SIM cards bought by Miah and, finally, he had a quantity of ideological material in his possession.

82. In relation to the credit to which he was entitled following his guilty plea, Mr Wood explained that he had fallen out with his legal team and, for some months until November 2011. Having said that, only when asked by Mitting J, Mr Wood admitted that the defence case statement had constituted a robust denial. As was made clear in *Caley* [2012] EWCA Crim 2821 at para. 14, there is no reason why he should not have

been prepared to admit, at a far earlier stage, what he was doing and why.

83. Latif is not affected by the decisions in relation to the Stoke defendants; his case was considered with the London and Welsh defendants. References to decisions in other cases only go so far: there is no reason, in this case, for interfering with the sentencing decision which Wilkie J reached and more than adequately explained: the sentence is neither wrong in principle nor manifestly excessive and his appeal is dismissed.

84. Mr Wood raised a further point in writing about a mobile phone said to have been found at the Latif family home; it was not in his bedroom and belonged to his brother. That was not pursued before the court. What he did seek to challenge was the forfeiture of a computer on which a thumbnail of the Inspire magazines appeared. No challenge was made to an order for its forfeiture at the hearing but Mr Wood produced a receipt to demonstrate that the computer had been purchased by Latif's father. That fact does not, of course, demonstrate that the computer did not belong to Latif. This court has not been given any material on which to decide this issue and we decline to interfere with the judge's order simply on the basis of the receipt.

Mohibur Rahman

85. Mr O'Neill Q.C argued that Mohibur Rahman had pleaded guilty only to the possession of two editions of the Inspire magazine; his offending was at a different level to that of his co-defendants. He was not one of the Stoke team who was destined to go to Pakistan, and, on the basis that he spent his time preaching on the streets of Stoke, he fell into the 'all talk' category. Mr O'Neill explained that Mohibur Rahman was now detained in a standard level prison undertaking de-radicalisation and that his continued incarceration served no purpose. He invited the court to reduce the sentence by 6 months which would effectively permit his immediate release.

86. It is important to underline that s. 57 of the Terrorism Act 2006 criminalises possession of articles in circumstances which give rise to a reasonable suspicion that their possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism. That has been construed as if it read "A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that he intends it to be used for the purpose of the commission, preparation or instigation of an act of terrorism", see *R v. Zafar and others* [2008] QB 2010, emphasis added.

87. Against that background, the degree of suspicion obviously falls to be tested and the prosecution rely on the fact one of the magazines contains a bomb making recipe with further hints about how UK resident Muslims should kill people in the UK. Combined with his presence at the 7 November meeting which was characterised by extensive anti-surveillance measures and involved a long journey (so that he was plainly a trusted member of the group), the reference to him by others at the 12 December meeting and

discussions with Khan and Shahjahan about a bomb in a public house on 14 December: all this leads to the conclusion that there is more than a reasonable suspicion that he intends it to be used to commit, prepare for or instigate terrorism. That was the conclusion reached by the judge.

88. Mr O'Neill Q.C relies on the sentences passed in *Zafar* (above) and *AG's Reference No 7 of 2008* [2008] EWCA Crim 1054, the former being sentences of between 2 and 3 years passed on four university students and a schoolboy and took the form of ideological propaganda; the suspicion was evidenced by communications which the prosecution alleged showed a settled plan to receive training in Pakistan and travel to Afghanistan. At the time, the maximum for the offence was 10 years (now 15 years). In the latter case, the offender was arrested at Heathrow with material providing a theological justification for terrorism along with military and intelligence guides downloaded from the internet, and, among other things, two battons, sleeping bags, night vision binoculars and £9,000. For a section 5 offence, with a 25% discount for his plea, he was sentenced to 4½ years imprisonment with a concurrent term of 3 years for possessing an article for terrorist purposes. The sentences were said to be lenient but not unduly so.

89. These are different offences not least because the items possessed were not, intrinsically, linked to terrorism at the same level as the magazines although the supporting material justifying the suspicion was equally as strong. On the other hand, it is critically important only to sentence for the admitted offence and not because of adverse inferences of wider criminality drawn from the surrounding circumstances. In that regard, Wilkie J did not fall into that trap: he could not have made the position clearer. Furthermore, there is absolutely nothing in the complaint that a larger discount should have been given because the offence was not initially on the indictment: as the judge observed, it was part of a different count and there was nothing to prevent the appellant admitting that aspect of that offence at a very much earlier stage.

90. Having reduced the sentence on the other Stoke defendants by removing the sentence of imprisonment for public protection, however, we have come to the conclusion that it is right to make a marginal adjustment to this sentence. In the circumstances, we do accede to Mr O'Neill's submission that the sentence be reduced to 4½ years, recognising that this will reduce the notification period from 15 years to 10 years. To that extent, his appeal is also allowed.