



HM Government

The Government Response to the report on the use of terrorism legislation following the Westminster Bridge Terrorist Attack by the Independent Reviewer of Terrorism Legislation

September 2018

Cm 9705



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Presented to Parliament
by the Secretary of State for the Home Department
by Command of Her Majesty

September 2018

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Home Office

Mr Max Hill QC
Red Lion Chambers
18 Red Lion Court
London
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Dear Mr Hill

REVIEW OF THE USE OF TERRORISM LEGISLATION FOLLOWING THE WESTMINSTER BRIDGE TERRORIST ATTACK

Thank you for your report on the use of terrorism legislation during Operation CLASSIFIC, the police investigation following the Westminster bridge terrorist attack, which was published on 28 March 2018.

On Wednesday 22 March 2017, Khalid Masood drove a car into pedestrians on Westminster Bridge before exiting the vehicle and stabbing PC Keith Palmer to death in the entrance gateway of the Palace of Westminster. Masood was then shot dead by responding police officers. The attack claimed the lives of six people and left 29 people injured.

In the aftermath of this attack on such an important location for our democracy, the British public responded by continuing with their normal lives. This is the right way to respond to terrorism and demonstrates to those who propagate hatred and evil that they will not defeat us or our values. Nevertheless, Masood's actions affected not just his victims and the families of those he injured and killed, but all of us, and the attack demonstrated a shift in the nature and scale of the terrorist threat during 2017.

In total, twelve people were arrested during the course of the investigation that followed, all of whom were subsequently released without charge. In these circumstances a review of the use by the police of their arrest and detention powers under terrorism legislation during the investigation was appropriate. It is a hallmark of our open and democratic society that the Government opens itself to independent oversight in such sensitive areas, and I welcome the diligent and authoritative approach you have brought to this.

I welcome your findings that there was 'a reasoned and proportionate use of the relevant terrorism legislation in this case' and that the investigation was 'fast, efficient and comprehensive'. Your conclusion that all twelve were lawfully arrested and detained provides assurance to the public that in the immediate wake of significant terrorist events such as the Westminster Bridge attack, special terrorism powers are used only where necessary and in a proportionate way, and are not used indiscriminately.

Thank you again for your report and the recommendations you make, which will serve as useful learning points in any future investigations after terrorist attacks. Most of these relate to operational matters which are the responsibility of the police, and I understand that you have engaged with CT policing directly on these. The Home Office has also discussed them with CT policing, and I hope that the following provides further clarity on current practice both for your benefit and for that of the public.

Transporting TACT detainees

As your report highlights, a detainee arrested on suspicion of terrorism related activity can potentially be transported to a TACT detention suite some distance from their place of arrest. During a fast moving and complex investigation such as CLASSIFIC, there can be good operational reasons for transporting detainees to where the investigation is being run, and where the investigating officers and Crown Prosecution Service (CPS) are co-located, rather than the other way round. This ensures that the investigation can progress, that suspects can be interviewed and that charging decisions can be reached as quickly as possible, without being delayed as officers travel up and down the country to conduct interviews. This can speed up the release of detainees who are not charged. Whilst this approach may not be necessary for all detainees, this will often only become apparent with hindsight once an investigation has advanced to the later stages. The police will always give due consideration to the balance between the impact of transporting a detainee large distances, and the potential benefit to them of reduced time spent in custody from the resulting expedited investigative process. Such decisions will be taken on a case by case basis, and this operational flexibility is vital to Senior Investigating Officers (SIOs) leading counter-terrorism investigations.

I am happy to support the principle of your recommendation that careful consideration should always be given to whether it is necessary to transport detainees large distances. I am pleased to note that this appears to be the case in practice, and I hope that this response provides additional clarity on how such decisions are approached. While in the case of Operation CLASSIFIC all those arrested were held in custody at a single location, I am satisfied that this was justified in the exceptional circumstances of that investigation and does not reflect a systemic approach taken with all detainees in all terrorism investigations.

Informing detainees of their rights at the earliest opportunity

Thank you for highlighting this important issue. This is an operational matter for the police, and the Home Office has engaged with CT policing to inform our response.

It is a clear requirement that detainees be informed of their rights at the earliest opportunity. This is something that is taken very seriously and in the majority of cases there is little or no delay. Where there are delays in informing detainees of their rights, it is because of practical issues such as when a large number of detainees are brought into the same custody suite for processing at the same time, particularly in an urgent and reactive investigation such as Operation CLASSIFIC. In these instances, a delay in informing detainees of their rights can be unavoidable

due to pressures on the available custody staff, and the need to ensure that detainees who may know each other are kept separated and are not in the same areas at the same time. Additionally, where there are forensic processes that need to be completed such as taking photographs and fingerprints, these can take up to two hours and can contribute to delays in informing detainees of their rights.

In line with your recommendation, the police have considered whether any learning outcomes can be identified, and have advised the Home Office that they are committed to addressing this issue and have put in place procedures to mitigate and manage delays where possible. For example, when multiple arrests are planned, an increased number of custody sergeants will be placed on duty. Further, the newly built TACT detention suite at Hammersmith has been purposefully co-located with a non-TACT detention suite, so that all custody staff can be trained to operate the TACT suite, significantly increasing the availability of staff who are able to process TACT detainees at short notice or in greater numbers.

Religious questions during interviews

During a police interview of a terrorism suspect, detailed religious questions can be necessary to ascertain views of the suspect which could inform assessment of the risk they pose, as well as whether their suspected involvement in terrorism-related activity may be in support of political, religious or ideological causes, and whether it may fall under the statutory definition of terrorism. These are important matters to address in order to bring a TACT charge if appropriate, or indeed to establish whether it may be appropriate to release the individual without charge. In an urgent and reactive investigation such as Operation CLASSIFIC, such questions can be important in rapidly identifying and mitigating any potential risk to public safety.

The police have confirmed that asking of religious questions is always done respectfully and sensitively, and in line with a carefully planned strategy for the interview. I support your point that every interview is case-specific and that it will not necessarily be appropriate to ask detailed religious questions in every interview of a person who has been arrested on suspicion of terrorism. If it is not considered necessary in order to achieve the intended purpose of an interview, then such questions will not form part of the strategy for that interview. However, in a case where the basis for the arrest and subsequent interview is a reasonable suspicion that the detainee is involved in terrorism motivated by extremist religious ideology, questions about religious beliefs are likely to be necessary in order to investigate meaningfully that suspicion.

I am pleased that your report concludes that none of the twelve arrested under Operation CLASSIFIC were detained because of their religion or ethnicity, and that where questions about religious belief and adherence were asked, this was for legitimate reasons connected with Masood's extremist views and intentions, and the reasonable belief that his attack was motivated by support for Daesh.

Reconsideration of bail before charge for TACT detainees

As you know the Home Office has previously considered this following similar recommendations made by your predecessor, Lord Anderson, in his last report as

IRTL covering 2015 (published in December 2016) as well as previous annual reports. My predecessor rejected that recommendation in the Government's formal response to that report which was published in July 2017.

I have considered the points you raise, in particular that this may potentially be useful for future cases involving juveniles, and may allow for greater operational flexibility. The Home Office has also consulted CT Policing, who have confirmed that the current detention arrangements meet operational needs and are an appropriate response to the current heightened threat picture.

Having carefully considered your recommendation I am not persuaded that the position has changed since the previous Home Secretary rejected the same recommendation in July 2017, and accordingly my response to the recommendation must remain the same. I am of the view that introducing bail for TACT detainees would not be appropriate and could put the public at risk. During the early stages of terrorism investigations the risks to the public may not be fully understood, and to grant bail to suspects arrested under TACT would increase the risk of potentially dangerous individuals being released before they have been sufficiently investigated or the risks they may pose fully established.

However, my predecessor previously committed to keep this position under review, and I am happy to reaffirm that commitment and to reconsider should the operational picture or the position of CT Policing change substantively in the future.

I will be publishing this response on the Government's website and placing copies in the Vote Office.

A handwritten signature in black ink, appearing to read 'S. Javid', with a small comma at the end.

The Rt Hon Sajid Javid MP

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