Mental Health Practitioners and Terrorist Risk
(talk at Forensic Network Scotland event, 29 June 2021)

1. One of the privileges of my UK wide remit as Independent Reviewer of Terrorism Legislation is the opportunity to compare and contrast practices across the different nations. It is true that terrorism and national security are reserved or excepted matters, and one would therefore not expect to see laws setting out different terrorism offences across different parts of the UK.

2. But offences and their consequences do not exist in the abstract. They have to be investigated by local police, offenders have to be detained in local prisons, and released offenders have to be managed where they are released. So that means investigation by police under the direction of the Senior National Coordinator in England and Wales; but by Police Scotland under the direction of the Lord Advocate. It means detention in prisons run by HMPPS in England and Wales; as opposed to the Scottish Prison Service. It means probation by probation officers who are also part of HMPPS rather than by criminal justice social workers in Scotland.

3. It is not just about distinct machinery but also about distinct laws governing prisons and probation which fall within the devolved legislative competences. So I was very pleased to write a separate chapter on Scotland in my latest annual review published in March because I think there is much to learn from one another. Scotland of course has a special risk heritage through the Risk Management Authority and Order for Lifelong Restrictions which have no direct counterparts elsewhere in the UK; there are relationships between agencies in Scotland which in some respects are deeper than those in England and Wales; in my current review into terrorism in prison in the prison estate South of the border I am of course looking to see what lessons can be learned from experiences and understanding developed in Scotland.

4. Closer to the subject of this talk, I am very conscious that close and responsive cooperation between mental health practitioners and Police Scotland led to a positive outcome in the case of Gabriel Friel, the 'incel' terrorist who was sentenced in January to 10 years under the Terrorism Act. The risk that he presented was clearly spotted and acted upon. One hopes that such effective cooperation will be replicated in all future cases, but of course it is the failures that gain the greatest prominence.

5. It could be said that there are two categories of failures: failures to identify terrorist risk; and separately from that, a failure to act on terrorist risk (and it is important to keep these two matter distinct – identifying risk or developing intelligence on risk or passing the matter over to another body to consider risk is the not the same as managing risk). As things currently stand, mental health practitioners are increasingly exposed to these potential failures. One reason is the extraordinary rise in the phenomenon of young men, frequently suffering from poor mental health or on the autistic spectrum, who are drawn to expressions of support for violent ideologies. This is reflected in the Prevent figures for England, Wales and Scotland (although Scotland has numerically far fewer referrals). It is reflected in the arrest figures.

6. At risk of being anecdotal, as part of my job I get contacted whenever someone is detained as a suspected terrorist. It is almost banal for me to hear that they are young, male, diagnosed with or suspected of autism spectrum disorder, and despite their age and vulnerability suspected of being Right Wing Terrorists with sometimes developed

attack plans. I do not say that this phenomenon is exclusive to Right Wing Terrorism, and caution must be taken against thinking that adherence to one violent ideology is an expression of mental vulnerability, whereas adherence to another is an expression of pure malice. But a link with mental health or neurological diversity, whether causal or correlative, is undoubtedly there.

6. Just standing back for a moment, terrorism legislation in the UK has its roots in responding to the threat posed by armed organisations in Northern Ireland. Quasi military groups whose members regarded themselves as soldiers did not as a rule recruit the most vulnerable in society. But recruitment now is different, if recruitment is even the right word, and it is unnecessary to say any more than these two words: internet, pandemic. The result is that mental health practitioners are at the front line. At the very least the front line is moving towards you.

8. In speaking about the topic of Mental Health Practitioners and Terrorist Risk I am going to draw on my review of Multi Agency Public Protection Arrangements in England and Wales which was published last May. An annex to that review considered the position of terrorist risk offenders who were detained for treatment at some stage after their sentence.

9. I appreciate this is only a small subset of individuals who mental health practitioners may come into contact with. I also acknowledge that you will have encountered great risks of self-harm or violence to other which have nothing to do with terrorism.

10. At the heart of difficulties in managing terrorist risk offenders who need to be treated for mental health is the presence of two different detention regimes: one which flows from sentencing objectives, the other which flows from treatment objectives. Both equally important, they are administered by different officials who do not necessarily in all cases communicate. The situation is aggravated by the with fluid movement between the regimes, for example individuals transferred from prison to hospital and back again.

9. In my review, I identified 5 key decision points in the treatment of such prisoners who were detained for treatment at some stage after sentencing:
- Decision on location (is the facility suitable for that level of risk?);
- Decision on conditions of detention (e.g. whether unsupervised access to the internet);
- Decisions on leave of absence (particularly where arrangements need to be made for surveillance by the police once they left hospital);
- Decisions on discharge (not just whether discharge is appropriate, but how to ensure that reporting obligations that may start on release are complied with);
- Decisions following release, such as recall to hospital.

10. I did not recommend any statutory changes for this precise aspect of my review. But I did recommend changes to practice. My recommendations were that a revitalised MAPPA model - with a core group of security cleared practitioners including those statutorily responsible for restricted patients - should be applied to mental health cases. I recommended that some form of multi-agency MAPPA process should begin at the point of admission. I also suggested that the rules for Mental Health Tribunals ought to expressly allow information to be withheld, subject to considerations of procedural fairness, on the grounds of national security.

11. But I did make a general recommendation for statutory change that, even if not directed specifically at mental health practitioners, is relevant to them. This was the need for a clearer statutory information gateway. It was, I thought, wrong that practitioners were uncertain, in this era of data protection, about whether they had authority to share information relevant to terrorist risk. A new statutory gateway is currently being given legislative effect in E&W in the Police Crime Sentencing and Courts Bill.

12. Perhaps conservatively, I did not suggest that practitioners should have a statutory duty to make disclosures. There is after all evidence, as the Friel case shows, that when practitioners have an understanding of terrorist risk and have good relationships with other agencies, then information will be shared. I thought it heartening that, speaking from an English perspective, creative steps were being taken in this regard. For example, where the police employed medical practitioners in a consultancy role, to act as a bridge between policing and health so that health practitioners have greater understanding of why police seek certain information; and police have greater understanding of how to ask for it.

13. I'd like to build on the apparently obvious point that multi-agency working requires effective information sharing. There are more subtle points that the modalities and content of that sharing depend greatly upon questions of capabilities, trust and confidence, priorities, and views of relevance which differ between partner agencies.

13. First of all, information sensitivity creates obvious difficulties. I found that, at the time of my MAPPA report, there was no person in the Ministry of Justice dealing with restricted patients who had the highest security clearance. Computer systems may not allow storage of sensitive information above a certain classification. So, police and intelligence agencies need to become more agile at creating less sensitive gists or forms of words. In too many situations the extent of information sharing depends upon the strength of pre-existing relationships: but people move on and relationships have to be established.

14. Turning to subject matter, it is not just about the case information - it is about capabilities. In my MAPPA review I found that different agencies were often ill-informed about the powers available to partners. To give an example, police did not appreciate the recall powers of probation.

14. It is inevitable that priorities will differ, and indeed priorities ought to differ between mental health practitioners and CT practitioners. The issue of prioritisation arose in substance in the Fishmongers' Hall inquests - the jury found that the possibility of rehabilitating Usman Khan may have excluded a cool-headed consideration of his risk on the part of the organisers of the event where he carried out his attack. But what ought a mental health practitioner do about a patient who expresses florid support for terrorist groups or ideologies? Is that a terrorist risk? How does online ideation relate to actual terrorist risk in the real world?

15. The only point I can make with any real certainty, particularly about online ideation, is that these questions are constantly being asked by CT Police. Indeed, to some extent these are questions that touch on the nature of terrorism itself: at what point does a person who copies terrorist language when carrying out a serious assault, because he

has developed a rigid fixation with terrorist attacks reported in the news, become a terrorist? If you are interested in my views on when violence becomes terrorism, I discussed this in some depth in my latest annual report.

16. Having really talked about the benefits of joint working and the multi-agency approach, it's right that I talk about some of the potential downsides. I've been thinking a lot about these as I am currently writing a report on terrorism in prisons.

17. Firstly, where there is multi-agency working how do you ensure that an identifiable someone remains accountable for the risk?

18. Secondly, how do you avoid the rule of the highest bidder: is it always the case in a multi-agency situation that if one member of the group identifies a terrorist risk, then they are a terrorist risk? What if that one person is wrong – who will challenge that? We need to avoid a situation in which identification of terrorist risk is a one-way process.

19. Thirdly, how do you avoid terrorist concerns being leveraged to get access to pots of money which are available for terrorists with mental health difficulties but not available for non-terrorists with mental health difficulties? Terrorists are only responsible for a fraction of the violence in the UK.

20. Fourthly, how do you reach a secure understanding of terrorist risk where sensitive information exists that cannot be shared in a multi-agency setting, or only shared at national or regional multi-agency structure, but not locally where decisions are made by frontline practitioners?

21. I've now done enough radio interviews to know that there comes a point where the interviewer asks you, As an expert, so what do you do about it? The best answer I can give at the present moment, and this is where I'll conclude my talk, is that we have to keep learning from one another.