

INDEPENDENT REVIEWER OF TERRORISM LEGISLATION

RESPONSE TO INDEPENDENT SENTENCING REVIEW DATED 12.12.24

1. This is a short response on sentencing for terrorism and state threats offences.
2. Leaving aside punitive and deterrent aspects, the key point for dealing with convicted terrorists and state threat actors is long term offender management.
3. This comprises effective management within the prison estate (in particular preventing or disrupting radicalisation activities) and on release (for terrorists, this includes the regime of offender notification under Part 4 of the Counter Terrorism Act 2008; and for both, effective management on licence).
4. But alongside potentially and sometimes justifiably intrusive post-release measures, there must be the possibility of offenders reintegrating into normal life. I make the following observations on the need for restraint when new post-release obligations are imposed by statute:
 - Excess post-release measures requiring interaction with the authorities can inhibit reintegration and decrease self-reliance.
 - Punitive post-release measures (e.g. restrictions on access to legal aid or social housing) based on status as a convicted terrorist could be a source of grievance and put the public more at risk.
 - Effective post-release monitoring is resource-intensive, and the authorities are already stretched (see recent comments by DG MI5).

5. Care must also be taken about release provisions to avoid a cliff-edge, where a defendant is released not on licence but at the very end of his sentence. After Fishmongers' Hall, the Terrorist Offenders (Restriction of Early Release) Act 2020 increased the possibility of this cliff-edge.
6. Whilst detention in custody has a protective aspect (because the defendant is off the street), releasing an individual without any licence condition risks undermining public safety. It is true that the authorities have found some workarounds - TPIMs in a handful of cases, and Serious Crime Prevention Orders in others - meaning that there are some mechanisms for offender management after the expiry of the sentence.
7. However these present a risk of distorting the criminal justice process, by piling on additional obligations on the basis of an earlier conviction; particularly in notorious cases where the authorities may feel the need to impose obligations just in case.
8. I do not have any observations on sentence length. Terrorism and state threat cases are rare and are considered by specialist judges. Annual statistics show a significant incidence of non-custodial sentences for terrorism (no doubt driven by juvenile cases), demonstrating that terrorism sentencing is tailored to the facts of individual cases.
9. Because of the role of expert and specialist judges, I regret the creation of mandatory sentences under the Counter-Terrorism and Sentencing Act 2021, and the removal, in certain cases under that Act, of the role of the Parole Board to order release if justified. Offender management requires attention to individual cases.

JONATHAN HALL KC

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