Case No. UKSC 2026/0099

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL OF ENGLAND AND WALES
[2026] EWCA Civ 721

BETWEEN:

THE KING
(on the application of HUDA AMMORI)

Appellant/Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Defendant

WRITTEN CASE OF THE APPELLANT[1]

A INTRODUCTION[2]

1. This appeal concerns the decision of the Secretary of State for the Home Department ("**SSHD**"), communicated in Parliament on 23 June 2025, to proscribe the direct action protest group Palestine Action ("**PA**") pursuant to s.3 of the Terrorism Act 2000 ("**TA 2000**").

2. PA was a protest group, formed in 2020, that was engaged in direct action on conscientious grounds. Its objects included the disruption of the supply of weapons from the United Kingdom to Israel at a time when the International Court of Justice ("**ICJ**") had found "*a real and imminent risk [of] irreparable prejudice*" to the rights of Palestinians in Gaza not to be subjected to acts of genocide.[3] Only three of the 385 actions undertaken by PA over five years were assessed as meeting the definition of terrorism in s.1 TA 2000.[4] This was solely on the basis that they involved "*serious damage to property*" (per

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[1] This version differs from the version filed on 23/09/2026 through (**i**) correction of typographical errors; (**ii**) addition of cross-references to page numbers of the Hearing Bundle ("HB"); and (**iii**) corrections for accuracy made to text at paragraphs §§8, 23, 28, 55, 57, 93.2, and 100.

[2] References are to: the CA's judgment of 15 June 2026 ([2026] EWCA Civ 721) in the form **J/§xx**; the DC's judgment ([2026] HRLR 9) in the form **DCJ/§xx**; witness statements in the form **surname number**.

[3] Application *of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Order, 26 January 2024) §§54, 74 **[HB/4975, 4980]**.

[4] The Appellant did not accept that this assessment, or the assessment that PA is an organisation *"concerned in terrorism"* for the purposes of s.3 TA 2000, was lawful. She sought to challenge those assessments at first instance, but was refused permission to do so by the Administrative Court: see J/§55 **[HB/254]**.

s.1(2)(b)).[5] In other words, the SSHD's advisors assessed that less than 1% of PA's direct action protest activities over five years fell within a definition of terrorism, described by this Court as "*striking*" in its breadth.[6] PA's proscription was an "*unprecedented*" response to direct action involving criminal damage.[7] It has made the UK an outlier in the international community.[8] It has resulted in the arrests of over three thousand individuals engaged in peaceful acts of protest, and in the total destruction of a protest group which enjoyed widespread support from across civil society. It has made it a terrorism offence simply to express the opinion that, in the face of Israel's brutal assault on Gaza, PA's actions were justified.[9] The observation of Chamberlain J (as he then was) that, *"The exercise of the power in respect of a group such as PA may also have wider consequences … for public confidence in the regime of the [TA 2000]*"[10] has been proven correct. Even allowing appropriate deference to the SSHD's assessment of national security interests, the impact of proscription does not come close to being justified as a proportionate interference with fundamental freedoms of expression and association, long protected by the common law, and enshrined in Articles 10 and 11 European Convention on Human Rights ("**ECHR**").

3. Authoritative voices have expressed deep concerns about the proscription, amongst them leading civil liberties and human rights organisations, UN experts, the Independent Commission on UK Counter-Terrorism Law, Policy and Practice, chaired by Sir Declan Morgan (the "**Commission**"), and MI6's former Director of Global Counter-Terrorism Operations. In particular, the Commission considered that "[t]*he proscription of Palestine Action highlights* […] *concerns about the power to proscribe*" including concerns that "*counter-terrorism powers risk being applied too broadly – capturing behaviour that is harmful but not terrorist*" and about "*proportionality, oversight and the protection of legitimate political …activity*".[11]

4. It is the Appellant's submission that those concerns are justified, and that the Divisional Court (Sharp PKBD, Swift and Steyn JJ, "**DC**") rightly concluded that the proscription was unlawful because it was incompatible with Articles 10 and 11 ECHR (DCJ/§§97-

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5 JTAC Assessment 7 March 2025 at §§1, 8, 9, 20-25 **[HB/1909-1913]**.

6 See *R v Gul* [2014] AC 1260 at §26 **[HB/3628]** endorsing *R v F* [2007] QB 960 at §27.

7 26 March 2025 Min Sub §10 **[HB/1897]**.

8 FCDO 11 March 2025 submission **[HB/1933]**; now with the exception of President Trump (discussed further below).

9 The offence under s.12(1) TA 2000 of inviting support for a proscribed organisation encompasses "*intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported*": *R v Choudary* [2018] 1 WLR 695 §46 **[HB/3596]**.

10 Judgment on interim relief [2025] EWHC 1708 (Admin) at §53 **[HB/363]**.

11 Exhibit AO7/3 **[HB/1545, 1549, 1577]**.

145) **[HB/315-328]**. The Court of Appeal (Carr LCJ, Vos MR, Edis, Lewis and Whipple LJJ, "**CA**") disagreed. It was wrong to do so. The Appellant now appeals to this Court.

5. The Appellant submits, following *Shvidler v Foreign Secretary* [2026] AC 607 **[HB/3856]**, that this Court should conduct its own *de novo* assessment of the proportionality of the proscription of PA. The Appellant therefore sets out at **B1-D6** her positive case on proportionality. The errors made by the CA, both in its findings of fact as well as its conclusions on the law, are addressed throughout. Lest this Court declines to conduct its own proportionality assessment, they are referenced at **D7** below.

A. FACTUAL BACKGROUND

A1. Palestine Action as an organisation

6. PA was a direct-action protest group. Its website explained that it was *"a direct action movement committed to ending global participation in Israel's genocidal and apartheid regime.*"[12] The Appellant explained that *"The goal is simple: to put our bodies in the way of [the] military machine perpetrating genocide*".[13] The "*main target*" of PA's activities was Elbit Systems Limited ("**Elbit Systems**"), Israel's largest military manufacturer, together with arms companies Teledyne, Leonardo and Arconic, all of which have produced materials used in Israel's assault on Gaza.[14]

7. PA also targeted, to a more limited extent, corporate entities providing goods and services to Elbit Systems, and other bodies facilitating, promoting and profiting from Israel's violations of international law, including financial institutions with ties to Elbit Systems.

8. The Appellant describes that, in co-founding Palestine Action in July 2020, she *"was inspired by the long tradition of direct action in this country: from suffragettes to anti-apartheid activists to Iraq war activists: people… taking action to prevent harm before it happens…".*[15] Since its formation, those associated with PA have sought to achieve those ends through research and public education,[16] and, in the face of continuing inaction and perceived complicity by the UK Government, through direct action including by targeting relevant premises in order to disrupt the continuing supply of weaponry from the UK to Israel.[17] PA's direct

12 Ammori 2 §2 **[HB/680]**.
13 Ammori 1 §30 **[HB/675]**.
14 Alnaouq 1 §17 **[HB/1454-1455]**.
15 Ammori 1 §29 **[HB/675]**; *see also* Hallward 1 §27 **[HB/1385]**; Grant 2 §5 **[HB/5229]**; Rogers 1 §7 **[HB/1207]**; Mead 1 §8 **[HB/1198]**.
16 Ammori 2 §2 **[HB/680]**; Exhibit HA1 **[HB/691]**; Ammori 4 §§11-21 **[HB/746-748]**.
17 Ammori 1 §§25-30 **[HB/674-675]**; Ammori 2 §§2-6 **[HB/680-681]**; Ammori 3 §5 **[HB/730]**.

action included "*damage to property contributing to the arms industry*" (described by the Joint Terrorism Analysis Centre ("**JTAC**") as "*typically more minor*" involving "*graffiti, petty vandalism, occupation and lock-ons*"[18]) as well as "*demonstrations, talks, sit ins, posters/banners and sieges*".[19]

9. Prior to its proscription on 5 July 2025, PA enjoyed widespread and significant public support. It had a mailing list of approximately 20,000 people, more than 248,000 followers on X (formerly Twitter), 413,000 followers on Instagram, 28,000 followers on TikTok, and 2,000 subscribers on YouTube.[20] The proscription decision was met by an immediate and overwhelming response from civil society: within 2 days, a petition against the proscription had over 23,000 signatures.[21] In his judgment on interim relief, Chamberlain J observed that "*PA has widespread support among those supportive of Palestinian rights and claims and that the proposed [as it then was] proscription has given rise to serious concern on the part of some journalists, politicians and mainstream civil society groups and non-governmental organisations*".[22] Ms Ammori's challenge to the lawfulness of the proscription is supported by leading academics;[23] civil society organisations: see the witness statements from Sacha Deshmukh (Chief Executive Officer of Amnesty International UK, "**Amnesty**"), Sam Grant (Director of External Relations at the National Council for Civil Liberties, "**Liberty**") and Anna Ost (Senior Legal Officer at the European Legal Support Centre); leading local and international cultural figures (including Selma Dabbagh (a British-Palestinian solicitor and novelist), and Sally Rooney (a novelist)); journalists (such as Ahmed Alnaouq and Kevin John McEvoy); numerous members of Parliament (28 of whom signed a joint statement following proscription, on 16 July 2025, exhibited to John McDonnell MP's statement); leading members of the Palestinian community (including Aimee Shalan, Chair of the British Palestinian Committee), as well as diverse religious groups including Muslim, Jewish, Quaker and other Christian groups.[24]

A2. <u>Context of proscription</u>

10. PA was proscribed 21 months into Israel's latest large-scale military onslaught against Gaza. Between October 2023 and July 2025, according to official UN figures, Israel killed a documented 56,156 Palestinians in Gaza, including 17,121 children – approximately

[18] 7 March 2025 JTAC Assessment §7 **[HB/1910]**.
[19] Ammori 1 §31 **[HB/675-676]**.
[20] Ammori 2 §13 **[HB/682]**; Ost 1 §§7-14 **[HB/869-871]**; Ost 3 §§6-9 **[HB/1091-1092]**; Middleton 1 §11 **[HB/1038]**.
[21] Ost 1 §14 **[HB/871]**.
[22] [2025] EWHC 1708 (Admin) §13 **[HB/351]**.
[23] See open letter at Hallward Exh. PH/02 **[HB/1392]**.
[24] Ost 1 §18 **[HB/872]**; Woodhouse 1 **[HB/1367]**, Exh DW01; Manson 1 **[HB/1300]**.

one every hour – with experts estimating the true numbers to be in the hundreds of thousands.[25] Israel had also injured over 132,239 Palestinians in Gaza, displaced over 90% of Gaza's population (an estimated 2.1 million people), and destroyed or damaged an estimated 78% of Gaza's infrastructure, including most of its hospitals, and caused widespread famine.[26] As stated by the UN Secretary General, the situation "*challenges the global conscience*",[27] and demands urgent action.[28]

11. The proscription took place against a legal backdrop where the consensus across the international human rights and humanitarian community – and amongst genocide scholars in Israel and worldwide – was (and remains) that Israel is committing war crimes, crimes against humanity and genocide in Gaza. Of course, the genocide in Gaza sits in a context of many decades of illegal occupation, forced evictions and racial segregation and apartheid in both Gaza and the West Bank. By way of illustration:

11.1. On 26 January 2024, the ICJ held that there was "*a real and imminent risk that irreparable prejudice*" would be caused to the rights of the Palestinian people in Gaza not to be subjected to acts of genocide.[29] The ICJ granted further provisional orders on 28 March 2024 and 24 May 2024 which re-affirmed the first order and found further risk of irreparable damage to those rights.[30]

11.2. On 19 July 2024, the ICJ further held that Israel's continued presence in Palestine violates "*fundamental principles of international law*", constitutes a serious breach of the fundamental *jus cogens* right of the Palestinian people to self-determination and is unlawful.[31] Its findings also included that Israel's policies and practices in the West Bank and East Jerusalem amount to racial segregation or apartheid in breach of Article 3 of the Convention on the Elimination of Racial Discrimination;[32] and in violation of *jus cogens* norms.[33]

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25 Ost 6 §6 **[HB/1459]**; Shalan 1 §10 **[HB/1061]**.
26 Ost 6 §§7-8 **[HB/1459]**.
27 Ost 5 §12 **[HB/1178]**.
28 *Cf, e.g.* Shalan 1 §21 **[HB/1064]**.
29 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel)* (Provisional Order, 26 January 2024) §§54, 74 **[HB/4975, 4980]**.
30 See 28 March 2024 Order §25 **[HB/4996]** and 24 May 2024 Order §47 **[HB/5022]**.
31 *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem* (Advisory Opinion, 19 July 2024) §§261-264 **[HB/5123-5124]**.
32 *Ibid* §§224-229 **[HB/5113-5114]**.
33 *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries* (Yearbook of the ILC, 2022, vol. II, Pt 2).

11.3. In September 2024, the United Kingdom Government concluded that Israel was not committed to complying with international law in Gaza and that there was a "*clear risk*" that military equipment exported from the UK might be used to commit or facilitate serious violations of international humanitarian law.[34]

11.4. On 20 September 2024, the UN Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories (UN Doc A/79/363) found (at §69) that Israel's policies and practices since October 2023 "*were consistent with the characteristics of genocide*".

11.5. On 21 November 2024, the International Criminal Court issued arrest warrants for Israel's Prime Minister and former Minister of Defence for war crimes and crimes against humanity, including starvation and persecution.[35]

11.6. On 13 March 2025, the UN Human Rights Council's Report of the International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (UN Doc A/HRC/58/CRP.6) concluded that (at §178):

> "*the ISF caused serious bodily and mental harm to members of* [the Palestinian people in Gaza], *and deliberately inflicted conditions of life that were calculated to bring about the physical destruction of Palestinians in Gaza as a group, in whole or in part, which are categories of genocidal acts in the Rome Statute and the Genocide Convention*".

12. Although the CA characterised the targets of PA's campaigns as "*lawful businesses*" (J/§§13, 45, 165 **[HB/243, 249-250, 273]**), the lawfulness of the conduct of Elbit Systems and other "targets" of PA actions was never assessed by the SSHD, and was not the subject of evidence. Rather, the unchallenged evidence was that at the time of proscription, PA's advocacy and actions were directed at preventing the ongoing complicity of UK-based companies in atrocity crimes, and there was the clearest possible link between those aims and the UK-based arms companies they targeted:

12.1. As noted above, by September 2024, the UK Government had assessed there was a *"clear risk"* that weapons and components being exported from the UK could be used to commit or facilitate serious violations of international law in Gaza, and cancelled around 30 export licences: see R (Al-Haq) v SSBT [2025] EWHC 1615

[34] R (Al-Haq) v SSBT [2025] EWHC 1615 (Admin) at §§32-39, *esp.* §35 **[HB/3123-3125]**.

[35] ICC Arrest Warrants, 21 November 2024.

(Admin) at §§32-39 **[HB/3123-3125]**. Yet Israel's own official documentation demonstrated that the value of UK arms imported by Israel reached a record *high* in June 2025, nine months after the announced cancelling of certain licences and immediately before PA's proscription. The value of monthly imports of UK-produced munitions to Israel was the highest ever on record.[36]

12.2. Arms companies operating in the UK such as Elbit Systems, Teledyne, Rafael and Arconic have contributed to the assaults in Gaza since 2023. Elbit Systems specifically markets itself as the backbone of the Israeli army, on the basis "*there is hardly a place where there isn't some sign of Elbit […] from the systems in the air to the last soldier on the ground*".[37] Similarly, Rafael asserts that it makes "*a crucial contribution to the IDF and the entire* [Israeli] *security establishment*", and the company has used real footage of its weaponry being used to kill an unarmed, fleeing man in Gaza as marketing material.[38]

12.3. Elbit Systems also provides technological infrastructure that facilitates the illegal occupation, apartheid and ethnic cleansing in the West Bank, through its provision of drone operations and surveillance technology for the illegal checkpoints and 'separation wall'.[39]

12.4. Mr Alnaouq, a journalist from Gaza whose father, sisters, brother, 12 nephews and nieces, were killed in an Israeli strike that levelled their apartment building, explains in evidence before this Court that, "*I did not come across the Israeli arms trade as a subject of research or an intellectual interest. I was born under its boot… The trademark logos of Elbit systems, Teledyne, Rafael, Arconic are not simply symbols of an industry with which I disagree. They are emblems of our subjugation. They are the polished, corporate face of our people's annihilation…*".[40]

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36 Ost 6 §11 **[HB/1460]**.

37 Ammori 3 §5(i) **[HB/730-731]**.

38 Ammori 3 §5(ii) **[HB/731-732]**.

39 7 March 2025 JTAC Assessment §7 fn6 **[HB/1910]** (Palestineaction.org/elbit, "Elbit Systems: genocide factories" p.2); *ICJ Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (9 July 2004) §§142, 149-154, 163 **[HB/5198, 5200-5202, 5204]**; *ICJ Advisory Opinion on Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (19 July 2024) §§229, 261-264 **[HB/5114, 5123-5124]**. The ongoing ethnic cleansing and "*settler terrorism*" in the West Bank is acknowledged by the UK government; Foreign Secretary Oral Statement on Israel-Palestine, 8 September 2026 https://www.gov.uk/government/speeches/foreign-secretary-oral-statement-on-israel-palestine.

40 Alnaouq 1 §10 **[HB/1453]**.

A3. Decision-making process

13. As far as the Appellant is aware, the proscription of PA was first discussed in a meeting on 19 April 2023 between the Policing Minister, the Chief Constable of Staffordshire Police, and representatives of the National Police Coordination Centre, the Home Office, Thales and Elbit. A briefing document for that meeting notes: "*Palestine Action does not meet the threshold for proscription as they do not commit, participate in, prepare for, promote, encourage, or otherwise be concerned with acts of terrorism*".[41] The Government's Independent Adviser on Political Violence and Disruption expressed the same conclusion in a May 2024 report, which concluded that "[t]*he bar for proscription* […] *is rightly very high and I do not believe that the activities of Palestine Action currently meet it*".[42]

14. Thereafter, a report dated 27 June 2024 by Counter Terrorism Policing ("**CTP**") entitled "*Palestine Action and CPS meeting*" assessed "*resource implications for CTP if the group is subsequently declared a terrorist group*".[43] It is unclear from the OPEN disclosure what prompted this meeting or assessment. The report identified PA's primary objective as being to "*critically disrupt the business operation of Elbit Systems UK*", whilst also noting the targeting of financial institutions since late 2023, citing 27 actions taken against Barclays Bank in particular. Whilst the summary of PA's actions stated that it had used "*both violent and non-violent direct action*", the only action said to involve violence was the action at Instro-Precision in Kent on 17 June 2024, where security guards were alleged to have been assaulted. The report noted that "[t]*his is a step up from PA's previous activities which very rarely involve offences against the person and are mostly confined to Criminal Damage* [sic] *investigations*".

15. Next, in a briefing dated September 2024, the National Police Co-ordination Centre ("**NPoCC**") assessed that PA was "*one of a small number of groups in the UK who, as a whole, utilise non-violent direct action*" and that violence was "*not the norm for PA action, and any harm or injuries historically are assessed to be the result of unintentional or misjudged action through trying to evade capture*".[44] It also assessed that, "*Since the action on 5th August 2024* [Elbit Systems] *in Bristol, there has been a reduction in direct action, with a focus on solidarity for those arrested*".[45] In December 2024, NPoCC repeated its foregoing assessment about violence, and noted again that "*the number of actions has reduced in December*".[46]

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41 Ammori 2 §36 **[HB/688]**; Exhibit HA3 **[HB/714].**

42 ASFG §20(ii) [**HB/554**].

43 27 June 2024 CTP General Report **[HB/1980-1981]**.

44 Sept 2024 NPoCC briefing, pp. 4, 9 **[HB/1989-1994]**.

45 Sept 2024 NPoCC briefing p.4 [**HB/1989**].

46 Dec 2024 NPoCC Assessment [**HB/2016**].

16. On 10 February 2025 the SSHD tasked the Proscription Review Group ("**the PRG**") – a cross-departmental group, which included the CTP – with considering whether to proscribe PA.

17. To that end, JTAC produced a report on 7 March 2025. JTAC: (**i**) assessed that PA "*commits or participates in acts of terrorism*" on the basis (only) of serious property damage;[47] (**ii**) noted that the majority of PA's actions would not constitute acts of terrorism, given typically minor criminal damage, involving petty vandalism, graffiti, occupations and lock-ons;[48] (**iii**) assessed that PA was involved in preparing for terrorism due to the publication of the "*Underground Manual*";[49] and (**iv**) promoted or encouraged terrorism on the basis that it had publicised the Filton action and had "*celebrated*" its "*perpetrators*", "*present*[ing] *them as 'political prisoners*"', and "*shar*[ing] *statements from Amnesty International and the United Nations which express concern regarding the use of TACT legislation to detain*" suspects.[50] It noted that PA was *"highly unlikely [to] explicitly advocate for violence against persons."*[51]

18. JTAC's assessment was subsequently adopted by the PRG,[52] which concluded that PA was "*concerned in terrorism*" and (on 13 March 2025) recommended that the SSHD exercise her discretion in favour of proscription, despite recognising that the proscription would be "*relatively novel and unprecedented*".[53]

19. The PRG's recommendation was then summarised in a Ministerial Submission dated 26 March 2025.[54] That submission considered that the discretionary considerations weighed in favour of proscription, on the basis that PA was "*responsible for an escalatory campaign of direct action*" and that proscription would provide law enforcement with "*additional levers to disrupt PAG's operations and critical infrastructure*".[55] It appears from context that the PRG's description of an "*escalatory campaign*" is a reference to JTAC's assessment that "*the volume and seriousness of PAG's activity increased in 2024*"; an assessment based on the "*two significant incidents: at Instro Precision in Kent (17 June [2024]) and Elbit Systems UK in Bristol (06 August [2024])*",[56] and notwithstanding the NPoCC's repeated conclusion to the contrary in

47 7 March 2025 JTAC Assessment §20 **[HB/1912]**.
48 7 March 2025 JTAC Assessment §7 **[HB/1910]**.
49 7 March 2025 JTAC Assessment §26 **[HB/1913]**.
50 7 March 2025 JTAC Assessment §§33-35 **[HB/1914]**.
51 7 March 2025 JTAC Assessment §36 **[HB/1914]**.
52 26 March 2025 Min Sub §§12-17 **[HB/1897-1898]**.
53 26 March 2025 Min Sub §10 **[HB/1897]**.
54 26 March 2025 Min Sub §§2, 12-17 **[HB/1895, 1897-1898]**.
55 26 March 2025 Min Sub §§18, 30 **[HB/1898-1899]**.
56 26 March 2025 Min Sub §7 **[HB/1896]**.

September and December 2024 (which repeated conclusions appear not to have been considered).

20. On 2 April 2025, a further Ministerial Submission was produced by CTP in relation to the operational response to PA and the consequences of proscription for law enforcement (including the risk of prejudice to ongoing criminal trials).[57] It referred to the Ministerial Submission of 26 March and noted the CTP's agreement with "*the assessment*" that PA's activity "*has escalated in seriousness over the past c. 18 months*". The CTP's submission did not elaborate upon this observation. Given that the PRG's reference to escalation was based on two incidents in June and August 2024, the CTP's extension of that assessment to approximately an 18-month period (c. October 2023 to April 2025), again runs contrary to the NPoCC's repeated conclusions in September and December 2024.

21. On 14 May 2025, the SSHD agreed to proscribe PA.[58] The proscription order was due to be laid before Parliament on 19 May 2025. However, the SSHD decided instead to seek further information "*concerning PAG's activity since August 2024*" and JTAC's view of the current threat.[59]

22. On 4 June 2025, a further Ministerial Submission provided that information. It noted that, of the 158 direct actions PA was assessed to have undertaken since August 2024, none were alleged (**a**) to involve violence against persons, or (**b**) "*serious damage"* to property, within the meaning of s.1(2)(a) and (b) TA 2000 **[HB/2237]**. It also assessed that *"[s]ince the attack on 6 August 2024 in Bristol, activity claimed by PAG has not met the statutory tests for "terrorism" under TACT*".[60] Perhaps understandably, the Ministerial Submission did not assert that PA's activity had *"escalated in seriousness over the past c.18 months"* or at all, but it nevertheless recommended that the SSHD retake her decision and proscribe PA "*at pace*". This urgency was based in large part on the risk of prejudice to upcoming criminal trials were proscription to be delayed.[61]

23. In the early morning of 20 June 2025, three PA activists broke into RAF Brize Norton and sprayed paint on two RAF Voyager aircrafts. The decision to proscribe Palestine Action was communicated by the SSHD's private secretary that afternoon.[62]

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57 2 April 2025 Min Sub **[HB/1965]**.
58 14 May 2025 HO email **[HB/1970]**.
59 Sinclair 1 §14 **[HB/1626]**; 4 June Min Sub §4 **[HB/1972]**.
60 This last assessment was only disclosed by the SSHD on 21 May 2026, after the CA hearing.
61 4 June 2025 Min Sub §§2-3 **[HB/1971]**.
62 20 June 2025 HO email **[HB/1978]**.

24. Three days later, on 23 June 2025, the Home Secretary made a formal written statement to the House of Commons announcing her decision to proscribe PA ("**Written Statement**"). It included the following:

> *… The disgraceful attack on Brize Norton in the early hours of the morning on Friday 20 June is the latest in a long history of unacceptable criminal damage committed by Palestine Action. The UK's defence enterprise is vital to the nation's national security and this Government will not tolerate those that put that security at risk….*
>
> *Since its inception in 2020, Palestine Action has orchestrated a nationwide campaign of direct criminal action against businesses and institutions, including key national infrastructure and defence firms that provide services and supplies to support Ukraine, the North Atlantic Treaty Organisation (NATO), "Five Eyes" allies and the UK defence enterprise. Its activity has increased in frequency and severity since the start of 2024 and its methods have become more aggressive, with its members demonstrating a willingness to use violence…*
>
> *In several attacks, Palestine Action has committed acts of serious damage to property with the aim of progressing its political cause and influencing the Government. These include attacks at Thales in Glasgow in 2022; and last year at Instro Precision in Kent and Elbit Systems UK in Bristol.* … **[HB/526]**

25. The Written Statement also made reference to the "*practical advice*" provided by PA to assist its members with conducting attacks, through its release of "*The Underground Manual*".

26. On 30 June 2025, a draft of the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025 (the "**Proscription Order**") **[HB/2254]**, accompanied by an Explanatory Memorandum,[63] was laid before Parliament for the proscription of PA alongside two other groups: the Maniacs Murder Cult and the Russian Imperial Movement.

27. The draft Proscription Order was debated and approved in the House of Commons and House of Lords on 2 July and 3 July 2025 respectively. The Proscription Order came into force on 5 July 2025.

A3.1. Basis of the decision

28. Notwithstanding that the Brize Norton incident "*clearly played a material part in triggering the Home Secretary's ultimate decision to proceed with proscription at the time when she did, and in the terms that she did*",[64] it has (quite properly) never been any part of the SSHD's case that the action of spraying paint on two RAF Voyager aircraft (both of which returned to service

[63] OPEN ADoR §§3 and 36 **[HB/633, 642]**.

[64] J/§54 **[HB/254]**.

within days[65]) is conduct which meets the definition of terrorism. As former Justice Minister Lord Falconer stated, on the basis of the public information available to him, the action at RAF Brize Norton on 20 June 2025 would not justify the proscription of PA.[66] This reflects the long-standing approach taken in the UK that direct action protest involving this kind of criminal damage at military bases is not regarded as terrorist.[67]

29. Rather, only three actions – out of the 385 direct actions undertaken by PA over five years – are relied upon as the basis for the Secretary of State's proscription decision. As set out in the Home Secretary's Written Statement,[68] those are the incidents at: (**i**) Thales in Glasgow on 1 June 2022; (**ii**) Instro-Precision (a subsidiary of Elbit) in Kent on 17 June 2024;[69] and (**iii**) Elbit Systems in Filton (Bristol) on 6 August 2024. Each is said to meet the threshold for the definition of terrorism under s.1(2)(b) by amounting to "*serious damage to property with the aim of progressing [PA's] political cause and influencing the Government*".

30. As acknowledged by PRG, proscription in these circumstances is "*unprecedented*".[70] Indeed, JTAC's March 2025 assessment of PA as a terrorist organisation, subsequently adopted by the PRG and then the Home Secretary, is an outlier in the context of (**i**) the UK's historic approach to direct action protest groups who commit (and advocate for) property damage; (**ii**) the approach taken by the international community to PA; and (**iii**) (strikingly) previous governmental assessments of PA's actions, including those informed by the incidents said to justify the Home Secretary's decision.

31. As to the UK's historic approach, in the 33 Orders laid under s.3 TA 2000, and out of the 98 organisations proscribed,[71] PA is the first to be proscribed exclusively on the basis that it was assessed to have caused "*serious damage to property"* within the meaning of s.1(2)(b), with no suggestion that it advocated serious violence against the person or any of the other forms of terrorist action identified in s.1(2). As noted above, the SSHD's advisors repeatedly recognised that any incidents involving violence were "*not the norm for PA action, and any harm or injuries historically are assessed to be the result of unintentional or misjudged*

65 McEvoy 3 §7 **[HB/1375]**.
66 ASFG §20 **[HB/554]**.
67 See e.g., the facts of the seminal case of *R v Jones (Margaret)* [2006] UKHL 16; [2007] 1 AC 136 **[HB/3669]**, where the criminal damage was far worse: see para 33 of the main text.
68 **[HB/526].**
69 The Appellant's précis, filed with the Supreme Court, incorrectly dated this incident as 17 June 2025. The correct date is 17 June 2024.
70 26 March 2025 Min Sub §10 **[HB/1897]**.
71 30 June 2025 Explanatory Memorandum §6.2; 11 November 2025, final report of the Independent Commission on Counter-Terrorism Law, Policy and Practice: Exhibit AO7/3 **[HB/1549]**.

action through trying to evade capture"[72] and that it was *"highly unlikely [to] explicitly advocate violence against persons"*.[73]

32. To be clear, the unprecedented nature of the decision to proscribe is not because PA's tactics were themselves novel and unprecedented. Nor, as the CA erroneously concluded, that they fell outside the well-established traditions of civil disobedience protest groups who Lord Hoffmann famously described as enjoying a *"long and honourable history in this country"* **[HB/3710/§89]** (*cf* J/§150 **[HB/270]**, see also J/§§160-163, 168 **[HB/272-274]**). To the contrary, the evidence before the DC was that many groups active both before and since 2000 have employed tactics wholly consistent with those employed by PA. Professor Rogers lists, by way of example, the Greenham Common women's peace camp,[74] the Trident Ploughshares movement,[75] and the Fairford Five[76] as direct action protest groups unified by "*an expressed motivation to bring specific types of military actions to an end which could be shown to endanger civilian populations*", including by means of "*causing damage connected to the production of weapons and/or weapons-linked physical property… but not to harm*" against the person.[77] Further examples can readily be found outside the anti-militarism movement, including environmental groups, animal rights groups and groups campaigning against genetically modified crops.[78] These direct action protest groups included serious property damage amongst their methods, preparation and training, including by way of published handbooks, as well as the use of incendiary devices and letter bombs.[79]

33. The CA's error in casting PA as outwith this tradition is neatly exemplified by the repeated suggestion (at J/§§149-150, 160-161 **[HB/270, 272-273]**) that PA had "*little or nothing in common with the suffragettes… or Iraq War protest groups*" by virtue of the tactics it employed. But if anything, PA's activities were of a substantially lesser degree of severity and reflected significantly more "*restraint*" than the suffragettes: the suffragettes conducted a concerted campaign, including the smashing of windows; arson and bombing attacks, including at Westminster Abbey and then Chancellor of the Exchequer, David Lloyd George's uncompleted house.[80] Similarly, as Amnesty pointed out in its

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72 September 2024 NPoCC briefing **[HB/1989, 1994]**; December 2024 NPoCC briefing (Annex C to CTP Report) **[HB/2013]**; December 2024 NPoCC PAG Assessment (Annex D to the CTP Report) **[HB/2016]**. *See also* 7 March 2025 JTAC Assessment at §36 **[HB/1914]**.

73 7 March 2025 JTAC Assessment §36 **[HB/1914]**.

74 Rogers §§10-11 **[HB/1208-1209]**.

75 Rogers §16 **[HB/1210].**

76 Rogers §17 **[HB/1215-1217].**

77 Rogers §18(3) **[HB/1219]**.

78 Mead §§4-7; 9-19; 20-27 **[HB/1196-1203]**.

79 Rogers §18 **[HB/1218-1219]**; Deshmukh 2 §§12-17 **[HB/5221-5224]**; Hallward §27 **[HB/1385].**

80 Hallward 1 §§27 **[HB/1385]**; Grant 2 §5 **[HB/5229]**; Rogers 1 §7 **[HB/1207]**.

evidence[81] and submissions below, it is the proscription of PA (and not PA's conduct) which marks the fundamental departure from the traditional criminal justice response to direct action protest on conscientious grounds: in *R v Jones (Margaret)* [2007] 1 AC 136, Lord Hoffmann famously recognised the "*restraint*" with which police and magistrates respond, by way of punishment, to the conduct of the conscientious objections of protestors (§89 **[HB/3710]**). That case concerned *inter alia* organised protestors who broke into a US airbase, with the intention of destroying or damaging a runway, setting fire to aircraft and obstructing and disrupting the maintenance of security, and who contested their guilt at trial: §§3, 7 **[HB/3685, 3687]**. As Mr Deshmukh says:

> "*It has … been the consistent policy of the British state to respond to civil disobedience and direct action protest movements through a combination of policing tactics and developments of the criminal law. The forms of activism that PA have engaged in are not new and are equivalent to and in some respects lesser in terms of severity [than] forms of activism that have not been treated as terrorism in the past.*"[82]

34. Thus until PA, no Secretary of State has ever considered it necessary to proscribe and prosecute direct action protestors as terrorists.

35. The FCDO also assessed in its written submission of 11 March 2025 that the decision is likely to make the UK an international outlier: it was "*highly unlikely*" that other countries (where PA is active) "*would take similar action*", including because PA is "*primarily seen by many countries as an activist group rather than an extremist one*".[83] The FCDO conceded that the assessment "*has raised reasonable questions as to the threshold of determining whether an organisation is concerned in terrorism or not*", and cautioned that "*acting in this way may be interpreted as an overreaction by the UK*".[84] Since PA's proscription by the Home Secretary, only President Trump has issued sanctions against PA, in August 2026.[85]

36. Even measured against domestic, contemporaneous assessments of PA's activity, JTAC's assessment was anomalous. For example, in relation to the Thales action which took place in Glasgow in June 2022:

    36.1. Nine months after the Thales action, the advice to the Home Secretary was (as noted above) that "*Palestine Action does not meet the threshold for proscription as they do not commit, participate in, prepare for, promote, encourage, or otherwise be concerned with acts of*

[81] Deshmukh 2 §§12-17 **[HB/5221-5224]**.
[82] Deshmukh 2 §17 **[HB/5224]**.
[83] FCDO 11 March 2025 submission **[HB/1934]**.
[84] FCDO 11 March 2025 submission **[HB/1933-4]**.
[85] https://www.theguardian.com/uk-news/2026/aug/26/us-issues-sanctions-uk-based-palestine-action.

terrorism".[86] This advice was reflected in a briefing note prepared for a meeting on 19 April 2023 between the Home Secretary, Policing Minister, the Chief Constable of Staffordshire Police, representatives of the National Police Coordination Centre, and Thales.

36.2. In May 2024**,** again as noted above, the Government's Independent Advisor on Political Violence and Disruption, Lord Walney, opined that *"[t]he bar for proscription […] is rightly very high and I do not believe that the activities of Palestine Action currently meet it*".[87]

36.3. In May 2025 (two months after JTAC assessed the Thales action as amounting to terrorism), the Scottish authorities (Police Scotland and the Scottish CONTEST Review Board) determined that PA's actions in Scotland (including the Thales action, which had taken place in Glasgow) had "*not been close to meeting the statutory definition of terrorism*"[88] (emphasis added).

36.4. Moreover, the JTAC assessment that the Thales action amounted to terrorism had inaccurately stated that PA had caused damage in excess of £1 million, but that included over £900 000 of lost revenue.[89]

37. Three other planks of the Home Secretary's decision to proscribe PA and upon which the CA placed considerable reliance – (**i**) the Underground Manual; (**ii**) PA's "*escalating*" campaign; and (**iii**) PA's actions' apparent risks to national security – are at odds with previous evaluations made by the SSHD's advisors:

38. Underground Manual: The "*Underground Manual*" (freely available online) – relied upon by JTAC as showing that PA was involved in preparing for terrorism[90] – was assessed by CTP in its report "*Palestine Action and CPS meeting*", published on 27 June 2024, to contain little more than *"basic ideas around operational security*".[91] Similarly, in a report dated 19 December 2024, the CTP assessed that possession of the 'Underground Manual'[92] was "*unlikely to warrant prosecution*" under s.58 TA 2000 (possession of information likely to be

[86] Ammori 2 §36 **[HB/688]**; Exhibit HA3 **[HB/714].**
[87] ASFG §20(ii) **[HB/554]**.
[88] Exhibit CL/01 **[HB/1277]**.
[89] 7 March 2025 JTAC Assessment §25 **[HB/1913]**; Dewar 1 §§4-6 **[HB/1237]**.
[90] 7 March 2025 JTAC Assessment §26 **[HB/1913]**.
[91] 27 June 2024 CTP General Report **[HB/1980]**.
[92] CTP 'General Report – Palestine Action Group (PAG): Underground Manual CT Assessment' **[HB/2010]**.

useful to a person committing or preparing an act of terrorism).[93] That assessment was correct, and the CA identified no basis for going behind it.

38.1. The CA selectively referred to elements of the document which contained advice on "*smashing stuff … with an efficient sledgehammer in your hand*" as something that was "*very quick*" and could cause "*quite a bit of damage*" (J/§42 **[HB/249]**), and referred to a section titled "*Extinguish your target*" without including the text which follows: This title in fact referred to the use of fire extinguishers filled with paint to spray buildings with water soluble paint.

38.2. The CA stated that the document, "*advocates the disruption and destruction of and damage to its targets, and avoiding detection*" (J/§13 **[HB/243]**) and that it "*encouraged readers*" to "*be creative*" and to "*disrupt damage or destroy*" targets "*without restraint*" (J/§43 **[HB/249]**). In fact, the Underground Manual is simply a document with relatively basic advice on how to conduct standard forms of direct action. This is how the CTP saw it. References to the use of a sledgehammer are to the breaking of windows and exterior equipment - a tactic that has been used by many direct-action groups including the Suffragettes. Basic advice on how to avoid detection by not taking mobile phones is not sinister. The Manual does not advocate the use of violence, much less does it (as the CA erroneously suggested) involve an encouragement "to carry and <u>use</u> lethal weapons" (J/§168 **[HB/273-274]**).

39. <u>Escalation</u>: Contrary to the SSHD's characterisation of PA's activity as showing an "*increase in frequency and severity*",[94] by the time of the proscription decision, there had been an observed decrease in PA's direct action. As noted, in a briefing dated September 2024, the NPoCC assessed that "*Since the action on 5th August 2024* [Elbit Systems] *in Bristol, there has been a <u>reduction</u> in direct action, with a focus on solidarity for those arrested*" (emphasis added). In December 2024, NPoCC repeated its foregoing assessments, noting further that "*the number of actions has reduced in December*". Similarly, the advice given to the Home Secretary in the Ministerial Submission of 4 June 2025 was that *"[s]ince the attack on 6 August 2024 in Bristol, activity claimed by PAG has not met the statutory tests for "terrorism" under TACT*".

40. <u>National security</u>: Finally, notwithstanding that PA's risk to "*the UK's defence enterprise*" was writ large in the Written Statement to Parliament (and followed advice given to the SSHD

[93] 19 December 2024 CTP General Report **[HB/2011-2012]**.

[94] Written Statement, 23 June 2025 **[HB/526]**.

in communicating her decision that she should articulate "*the knock-on impact on the UK's defence industry and strategic goals*")[95] insofar as any national security rationale for proscription has been advanced, it has been essentially linked to the vindication of the property rights of the arms companies involved. On 11 March 2025, the FCDO assessed that there were no "*significant foreign policy factors in favour of proscription*" **[HB/1933]**, despite the SSHD's (elliptical) reference in her Written Statement of 23 June 2025 to Ukraine, NATO, and "Five Eyes" allies. On 18 March 2025, in a discussion between the Ministry of Defence ("**MoD**"), the Home Office and the police, "*key points discussed*" included that while the impact on individual companies "*has been large*" (and included the cost of damage, additional security measures, and impact on staff), PA's overall impact on the UK defence industry was "*low by proportion*".[96] Notwithstanding that an "*action*" point following that meeting was for MoD to share "*anything that establishes the detrimental impact and the evidence for it*", even in the form of "*a strategic narrative with anecdotal examples*",[97] there is no indication in OPEN of any evidence-based assessment of the impact of PA's actions on the wider UK defence industry and/or UK defence capabilities.

A4. Impact of proscription

41. The impact of proscription is deliberately draconian and stark. As the DC correctly noted: "*the very purpose of proscription is to put measures in place that are designed to ensure that an organisation ceases to exist*" (DCJ/§135 **[HB/327]**).

A4.1. Terrorism offences arising out of proscription

42. As Lord Reed observed in *R v ABJ* [2026] 2 WLR 542 (SC) (at §29 **[HB/3557]**), *"Proscription is not an end in itself, but is the basis on which a number of other provisions apply… In particular, the Act creates a number of offences which are designed to inhibit activities associated with proscribed organisations, including the offences created by sections 11 to 13"*. It is those criminal offences which are the starting point for the far-reaching interference with Convention rights.

43. Those terrorism offences which are expressly contingent on proscription include **[HB/2242-2249]**:

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[95] 26 March 2025 Min Sub **[HB/1901/§42(b)]**.
[96] 18 March 2025 MOD/HO/Police Minute **[HB/2052-2053]**.
[97] 18 March 2025 MOD/HO/Police Minute **[HB/2052-2053]**.

43.1. "*belong*[ing] *to*" that organisation, punishable by up to 14 years' imprisonment: s.11 TA 2000;

43.2. inviting support for the organisation: s.12(1) TA 2000; punishable by up to 14 years' imprisonment: s.12(6) TA 2000;

43.3. recklessly expressing support for the organisation, punishable by up to 14 years' imprisonment: s.12(1A) TA 2000;

43.4. arranging or addressing a meeting to support or further the activities of the organisation, punishable by up to 14 years' imprisonment: s.12(2), (3) TA 2000;

43.5. displaying or publishing an image or article if it could arouse reasonable suspicion that the individual supports the organisation (even if that is not the individual's intention), punishable by up to 6 months' imprisonment: s.13 TA 2000.

44. These are very broad offences. The offence under s.12(1) of inviting support for a proscribed organisation encompasses not only practical or tangible support, but also "*intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported*": *R v Choudary* [2018] 1 WLR 695, §46 **[HB/3596]**. The offences do not require proof that at the time the defendant expressed the opinion or belief he knew that the organisation in question was proscribed (see CA judgment in *R v ABJ* [2025] 1 WLR 1909 at §37; and the Supreme Court in *R v ABJ* at §§71-74 **[HB/3568-3569]** in relation to s.12(1A), and *Pwr v DPP* [2022] 1 WLR 789 at §39 **[HB/3018]** in relation to s.13). Moreover, the Supreme Court in *R v ABJ* at §§134-136 **[HB/3583]** held that the ingredients of the s.12(1A) offence satisfy the proportionality requirement, so that if they are made out, conviction would not breach the defendant's rights under Article 10.

45. In addition, the fact of proscription extends the property and funding of terrorism offences, such as those under ss.15-17 TA 2000 **[HB/2250-2252]**, and the "money laundering" offence at s.18 TA 2000 **[HB/2253]**: DCJ/§103 **[HB/318]**. By s.1(5) **[HB/2238]**, the requirement that the offence is done "*for the purposes of terrorism*" is deemed to be met if the act was done "*for the benefit of a proscribed organisation*". Therefore inviting a person to provide money or other property, receiving such money or providing such money with reasonable cause to suspect that it may be used for the benefit of a proscribed organisation constitutes terrorist fundraising (s.15(1)-(3) TA 2000 **[HB/2250]**).

46. By virtue of s.20(2) Terrorism Act 2006 ("**TA 2006**") **[HB/2276]**, any action taken for the benefit of a proscribed organisation is also an "*act of terrorism*" for the purposes of Part 1 of that Act. Proscription therefore creates the following offences all as a result of actions taken "*for the benefit of a proscribed organisation*" **[HB/2260-2270]**:

46.1. **Encouragement of Terrorism (s.1):** This makes it an offence to publish statements that are likely to be understood as a direct or indirect encouragement to the commission of acts for the benefit of a proscribed organisation (s.1(1)-(2) TA 2006), including by glorifying acts done for the benefit of a proscribed organisation (s.1(3) TA 2006).

46.2. **Dissemination of Terrorist Publications (s.2):** This makes it an offence to publish or distribute any publication which contains material that is likely to be understood as encouragement to the commission of action for the benefit of a proscribed organisation, intending or being reckless as to whether it does so.

46.3. **Preparation for Terrorist Acts (s.5):** Section 5 makes it an offence for a person to intend to commit acts of terrorism, or assist another to commit such acts, and engage in any conduct preparatory to giving effect to his intention.

47. Proscription exposes those who are deemed to belong to an organisation or to support it to the full range of terrorism offences and counterterrorism powers (including searches, arrest without warrant, and terrorism prevention and investigation measures, as well as notification requirements under Counter-Terrorism Act 2008 Part 4).

48. The impact for some vulnerable communities is particularly severe: for example, as this Court has previously noted, conviction for a s.11 or s.12 offence gives rise to a presumption that a refugee "*constitutes a danger to the community of the United Kingdom, justifying expulsion from the United Kingdom*".[98] The stigma of a terrorism conviction is self-evident, and is likely to have life-long consequences.[99] The potential loss of employment creates particular vulnerabilities for young persons or those with less established careers.[100]

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[98] *Pwr v DPP* [2022] 1 WLR 789 (SC) at §65 **[HB/3025]**; *see also* Peirce 2 §1(iv) **[HB/1171]**.

[99] Saul 1 §39 **[HB/2070]**; Dagostino 1 §§11-12; Peirce 1 §22 **[HB/1084]**.

[100] Dagostino 1 §§11-12.

A4.2. Aftermath of the proscription of PA

49. The decision to proscribe PA has given rise to sweeping and severe restrictions on the rights of freedom of expression and assembly for large swathes of the general public in relation to a matter of profound political importance. It has resulted in the total destruction of the direct-action protest organisation itself, one that had considerable popular support from mainstream and civil society groups across the UK, and whose activities sought to prevent atrocity crimes and other serious violations of international law.

50. In the courts below, the Appellant relied on detailed (and uncontested) evidence as to the impact of proscription on a broad range of stakeholders, including: (**i**) PA itself; (**ii**) individuals involved with PA; (**iii**) individuals who supported PA; (**iv**) individuals opposing proscription; (**v**) campaigning organisations; (**vi**) individuals seeking to protest Israel's violations of international law and treatment of the Palestinian people; (**vii**) Palestinians in Britain; (**viii**) journalists; (**ix**) culture, the arts and academia; and (**x**) the Appellant herself. By way of illustration only:

51. **PA itself**. The DC was right to say that the extent to which proscription interferes with Article 11 rights is "*stark*", because "*the very purpose of proscription is to … ensure that an organisation ceases to exist*" (DCJ/§135 **[HB/327]**).

52. **Persons involved or associated with PA (pre-proscription)**. Prior to proscription, there were many hundreds of thousands of people who engaged with or participated in PA in a variety of ways, for whom PA was a vehicle for their rights of expression and association. The rights of those people have been dramatically impacted. They include people who: (**i**) consumed and engaged with educational content which PA distributed, chiefly about the role of United Kingdom-based arms companies in atrocity crimes committed in Israel; (**ii**) joined with PA in conventional expressive protest activity (via demonstrations and holding placards etc.); (**iii**) engaged in conventional, disruptive direct action protests (which, although they may have involved breaches of the criminal law, were on no view terroristic): lock-ons, sit ins, blockades, minor damage to property[101] and (**iv**) the much smaller proportion of those involved with PA who engaged in more significant damage to property. However, notwithstanding that only a small number of individuals have been charged or prosecuted for involvement in the three actions said to

[101] Ammori 1 §29 **[HB/675]**.

justify proscription,[102] the effect of proscription is the same for all. Their expressive conduct and association becomes not just criminal, but terrorist.

53. **PA's supporters**. As well as those who engaged with or participated in PA's activities pre-proscription, there was a wider class of persons who supported some or all of PA's actions without themselves participating in any action. Prior to proscription, such persons were free to express their support for PA, whether this included some or all of its activity. PA was therefore also a vehicle for their rights of expression and association. The rights of such persons to express such support have been dramatically curtailed. The very expression of support for PA has been criminalised. Since the proscription of PA, there have been mass protests at a scale entirely unforeseen by the SSHD.[103] Over 3,300 people have been arrested, and over 1,200 people charged,[104] for holding signs reading "*I oppose genocide, I support Palestine Action"*, most on the basis of s.13 TA 2000[105] which recognises no distinction between support for the low-level civil disobedience which was the vast majority of PA actions, and support for the (c.1% of) PA's activity which was assessed as falling foul of s.1 TA 2000. People have also been arrested for actions including: being in the vicinity of others holding such signs;[106] holding placards with slogans such as: "*Palestine needs action not fine words, stop the genocide*";[107] holding a sign saying "*WE ARE ALL PALESTINE ACTUALLY*" while wearing a red boiler suit;[108] wearing a t-shirt saying "*Genocide in PALESTINE – Time to take ACTION*";[109] holding up a cover of a magazine with a photograph of a placard on it;[110] and displaying a sign in the window of a private home which said "*Support Palestine Action, Free Palestine*".[111]

54. **Individuals opposing proscription**. In addition to PA's pre-proscription supporters, there are many persons who oppose the proscription of PA on the basis that it constitutes a gross interference with civil liberties more generally. There have been arrests for the

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102 7 March 2025 JTAC assessment §22 **[HB/1912]** (notes that to date, 18 individuals have been charged in relation to the Filton incident) and §25 **[HB/1913]** (the Thales action involved "*five PAG aligned individuals*"). Open source reporting indicates that 9 defendants have been charged in relation to Instro-Precision, and there are 25 defendants in the Filton trial.

103 26 March 2025 Min Sub Annex F (Community Impact Assessment), pp. 3-5 **[HB/1942-1944]**; April 2025 CTP Briefing p. 1 **[HB/1967]**.

104 These cases are currently before the courts and no comment is made on any specific defences that may be raised.

105 Ost 6 §14 **[HB/1461]**; White 1 §3 **[HB/1251]**; Hinton 1 §§2-10 **[HB/1338]**; Evans 1 §20 **[HB/1522]**; Godlee 1 §§9-12 **[HB/1516]**; Manson 1 §§26-27 **[HB/1304]**. See recently Amnesty International UK, 'Over 500 further arrests at peaceful protest' (26 May 2026) https://www.amnesty.org/en/documents/eur45/1035/2026/en/.

106 Evans 1 §§16-17 **[HB/1522]**.

107 Campbell 1 §§2-19 **[HB/1361-1363]**.

108 Ost 5 §9 **[HB/1177]**; Exhibit AO5/4 **[HB/1190]**.

109 Ost 5 §7 **[HB/1177]**; Exhibit AO5/2 **[HB/1186]**.

110 Jacobs 1 §§2-8 **[HB/1239]**.

111 Morton 1 §§7-9 **[HB/1424/§1]**.

display of statements which do not explicitly express support for PA but may be interpreted as either expressing indirect support for PA or expressing opposition to proscription. These include arrests for holding signs with slogans such as "*I do not support the proscription of Palestine Action*",[112] "~~Palestine Action~~ [Censored] are not the terrorists",[113] *"those who take ACTION against genocide in PALESTINE are NOT the terrorists*".[114]

55. Further, as Chamberlain J recognised in the permission judgment: "*there are numerous examples of speech which have attracted police attention where the line between legitimate and proscribed speech is more difficult to draw. ...the existence of a large category of cases that are close to the line demonstrates that the proscription order is likely to have a significant deterrent effect on legitimate speech.*"[115] Ms Sue Beardon, a 78-year-old Jewish member of 'Jews for Justice for Palestinians', has given evidence that following an email she sent to the Lancaster Palestine Solidarity Campaign private email group expressing her "*outrage*" at the decision to proscribe PA and "*hoping to spark a general discussion",* she was visited at her home by two counter-terrorism officers who enquired whether she was a supporter or member of PA. Never having held up a placard indicating support for PA; never having attended a PA demonstration, and never having donated, her experience has left her feeling "*cautious about what I say and do*", with others feeling the mailing list is no longer safe for discussion.[116] It is intrinsic to many of the speech offences which arise from proscription that liability may turn on very fine-grained distinctions which are very difficult, even for lawyers (let alone lay persons), reliably to ascertain. Gareth Peirce's evidence is that over her many decades of giving advice concerning terrorism legislation, she has "*never previously observed the level of anxiety of enquiry and of concern and uncertainty manifested by the providers and the recipients of advice*".[117]

56. **Campaigning civil society organisations**. In the courts below, there was extensive evidence from civil society organisations including from Amnesty International UK[118] and Liberty,[119] of the chilling effect of the proscription decision which has inhibited their members "*from campaigning against the fact of proscription*", and has exposed them to "*risks* […] *if they were to campaign, generally, against the use of the power to proscribe*" (DCJ/§123 **[HB/324]**). Amnesty's evidence is that proscription has fundamentally changed the

[112] Ost 6 §55 **[HB/1468]**.
[113] Ost 4 Exhibit AO4/1 **[HB/1154]**.
[114] Ost 5 §8 **[HB/1177]**; Exhibit AO5/3 **[HB/1188]**.
[115] *R (Ammori) v SSHD* [2025] EWHC 2013 (Admin) at §42 **[HB/337-338]**.
[116] Beardon 1 §§13 and 15 **[HB/1355]**.
[117] Peirce 1 §§29, 30 **[HB/1086]**.
[118] Deshmukh 2 **[HB/5218-5227]**.
[119] Grant 2 **[HB/5228-5237]**.

campaigning and advocacy methods which they have used and can use to oppose proscription, which they consider likely to violate the UK's international human rights obligations. They can no longer address requests directly to the authorities through meetings, emails or letters making calls to take specific steps and why they believe those steps should be taken;[120] the ill-defined line between condemnation of proscription and support for PA means they are constrained in what their spokespeople can say in interviews, press releases and op-eds. As concrete examples of this, Deshmukh points to the arrests of two former members of staff for carrying signs stating, "*UK Govt: Stop supporting state terror*" and "*Palestine Action (largely covered by a CENSORED stamp) are not the terrorists*";[121] proscription has caused Amnesty to cease encouraging their members to campaign (even to engage with their MPs) out of fear of the criminal liability this could incur for their staff and members. Liberty's evidence is to similar effect. They have ceased public-facing work on proscription; ceased engagement with Parliamentarians on the issue, including deciding not to provide information or recommendations to scrutiny and review bodies such as Parliamentary select committees; declined numerous media requests; ceased all public fundraising appeals for ongoing work that could be linked to the proscription decision; have been precluded from speaking to civil society organisations about the relationship between PA's proscription and trends in Prevent referrals or the basis used for Prevent referrals; and have taken steps to limit the information which volunteers provide to concerned members of the public. The internal communications infrastructure that Liberty had created to facilitate its response to the proscription announcement was closed down.[122] The DC accepted, quite properly on the basis of those concerns, that the breadth of the s.12 TA 2000 offence, in particular, is capable of causing "*genuine problems*" (DCJ/§123 **[HB/324]**).

57. **Impact on those campaigning against Israel's violations of international law**. The proscription of PA has also impacted the ability of other organisations to advocate against the ongoing complicity of UK-based companies in atrocity crimes (whether or not by direct action). Dr Aimee Shalan, the Chair of the British Palestinian Committee, described how the proscription of PA would create a "*culture of fear*" among those campaigning for Palestinian rights,[123] resulting in self-censorship amidst fears of serious, terrorism-related criminalisation. Netpol, the Network for Police Monitoring – an organisation which seeks to monitor public order, protest, and street policing – was overwhelmed by queries from

[120] Deshmukh 2 §24 **[HB/5226]**.
[121] Deshmukh 2 §25 **[HB/5226]**.
[122] Grant 2 §§18-29 **[HB/5233-5236]**.
[123] Shalan 1 §26 **[HB/1065]**.

members of the public concerned that their attendance at public demonstrations in support of the cause of Palestinian rights would fall foul of the proscription of PA.[124] The Campaign Against Arms Trade reported contact from concerned members of the public, who were concerned that they could no longer say "*Free Palestine*" or display a Palestinian flag, for fear of being labelled terrorists.[125]

58. To be clear, the concern is not (or, not only) that those members of the public are in fact at risk of prosecution, but rather that the climate created by proscription means that a great many people, concerned to avoid trouble, will self-censor to a greater degree than may actually be required. As noted above, this problem is exacerbated by the overbroad and uncertain exercise of police powers, in the context of offences which – focused on expressive conduct – are particularly susceptible to misinterpretation.

59. Adverse action has also been taken against pro-Palestinian organisations unaffiliated with PA (for example, the freezing of bank accounts or public accusations of being terrorists).[126] Further, those associated with PA prior to proscription have experienced adverse treatment within the criminal justice system following proscription, including harsher bail conditions (with proscription expressly cited as the reason),[127] and a marked deterioration in their treatment in prison on remand.[128]

60. It is also not the case that the impact of proscription has been (or will be) restricted to expressions of support for PA, as opposed to for the Palestinian cause. The broad ambit of offences such as s.12 TA 2000 mean that whether or not an individual supports PA, it is a terrorism offence for those who recognise Israel as committing genocide and atrocity crimes, to express the opinion that PA's actions (whether in general or particular incidents) were justified – given the circumstances – in trying to prevent greater harm; or to say that *"I may not agree with all of [PA's] statements or actions"* but *"sometimes think that [PA] are the only people of true courage and morality in this country*."[129] The chilling effect of proscription is felt by grassroots groups engaging in activities that are similar to the (lawful) activities undertaken by PA. Anna Ost of the European Legal Support Centre evidences the concern of Parents for Palestine, for example, who have noted that the

[124] Ost 3 §31 **[HB/1098]**.
[125] Ost 3 §35 **[HB/1099]**.
[126] Ost 6 §§48, 80 **[HB/1466, 1474]**; Exhibits AO3/14, AO6/1 p. 3 (Tadhamon singers) **[HB/1480]**; Ost 3 §30 **[HB/1097]**; Ost 4 §14 **[HB/1150]**; Middleton 1 §21 **[HB/1042]**.
[127] Southwell 1 §§7-11 **[HB/1231-1232]**.
[128] Potter 1 §§12-15 **[HB/1440-1441]**; Exhibits RP/01, RP/04 **[HB/1443, 1447]**.
[129] Alnaouq 1 §21 **[HB/1456]**; Dabbagh 1 §14 **[HB/1030]**.

similarity of their own activities "*to how Palestine Action targets various suppliers and other companies doing business with Elbit Systems*", have caused them to fear that "*those similarities will be used to justify repression of our actions*".[130] Ms Basma Ghalayini, a Palestinian from Gaza living in England, explained in her evidence that many of the protests she attended with her children were "*organised, attended or supported by Palestine Action. These protests created a space for us to express our identities as well as our condemnation of the UK's involvement in the murder of my children's relatives and friends - people they had met and played with in 2022.*"[131] Ms Ghalayini asks, "*If anyone uses paint in their protest or uses a lock on to blockade an Elbit factory, or engages in other direct action protest typically adopted by Palestine Action, will the police arrest them under terrorism charges? Will we even be allowed to chant 'Shut Down Elbit', a well known Palestine Action slogan? If we continue protests against Elbit Systems which have previously been organised by Palestine Action, will we be accused of showing support for them? Everyone in our community is worried and afraid about what the proscription will actually mean. Many will stop protesting all together out of fear that it might result in arrest for terrorism".*[132] Mr Morton, a care worker who was arrested and charged under s.13(1A) TA 2000 for supporting PA by "*display[ing] a small handwritten sign*" in his window "in *a quiet, residential neighbourhood*" explains that he no longer feels safe displaying signs in support of Palestine, and has "*actively avoided attending any protests or engaging with members of the Palestinian solidarity movement"* out of fear that it will be perceived as showing support for PA.[133]

61. It is not an answer to say, as Mr Farrant does, that "55" protests against UK-based companies with alleged links to the Israeli arms trade have taken place post proscription.[134] The picture presented is materially incomplete. Ms Ost's statement captures the point of significance: It "*does not include any metrics such as comparisons of the size of protests before and after the proscription, the frequency… the chants and methods of protest that people feel able to engage in, self reported fear on the part of those protesting, or members of the public who have stated they do not feel able to attend these protests".*[135] As to this, the evidence before the courts below was that where protests have gone ahead since proscription, those in attendance have reported that "*the numbers of people attending have dramatically reduced and … there has been an increase in police presence*".[136] In some cases attendance has "*more than halved*".[137] Moreover, as Amnesty and Liberty pointed out below, s.12(2)(b) **[HB/2244]** makes it an offence

130 Ost 1 §32 **[HB/876]**.
131 Ghalayini 1 §3 **[HB/995]**.
132 Ghalayini 1 §6 **[HB/996]**.
133 Morton 1 §§1, 7 **[HB/1424-1425]**.
134 Farrant 2 §4 **[HB/1617-1618]**.
135 Ost 7 §5 **[HB/1526]**.
136 Ammori 5 §12 **[HB/769-770]**; *see also* Ost 7 §5 **[HB/1526]**.
137 Ost 7 §10 **[HB/1528]**.

for a person to arrange a meeting to *"further the activities of a proscribed organisation"* which potentially criminalises any attempt to coordinate in continuing direct action protest under an alternative banner to PA (see also s.12(3) **[HB/2245]** for those addressing such a meeting).

62. **Palestinians in Britain.** Evidence before the courts below spoke powerfully to the impact on Palestinians in Britain, whose conduct and expression have been chilled and criminalised at precisely the moment when their communities in Palestine are being annihilated.[138] Members of the Palestinian community in Britain involved in campaigning and advocacy work routinely face legal threats, including allegations of being "*terrorists*" and "*terrorist sympathisers*", which they fear will be fuelled by proscription.[139] Following the proscription of PA, Palestinian campaigners have been exposed to police surveillance, stopping, questioning, and arrest regardless of whether they have any association with PA.[140] Ms Ghalayini's evidence is that "*the decision to single out Palestine Action*" in circumstances where other groups who have caused damage and disruption have not been labelled as terrorists "*sends a clear message to the Palestinian community in Britain – and worldwide: our people, our views, our campaigns are not welcome here. Our lives are worth less than others*".[141]

63. **Impact on academic and journalistic publications.** The evidence before the courts below established that journalists and publishers were likely to, and had in fact, self-censored and modified their reporting – on a matter of real and immediate public interest – to avoid the appearance of support of PA.[142] Peter Hallward, Professor of Philosophy at Kingston University, and a main author of an open letter condemning Israel's assault on Gaza and criticising the decision to proscribe PA, explains that the publishers he engaged with were "*all initially reluctant"* to publish anything that *"might be seen as … potentially violating"* s.12 TA 2000, with the *Guardian* delaying its publication for almost a full week.[143] Charlotte England, a Director of Novara Media, observed that the chilling effect of the proscription of PA has flowed not just from journalists' fear of "*a potential prosecution",* but also from the risks of a *"mere investigation. As the Terrorism Act contains no*

[138] Dabbagh 1 §14 **[HB/1030]**; Alnaouq 1 §14 **[HB/1454]**; Shalan 1 §§24-28 **[HB/1065-1066]**; Shalan 2 §§3-18 **[HB/1068-1071]**; Ghalayini 1 §§5-7 **[HB/995-996]**; Ost 6 §§63-64, 70-71 **[HB/1469-1471]**.

[139] Shalan 1 §27 **[HB/1065]**; Shalan 2 §7 **[HB/1069]**.

[140] Ost 3 §§11-13 **[HB/1093]**; Ost 6 §§41-42, 78, 80 **[HB/1465, 1473-1474]**; Exhibit AO6/01 **[HB/1478]**; Graham 1 §12 **[HB/1347]**; Nedelec 1 §§4, 13 **[HB/1296, 1298]**.

[141] Ghalayini 1 §4 **[HB/995]**.

[142] McEvoy 1 §§5-6 **[HB/1003-1004]**; Landin 1 §§8-10 **[HB/1256]**; England 2 §§3-6 **[HB/1342-1343]**; Hallward 1 §§21-22 **[HB/1384]**; Alnaouq 1 §20 **[HB/1456]**.

[143] Hallward 1 §21 **[HB/1384]**.

exemption for journalism, an investigation by counter-terror police could involve the seizure of devices containing privileged journalistic material".[144] In this context, it is clear that whatever the position may ultimately be on prosecution, it is with reference to enforcement agencies' interpretation of the offences that many journalists' conduct will be guided.

64. **The Appellant.** The impact of proscription on the Appellant herself has been severe. It has resulted in the destruction of much of her life's work, and has severely restricted her exercise of her Article 10 and 11 rights. She has been 'deplatformed' from a number of events, due to organisers' fears of committing offences under ss.11 or 12 TA 2000.[145] She has been compelled to self-censor, with her every word now being monitored closely, such that she is concerned about the risk of inadvertently committing offences under s.12 TA 2000.[146] She has been forced to stop participating in protest activity – a core part of her identity and self-expression – for fear of exposing herself and others to a risk of prosecution for terrorist offences.[147]

B. LEGAL FRAMEWORK

B1. TA 2000

65. The statutory definition of "*terrorism*" is contained in s.1 TA 2000 **[HB/2237]**. It defines terrorism by reference to action, design and purpose:[148]

> *(1) In this Act, "terrorism" means the use or threat of action where -*
>
> *(a) the action falls within subsection (2),*
>
> *(b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and*
>
> *(c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.*
>
> *(2) Action falls within this subsection if it –*
>
> *(a) involves serious violence against a person,*
>
> *(b) involves serious damage to property,*
>
> *(c) endangers a person's life, other than that of the person committing the action,*

144 England 2 §7 **[HB/1343]**.
145 Ammori 5 §9 **[HB/769]**; DCJ §121 **[HB/323]**.
146 Ammori 1 §40 **[HB/677]**.
147 Ammori 5 §13 **[HB/770]**.
148 While it is not relevant to the appeal before this Court, by s.1(3) TA 2000, where firearms or explosives are used, the design limb is not necessary.

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

66. Section 1(4) TA 2000 **[HB/2237]** gives the definition extra-territorial reach. It states:

(4) In this section –

(a) "action" includes action outside the United Kingdom,

(b) a reference to any person or to property is a reference to any person, or to property, wherever situated,

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and

(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

67. As is clear from its face, the definition is extremely wide. It has been described by this Court in R *v Gul* [2014] AC 1260 at §26 **[HB/3628]** as "*striking*" in its breadth.[149] In *Al-Sirri v SSHD* [2013] 1 AC 745 **[HB/2430/§39]**, this Court held at §39 that "*The essence of terrorism is the commission, organisation, incitement or threat of serious acts of violence against persons or property for the purpose of intimidating a population or compelling a government or international organisation to act … in a particular way … the use for political ends of fear induced by violence.*"

68. The statutory definition is capable of capturing conduct which is not designed to intimidate, which does not involve violence against the person, and "*which might command a measure of public understanding, and even support*".[150]

69. Proscription is addressed in s.3 TA 2000 **[HB/2239]**. Section 3(3) empowers the Secretary of State to proscribe an organisation by adding it to Schedule 2 to the Act. By s.3(4), the Secretary of State *"may exercise his power under subsection (3)(a) in respect of an organisation only if he believes that it is concerned in terrorism*" within the meaning of s.3(5). That is to say, *"if it (a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism, or (d) is otherwise concerned in terrorism".*

70. This is a broad, discretionary power – one which has been described by the Independent Reviewer for Terrorism Legislation as "*a measure with a tempting degree of executive fiat*".[151]

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[149] Endorsing *R v F* [2007] QB 960 at §27.

[150] *R v Gul* at §29 **[HB/3629]**.

[151] 11 November 2025, final report of the Independent Commission on Counter-Terrorism

71. The Home Secretary's discretion is guided by its published Proscription Policy, set out in a policy paper updated on 27 February 2025 **[HB/2110-2111]**. Under a section headed "*Proscription criteria",* it includes the following:

> ***What determines whether proscription is proportionate?***
>
> *If the statutory test is met, the Home Secretary will consider whether to exercise their discretion to proscribe the organisation.*
>
> *In considering whether to exercise this discretion, the Home Secretary will take into account other factors, including:*
>
> - *the nature and scale of an organisation's activities;*
> - *the specific threat that it poses to the UK;*
> - *the specific threat that it poses to British nationals overseas;*
> - *the extent of the organisation's presence in the UK; and*
> - *the need to support other members of the international community in the global fight against terrorism.*

72. Any decision to proscribe must be made by statutory instrument (s.123(1) following the procedure specified in s.123(4) TA 2000). Other than in circumstances of urgency (s.123(5)), a proscription order under s.3(3) shall not be made unless a draft of the order is laid before and approved by affirmative resolution of each House of Parliament.

B2. Articles 10 and 11 ECHR

B2.1. Article 10: principles

73. **First,** freedom of expression "*constitutes one of the essential foundations of a democratic society"*: *Lingens v Austria* (App. No. 9815/82, 8 July 1986) at §41. Any restrictions on an individual's Article 10 and 11 rights must be "*narrowly interpreted"* and *"convincingly established"*: *Sunday Times v United Kingdom* (No 2) (1992) 14 EHRR 229 at §50 **[HB/4909]**. What is "*necessary in a democratic society"* means more than *"admissible*", "*useful*", or *"reasonable or desirable"*: *Handyside v United Kingdom* (1979-80) 1 EHRR 737 at §48. Political speech is *"particularly worthy of protection*": *DPP v Ziegler* [2022] AC 408 (SC) at §86 **[HB/2807]**.

Law, Policy and Practice: Exhibit AO7/3 p.240 **[HB/1563]**.

74. Therefore, restrictions on the freedom of expression in political debate on matters of general interest should be interpreted narrowly: *Lopes Gomes da Silva v Portugal* (App. No. 37698/97, 28 September 2000) at §33. The court requires very strong reasons for justifying restrictions on political speech, since broad restrictions imposed in individual cases will affect respect for freedom of expression in general in the State: *Bumbes v Romania* (App. No. 18079/15, 3 May 2022) at §92. In a democratic society, even small and informal campaign groups must be able to carry on their activities effectively, as there is a strong public interest in enabling such groups to contribute to public debate: *Steel and Morris v United Kingdom* [2005] EMLR 15 at §89 **[HB/4840]**.

75. The right to freedom of expression has of course long been recognised as fundamental by the common law*:* e.g. *Derbyshire CC v Times Newspapers* Ltd [1993] AC 534, 550E-551G*; R v Shayler* [2003] AC 247 at §21; *R v ABJ* at §105 **[HB/3576]**. Lord Sumption considers it *"truly fundamental"* and one of the rights *"without which a community cannot function as a democracy"*.[152] Lord Steyn has said that *"In a democracy it is the primary right: without it an effective rule of law is not possible*": *R v SSHD ex p Simms* [2000] 2 AC 115, 125G **[HB/3724]**. The Courts have recognised that it is of both intrinsic and instrumental importance, and serves a broad set of objectives: it promotes the self-fulfilment of individuals; it provides in the market-place of ideas the "*best test of truth*"; it informs political debate; it acts as both a safety valve and a brake on the abuse of power: *see* e.g. *Simms* (above) at 126F-G.

76. **Secondly,** the scope of Article 10 is determined by the act's expressive character. Expressive acts are protected by Article 10 even if they constitute criminal or unlawful conduct under domestic law: *see* e.g. *Murat Vural v Turkey* (App. No 9540/07, 21 October 2014) at §54 **[HB/4456]**. Article 10 covers actions that cause damage during protests, including significant damage: see *R v Hallam & Others* [2025] EWCA Crim 199 at §§38-42 **[HB/3648-3649]** where the CA emphasised that it would be wrong to read into *Attorney General's Reference (No 1 of 2022)* [2022] EWCA Crim 1259 **[HB/2484]** the conclusion that significant damage was removed from the scope of Convention protection as it was a form of "violence". The European Court of Human Rights ("**ECtHR**") has frequently held that protest actions involving damage fall within the scope of Article 10, such that any interference by e.g. conviction or sentence must be proportionate:

[152] Reith Lectures 2019: *Law and the Decline of Politics,* 4 June 2019.

76.1. Pouring paint over statues: *Maria Alekhina v Russia* (App. No 38004/12, 17 July 2018) at §204 **[HB/4414]**; *Murat Vural* at §56 **[HB/4456]**.

76.2. Spray painting a public monument: *Genov v Bulgaria* (App. No. 52358/15, 30 November 2021) at §§57-60.

76.3. Using signal flares and firecrackers in a hotel during a protest causing damage: *Olga Kudrina v Russia* (App. No. 34313/06, 6 April 2021) at §§46-47 **[HB/4599-4600]**.

76.4. Protestors chaining themselves to a gate refusing to move, requiring the gate to be cut: *Bumbes* at §§11, 48-49.

77. **Thirdly,** even in the context of asserted national security and counter terrorism, there is no difference in the approach that should be taken to freedom of expression. The same general principles concerning the proportionality of restrictions on free speech "*also apply to measures taken by national authorities to maintain national security and public safety as part of the fight against terrorism*": *Zana v Turkey* (1999) 27 EHRR 667 at §§51, 55 **[HB/4938-4939]** (see also *Doner v Turkey* (App. No. 29994/02, 7 March 2017) at §102 **[HB/4195]**). In this assessment, whether a group "*encourag[es] the use of violence or inciting others to armed resistance or rebellion"* is a key consideration: *Gül v Turkey* (App. No. 4870/02, 8 June 2010) at §44 **[HB/4217]**; *Yefimov v Russia* (App. Nos. 12385/15 and 51619/15, 7 December 2021) at §43*; Perinçek v Switzerland* (2016) 63 EHRR 6 [GC] at §§204-208 [**HB/4691-4692**]. By way of illustration:

77.1. In *Kilic and Eren v Turkey* (App no. 43807/07, 29 February 2012), a breach of Article 10 was found where the applicant had attended a rally and shouted slogans in support of the imprisoned leader of a banned/proscribed organisation (the PKK). The slogans had violent undertones, but did not advocate violence or harm to any person (§29 **[HB/4269]**). Further, the conduct did not have an impact on public order or national security by "*encouraging violence or inciting others to armed resistance or rebellion, which are factors to be taken into account*" (§30 **[HB/4269]**).

77.2. In *Gül v Turkey* (App. No. 4870/02, 8 June 2010) **[HB/4207]**, a breach of Article 10 was found where the defendants had been prosecuted for shouting slogans in support of an armed, illegal organisation (again, the PKK).

77.3. In *Stomakhin v Russia* (App. No. 52273/07, 8 October 2018), the ECtHR considered disproportionate (§132 **[HB/4883]**) measures (a sentence of five years' imprisonment and a 3 year ban on practising journalism) taken against a journalist for publishing abusive statements which purportedly incited hatred against Russian servicemen, describing them e.g. as "*maniacs, bloodthirsty sadists, murderers"*. Whilst these statements were "*a clear attempt to justify and advocate violent actions*" (§107 **[HB/4877]**), the ECtHR considered it "*important to note that […] those accusations may not have been without foundation*" (§106 **[HB/4876]**). Moreover, while some statements may have "*glorified terrorism and advocated and promoted violence and hatred and that, thus, there was a need for a restriction of the applicant's right of freedom of expression to protect the interests secured by Article 10 §2*" (§127 **[HB/4882]**), this did not apply to all of the statements (§124 **[HB/4881]**).

78. **Fourthly,** restricting peaceful, non-violent expression, particularly through the threat of and/or the imposition of criminal sanctions "*inevitably exerts a chilling effect on freedom of expression, intimidating civil society and silencing dissenting voices*": *Novaya Gazeta v Russia* (App. No. 11884/22, 11 February 2025) at §118 **[HB/4504]**. For example, requiring persons to "*monitor continually their accounts and remove online content*" that might become unlawful after initially posted "*constitutes an unreasonable and disproportionate burden resulting in a "chilling effect" on freedom of expression*": *Novaya Gazeta* at §122 **[HB/4506]**. A chilling effect arises simply from the "*risk of prosecution*" or "*fear of sanction*" even if charges are not brought: see *Altug Taner Akcam v Turkey* (2016) 62 EHRR 12 at §68 and §§75-77 **[HB/4011-4012]**.

79. **Fifthly,** any restrictions on freedom of expression must be clear, foreseeable as to their effects, and formulated with sufficient precision to enable persons concerned to foresee the legal consequences of their actions: *Karastelev v Russia* (App. No. 16435/10, 6 October 2020) at §78. Where there is *"considerable uncertainty about the potential effects of the impugned legal provisions applied by the domestic authorities",* the measure may exceed what is acceptable under Article 10(2): *Magyar Ketfarku Kutya Part v Hungary* (App. No. 201/17, 20 January 2020 [GC]) at §116. While issues of foreseeability and clarity are primarily relevant to whether a measure is "*prescribed by law*", they are also relevant to the "*fair balance*" test, because the chilling effect of a measure's imprecision is an aggravating factor in the proportionality assessment: *see* e.g. *Novaya Gazeta* at §122 **[HB/4505-4506]**.

80. Thus, in *Anti-Corruption Foundation (FBK) and Others v. Russia* (App. No. 13505/20 and 138 others, 16 December 2025), the ECtHR held that measures taken to designate three

organisations related to the opposition leader, Aleksey Navalnyy, as "*extremist*" (on the basis of *inter alia* generalised allegations of inciting violence, mass disorder and disseminating extremist material) violated Article 11(2) read with Article 10. Concluding that the designation was not prescribed by law, the Court decried the "*excessively broad interpretation of the concept of 'extremism'*" (§128 **[HB/4052]**) and the wide-reaching "*chilling effects*" of the designation which "*extended far beyond*" the dissolution of the groups themselves (§129 **[HB/4052-4053]**). The mere fact of having been involved in, donating to or displaying the symbols of those organisations could give rise to – and had indeed given rise to – criminal charges (§§39, 129 **[HB/4027, 4052-4053]**): *"[t]hese developments demonstrate the expansive and punitive operation of the "extremism" framework and the chilling effect it produced on political expression and association. Such consequences reveal a system in which peaceful and legitimate conduct is stigmatised and criminalised, a situation fundamentally incompatible with the principles of pluralism and tolerance that form the hallmark of a "democratic society" and bearing no resemblance to the standards of a State governed by the rule of law*": §129 **[HB/4052-4053]**.

B2.2. Article 11: principles

81. The guarantees of Article 11 apply to all gatherings except those where the organisers and participants have violent intentions, incite violence or otherwise reject the foundations of a democratic society: *Kudrevičius v Lithuania* (App. No. 37553/05, 15 October 2015 [GC]) at §92 **[HB/4293]**, cited by the Supreme Court in *Ziegler* at §69 **[HB/2801]**.

82. However, as under Article 10, an individual will not automatically fall outside the scope of Article 11 even if they commit acts of violence against persons: see e.g. *Makarashvili v Georgia* (App. Nos. 23158/20, 31365/20, 32525/20, 1 September 2022) at §§81-82 **[HB/4346]**; *Barabanov v Russia* (Apps. No. 4966/13 and 5550/15, 30 January 2018) at §§74-78.

83. Likewise, an individual does not lose the Article 11 protection simply because of violent actions of others in their organisation. See *Primov v Russia* (App. No. 17391/06, 12 June 2014) at §155 **[HB/4756]** (approved domestically in *Ziegler* at §69 **[HB/2801]**): "*The Court recalls that Article 11 does not cover demonstrations where the organisers and participants have violent intentions […]. However, an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration if the individual in question remains peaceful in his or her own intentions or behaviour*."

84. The ECtHR has accepted that associations other than political parties are essential to the proper functioning of democracy as "*the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively*": Ecodefence v Russia (App. No. 9988/13, 14 June 2022) at §88.

85. Particular considerations apply to the dissolution of associations: Where a measure will cause the outright dissolution of an association, it may only be taken "*in the most serious cases*", and the Court must assess whether it is "*exceptionally justified*" by "*relevant and sufficient reasons*": Association Rhino v Switzerland (App. No. 48848/07, 11 October 2011) at §62 **[HB/4163]**. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasised that "[*t*]*he suspension and the involuntary dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient*".[153]

C. GROUND 1: ECHR COMPATIBILITY

86. This Court granted the Appellant permission to appeal limited to a single issue:

> **Is the proscription of Palestine Action pursuant to s.3 TA 2000 compatible with Articles 10 and 11 ECHR?**

87. For the reasons set out below, the answer to that question is "No".

C1. The role of this Court: *Shvidler*

88. This Court should undertake its own *de novo* assessment of the proportionality of the proscription of PA.

88.1. This approach is appropriate where "*it is important that the appellate court should give its own opinion*", including because "*the decision will provide guidance for other cases or … the subject matter has major social or political significance so that the public will rightly expect the senior judges in the appellate court to exercise their own judgment*": Shvidler at §144 **[HB/3908]**.

[153] A/HRC/20/27 §75.

88.2. This test is plainly satisfied in this case. (**i**) Both the DC (in granting permission to appeal) and the CA (at J/§6 **[HB/242]**) recognised that this matter raises points "*of general public importance concerning the use of the power to proscribe under* [s.3 TA 2000]". (**ii**) The appeal is of substantial importance to other criminal cases (including many thousands of individuals awaiting trial for offences related to expressing support for PA). (**iii**) There has been a stark divergence in views between a unanimous three-judge DC (including the President of the KBD) and a unanimous five-judge CA (including the Lady Chief Justice and the Master of the Rolls). (**iv**) The CA itself adopted the fresh determination approach, on the basis that the appeal "*has both major social and political significance and public importance*" (J/§102 **[HB/262]**). As this Court observed in *Shvidler* (at §149 **[HB/3910]**), "*the approach adopted ought to be the same at each appellate stage*".

88.3. It follows that this Court should form its own view as to the proportionality of the measure, "*without deferring to the assessment made by the lower court, even if that court has directed itself correctly and its decision cannot be said to be unreasonable*": *Shvidler* at §147 **[HB/3909]**.

89. As to the proper role of the Court (generally) in determining questions of proportionality:

89.1. Whether a measure is incompatible with a Convention right is "*a question of substance for the court itself to decide*", by assessing whether "*there has actually been a violation of Convention rights*", and not merely "*whether the decision-maker properly considered the question of whether* [the applicant's] *rights would be violated or not*": *Shvidler* at §120 **[HB/3900]**, quoting *Belfast City Council v Miss Behavin' Ltd* [2007] 1 WLR 1420 (HL) at §15 **[HB/2718]**.

89.2. This question is one of law, albeit to be assessed in light of the facts of the case. A proportionality assessment "*involves the application, in a factual context* […] *of the series of legal tests* […] *together with a sophisticated body of case law*": *Shvidler* at §145 **[HB/3909]**, quoting *Re Abortion Services (Safe Access Zones)* [2023] AC 505 at §30.

89.3. The Court's constitutional responsibility is to police the free-standing rights provided under the Convention as enacted by Parliament, which are "*enforced by the European Court of Human Rights on a substantive basis*"; it is always open to the Court to find that a particular measure, which is otherwise free from public law error,

nonetheless fails to strike a fair balance, and so is unlawful under HRA 1998 s.6 **[HB/2175]**: *Shvidler* at §122 **[HB/3901]**.

90. This approach does not render the Court the primary decision-maker. Where appropriate, the Court may "*afford a measure of respect to the balance of rights and interests struck by the public authority*": *Shvidler* at §122 **[HB/3901]**.

91. In this case, the degree of deference to which the SSHD would in principle otherwise be entitled is significantly attenuated:

91.1. The extent to which the Court will respect "*the balance of rights and interests struck*" depends in part on whether the decision maker "*has carefully weighed the various competing considerations*", "*attempt*[ed] *to address that question*", and has reached a "*considered opinion*": *Miss Behavin'* at §§26, 37, 46-47 **[HB/2721, 2724, 2726]**. In this case, there is no such proportionality assessment before the Court. The exorbitant deference for which the SSHD has hitherto contended has not been earned. In evidence, the SSHD asserts that it was "*plain*" that "*an analysis was made of the impact of proscription on ECHR rights*".[154] However, she relies only on a passage of the underlying Ministerial Submission which was redacted for legal professional privilege. That is of no assistance.

91.2. In any event, the SSHD's *post hoc* assessment of ECHR compatibility was premised on a fundamental misdirection of law, i.e., that Article 17 prevented Article 10 and 11 rights from being engaged at all, such that there was no scope to conduct the *Bank Mellat* analysis at all: see Section C3 below. No substantial weight may properly be placed upon the SSHD's assessment (as the CA erroneously did), premised as it is on an error of law.

91.3. Further, this Court is better placed than the SSHD to conduct the relevant proportionality assessment. It has substantially more information and evidence (including CLOSED evidence) than was available to the SSHD, including in respect of the actual impact of the proscription and its interference with Article 10 and 11 rights: see Section A4 above. The Court is well placed and competent to assess evidence of that kind for itself: *Shvidler* §§120, 124 **[HB/3900, 3902]**.

[154] Farrant 1 §45 **[HB/1613]**.

C2. National security

92. The CA placed considerable reliance on the SSHD's constitutional responsibility and institutional competence in relation to "*questions of national security*": J/§§107, 114-116, 174, 178, 180 **[HB/263-264, 274-275]**. But the mere fact that a decision is said to engage "*national security*" does not itself determine the degree of deference to which the public authority is in consequence entitled. Instead, the extent of any judicial restraint is apt to vary substantially depending on the circumstances of the case:

92.1. The Court should (**i**) identify the nature of the decision in respect of which deference is sought; (**ii**) identify what (if any) national security issues are in play (whether national security is engaged being a question of law, for the Court: *Lord Carlile* at §23 **[HB/3410]**, citing *Rehman v Home Secretary* [2003] 1 AC 153 at §50 **[HB/3807]**, see also §54 **[HB/3808]** where Lord Hoffmann warns that it is important to neither blur nor exaggerate the area of responsibility entrusted to the executive); and (**iii**) consider whether the evidence and information before the decision-maker (as presented in OPEN or CLOSED) justifies deference to its national security assessment, and *if so, to what degree*.

92.2. Deference reflects the "*assignment of weight to the decision-maker's judgment*", on account of, first, the "*constitutional principle of the separation of powers*", and second, "*a pragmatic view about the evidential value of certain judgments of the executive, whose force will vary according to the subject matter*": *R (Lord Carlile of Berriew) v Home Secretary* [2015] AC 945 at §22 **[HB/3410]** (emphasis supplied). The Court must reach a view as to the proper degree of restraint to reflect the "*evidential value*" of the Executive's judgment. That is because "*[t]he executive's assessment of the implications of the facts is not conclusive*"; although they "*may*" be entitled to "*great weight*", the proper degree of weight depending on "*the nature of the decision and the expertise and sources of information of the decision-maker or those who advise her*": *Lord Carlile* at §32 **[HB/3415]**.

92.3. This approach accords with comments made by the promoting Minister, Home Secretary Jack Straw MP. He described the HRA 1998 as a "*profound safeguard*" which "*will provide powerful control*" against the disproportionate use of proscription

powers.[155] The HRA was always intended to act as a robust guardrail on the use of proscription powers by the SSHD.

93. In this case, it is therefore necessary to interrogate the nature and severity of the asserted "*national security*" interests engaged by the proscription. The Appellant submits:

93.1. The SSHD's suggestion that PA posed a material threat to the UK's defence infrastructure was not borne out by the evidence. The SSHD's own evidence indicated that any national security interests engaged were limited, and were linked to PA's targeting of the UK-based operations of international arms companies.[156] The Government's overall assessment, recorded in March 2025, was that while PA's impact on the individual companies had been "*large*", PA's impact on the UK defence industry as a whole was "*low by proportion*".[157] The contemporaneous documents assessing the impact on the defence industry were focused on the need to get the public "*narrative*" right, rather than on any genuine assessment of national security impact.[158] The FCDO assessed that there were no "*significant foreign policy factors in favour of proscription*", that the UK's allies perceived PA "*to be about activism and not … terrorism*", and that "*acting in this way may be interpreted as an over-reaction by the UK*".[159] The SSHD's reference in her Written Statement of 23 June 2025 to Ukraine, NATO and "Five Eyes" allies was commensurately elliptical. Nothing in the OPEN material evidences any national security case for proscription distinct from the damage to the property of the companies targeted.

93.2. Insofar as the evidence of alleged national security impact depends upon the Brize Norton incident, it is significant that (as noted above) the conduct in question – the spraying of paint on two RAF Voyager aircraft, both of which returned to service shortly thereafter[160] – (a) has at no point been relied upon in these proceedings as an incident of terrorism; and (b) is similar to (if not far less serious

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[155] Hansard HoC Debates Vol 341, Cols 160-161, 14.12.99 **[HB/2280-2281]**. Parliamentary materials can be relied upon to identify the mischief and as part of the background materials: *Williams v Central Bank of Nigeria* [2014] AC 1189 at §§104–105; *Kennedy v Charity Commission* [2015] AC 455 at §§118–110 **[HB/2946]**.

[156] 18 March 2025 MOD/HO/Police Minute, pp.1-2 **[HB/2052-2053]**.

[157] 18 March 2025 MOD/HO/Police Minute, p.2 **[HB/2053]**. Indeed, when considering the extent to which this meeting amounted to any rigorous assessment of PA's national security impact, it is striking that one purpose of this meeting was to find out such basic information as "*what do Elbit Systems UK, and other sites regularly target, produce and what do they not produce? And for whom?*".

[158] See 26 March 2025 Min Sub **[HB/1900-1901]**.

[159] See 11 March 2025 FCDO submission **[HB/1933-1935]**.

[160] McEvoy 3 §7 **[HB/1375]**.

than) historic protest activity involving criminal damage at military bases which has not been regarded as terrorist.[161]

93.3. Further, even assuming that the evidence did show that national security interests were engaged by the proscription—as opposed to the private property interests of individual actors, such as Elbit Systems—they are plainly at the less serious end of the spectrum. This should inform the degree of deference the Court considers it appropriate to afford the SSHD when weighing these interests in the balance.

C3. Engagement of Articles 10 and 11

94. The proscription of PA (and its consequences, including the criminalisation of certain acts of speech and association) plainly engages rights under Articles 10 and 11. This was accepted by both the DC and the CA. It also follows the decisions of the Supreme Court in *ABJ* and *Pwr* and the CA in *Choudary* and *Choudary (No 2)*.

95. In both courts below, the SSHD sought to rely on Article 17 (concerning the abuse of rights under the Convention) in support of the contention that Articles 10 and 11 were not engaged by proscription at all. Both courts rejected this argument briefly, as (**i**) the Article 10 and 11 rights of many individuals who "*wish to express support for Palestine Action and who wish to engage in peaceful protest*" are obviously engaged by proscription; (**ii**) many aims of PA (including its opposition to genocide) cannot sensibly be described as "*aimed at the destruction* [or limitation] *of* […] *the rights and freedoms*" under the ECHR; and (**iii**) the SSHD's own decision-making material advised her to consider any interference with Articles 10 and 11: DCJ/§§114-115 **[HB/321]**; J/§§93-97 **[HB/261]**.

96. If the SSHD had wished to preserve her Article 17 argument on this appeal, she was required to "*state that clearly in the notice of acknowledgment*": UKSC Rule 22(3). She omitted to do so. The SSHD should therefore not be permitted to contest the engagement of Articles 10 and 11 before this Court.

C4. Legitimate aim

97. The SSHD has persistently sought to characterise the legitimate aim of proscription as being to "*disrupt and degrade* [PA] *so as to protect the rights of others and maintain national security*":

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[161] *See, e.g.,* the facts of the seminal case of *R v Jones* **[HB/3669]**, summarised at para 33 *supra*.

see Detailed Grounds of Defence §§59-61 **[HB/650-651]**; DCJ/§128 **[HB/325]**; J/§119 **[HB/265]**. That approach is wrong in principle:

98. **First**, the SSHD's approach wrongly conflates the means of achieving an objective with the objective itself. The DC rightly rejected that approach, and correctly identified that the only legitimate aims capable of being engaged were "*the protection of the rights and freedoms of others*" and/or "*the interests of national security*" (DCJ/§128 **[HB/325]**). Those are the aims enumerated in Articles 10(2) and 11(2). The disruption or degradation of an organisation is not among them. The degradation of an organisation writ large is the consequence of proscription (the impact of which falls to be assessed for proportionality at the third and fourth stages of the *Bank Mellat* analysis); it cannot itself be the aim.

99. **Secondly**, the SSHD's approach is circular. Proscription inevitably degrades the organisation which it targets: as the DC recognised, "*the very purpose of proscription is to ... ensure that an organisation ceases to exist*" (DCJ/§135 **[HB/327]**). Indeed, the SSHD's approach would distort the *Bank Mellat* test, and indeed in some respects, denude it of all practical content: If the disruption and degradation of PA is treated as the objective, then (**i**) the rational connection limb is invariably satisfied (because proscription of an organisation is necessarily rationally connected to the objective of its degradation); (**ii**) the analysis of less intrusive measures is entirely otiose (because nothing short of proscription will ever achieve "*the collective impact of an order for proscription*" (J/§129 **[HB/267]**)); and (**iii**) in relation to the fair balance limb, the scales are invariably unfairly weighted in favour of the SSHD, because the impact of the measure (i.e., the proscription of PA and its consequences), will, to a significant degree, be coextensive with the objective pursued (i.e., the degradation of PA, and cessation of its activities).

100. **Thirdly**, the SSHD's approach is wrong in principle. The legitimate aim of any exercise of the proscription power is limited by the purpose of the TA 2000, as well as the HRA 1998. It must therefore be limited to curtailing such actions by the organisation as would both constitute "*terrorism*" within the meaning of s.1 TA 2000 and which impact upon national security or the rights of others. The SSHD's own assessment was that only three of PA's 385 actions met the s.1 definition;[162] that the majority of PA's actions involving

[162] For the avoidance of doubt the Appellant does not accept the accuracy of the SSHD's assessment.

damage were "*typically more minor*" such as *"graffiti, petty vandalism, occupation, and lock-ons*"; and that PA was "*highly unlikely [to] explicitly advocate for violence against persons*".[163]

101. Adopting the wrong categorisation of the SSHD's objectives yields the erroneous conclusion that the proscription of an organisation may be justified by reference to a desire to disrupt activities which do not amount to "*terrorism*" within the meaning of s.1 TA 2000. The DC (rightly) recognised that such an approach was wrong in principle: "*The power in the 2000 Act is to proscribe organisations because they act in ways that mean they are concerned in terrorism, not because of other activities that fall short of terrorism"* (DCJ/§83 **[HB/313]**). By contrast, the CA's erroneous conception of the SSHD's objectives led the Court to conclude that it was "*permissible for the Home Secretary (and, therefore, is permissible for us), in considering [PA's] characteristics and activities to consider the entirety of [PA's] activities, not just its activities classified as terrorist"* (J/§163 **[HB/273]**). In domestic public law terms, that approach erroneously licenses the use of the discretionary proscription power for purposes other than that for which it was conferred.[164] In Convention terms, it results in an unprincipled enlargement of the purposes for which a measure may legitimately be adopted.

102. It would be odd, to say the least, for the proscription of an organisation to be justified by reference to a desire to disrupt or otherwise address activities which do not constitute "*terrorism*" even on the expansive s.1 TA 2000 definition. To adopt as the aim of proscription the disruption of PA's activities "*as a whole*" (J/§117 **[HB/265]**) is to legitimise a measure aimed at suppressing conduct, the overwhelming majority of which was entirely lawful (or, at most, amounted to ordinary criminality), and which is protected by Articles 10 and 11, as an end in itself, rather than as a means by which to address a risk of terrorism. The overwhelming majority of PA's activities were entirely lawful (or involved the commission of only minor criminal offences), and the significant majority of those who supported or engaged with PA did so (and only did so) in ways which were entirely lawful: see §§8, 15, 17, 29 and 52-56 above.

103. **Fourthly**, once the objectives pursued by proscription are correctly identified, it is possible to make a more measured assessment of the weight properly to be attached to those objectives, in the context of this particular case:

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[163] 7 March 2025 JTAC Assessment §§7, 36 **[HB/1910, 1914]**.

[164] *cf* Padfield v Minister of Agriculture and Fisheries [1968] AC 997.

103.1. As to "*the protection of the rights and freedoms of others*", the rights in question are the property rights of a small number of sophisticated, well-resourced multinational arms companies – principally Elbit Systems, PA's "*main target*" (DCJ/§16 **[HB/294]**) – and of a limited number of companies in their supply chain. The public interest in curtailing damage to property is inherently (and substantially) more limited than the public interest in curtailing serious violence against persons, endangering life, or creating a serious risk to the health or safety of the public, per the other limbs of s.1(2) TA 2000. Even accepting that the protection of such property from damage meeting the s.1(2)(b) threshold is a legitimate aim, the fact that less than 1% of PA's activities were assessed to cross that threshold means that the justification required for PA's proscription had to be all the more compelling.

103.2. As to "*the interests of national security*", as set out above, the SSHD's own evidence indicated that any national security interests engaged were limited, and were linked to PA's targeting of the UK-based operations of international arms companies:[165] see §40 and §93 above. Insofar as national security interests are engaged at all, they are plainly at the less serious end of the spectrum, far removed from the interests in issue in cases such as *Rehman*; *R (Begum) v SIAC* [2021] AC 765 **[HB/3266]**; or *U3 v SSHD* [2025] AC 1510 **[HB/3948]**.

104. It is against those aims – and not against the objective of "*disrupt[ing] and degrad[ing]*" PA – that each of the remaining stages of the *Bank Mellat* analysis must be conducted.

C5. Less intrusive measures

105. The SSHD could (and, therefore, should) have adopted measures which were less restrictive (when compared to the proscription of PA), without unacceptably compromising the objectives pursued.

C5.1. The alternative means available

106. In relation to the proscription of PA, there were a number of less intrusive, but equally effective, means of preventing "*serious damage*" to property as a result of PA actions. Those measures fall to be considered holistically – contrary to the CA's approach[166] - as a suite of

[165] 18 March 2025 MOD/HO/Police Minute, pp.1-2 **[HB/2052-2053]**.

[166] The CA erred in considering each potential alternative measure in isolation, comparing the impact of each with "*the collective impact of an order for proscription*" (J/§129) **[HB/267]**. The correct question was to examine the full suite of powers and remedies available to the SSHD.

measures capable of providing an alternative means to achieve the aims pursued by the SSHD. They included:

106.1. **Criminal prosecutions for ordinary criminal offences**. This included prosecution for substantive offences of criminal damage (s.1 Criminal Damage Act 1971), aggravated trespass (s.68 Criminal Justice and Public Order Act 1994 **[HB/2166]**), public nuisance (s.78 Police, Crime, Sentencing and Courts Act 2022 **[HB/2182]**), public order offences under the Public Order Act 1986, and burglary and aggravated burglary (ss.9-10 Theft Act 1968). Criminal liability is not limited to those who themselves engage in primary offences: Organisers of direct action protest may also be liable to prosecution for substantive offences as secondary parties (i.e., having aided, abetted, counselled or procured the substantive offences), or for inchoate offences including conspiracies and offences of encouraging or assisting crime under Part 2 of the Serious Crime Act 2007 **[HB/2198-2234]**. Further, organisers may be liable for the separate statutory offences of participation in the activities of an organised crime group (s.45 Serious Crime Act 2015 **[HB/2235]**). As the DC noted, these offences carry severe penalties of up to life imprisonment (DCJ/§139 **[HB/327-328]**).

106.2. **Criminal prosecutions for terrorism offences which do not depend upon proscription**. A range of existing terrorism offences apply independently of the proscription regime, including encouragement of terrorism (s.1 TA 2006), dissemination of terrorist publications (s.2 TA 2006), preparation of terrorist acts (s.5 TA 2006), training for terrorism (s.6 TA 2006), and the making and possession of devices and materials (s.9 TA 2006) **[HB/2260-2274]**. Any conduct which in fact falls within s.1 TA 2000 is already liable to prosecution under those provisions, irrespective of proscription.

106.3. **Quasi-criminal behaviour orders**, including Criminal Behaviour Orders, Serious Crime Prevention Orders, Restraining Orders and – significantly – Serious Disruption Prevention Orders under the Public Order Act 2023, the bespoke behavioural order specifically designed by Parliament for use in the protest context.[167]

[167] *See* the multiple references to "protest-related offence" in s.20 Public Order Act 2023 **[HB/2191]**.

106.4. **Asset forfeiture** pursuant to the Proceeds of Crime Act 2002 ("**POCA**"), which provides a range of financial powers capable of impacting an organisation's fundraising capacity, including the freezing and forfeiture of any property "*intended by any person for use in unlawful conduct*".[168]

106.5. **Disruption by policing powers**, including ordinary powers of search and seizure, and terrorism policing powers under TA 2000 which apply in relation to actions meeting the s.1 TA 2000 definition, irrespective of proscription.[169]

106.6. **Civil injunctions**, capable of being sought against a direct action group,[170] and/or against "*persons unknown*",[171] including on a precautionary basis, and *ex parte*. Their scope can be extremely broad: such injunctions have covered entire strategic road networks, and all Shell petrol stations across England and Wales.[172] The High Court regularly frames injunctions targeted at particular types of protest activity (such as those capable of causing serious damage to property) and/or at the actions of particular protest groups.[173] As the evidence demonstrated, the imposition of an injunction in relation to Teledyne in December 2024 had the practical effect of essentially eliminating PA's actions at that site.[174]

107. To the extent that what the SSHD sought, in substance, was an ability to target the "leadership" and/or "organisation" of PA, that concern could have been addressed by (**i**) the ordinary operation of the criminal law (including accessorial liability for substantive offences committed by others); (**ii**) quasi-criminal civil orders (which do not depend upon conviction for a criminal offence); (**iii**) civil injunctions; and/or (**iv**) asset-freezing measures under POCA.

108. The CA was wrong to dismiss the "*ordinary criminal law*" as an effective less intrusive measure (J/§§132-139 **[HB/267-268]**). The asserted inadequacy of existing criminal offences was not the subject of evidence or explanation. In the absence of such evidence

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168 *See,* e.g., s.298(1) POCA **[HB/2185]** (forfeiture of cash) and s.303Z14(4) POCA **[HB/2185]** (forfeiture of funds in a bank account).

169 Including the power to prohibit persons from entering "cordoned areas" (ss.33-36 TA 2000); search and seizure warrants (s.37 and Schedule 5 TA 2000); disclosure orders (s.37A and Schedule 5A TA 2000); financial information orders (s.38 and Schedule 6 TA 2000); and account monitoring orders (s.38A and Schedule 6A TA 2000).

170 *Heathrow Airport Ltd v Garman* [2007] EWHC 1957 (QB) at §§72-73.

171 *Wolverhampton City Council v London Gypsies and Travellers* [2024] AC 983.

172 Blowe 2 §2 **[HB/1193]**.

173 *MBR Acres Ltd v Curtin* [2025] EWHC 331 (KB); *National Highways Ltd v Persons Unknown* [2022] EWHC 1105 (QB).

174 Blowe 2 §§4-5 **[HB/1193]**.

(and therefore lacking any proper basis), the Court's conclusions were speculative (J/§§133-134 **[HB/267]**). The SSHD's own evidence which was before the Court was to the contrary effect, suggesting instead that arrests and prosecutions of PA activists for ordinary criminal offences had reduced the frequency and seriousness of PA's actions, in particular since the arrests associated with the action in Filton, Bristol. The Court failed to consider that evidence. The Court's reasoning that proscription (unlike the ordinary criminal law) deals with "*both the covert and the overt activity in a way that the ordinary criminal law may not*" (J/§§135-136 **[HB/268]**) is, with respect, difficult to understand. If an organisation's "*covert*" activity renders it difficult for investigators to identify and punish its criminal wrongdoing, that difficulty will arise equally in relation to proscription offences.

C5.2. The SSHD's assessment of the alternative means

109. The SSHD's contemporaneous assessment of alternative measures available to her was woefully inadequate. The CA's observation that "*the question of whether less intrusive measures could have been adopted was considered in the materials placed before the Home Secretary*" (J/§126 **[HB/266]**) was materially incomplete. In particular:

109.1. The SSHD failed even to identify – still less properly to assess the effectiveness of – a number of the alternative means identified above, including (**i**) the full range of quasi-criminal behaviour orders, including Serious Disruption Prevention Orders, which were not considered at all; (**ii**) the possibility of disrupting PA's fundraising by asset forfeiture under POCA; and (**iii**) the possibility of affected companies (or public authorities) seeking civil injunctions.

109.2. Such limited assessment as was undertaken contained obvious errors of law. By way of illustration, CTP erroneously advised that two forms of behaviour order (Criminal Behaviour Orders and Serious Crime Prevention Orders) were available only post-conviction,[175] when in fact the latter may be made without conviction.[176]

109.3. The asserted inadequacy of existing criminal offences was unevidenced and unexplained.[177] As noted above, the evidence before the SSHD pointed the other

[175] 26 March 2025 Min Sub Annex C (5 March 2025 CTP Report) p.5 **[HB/1926]**.

[176] Serious Crime Act 2007, s.1(1) **[HB/2195]**.

[177] E.g. the CTP assessment that "*the criminal prosecution route has failed or is simply unavailable under existing legislation*": 5 March 2025 CTP Report p.7 **[HB/1928]**.

way. As the DC correctly noted, "*the prospect of significant punishment*" for activists "*would serve as a significant deterrent to others*" (DCJ/§139 **[HB/327-328]**).

109.4. Notably, CTP's dismissal of the effectiveness of prosecution rested in part on the complaint that PA "*employ[ed] legal defence teams to hold law enforcement to a strict liability of proof*", purportedly seeking to "*stifle*" an "*already strained criminal justice system*".[178] That the accused in protest-related trials engage lawyers and put the prosecution to proof is not a deficiency of the ordinary criminal law; it is the rule of law in operation. The reliance placed on this consideration evidences a troubling attempt to instrumentalise the proscription power so as to circumvent fundamental fair trial guarantees.

110. Those errors and failures substantially attenuate the deference properly owed to the SSHD's assessment of the availability and effectiveness of less restrictive measures. Moreover, this is a limb of the analysis in respect of which the Court is particularly well placed: the availability and efficacy of judicial mechanisms such as civil injunctions, behavioural orders and criminal remedies is a matter squarely within the institutional competence of the courts, and the SSHD has no "*special claim … to be in a superior position than the court*" in respect of it: *Shvidler* at §126 **[HB/3902]**.

C6. Fair balance

111. The DC was right to conclude that the proscription of PA failed to strike a fair balance between the Article 10 and 11 rights of those affected by it and the general interests of the community, namely the property rights of the companies concerned and the interests of national security (DCJ/§§135-140 **[HB/327-328]**). The CA erred in concluding otherwise (J/§182 **[HB/276]**). The correct analysis is as follows.

112. **First**, it is important to approach the assessment of proportionality on the basis of a proper understanding of the legislative framework of the TA 2000 (see **C1** above), which has at least three significant analytical consequences:

112.1. The s.1 TA 2000 definition of "*terrorism*" is *"striking"* in its breadth, and is apt to include "*activities which might command a measure of public understanding, if not support*".[179] It could lead to the proscription as terrorist of any and all protest activity giving rise

[178] 26 March 2025 Min Sub Annex C (CTP Report) **[HB/1927]**.

[179] *R v Gul* [2014] AC 1260 at §§26-29 **[HB/3628-3629]**; see also §§61-64 **[HB/3636-3637]**.

to serious damage to property. Precisely because the criteria for proscription are so broad, and the consequences so draconian, the responsibility of the Court under s.6 HRA 1998 to scrutinise the compatibility of any given proscription decision with the Convention operates as a critical constraint on the exercise of the power.

112.2. It follows that the bare conclusion that PA was "*concerned in terrorism*" – on which the SSHD relied heavily, and to which the CA repeatedly returned – is of limited analytical assistance. Satisfaction of the statutory criteria is only the beginning of the inquiry. The tenor of the SSHD's submissions has been that, provided she has (rationally) concluded that an organisation is "*concerned in terrorism*", that is close to the end of the matter. That is wrong. The issue is one of substance, not nomenclature: the *degree to, and respect in,* which an organisation is assessed to be "*concerned in terrorism"* must inform the cogency of the reasons required by way of justification for its proscription.

112.3. It is also significant that the legal consequences of proscription are automatic: proscription carries with it a fixed suite of consequential (criminal) measures, and there is no prospect of the SSHD selecting *which* of the consequences of proscription are (or are not) appropriate. This Court must assess whether a fair balance has been struck having regard to the full impact of the complete range of measures which arise in consequence of proscription.

113. **Secondly**, the proscription of PA has entailed a very significant interference with Convention rights (DCJ/§135 **[HB/327]**; see also DCJ/§§103-104, 116-124 **[HB/318, 321-324]**). Indeed, the true impact was more severe than the DC recognised, and far more severe than the CA acknowledged. The Appellant relies on the detailed and uncontested evidence of the impact of proscription set out at **B4.2** above. The following points are of particular importance in the balance to be struck:

113.1. **The nature of the expression restricted**. The expression and assembly in issue is political expression on a matter of the most acute public importance: the alleged commission of war crimes, crimes against humanity and genocide, and the complicity of UK-based companies in those crimes. Such expression attracts the highest level of Convention protection, and restrictions upon it must be "*narrowly*

interpreted" and "*convincingly established*":[180] *a fortiori* where the expression concerns "*acts which may amount to war crimes or crimes against humanity*".[181] The proscription of PA chilled expression and protest at precisely the time when the need to speak out was most acute.

113.2. **The severity of the sanction**. Proscription does not merely regulate expression; it renders it a terrorism offence. Criminal conviction constitutes one of the "*most serious forms of interference with the right to freedom of expression*", requiring particular justification.[182] Conviction for a terrorism offence carries consequences which reach every aspect of a person's life: employment, study, immigration status, travel, referral to Prevent, and even the ability to hold a bank account.[183]

113.3. **The breadth of the class affected**. Proscription has criminalised, as terrorism, the conduct of over 3,300 people arrested for holding signs; it has silenced organisations such as Liberty and Amnesty in their campaigning against the measure itself; it has chilled the expression of journalists, academics, artists, and Palestinians in Britain; and it has been felt across the entire Palestinian solidarity movement, regardless of any connection with PA: see §§52 – 63 above. The applicable criminal offences focus on expressive conduct – wearing or displaying articles, organising or addressing meetings, expressing support – and are therefore particularly liable to misinterpretation and over-broad application. Those risks are especially acute in relation to a direct action protest group such as PA, which had no "*membership*" as such and comprised instead a loose network of activists strongly associated with the broader Palestinian solidarity movement in the UK.[184] The risk of over-policing was and remains an inevitable consequence of PA's proscription, and the (unpublished) CTP guidance on enforcement[185] does not decrease the chilling effect: overbroad legislation touching on liberty cannot be saved by policy.[186]

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[180] *Sunday Times v UK (No 2)* (1992) 14 EHRR 229 at §50(a) **[HB/4909]**; *Lindon v France* (2008) 46 EHRR 35 [GC] at §48; *Sabuncu v Turkey* (App. No. 23199/17, 10 November 2020) at §221.

[181] *Novaya Gazeta v Russia* (App. No. 11884/22, 11 February 2025) at §117 **[HB/4503]**.

[182] *Perinçek v Switzerland* (2016) 63 EHRR 6 [GC] at §273 **[HB/4709]**.

[183] Peirce 1 §22 **[HB/1084]**; Peirce 2 **[HB/1169]**; Ost 2 **[HB/986]**; Ost 3 §30 **[HB/1097]**.

[184] Ost 3 §§6-9 **[HB/1091-1092]**; Exhibit AO3/1 **[HB/1103]**; Ghalayini 1 §6 **[HB/996]**.

[185] DCJ/§119 **[HB/322]**.

[186] *A v SSHD* [2005] 2 AC 68 at §33 (Lord Bingham) **[HB/2322]**; *R v Gul* at §36 (Lord Neuberger) **[HB/3631]**.

113.4. **The dissolution of an association**. The extent to which proscription interferes with Article 11 is "*stark*", because "*the very purpose of proscription is to ... ensure that an organisation ceases to exist*" (DCJ/§135 **[HB/327]**). Where a measure causes the outright dissolution of an association, it may only be taken "*in the most serious cases*", where "*exceptionally justified*" by "*relevant and sufficient reasons*".[187] PA – with a mailing list of some 20,000 people and hundreds of thousands of followers on social media – has ceased to exist, and those associated with it prior to proscription have been subjected to harsher treatment within the criminal justice system on that account.[188]

114. **Thirdly**, it is highly material to the Court's assessment of proportionality that PA's actions were aimed at seeking to prevent (at the very least, the *"clear risk"* of) ongoing serious violations of international law, which have been recognised and authoritatively established by international judicial bodies and UN institutions, as well as by the UK Government itself: see §11, above.

115. **Fourthly**, the significant impact of PA's proscription on the Article 10 and 11 rights of a substantial number of people cannot be justified by the countervailing interest in the protections of the rights and freedoms of others and/or the interests of national security:

115.1. The SSHD's assessment that PA was "*concerned in terrorism*" was based solely on the "*serious damage to property*" limb of s.1(2) TA 2000. The public interest in curtailing property damage is inherently, and substantially, more limited than the public interest in curtailing violence against persons, endangering life, or creating a serious risk to the health or safety of the public.

115.2. Even in relation to property damage, as noted above, the SSHD's own assessment was that the vast majority of PA's actions did not meet the statutory threshold: of 385 PA actions over five years, she assessed just three to have met the "*serious damage*" threshold,[189] and property damage caused by PA was "*typically more minor",* involving *"graffiti, petty vandalism, occupation and lock-ons*".[190] The DC was accordingly correct to find that only "*[a] very small number of [PA's] actions have amounted to terrorist action within the definition at section 1(1) of the 2000 Act*" (DCJ/§138 **[HB/327]**).

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187 *Association Rhino v Switzerland* (App. No. 48848/07, 11 October 2011) at §62 **[HB/4163]**; *Adana TAYAD v Turkey* (App. No. 59835/10, 21 July 2020) at §35.

188 Southwell 1 §§7-11 **[HB/1231-1232]**; Potter 1 §§12-15 **[HB/1440-1441]**.

189 7 March 2025 JTAC Assessment §§7-8 and 47 **[HB/1910, 1916]**; 13 March 2025 PRG Minutes p.2 **[HB/1959]**.

190 7 March 2025 JTAC Assessment §7 **[HB/1910]**; Feinstein 1 §11 **[HB/825]**.

115.3. The "*main target*" of PA's activities was Elbit Systems (DCJ/§16 **[HB/294]**), together with Teledyne, Leonardo and Arconic, all widely reported to have produced materials used in Israel's assault on Gaza since October 2023: see §6 above. Those companies were alleged to have been involved in serious criminality – aiding, abetting, facilitating and profiting from serious violations of international law – which would constitute domestic crimes under the International Criminal Court Act 2001.[191]

115.4. The national security interests engaged were, at most, limited and peripheral, for the reasons given at §§40 and 93, above.

115.5. Any suggestion that PA's activities were on an "*escalating trajectory*" in the period immediately prior to proscription (J/§§166-170 **[HB/273-274]**) is inconsistent with the SSHD's own contemporaneous assessments that (**i**) PA actions involving serious damage to property were not "*the norm*"; (**ii**) there had been a "*reduction in direct action*" by September 2024 (and again in December 2024), following the Filton arrests; (**iii**) as of June 2025 there had been no further instances of violence or injury; (**iv**) PA was "*highly unlikely [to] explicitly advocate for violence against persons*"; and (**v**) "*[s]ince the attack on 6 August 2024 in Bristol, activity claimed by PAG has not met the statutory tests for 'terrorism' under TACT*".[192] The PRG's reference to an "*escalatory campaign*" was based on two incidents in 2024 and ignored the NPoCC assessments of September and December 2024. The spectre of escalation is unpersuasive, when, on her own evidence, the trajectory in the ten months preceding the Decision was one of de-escalation.

115.6. The "*Underground Manual*" (see J/§§42, 159-161, 168 **[HB/249, 272-274]**) takes matters no further. As noted above, that document – freely available online – was assessed by CTP to contain little more than "*basic ideas around operational security*" which were themselves largely obvious and freely available online. Its possession was assessed by CTP as "*unlikely to warrant prosecution*" under s.58 TA 2000.[193] The document does not advocate the use of violence.

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[191] Sections 52 and 55 of, and Articles 6-8 of Schedule 8 to, the International Criminal Court Act 2001; see also s.1 Geneva Conventions Act 1957.

[192] (i) December 2024 NPoCC briefing p.4 **[HB/2016]**; 7 March 2025 JTAC Assessment at §7 **[HB/1910]**; (ii) September 2024 NPoCC briefing p.4 **[HB/1989]**; December 2024 NPoCC briefing **[HB/2016]**; (iii) 4 June 2025 Min Sub **[HB/1972]**; (iv) 7 March 2025 JTAC Assessment §36 **[HB/1914]**; (v) 4 June 2025 Min Sub **[HB/1977]**, disclosed only on 21 May 2026.

[193] 27 June 2024 CTP General Report **[HB/1980]**; 19 December 2024 CTP General Report **[HB/2011]**.

116. For all those reasons, this Court (assessing the matter for itself) should conclude that the proscription of PA failed to strike a fair balance between the Article 10 and 11 rights of those affected by it and the general rights of the community, including the property rights of others and the interests of national security.

C7. Errors in the CA's approach

117. Insofar as (contrary to the position set out at Section D.1., above) it is necessary to identify errors in the approach of the CA, they are identified in the Appellant's Grounds of Appeal. Those errors are also addressed throughout the submissions above, see §§12, 32–33, 38, 92, 97-104, 106-115.

D. CONCLUSION

118. The Appellant invites the Supreme Court to allow her appeal and to quash the Decision and the Order for the following, amongst other,

REASONS

The proscription of PA:

1. **was not the least intrusive measure available to the SSHD;**

2. **failed to strike a fair balance between the interference with the Article 10 and 11 rights it occasioned, and the interests of the community.**

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23 September 2026