CASE ID 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

B E T W E E N:

THE KING
(on the application of HUDA AMMORI)

Appellant/Claimant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent/Defendant

(1) UNSR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM
(2) AMNESTY INTERNATIONAL UK ("AMNESTY UK") and LIBERTY
(3) THE JEWISH LEADERSHIP COUNCIL and COMMUNITY SECURITY TRUST
(4) THE JEWISH BLOC
(5) ENGLISH PEN and PEN INTERNATIONAL

Interveners

WRITTEN CASE OF AMNESTY UK AND LIBERTY

A. Introduction

1. This appeal raises issues of significant importance for society about the scope of the Secretary of State's power to proscribe an organisation under s 3 Terrorism Act 2000 ("**TACT 2000**") and the proper approach for the courts on an application for judicial review of a proscription decision on the basis that it unjustifiably impinges upon fundamental rights. There is no prior appellate case addressing how Articles 10 and 11 of the European Convention on Human Rights ("**the Convention**") operate to constrain the Secretary of State's discretion to proscribe an organisation, nor how the courts should review the proportionality of such a decision. Given the novelty and significance of the issues at stake, the proportionality of the Secretary of State's decision to proscribe Palestine Action ("**PA**") is a matter which, consistent with the guidance given by the Court in *Shvidler v Secretary of State for FCDA* [2026] AC 607, the Supreme Court ought

to assess for itself.[1] Amnesty UK and Liberty – expert civil liberties organisations who have themselves been directly affected by the decision under challenge – seek to assist the Court on points of principle which arise in respect of that question.

2. Amnesty UK and Liberty's submissions are, in summary, as follows:

   a. **First**, the broad proscription power established by TACT 2000 was intended by Parliament to be subject to the controlling principles of the Convention, including the principle of proportionality, as ultimately assessed by the Court. A theme running through the Secretary of State's submissions is that because she has concluded PA is "*concerned in terrorism*" within the meaning of s 3 TACT 2000, the proscription of PA is proportionate in Article 10/11 terms. Not only is that argument circular (in the sense that it relies on the labelling of an organisation as concerned in terrorism to supply the justification for treating as such), but its effect is to give proportionality little to no role to play in constraining the extremely wide discretionary power of proscription. That is contrary to the scheme of safeguards that Parliament intended when it enacted s 3 TACT 2000. Put shortly: satisfaction of the statutory pre-conditions for exercising the proscription power is the beginning and not the end of the enquiry mandated by Parliament. The approach advanced by the Secretary of State, and endorsed by the Court of Appeal, deprives proportionality of its essential function as a key legislative safeguard which acts as an independent constraint on the exercise of an otherwise broad discretionary power. This displacement of proportionality is particularly striking in a case where the Secretary of State's assessment of PA's activities is (i) based solely on the "*serious damage to property*" limb of the definition of terrorism under s 1 TACT 2000, and (ii) concerns only 3

[1] Contrary to the Secretary of State's submissions at §§14-19 of her Written Case in this appeal **[HB/77-80]**, this is evidently a case raising civil liberties issues of "*major social and political significance*" (*Shvidler*, §224), such that it is entirely appropriate for each of the appellate courts to to exercise their own judgment on proportionality. The Court of Appeal itself held that the appeal "*raises points of general public importance*", "*engages the respective constitutional responsibilities and institutional competencies of the courts and the executive*" and was liable to impact over 700 cases pending in the criminal courts of England and Wales and many more at the pre-charge stage (CA/6). Amnesty UK and Liberty note that recent reports suggest that 2500 individuals have been charged with proscription-related offences, see: "*Almost half of terrorism arrests in Great Britain since 9/11 have been in past year*", The Guardian, 1 Sept 2026, available at**:** https://www.theguardian.com/politics/2026/sep/01/almost-half-of-terrorism-arrests-in-great-britain-since-911-have-been-in-past-year

incidents that were assessed as meeting the statutory definition of terrorism, in circumstances where (iii) the United Kingdom's definition of terrorism is extremely broad by international standards (on which see §4b and fn 4, below). If the reasoning of the Court of Appeal is right, it is is hard to see that a proscription decision could ever be disproportionate.

b. **Second**, the decision under challenge constitutes a form of prior restraint, which "*call for the most scrupulous examination by the Court*": *Kaos GL v Turkey*, App. No. 4982/07, 22 Nov 2016, §50. The draconian nature of prior restraint represents a fundamental departure from the approach described by Lord Hoffmann in *Margaret Jones* [2007] 1 AC 136 ("*Jones*"), by which the State shows a degree of tolerance to direct action protests, even those causing serious damage to property. In contrast, proscription of an organisation prevents its members and supporters from exercising their right to protest in the form and manner that they choose, even though such protest may not involve any criminal activity at all. Rejecting essentially this submission, the Court of Appeal characterised the activities of PA as the "*antithesis"* of the protest groups referred to in *Jones* (CA/161). But this is ahistorical, inaccurate, and illustrates that the Court did not give appropriate weight to the political and expressive character of the activities of PA when conducting the proportionality assessment.

c. **Third**, the use of the proscription power gives rise to sweeping, ill-defined criminal offences for speech and conduct and has severe consequences not only on members of the organisation but also through wider chilling effects, as shown by the evidence of Liberty and Amnesty UK. The Divisional Court stated that proscription criminalises individuals speaking up against the proscription itself. In this way, the exercise of a coercive public power is insulated from criticism or challenge. The very grave nature of that impact for the rule of law in a democratic society was not given any weight by the Court of Appeal.

d. **Fourth**, and relatedly, the impact of the proscription decision on the ability of individuals to associate together to strategically advance shared political interests as protected by Article 11 is enormous, and gives rise to issues distinct from and independent of those arising under Article 10, given the principal purpose and effect of the decision is to dissolve and criminalise a previously lawful political collective.

Yet the Court of Appeal failed to give any, or at the very least any sufficient, weight to Article 11 rights, and the Secretary of State has failed to engage with it entirely when making the decision under challenge and in these proceedings.

3. Amnesty UK and Liberty therefore invite the Court to allow the appeal and affirm the Divisional Court's conclusion that the proscription of PA was unlawful because it was incompatible with Articles 10 and 11 of the Convention.

B. Proportionality: an important constraint on the exercise of the proscription power

4. By s 3(4) TACT 2000, the Secretary of State may proscribe an organisation if she "*believes it is concerned in terrorism*". That is a very broad power:

   a. The threshold imposed by s 3(4) TACT 2000 is that the Secretary of State must "*believe*" that an organisation is concerned in terrorism in order to exercise the proscription power against it. A "*belief*" threshold has been described as a "*relatively low*" evidential threshold which is "*some way short of proof even on the balance of probabilities*": see domestic decisions leading to *A v UK* [GC], App. No. 3455/05, ECHR 2009, as recorded in *A* at §§26, 69. Thus, while the belief must be a reasonable one for the power to be lawfully exercised, there is no requirement that the Secretary of State be satisfied on the balance of probabilities (let alone to the criminal standard[2]) that the organisation is concerned in terrorism.

   b. The applicable definitions of "*concerned in terrorism*" and "*terrorism*" are contained in s 3(5) and s 1 TACT 2000, respectively. These definitions are extremely wide: see, e.g., *R v Gül* [2014] AC 1260, §26, 33-34; *R (Miranda) v Secretary of State for the Home Department* [2016] 1 WLR 1505, §45-51 in respect of s 1; *SSHD v Lord Alton of Liverpool and others* [2008] 1 WLR 2341, §33-38 in respect of s 3(5). Accordingly, the range of organisations which may be liable to proscription is broad and the conduct and aims of such organisations are varied – from those whose core purpose is terrorism, to those, like PA, in respect of whom only a few acts have been found to meet this threshold. Out of 385 actions considered by the Secretary of State just three – (i.e. less than 1%) were assessed

[2] An example of a requirement that the Secretary of State be satisfied to the criminal standard is contained in s 41(1) of the National Security and Investment Act 2021, concerning the imposition of monetary penalties.

to satisfy the s 1 TACT 2000 definition of terrorism[3] (and those only through the property damage limb of the definition, an aspect of the United Kingdom's statutory definition of terrorism which extends beyond core international standards relating to terrorism, *viz*. the use or threat of use of explosives and/or serious violence against people or hostage-taking for political purposes).[4]

5. The decision to proscribe an organisation carries serious and far-reaching consequences. Alongside the effective dissolution of the organisation in question, proscription is "*an event defined by its consequences*" (DC/13) and the gateway through which "*a number of other provisions apply*" (CA/27), in particular the criminalisation of actions (including speech) which would otherwise be lawful (DC/13-14). The stark rights-impacts which are the inherent consequence of the proscription decision include impacts upon the rights of individuals peacefully opposing the proscription decision as well as the rights of those (including civil liberties organisations) who are not members or supporters of the proscribed organisation but whose expressive rights are nevertheless seriously curtailed. The sentences for proscription-related offences are heavy: e.g. s 12(6) TACT 2000 (up to 14 years' imprisonment on conviction on indictment in respect of the support offences).

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[3] As noted in the judgment of the Divisional Court (DC/28).

[4] See, for example: International Convention for the Suppression of the Financing of Terrorism (ratified by the UK on 7 March 2001), Art. 2 of which defines terrorism including as *"any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act"*; UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism's model definition of terrorism (Report on ten areas of best practices in countering terrorism, A/HRC/15/51, 22 December 2010), states that terrorism means an action or attempted action which constitutes the intentional taking of hostages; or is intended to cause *"death or serious bodily injury to one or more members of the general population or segments of it"*; or involves "*lethal or serious physical violence against one or more members of the general population or segments of it*". International Convention for the Suppression of Terrorist Bombings (ratified by the UK on 7 March 2001), providing universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place.

6. Thus, the statutory provisions have the combined effect of creating a power which (i) may be exercised pursuant to a *"belief*" threshold, (ii) arises in wide circumstances and against a potentially broad range of organisations and activities, and (iii) has severe effects not only on the organisation and those associated with it, but also on the human rights of law-abiding non-members/non-supporters of the proscribed organisation. In such circumstances, the requirement for compatibility of a proscription decision with s 6 Human Rights Act 1998 ("**HRA 1998"**) provides a critical safeguard against misuse or abuse of this otherwise largely untrammelled power.

7. Indeed, Parliament had the protections of HRA 1998 closely in mind when enacting TACT 2000, and it was a key element of Parliament's intention that the powers in TACT 2000 would be exercised compatibly with the Convention:

   a. TACT 2000 was enacted in the context of Parliament's recent enactment of the HRA 1998 and in the period immediately prior to commencement of the HRA 1998. The HRA 1998 received Royal Assent on 9 November 1998, and its provisions which are relevant for present purposes came into force on 2 October 2000.[5] The Bill which became TACT 2000 was introduced on 2 December 1999 and received Royal Assent on 20 July 2000, but provisions including s 3 TACT 2000 were only brought into effect on 19 February 2001 i.e. after the commencement of HRA 1998.[6] The obligations created by s 6 HRA 1998 were therefore active upon the Secretary of State prior to the conferral on her of the proscription power in s 3 TACT 2000.

   b. This reflected the Government's position during the passage of the Bill. Introducing the Bill on second reading, the Parliamentary Under-Secretary of State for the Home Office stated that the Government had paid close attention to the need for the powers to comply with the United Kingdom's obligations in international law. He stated that the Government had sought to ensure that the "*exceptional powers*" in the Bill "*are proportionate to the threat we face and fully consistent with our human rights obligations*". The Government had "*paid particularly close attention to the need for balance and safeguards*".[7]

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[5] Human Rights Act 1998 (Commencement No. 2) Order 2000 (S.I. 2000/1851) 12 July 2000.

[6] The Terrorism Act 2000 (Commencement No. 3) Order 2001 (SI 2001/421) 19 February 2001.

[7] Hansard Vol 611, 6 April 2000, Column 1428. Parliamentary materials can be relied upon under a distinct principle to identify the mischief at which legislative provisions are directed

c. Those "*safeguards*" included, pre-eminently, the fact that the powers would be subject to the HRA 1998 and the overriding requirement of proportionality, since Parliament was not in a position itself to foresee all the circumstances in which the "*exceptional powers*" in TACT 2000 might be exercised. The Minister explained that, "*proscription is a very heavy power and we shall use it only when it is absolutely necessary*";[8] similarly, the Government assured the House of Lords Delegated Powers Committee that proscription "*is a heavy power and should only be used sparingly*", taking into account, inter alia, the "*nature and scale of the group's activities*".[9] The Government specifically drew the attention of the Committee to "*the safeguards in respect of the use of this power*" provided by the Proscribed Organisations Appeal Commission ("**POAC**"), including the ability of POAC to find proscription to be incompatible with the Convention.[10] The Explanatory Notes to TACT 2000 also made clear to Parliamentarians that, "*... once the Human Rights Act 1998 (c. 42) is fully in force, it will be possible for an appellant to raise points concerning those rights under the European Convention on Human Rights which are "Convention rights" under the 1998 Act*" (§17).

d. Finally, s 9 TACT 2000 expressly refers to the HRA 1998 and ensures that HRA challenges can be raised before POAC and that POAC can determine that "*action of the Secretary of State is incompatible with a Convention right…*" (s 9(4)). TACT 2000 also contemplates challenges under the HRA 1998 being brought other than by way of appeal to POAC.

e. It is therefore clear that the very broad nature of the proscription gateway was intended to be offset by the ability of the courts to ensure that the power was used only where necessary and proportionate, having regard to the impact on Convention rights. The protection of the Convention is built-in to the statutory regime. Yet on

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and as part of the background materials: *Williams v Central Bank of Nigeria* [2014] AC 1189 at §§104–105 (Lord Neuberger, with whom Lord Sumption and Lord Hughes agreed).

[8] Hansard Vol 611, 6 Apr 2000, Column 1431.

[9] Supplementary memorandum by the Home Office and Northern Ireland Office for the Select Committee on Delegated Powers and Deregulation Twelfth Report (27 March 2000) available at: https://publications.parliament.uk/pa/ld199900/ldselect/lddereg/57/5706.htm

[10] Supplementary memorandum by the Home Office and Northern Ireland Office, 27 March 2000, §§3 and 5.

the approach of the Government and the Court of Appeal, and as further developed below, those protections, on which Parliament relied, provide no real check on the exercise of the power. It is hard to see, on that approach, how any exercise of the proscription power against an organisation which has engaged in criminal acts meeting the threshold of terrorism, in order to prevent the organisation's members committing further criminal acts, could be found to be disproportionate.

Factors relevant to the proportionality balance

8. The centrality of the protections provided by HRA 1998 to the applicable statutory scheme has a bearing on the approach the courts must take in respect of the proportionality balance. The passage of HRA 1998 was a watershed moment as regards the domestic protection of freedom of expression and assembly. As Lord Bingham observed in R (Laporte) v Chief Constable of Gloucestershire Constabulary [2007] 2 AC 105, 127: "*The approach of the English common law to freedom of expression and assembly was hesitant and negative, permitting that which was not prohibited. Thus although Dicey in An Introduction to the Study of the Law of the Constitution, 10th ed (1959), in Part II on the "Rule of Law", included chapters VI and VII entitled "The Right to Freedom of Discussion" and "The Right of Public Meeting", he wrote of the first (at pp 239-240) that "At no time has there in England been any proclamation of the right to liberty of thought or to freedom of speech" and of the second (at p 271) that "it can hardly be said that our constitution knows of such a thing as any specific right of public meeting". Lord Hewart CJ reflected the then current orthodoxy when he observed in Duncan v Jones [1936] 1 KB 218, 222, that "English law does not recognize any special right of public meeting for political or other purposes". The Human Rights Act 1998, giving domestic effect to articles 10 and 11 of the European Convention, represented what Sedley LJ in Redmond-Bate v Director of Public Prosecutions (1999) 163 JP 789, 795, aptly called a 'constitutional shift'.*" Parliament introduced the proscription power, with its obvious ramifications for freedom of speech and association, in full knowledge of the increased status domestic law now gave to those rights, and in the expectation that the power would be exercised to limit those rights only where and in a manner consistent with the HRA 1998's protection of them.

9. The limitation that the Convention and proportionality imposes on the use of the proscription power is thus an integral and important element of the legislative scheme.

That safeguard for individual rights assumes even more importance given the courts have determined that various offences established by ss 12 and 13 TACT 2000 do not themselves admit of Articles 10 and 11 defences, because their proportionality is ensured by the elements of the offence (see *Choudary* [2018] 1 WLR 695, *Pwr* [2022] UKSC 2 and *ABJ* [2026] UKSC 6). This assumes and requires the proportionality of the gateway proscription decision itself: see, e.g. *ABJ*, §§108, 137. This underscores the need for a careful assessment of the proportionality of a proscription decision both by the decision maker and the Court on an application for judicial review. Where, as here, the Court is equipped with substantially more evidence on the impact of the decision on Article 10 and 11 rights than was the Secretary of State when the decision was taken, that necessarily affects the nature of the assessment the Court must make, including the level of deference to be shown to the Secretary of State's assessment that the decision was proportionate.[11]

10. Both the Court of Appeal's decision and the Secretary of State's case on appeal denude the safeguard provided by the HRA 1998 of much of its protective force:

    a. The Secretary of State submits that the fact that she has determined PA is an organisation "*concerned in terrorism*" is (i) not only the "*starting point*" for the assessment of whether an instrusion is proportionate (SSHD Written Case, §70 **[HB/104]**) but also (ii) provides the answer to whether there were lesser alternative means available (SSHD Written Case, §77(a) **[HB/108]**), and (iii) offers justification for the chilling effects proscription may have on fundamental rights (SSHD Written Case, §89 **[HB/114]**). The Court of Appeal also put great weight on the conclusion that PA is "*concerned in terrorism as defined in the 2000 Act*" (CA/13) when assessing the proportionality of the decision under challenge.

    b. This argument risks collapsing two distinct questions: whether the statutory pre-conditions for exercising the proscription power are met, and whether the exercise

[11] As the Appellant observes at §91 of her Written Case **[HB/56]**, this applies *a fortiori* to the facts of this case where the Court cannot safely assume that the Secretary of State gave consideration to the question of proportionality which was not premised on a material misdirection in law. The Secretary of State's position both before the Divisional Court and Court of Appeal was that the principle of proportionality does not apply to proscription, since (in her view) neither Article 10 nor Article 11 are engaged because Article 17 of the Convention applies. That was also the position stated in the Explanatory Note that accompanied the draft Amendment Order in Parliament. It appears no longer to be pursued.

of that power is justified and proportionate under the Convention. If the fact that an organisation is assessed by the Secretary of State to be "*concerned in terrorism*" is treated as the starting point not just for whether an organisation should be proscribed, but *also* as the first stage in the assessment of the proportionality of proscription, *and* as the basis for establishing that there no less restrictive alternatives, *and* as supplying a Convention justification for the interferences with fundamental rights then proportionality has little meaningful role to play in constraining the exercise of the proscription power.

c. But this is a paradigm case where satisfaction of the statutory criteria in s 3 TACT 2000 does not get close to establishing that proscription is proportionate. That is because, as explained above, even proceeding on the basis that PA satisfies the statutory criteria for proscription, its activities place it at the very end of the spectrum of groups against whom proscription can be levied (being directed solely towards serious property damage, rather than violence against people, and given that the overwhelming majority of its activities do not even arguably meet that threshold). There is no other example of proscription being used in such a case, nor where it would impact so significantly on people whose conduct has not been assessed to amount to terrorism (i.e. those involved in over 99% of PA's activities).

d. The failure properly to acknowledge the importance of the constraints imposed by Parliament on the exercise of the s 3 TACT 2000 power by the HRA 1998 also infected the Court of Appeal's approach to the degree of respect to be afforded to the decision maker. The Court of Appeal purported to recognise that the protection of civil liberties, including free speech and freedom of association, is a matter firmly within the institutional competence of the court (CA/107) but, in practice, did not analyse the decision in accordance with the "*constitutional shift*" instigated by the HRA 1998 as regards the protection of freedom of expression and association. The Court of Appeal observed that before the enactment of the HRA 1998 the decision would have been "*regarded as unsuitable for judicial scrutiny at all*", then (notwithstanding the protections introduced by HRA 1998) proceeded to defer entirely to the Secretary of State's judgement on the proportionality of proscription, on the basis that she is "*better placed than the court to adjudicate the balance of the various rights and interests engaged in the context of national security*" (CA/116,

see also CA/174-175, 180-181). The Court also limited its own assessment of proportionality to "*all the materials available to the Home Secretary*" (CA/175) – contrary to the guidance of this Court in *Shvidler* at §140 and despite (i) the highly intrusive nature of the decision, (ii) the inadequacy of the Secretary of State's assessment of the rights-compatibility of the decision (on which see fn 11 above), and (iii) the comparative quality of the evidence and material before the Court on the impact of the decision on Articles 10 and 11 as compared to the (absence of) material addressing this which was before the Secretary of State.[12] Each of these factors pull in the direction of *greater* scrutiny of, and less deference towards, the Secretary of State's decision. The national security context does not alter that and nor does it extinguish these other important features of the case. Taking account of all the relevant factors, the Court is equally well or better placed to determine proportionality, and the Divisional Court was correct that the Court should afford a measure of deference to the Secretary of State only on issues which she is genuinely better placed to judge.

C. Imposition of a prior restraint contrary to common law protections for civil disobedience

11. The exercise of the proscription power is essentially a form of prior restraint. Whereas the traditional criminal justice response to direct action protest tolerates protests occurring and imposes (appropriately attenuated) penalties afterwards, the purpose and effect of proscription is to prevent and disrupt the organisation's activities before they take place. That applies to all their activities, whether criminal or not and whether they meet the threshold of terrorism or not.

12. The European Court of Human Rights has stated that prior restraints "*present such great dangers that they call for the most scrupulous examination by the Court*": *Kaos GL v Turkey*, App. No. 4982/07, 22 Nov 2016, §50. So too have the domestic courts emphasised that any form of prior restraint on expression "*calls for the most careful scrutiny*" as to why the speech cannot be permitted and individuals held to account after the fact: *Laporte,* §37. The imposition of prior restraints on speech must be subject to a

[12] On this issue, Amnesty UK and Liberty endorse the points made by the Appellant in her Written Case at §91 **[HB/56]**.

legal framework "*ensuring both tight control over the scope of bans and effective judicial review to prevent any abuse of power*": Kablis v Russia [2019] ECHR 318, §92.

13. Neither the decision under challenge nor the decision of the Court of Appeal treated the proscription of PA with the very anxious scrutiny required in cases of prior restraint. The central reasoning for the Court of Appeal's finding that the proscription decision was proportionate was that proscription of the organisation would prevent PA members committing criminal offences. This argument, however, goes too far. It would justify the prior restraint of any group thought to be engaged in criminality, despite the principle of the rule of law that people should have their liberty restricted only after proven breach of the law.[13] It also failed to give due weight to the fact that the criminal law prohibits not only attempts and conspiracies but acts preparatory to terrorism (s 5 TA 2006). These criminal justice measures are themselves extremely broad (and, in a protest context, impact on human rights: see §16 below), but they are a considerably more targeted means for the state to prevent the occurrence of alleged acts of terrorism, without the extremely wide-ranging and intrusive impacts of proscription.

14. In addition, the imposition of prior restraint rather than post-hoc criminal justice responses represents a fundamental departure from the approach described by Lord Hoffmann in the Jones case which *"accommodates"* and tolerates direct action protests, even those causing serious damage to property, by subjecting them to the ordinary criminal justice system and the subsequent sanction of the criminal law. Why? Because of the extremely weighty importance of freedom of expression. In Jones, Lord Hoffmann referred to the fact that civil disobedience "*on conscientious grounds has a long and honourable history in this country*" (§89). He referred to the suffragettes—whose campaign of direct action included deliberate property destruction—and said that it "*is the mark of a civilised community that it can accommodate protests and demonstrations of this kind*." His Lordship described the way that protesters "*vouch the sincerity of their beliefs by accepting penalties imposed by law*" and that police and magistrates recognise the conscientious objections, acting with restraint in sentencing such individuals.

[13] "No man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary manner before the ordinary Courts of the land": *Introduction to the Study of the Law of the Constitution*, eighth ed., 1920, pp.183-184.

15. Thus, the common law has recognised that individuals who are motivated by their conscience to contravene the criminal law to protest against injustice are different in kind from ordinary lawbreakers, and should be treated accordingly. In *R v Roberts* [2019] 1 WLR 2577, §34, Burnett LCJ referred to "*a bargain or mutual understanding operating in such cases*". In *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29, Leggatt LJ referred to an important "*dialogue*" with the civilly disobedient actor who is distinguished by their "*moral difference*" from ordinary law-breakers (§98).

16. Importantly, in such cases the imposition of criminal penalties itself represents a serious interference with freedom of association and freedom of expression. A criminal conviction has been held to be one of the "*most serious forms of interference*" with the rights to freedom of expression and assembly (*Perinçek v Switzerland* (2016) 63 EHRR 6, §27; *Yordanovi v Bulgaria*, App. No. 11157/11, 3 September 2020, §50). Protestors accept this risk – and the attendant impact in terms of conviction, sentence, and ancillary detriments (e.g. on immigration) – as the consequence of their civil disobedience. It is a weighty consequence: all the more so where their civil disobedience may give rise to an offence under anti-terrorism legislation, with the additional opprobrium and negative effects occasioned by receiving a terrorism-related conviction. The Secretary of State requires substantial justification to show that even such weighty penalties are not an appropriate alternative measure for achieving a legitimate aim and that a measure of prior restraint in the form of proscription is in fact necessary.

17. The Court of Appeal's reasoning that the activities of PA are the "*antithesis"* of the protest groups referred to in *Jones* and *Cuadrilla Bowland Ltd* and have "*little or nothing in common with the suffragettes or the anti-apartheid or Iraq War protest groups*" (CA/161) (thus justifying a different response by the State) is wrong:

    a. *Jones* was concerned with organised protesters who broke into an airbase with the intention of destroying or damaging a runway, setting fire to aircraft, damaging fuel tankers, and obstructing and disrupting the maintenance of security (§3). *Cuadrilla* concerned protesters alleged to have "*mobbed*" and damaged security vans, and climbed on top of moving lorries to stop them getting to a fracking site (§8).

    b. The suffragettes – expressly referred to by Lord Hoffmann in *Jones*, now vindicated by history and celebrated – used tactics that would have fallen within the s 1 TACT

2000 definition, including a campaign of bombing and arson attacks.[14] These activities, on any view, seriously interfered with the rights of others and cannot be distinguished as lesser interferences than those alleged to arise from PA's activities.

c. The Court of Appeal relied upon the Divisional Court's analysis of civil disobedience movements (CA/150), without recognising the close historic relationship between civil disobedience and direct-action protest involving damage to property, which was a central feature of the suffragette and anti-apartheid movements.[15] For example, the Second Witness Statement of Mr Sasha Deshmukh, the then CEO of Amnesty UK, identifies a range of direct action campaign groups including the Animal Liberation Front, Animal Rights Militia, Trident Ploughshares, Extinction Rebellion, Just Stop Oil, and Insulate Britain which deployed similar tactics to PA, including effecting significant property damage and targeting military infrastructure in pursuit of their ideological objectives. Having surveyed that history, Mr Deshmukh concludes: "*It has thus 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 in 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*" (Deshmukh 2, §17). The distinction on which the Court of Appeal relied was therefore historically inaccurate and contrary to the evidence before the Court.

18. The use of the proscription power against PA represents, in contrast to the approach advocated by Lord Hoffmann in *Jones*, a clear instance of disproportionality. Not only is the Secretary of State using the sledgehammer of an anti-terrorism power to crack the nut of a direct-action protest group, but the comparisons drawn by the Court of Appeal ultimately illustrate that the Court minimised and did not give appropriate weight to the political and expressive character of the activities of PA when conducting the proportionality assessment.

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[14] See e.g. Webb, S., *The Suffragette Bombers: Britain's Forgotten Terrorists* (2014) Pen & Sword Books https://library.britishcouncil.org/cgi-bin/koha/opac-detail.pl?bib=881

[15] See examples provided in the Second Witness Statement of Sacha Deshmukh, §§9-19 **[HB/5220-5224]**, and the Second Witness Statement of Sam Grant, §5 **[HB/5229]**.

D. Chilling effect

19. The Court of Appeal, and the Secretary of State on appeal, both significantly underplay the impact of the decision under challenge on individual rights. The specific "*chilling effect*" on civil society was simply not addressed by the Court of Appeal nor identified as a factor in the Court of Appeal's analysis, and it is given short shrift by the Secretary of State before this court, in a single sentence containing no analysis at all (SSHD Written Case, §89(e) **[HB/115]**).

20. Articles 10 and 11 are engaged where a measure "*could have*" or even is "*capable of having*" a "*chilling effect*" on the exercise of expression and association (*Baczkowski v Poland*, App. No. 1543/06, 3 May 2007, §67; *Various Claimants v NGN* [2019] EWCA Civ 350, §18; *Shmorgunov v Ukraine*, App. Nos. 9078/14, 15367/14, 16280/14, 21 January 2021, §493). Having a chilling effect has been described as having a "*deterrent impact*" on a person exercising their rights (*R (Leigh) v Commissioner of Police of the Metropolis* [2022] 1 WLR 3141, §76) or as being "*capable of discouraging participation*" in the expressive or associative rights in question (*Sociedade Independente De Comunicação v Portugal*, App. No. 29856/13, 27 July 2021, §69). In this case, the Divisional Court rightly recognised that "*the interference with Convention rights in this case must be measured both by the restrictions required by the letter of the criminal offences; and by the further extent to which people will exercise self-restraint in terms of what they say and what they do*" (DC/121).

21. Here, the chilling effect is particularly acute because the offences consequent on proscription are broad (including in their application to non-members of the proscribed organisation, and to a wide array of conduct), carry serious penalties, and are uncertain in scope. For example, there is no authority or guidance on whether public statements opposing proscription, or advocating for de-proscription, of a proscribed organisation constitute one or more of the offences under TACT 2000. Section 12(1A) TACT 2000 criminalises the expression of an opinion or belief that is supportive of a proscribed organisation. It is clear from the authorities that "*support*" includes "*intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported*" (*Choudhary* [2018] 1 WLR 695, §46). On the approach of the Divisional Court, statements such as, "[*Proscribed organisation A] should not be proscribed" or "it was unlawful to proscribe organisation A" or "[Proscribed organisation A] should*

be de-proscribed" or "[*Proscribed organisation A] should not be proscribed because they are engaged in direct action protests, which are a legitimate exercise of free speech*" constitute an offence.

22. Thus, the Divisional Court considered that journalists, campaign groups, academics and students could be at risk of prosecution if they express views opposed to the proscription of any individual proscribed organisation, including on the basis that its proscription is thought to be unlawful. The Divisional Court appeared to accept that the expression of such opinions is prohibited, stating that journalism or teaching which is merely "*reporting of things said or done by others*" and teaching limited to "*imparting information and testing general ideas*" would be lawful; implying that a journalist, academic, teacher, student or member of the public who expressed an opinion that a particular proscription decision is wrong or unlawful would commit a serious criminal offence (DC/123). Thus, in respect of campaign groups, the Court stated that, "*care will need to be taken to ensure that any general campaign against the use of proscription does not inadvertently descend into a campaign against any particular use of the power to proscribe"* (DC/123).

23. This represents a seriously concerning departure from the rule of law, since it risks immunising the exercise of coercive state power from public criticism. Simply by dint of exercising the proscription power, the government may thus insulate itself from criticism or challenge for doing so.[16] The Court of Appeal recognised the decision under challenge was "*highly controversial*" (CA/204), but much of the public expression of this controversy is, on the Divisional Court's analysis, unlawful.

24. It is inconsistent with basic notions of freedom of expression in a rights-respecting society to criminalise statements of opinion directed at how a state power has been exercised and arguments that a decision taken by government should be changed (whether because it is wrong, unlawful, or because, following a change of government or change of circumstances, it should be reversed). The impact is amplified in the context of the use of the power against a protest group whose aims are to raise matters of legitimate public concern supported by many law-abiding citizens.

[16] Other than through the courts or Parliament.

25. The Court of Appeal failed to engage with or give any weight to these implications. But on the courts' current analysis of the legal position consequent on proscription, there is a very real risk that legitimate criticism of the exercise of a coercive state power cannot be advanced, alongside profound wider chilling effects on public discussion, teaching and reporting of a decision taken by government.

26. The chilling effect of the decision is addressed in Liberty and Amnesty UK's evidence in these proceedings, including in respect of the chilling effect on their own professional activities. Thus, the proscription decision deterred Liberty and Amnesty UK from expressing views, campaigning, and organising in relation to a contentious Government decision and matter of public concern. Liberty conducted "*considerable*" advocacy and campaigning work between the Secretary of State's announcement of her intention to proscribe PA and the proscription taking effect (Grant 2, §9 **[HB/5230]**). This included writing to the Secretary of State, briefing Parliamentarians, and commenting widely in the press (Grant 2, §§11-16 **[HB/5231-5233]**). But after the coming into effect of the proscription order, its activities had to be severely scaled back given the *"breadth of the related criminal offences and the [organisation's] senior leadership team's understandable unwillingness for Liberty and its staff to be exposed to any risk of breach of the criminal law*" (Grant 2, §19 **[HB/5233]**). While in normal circumstances Liberty would have "*continued to carry out influencing work in respect of a government decision with a significant impact on civil liberties*" the risks of inadvertently committing serious offences meant Liberty did not engage further with Parliamentarians and refused a large number of media requests (Grant 2, §§22-26 **[HB/5234-5236]**). Similarly, see on behalf of Amnesty UK Mr Deshmukh's evidence at §§23-27 **[HB/5226-5227]**, which echoes these concerns.

27. The experience of both organisations corresponds with the Divisional Court's conclusion that for campaigning organisations "*the section 12 offences could cause genuine problems*" (DC/123). Mr Grant and Mr Deshmukh explain that, in addition to limiting the external-facing campaigning work they would ordinarily have undertaken, the decision also inhibited the internal workings of both human rights organisations (Grant 2, §20 **[HB/5233]**; Deshmukh 2, §28 **[HB/5227]**). As Mr Grant puts it, Liberty has ultimately been compelled to "*conduct its campaigning work in a materially different – and less effective – manner than it has in respect of previous Government decisions and*

legislation on counterterrorism which we assess seriously impact civil liberties" (Grant 2, §27 **[HB/5236]**).

28. These important matters are ones which should plainly weigh extremely heavily in the proportionality balance.

E. Freedom of association

29. In the context of the decision under challenge, Article 11 of the Convention, which protects, *inter alia,* the right to freedom of association, raises issues distinct from and independent of those arising under Article 10 of the Convention both in terms of the interference with individual rights which must be justified and the nature of the Court's review:

    a. Article 11 encompasses not only the right to freely assemble, but also a right to freely associate in order to "*act collectively in a field of mutual interest*" and the way in which domestic legislation is applied by the authorities "*reveal the state of democracy in the country concerned*" (Sidiropoulos and Others v Greece, App. No. 57/1997/841/1047, 10 July 1998, §40). The European Court of Human Rights has also emphasised the importance of permitting individuals to organise collectively, including for political ends, for the proper functioning of a democracy (*Gorzelik v Poland* (App. No. 44158/98, 17 February 2004, §88).

    b. The principal purpose and effect of the power to proscribe an organisation under s 3 TACT 2000 is to dissolve and criminalise activities which further a previously lawful political collective of individuals, impairing the very essence of the right to freedom of association.

    c. The Strasbourg court recognises that outright dissolution of an organisation is a measure which is "*drastic*" (*United Communist Party of Turkey v Turkey*, App. No 133/1996, 30 January 1998, §54) and "*extremely harsh*" (*Tayad v Turkey*, App. No. 59835/10, 21 July 2020, §35[17]), given it entails significant consequences for

[17] This decision is only available in French. The original text reads:
"35. *La Cour rappelle par ailleurs que la dissolution pure et simple d'une association constitue une mesure extrêmement sévère (Tunceli Kültür ve Dayanışma Derneği c. Turquie, no 61353/00, § 32, 10 octobre 2006, Vona, précité, § 58, et Les Authentiks et Supras Auteuil 91 c. France, nos 4696/11 et 4703/11, § 80, 27 octobre 2016), entraînant des conséquences*

members. It must therefore only be taken in the most serious cases and justified by compelling reasons, which is a heavy burden to discharge (*Tayad*, §§35-36).

d. The kind of cases in which the Strasbourg Court has considered dissolution of an organisation justified can properly be characterised as extreme, e.g. organisations which strived for a State based on Sharia law (*Refah Partisi (The Welfare Party) and others v Turkey* (2003) 37 EHRR 1); had links with or were controlled by other organisations which committed acts of violence against people (*Herri Batasuna and Batasuna v Spain*, App. Nos. 25803/04 and 25817/04, 30 Jun 2009); or which advocated violence against people (*Ayoub and Others v France*, App. Nos. 77400/14, 34532/15, and 34550/15, 8 October 2020). Amnesty UK and Liberty are not aware of any case in which the Strasbourg court has upheld as proportionate the dissolution of an organisation on the basis that it has damaged property as part of direct-action protest.

30. Article 11 protects the right of people to organise together, so that their shared political concerns may be amplified and their influence on society increased. Disbanding an association formed to promote the political views of its members and supporters under compulsion of law is one of the most serious possible interferences with freedom of association. Designation as a proscribed organisation has precisely that effect and, accordingly, requires compelling and specific justification, by reference to Article 11 itself and not through the rubric of the distinct protection afforded by Article 10.

31. An Article 11-compliant proportionality analysis also required consideration of the broad scope of the criminal sanctions in s 12 TACT 2000 which flow from proscription. In particular, s 12 TACT 2000 criminalises meetings held to "*further the activities*" of a proscribed organisation (s 12(2)(b)). The activities to which the offence attaches are not confined to terrorist or even criminal conduct. On the Court of Appeal's own analysis, PA's activities included direct action protest in support of the Palestinian cause. Associating to further even such non-terrorist expressive activity is thus placed within

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importantes pour ses membres, ne peut être tolérée que dans des circonstances très sérieuses (voir, mutatis mutandis, Association Rhino et autres c. Suisse, no 48848/07, § 62, 11 octobre 2011, avec la référence citée), et qu'en conséquence l'article 11 impose à l'État une charge élevée de justification pour une telle mesure. Elle devra donc examiner si cette mesure était en l'espèce exceptionnellement justifiée."

the scope of the criminal law as a result of the proscription decision, and it is not clear how, for example, those formerly linked to PA can associate with others in support of the Palestinian cause without running a risk of coming within s 12. That consequence is central to the Article 11 assessment and the proportionality analysis more broadly and ought to have been squarely addressed by the Secretary of State and the Court of Appeal. Had it been, it would have shown why application of the proscription regime to an organisation with PA's conduct and activities was disproportionate and inapt.

32. The Court of Appeal, however, failed to give any (or at least any sufficient) weight to the impact of the decision on Article 11 and the consequent need for a compelling justification, and the Secretary of State fails to engage with it entirely:

    a. The Court of Appeal's judgment acknowledged that the decision interferes with Article 11 (CA/96) but failed to consider the nature and extent of the impact on association rights at all (c.f. the reasoning of the Divisional Court at (DC/105) and (DC/135)). Otherwise, reference was only made to Article 11 in composite with Article 10 of the Convention or made reference to the right to freely assemble, which is just one aspect of the Article 11 right. This illustrates a failure to take account of the distinct impact of the decision on freedom of association specifically.

    b. The Secretary of State, both as the decision-maker and in this appeal, makes no reference at all to the particular concerns which arise under Article 11, nor makes any effort to explain how the extreme consequences for individuals' associative rights are justified. Her failure to consider Article 11 impacts means little deference is due to her assessment that proscription is proportionate. In the circumstances, the impact of the decision on Article 11 rights is not justified.

F. Conclusion

33. For all of the above reasons, Amnesty UK and Liberty invite the Court to allow the appeal on the basis that the proscription decision disproportionately interferes with Articles 10 and 11 of the Convention.

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14 October 2026