Appeal no.: UKSC/2026/0099

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM HIS MAJESTY'S COURT OF APPEAL (CIVIL DIVISION) (ENGLAND AND WALES)
LADY CARR CJ, SIR GEOFFREY VOS MR, LORD JUSTICE EDIS (VICE PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)), LORD JUSTICE LEWIS & LADY JUSTICE WHIPPLE
[2026] EWCA Civ 721

B E T W E E N :

THE KING
(on the application of HUDA AMMORI)
Claimant/Respondent below/Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Defendant/Appellant below/Respondent

SECRETARY OF STATE'S OPEN WRITTEN CASE

References are in the following form:

(i) to the Statement of Facts and Issues - "**SFI, §**";

(ii) to the Appellant's Written Case dated 23 September 2026 – "**AWC, §#**";

(iii) to the judgment of the Court of Appeal dated 15 June 2026 ([2026] EWCA Civ 721) – "**CA Judgment, §#**";

(iv) to the order of the Court of Appeal dated 15 June 2025 – "**CA Order, §#**";

(v) to the judgment of the Divisional Court dated 13 February 2026 ([2026] EWHC 292 (Admin), [2026] HRLR 9) - "**DC Judgment, §#**";

(vi) to the judgment of the Administrative Court dated 30 July 2025 ([2025] EWHC 2013 (Admin)) – "**AC Judgment, §#**".

Unless otherwise stated, emphasis in quotations is added.

I. INTRODUCTION

1. The Appellant is one of the co-founders of Palestine Action ("**PA**"). Both the Divisional Court and the Court of Appeal have rejected her attempt to portray PA as a non-violent direct action "*protest group*" (see e.g. AWC, §2). Rather, the Court of Appeal concluded – basing themselves on the evidence that had led the Divisional Court to essentially the same conclusion – that PA is "*the antithesis of the kind of civil disobedience protest group*" referred to in cases such as *R v Jones* [2007] 1 AC 136 (see CA Judgment, §161). HB/22 HB/272

2. The Court of Appeal carefully considered (afresh) all of the material bearing on the issues under Articles 10 and 11 ECHR. In many respects, their conclusions on the facts were the same as those reached by the Divisional Court. The Court of Appeal correctly noted at CA Judgment, §14 that: "*The Home Secretary proceeded on the basis of the advice from the Joint Terrorism Analysis Centre and other experts, and reached her decision properly following the Proscription Policy, making her own balance between the free speech and freedom of assembly rights of individuals and the interests of national security and of third parties, such as the companies affected by Palestine Action's activities. She had both the institutional competence and the democratic accountability to make that decision*." HB/243

3. The principles applied by the Court of Appeal in allowing the Secretary of State's appeal were long-standing, settled, and orthodox. The Court of Appeal made no error of law. Their conclusions of fact were plainly justified on the evidence before them (and in many key respects the same as those reached by the Divisional Court). Whatever approach to the Convention issues this Court takes, it is submitted that the appeal should be dismissed.

II. LEGISLATIVE FRAMEWORK GOVERNING PROSCRIPTION

(a) TA 2000

4. The TA 2000 "*provides the measures considered by Parliament to be necessary to protect the citizens of the United Kingdom against terrorism, and to enable a democratic society to operate without fear. It also contains measures designed to prevent the United Kingdom*

from being used for the purpose of terrorism outside the jurisdiction": R v. ABJ [2026]
HB/3555 2 WLR 542 ("***ABJ***"), at §18.

HB/2237 5. Section 1(1) TA 2000 defines 'terrorism' as:

> '*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.*'

HB/2237 6. By reason of s.1(2)(b), action done for the purposes set out in s.1(1)(b) and (c) can constitute terrorism if it '*involves serious damage to property*'. An action need not involve violence against any person or endanger life or create a risk to health or safety to meet the definition of terrorism.

HB/2239 7. Section 3(3) TA 2000 gives the Secretary of State the power by order to proscribe an organisation by adding it to Schedule 2 to the TA 2000. By s.3(4) and (5), the s.3(3) power may be exercised only if the Secretary of State believes that an organisation is '*concerned in terrorism*', which means that the organisation '*(a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism, or (d) is otherwise concerned in terrorism*'. Subject to satisfaction of one of those statutory criteria, Parliament conferred a broad discretion on the Secretary of State to exercise the power under s.3(3). Parliament afforded primacy to the Secretary of State's decision-making in this area, including the pursuit of national security and other public interest objectives sought to be achieved as a consequence of proscribing an organisation. In ABJ
HB/3576 at §106, Lord Reed observed:

> "*Deciding where and how to balance the value of freedom of expression against the need to combat terrorism is a highly sensitive matter falling primarily within the responsibility of the elected national authorities. Judicial supervision, whether by domestic courts applying the Human Rights Act or by the European court applying the Convention, has to respect the institutional expertise and constitutional legitimacy underlying the judgment made by those authorities by according them a correspondingly wide margin of appreciation. Although a strict approach is generally taken to restrictions on political speech, the European court has recognised that states must enjoy a wider margin of appreciation when countering terrorism: see, for example, Schwabe v Germany (2011) 59 EHRR 28, para 113, and Internationale Humanitäre Hilfsorganisation eV v Germany, para 89 ("the aims pursued by the prohibition of indirect support for terrorism as being contrary to the concept of*

international understanding are necessarily very weighty and states enjoy a wider margin of appreciation in that regard")."

8. Orders under the TA 2000 must be made by statutory instrument (s.123(1)). By s.123(4) and (5), an order under s.3(3) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.[1] In this case, a draft order was laid before Parliament on 30 June 2025, approved by the House of Commons (2 July 2025) and the House of Lords (3 July 2025), and came into force on 5 July 2025.[2]

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9. Parliament has also provided that, once an organisation is listed in Schedule 2, certain criminal offences under the TA 2000 may be committed through conduct relating to that organisation: see CA Judgment, §§27-32, and IR Judgment, §§33-39. In *ABJ* at §29 (cited at CA Judgment, §27), Lord Reed held:

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"*Proscription is not an end in itself, but is the basis on which a number of other provisions apply. Those provisions are designed to prevent proscribed organisations from gathering support or financial aid, to counter their influence on susceptible individuals, and ultimately to reduce the threat which they pose to our democracy and to public safety. 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*."

10. Parliament did not confer on the Secretary of State a power to tailor the specified criminal liability or relevantly limit the persons to whom, or the specific activities to which, it applies. Rather, a proscription order has the effect of including an organisation in Schedule 2 to the TA 2000, triggering potential criminal liability in accordance with the provisions of the TA 2000.[3] The offences in Part II TA 2000 (ss.11-13) underpin the proscription

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[1] The exception is where the Secretary of State is of the opinion that it is necessary to proceed urgently, in which case the instrument ceases to have effect 40 days later, unless in the intervening period it has been approved by a resolution of each House (see s.123(5)). However, the urgency provision was not invoked in this case.

[2] This followed Chamberlain J's decision to refuse the Appellant's application for interim relief on 4 July: [2025] EWHC 1708 (Admin) ("**the IR judgment**"); and the Court of Appeal's refusal of permission to appeal that decision dated the same day: [2025] EWCA Civ 848.

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[3] Further powers under the Anti-Terrorism, Crime and Security Act 2001 ("**ATCSA 2001**") are engaged upon an organisation's proscription: see ss.1(1)(b) and 1(2) ATCSA 2001. The powers conferred under the ATCSA 2001 are extensive and include powers concerning the forfeiture of terrorist property. Schedule 1 ATCSA 2001 is entitled "*Forfeiture of terrorist property*". It is structured as follows: Part 2 concerns seizure and detention of terrorist cash; Part 2A concerns forfeiture of terrorist cash

regime. Those offences relate to membership of a proscribed organisation (section 11); support for it (section 12), and the wearing of uniforms etc. (section 13). The proscription regime "*is a fixed suite of prohibitions and criminal offences, not a list of options from which the Home Secretary had power to pick and choose*" (DC Judgment, §101). Each offence does not sit in isolation but rather is part of "*a rational counter-terrorism strategy to stymie the operation of proscribed organisations. At root the strategy rests on the Secretary of State's listing of an organisation as a proscribed terrorist organisation*": *PWR and others v Director of Public Prosecutions* [2022] UKSC 2, [2022] 1 WLR 78 ("***PWR***"), at §55. HB/317 HB/3023

11. The fact that individuals might commit offences under Part II TA 2000 by reason of acts that do not themselves meet the statutory definition of '*terrorism*', or only meet that definition in part, is squarely within the contemplation of the statutory scheme. Those are measures that "*Parliament has considered necessary to combat organisations concerned with terrorism*": *R v Choudary* [2018] 1 WLR 695 ("***Choudary***"), at §38. Parliament intended for proscription to have the effect of stifling organisations concerned in terrorism and for members of the public to face criminal liability for joining or supporting such organisations.[4] That serves to ensure proscribed organisations are deprived of the oxygen of publicity and support: see *Choudary*, at §41, *ABJ*, at §98 and *PWR*, at §55. HB/3595 HB/3595 HB/3574 HB/3023

(b) HRA

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without court order; Part 3 concerns forfeiture of terrorist cash; Part 4A concerns forfeiture of terrorist assets; Part 4B concerns forfeiture of terrorist money held in certain accounts; Part 4BA concerns seizure and detention of terrorist cryptoassets; Part 4BB concerns crypto wallet freezing orders; Part 4BC concerns forfeiture of terrorist cryptoassets; and Part 4BD concerns conversion of cryptoassets.

[4] See further s.59(7)(a) of the Online Services Act 2023, which defines offences specified in Schedule 5 as "*priority offences*". Schedule 5 lists terrorism offences under ss.11-13, 15-18, 54, 56, and 58-61 TA 2000. By s.10(2)(b) OSA 2023, there is a duty on providers of user-to-user services "*to take or use proportionate measures relating to the design or operation of the service to- … (b) effectively mitigate and manage the risk of the service being used for the commission or facilitation of a priority offence, as identified in the most recent illegal content risk assessment of the service*".

HB/2172 12. Article 10 provides:

> "*1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*"

HB/2172 13. Article 11 provides:

> "*1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*
>
> *2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*"

III. FACTUAL BACKGROUND

(a) Fresh assessment by this Court

HB/54 14. At AWC, §88, the Appellant contends that this Court "*should undertake its own de novo assessment of the proportionality of the proscription of PA*", citing *Shvidler v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2026] AC 607 ("***Shvidler***"). The Appellant regards a *de novo* assessment of proportionality as requiring this Court to make fresh findings of fact, in the course of which she invites the Court to depart fundamentally from key findings consistently made by both the Divisional Court and the Court of Appeal. For example, the Appellant invites the Court to find that: (i) PA's tactics fell within "*the well-established traditions of civil disobedience protest groups*" and were incorrectly identified at CA Judgment, §45, as lacking restraint (see AWC, §§32-33); (ii) the trajectory of PA's activities was downward, rather than escalating, prior to the Decision (see AWC, §§15, 39 and 108); and (iii) the "… *true impact [of the Decision]*

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was more severe than the DC recognised, and far more severe than the CA acknowledged"
HB/67 (AWC, §113).

15. The Secretary of State's primary case is that a fresh assessment of the proportionality of
HB/3908 the Decision is neither warranted nor required: c.f. *Shvidler* at §144. Rather, a review approach is to be adopted at this stage. In particular:

a. Both the Divisional Court and the Court of Appeal undertook careful and fresh assessments of the proportionality of the Decision in considerable detail, having considered the voluminous evidence filed in the proceedings in both OPEN and CLOSED. A further fresh assessment by this Court would lead to "*repetition of arguments up through the legal system by the loser seeking without sufficient reason*
HB/3908 *to have a second bite at the cherry*" (*Shvidler* at §143).

b. Over lengthy hearings in both OPEN and CLOSED, the Courts below reached substantially similar findings of fact. Repeating that process on a third occasion is unwarranted. *Per* Lord Brown in *R (Cart) v Upper Tribunal* [2012] 1 AC 663 at §100: "*The rule of law is weakened, not strengthened, if a disproportionate part of the courts' resources is devoted to finding a very occasional grain of wheat on a threshing floor full of chaff.*"

c. That the Court of Appeal undertook a fresh assessment of the proportionality of the Decision does not mean that a fresh assessment must be undertaken by this Court also. To the contrary, the guidance provided in the CA Judgment has the effect that there is "*... no significant need or justification for an appellate court to re-assess the matter afresh ... Similarly, in matters of wide social concern, it is only necessary that the appellate courts examine them in order to exercise their own judgment as*
HB/3909 *they first arise, not on every occasion thereafter"* (*Shvidler* at §148).

d. The CA Judgment referred to, and applied, orthodox and long-established public law and Convention principles. Two points follow. First, there is no need for this Court to resolve differences between divergent strands of authority (c.f. *Shvidler* at
HB/3913 §162). Secondly, although the Decision took effect, via the Order, by way of an amendment to Schedule 2 to the TA 2000, it was a one-off decision of the Secretary of State which depended entirely on the application of well-established law and
HB/3913 principles to the specific facts concerning PA (see *Shvidler* at §160).

16. It is no answer to the submissions immediately above for the Appellant to assert that various contemporaneous documents were disregarded by the Divisional Court and the Court of Appeal (e.g. the Appellant alleges that the Court of Appeal failed to consider contemporaneous evidence of the effect of arrests and prosecutions of "*PA activities [sic] for ordinary criminal offences*" at AWC, §108) or for her now to elevate in her submissions documents on which the lower courts heard submissions but did not see fit to refer to in their judgments (see e.g. the references to the National Police Co-ordination Centre ("**NPoCC**") briefings of September and December 2024 at AWC, §§15, 19, 20, 39, and 115.5). The Appellant's submissions below were advanced robustly and expressly with reference to the documents now alleged to have been disregarded. There is no proper basis for that suggestion, the documents having been referred to by the Appellant below. It is well-established that "*[t]here is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter*": see *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] ETMR 26 at §§114-115 (approved in *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] Bus LR 532 at §48).

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17. Alternatively, in the event that the Court undertakes a fresh assessment of the proportionality of the Decision, that still would not lead to the Court conducting in effect a *de novo* assessment of all of the material before the Court of Appeal. The Court is entitled to, and should, consider whether there was apparent error in the consideration of the material by the Court of Appeal. The Court is also entitled to have regard to the fact that many of the facts found by the Court of Appeal were entirely consistent with the findings of fact made by the Divisional Court. In these circumstances, the Court is invited to rest its assessment on materially the same findings of fact to the Courts below: see, by analogy, *R (AAA (Syria)) v Secretary of State for the Home Department* [2023] 1 WLR 4433 at §73. At the least, the findings of the Courts below ought to be accorded considerable respect. In this case, it is submitted that there is no justification for making different findings of fact on a third assessment for the purposes of considering proportionality.

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18. That is especially so in circumstances where the Appellant sought but failed, through a Respondent's Notice, to challenge the Divisional Court's findings of fact before the Court of Appeal (see CA Judgment, §45). That the Court of Appeal rejected that challenge and

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reaffirmed the findings of the Divisional Court in this respect is a powerful reason why it would be wrong in principle now to seek to revisit those findings.

19. Notably, in contrast to its approach of formally challenging the Divisional Court's findings of fact by way of a Respondent's Notice, the Appellant has elected not formally to seek permission to appeal on the basis of the Court of Appeal allegedly having erred in making findings of fact which lack cogency or were incapable of sustaining the weight accorded to them. Instead, the Claimant has simply invited the Supreme Court to make fundamentally inconsistent findings on the basis of a fresh assessment allegedly required by *Shvidler*. That is not what *Shvidler* decides or permits.

(b) The findings of the Courts below regarding PA

20. Although the Appellant initially sought to challenge the Secretary of State's assessment that PA was an organisation "*concerned in terrorism*" for the purposes of her power to proscribe PA, permission to claim judicial review on that ground was refused by Chamberlain J on 30 July 2025 (see AC Judgment, §§77-80). The Appellant did not renew her application. As such, the correctness of that assessment is not a live issue in the proceedings: see CA Judgment, §55.[5] That PA is an organisation "*concerned in terrorism*" is a key starting point and basis on which the discretion to proscribe fell to be exercised.

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21. **The Divisional Court** addressed PA's structure, activities and membership at DC Judgment, §§15-30. As a general observation, the Divisional Court noted that the Appellant's evidence "*provides surprisingly little information about Palestine Action as an organisation*" (DC Judgment, §15[6]) and "*... the picture the claimant seeks to paint of*

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[5] The Appellant's repeated statements that she does not "*accept this assessment*" are, therefore, irrelevant: see AWC, fts.3 and 155.

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[6] See similarly, DC Judgment, §18 ("*The claimant's evidence does not explain how many people have signed up to take direct action or to receive training*"), §19 ("*Information about how Palestine Action is organised and run is also sparse ... The claimant does not explain her own role in the organisation, other than as a spokesperson, nor does she explain the extent to which Palestine Action prepares for, co-ordinates, or assists the operations undertaken by its members.*"), §20 ("*She gives no explanation about how those funds are used*"), §24 ("*The claimant has provided no evidence of the nature of the training provided through these courses or the scale of Palestine Action's training programmes*"), and

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an ordinary protest group engaged in activities that fall within the well-established tradition of peaceful protest is not an accurate picture" (DC Judgment, §30). The following findings are particularly relevant. HB/298

22. First, the "*main target of Palestine Action's activities in the United Kingdom is Elbit Systems*" (DC Judgment, §16). However, PA's activities are "*also directed at any other company or organisation considered by Palestine Action to enable Elbit's business in the United Kingdom*" (DC Judgment, §17). The evidence was clear (on this basis and more generally) that it had a "*wide range of targets*" (DC Judgment, §23). HB/294 HB/294 HB/296

23. Secondly, the Divisional Court noted that the "*extent and nature of Palestine Action's membership and organisation is largely unexplained*" (DC Judgment, §18) and "*[i]nformation about how Palestine Action is organised and run is also sparse"* (DC Judgment, §19). They held that: "*It is entirely unlikely that an organisation committed to achieve an objective through direct action would do nothing to direct that action to its best effect and would have no structure to promote and guide its direct action*" (DC Judgment, §19). Indeed, they correctly inferred that "*the major part of its funds are directed to supporting direct action*" (DC Judgment, §20). HB/295 HB/295 HB/295

24. Thirdly, the direct action undertaken by PA was not synonymous with "*civil disobedience*", properly described (DC Judgment, §§21-23). To the contrary, PA's activities were "*for the most part various types of criminality including acts of criminal damage such as spray painting, damaging buildings or other property and destroying or attempting to destroy property*" (DC Judgment, §21) undertaken with "*no suggestion of restraint or proportionality*" (DC Judgment, §25). The Divisional Court further held that, "*Palestine Action encourages the causing of more, rather than less harm*" (DC Judgment, §25), and in that context its own 'Underground Manual' encouraged those who read it "*to 'be creative' and to 'disrupt damage or destroy' targets without restraint*" (DC Judgment, §26). HB/296 HB/296 HB/297 HB/297

HB/323 §122 ("*Given the paucity of the evidence that we have about Palestine Action there is nothing that could reliably identify how large this class of person would be*").

25. The Divisional Court made reference to the Underground Manual's recommendation of causing damage with an "*efficient sledgehammer*" (DC Judgment, §§24, 27, 29). This was in circumstances where the Joint Terrorism Analysis Centre's ("**JTAC**") expert assessment of one of PA's attacks which had met the definition of terrorism was that "*those participating in the Bristol attack had 'entered the [Elbit] warehouse, using weapons including sledgehammers, axes and whips' and 'during the attack two responding police officers and a security guard were assaulted and suffered injuries. One police officer had been assaulted with a sledgehammer and sustained a serious back injury'*"[7] (DC Judgment, §34(1)).

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26. Fourthly, the Divisional Court recognised that three incidents were assessed to have met the definition of terrorism in s.1(1) TA 2000. However, the Divisional Court declined to infer that those three incidents meeting the threshold of terrorism were "*outliers ... as to scale and extent, and were not therefore indicative of Palestine Action's activities*" (DC Judgment, §28). Rather, the Divisional Court held that: (i) the conduct encouraged by the Underground Manual "*particularly if equipped with an "efficient sledgehammer", runs the risk that something worse will happen*" (DC Judgment, §27); (ii) the risk was all the greater because the Underground Manual encouraged people to take matters into their own hands; and (iii) it was "*not a sustainable proposition*" to seek to portray PA as a "*non-violent*" organisation (DC Judgment, §29). Such a proposition "*also ignores the real risk of injury (to members of the public) which may occur when individuals go equipped with sledgehammers to do damage to property as Palestine Action suggests they should do, and are intent at the same time on avoiding detection*" (DC Judgment, §29).

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27. At DC Judgment, §137, the Divisional Court further held:

> "*Real weight must attach to the fact that Palestine Action has organised and undertaken actions amounting to terrorism as defined at section 1(1) of the 2000 Act. Those actions are small in number but they are still significant and it is also significant that these actions have happened in the United Kingdom. There is, obviously, a heightened public interest in eliminating the risk of any action amounting to terrorism as defined in the 2000 Act within the United Kingdom. Any such action is the antithesis to the notion of a democratic society that is the foundation of the European Convention on Human Rights. It is significant that Palestine Action has not suggested that its actions that have*

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[7] This quotation has been taken from the DC Judgment at §34(1). The last sentence differs slightly from the wording in the JTAC report itself. The JTAC report reads: "*The officers were assaulted with a sledgehammer and one suffered a serious injury to their back*".

been assessed to comprise terrorism were either a mistake or an aberration. Rather, Palestine Action has lauded those who took part in those actions. It is, further, significant that the contents of the Underground Manual provide good evidence of Palestine Action's continuing intention to promote the use of violence regardless of the risk that this will result in serious damage to property or serious violence against members of the public."

28. **The Court of Appeal** undertook a fresh assessment of proportionality: see CA Judgment, §102. The Court of Appeal reconsidered the facts on the basis of all of the material before them. Their factual findings regarding PA's structure and activities substantially mirrored those of the Divisional Court. As well as quoting PA's Underground Manual at Annex A to the CA Judgment, the Court of Appeal held:

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a. At CA Judgment, §13:

"*(i) Palestine Action is not an organisation engaged in activities falling within the well-established tradition of peaceful protest, (ii) Palestine Action is, instead, an organisation that is concerned in terrorism as defined in the 2000 Act and is engaged in causing serious damage to property using weapons, including sledgehammers, presenting very real risks of injury to members of the public, (iii) Palestine Action's "Underground Manual" published in late 2023 advocates the disruption and destruction of and damage to its targets, and avoiding detection, (iv) Palestine Action's nationwide campaign was escalating and was not being pursued with any restraint, (v) that campaign was intended to close down the operations of companies pursuing lawful businesses, and has involved 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), the "Five Eyes" allies and the UK defence enterprise, and (vi) a key benefit of proscribing Palestine Action was to prevent it from funding terrorism and to degrade its covert infrastructure characterised by secret cells.*"

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b. At CA Judgment, §45:

"*Palestine Action was an organisation engaged in causing serious damage to property using weapons, including sledgehammers. It presented a very real risk of injury not only to property but also to members of the public. Its campaign was intended to close down the operations of a company pursuing a lawful business. The campaign has not been pursued with restraint. The wide range of targets is significant. It was designed to intimidate the persons and businesses targeted to end their relationships with Elbit. It operated covertly to prevent its operations being known or perpetrators being apprehended. It was not "engaged in any exercise of persuasion, or at least not the type of persuasion that is consistent with democratic values and the rule of law" …"*

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c. At CA Judgment, §161:

"*161. The essential characteristics of Palestine Action are, in fact, the antithesis of the kind of civil disobedience protest group explained in Jones and Cuadrilla at [145]-[146] above. First, Palestine Action's activities are planned and undertaken secretly with the objective of avoiding detection (see, for example, the Underground Manual at Annex A advocating creating cells to take "actions without detection as part of Palestine Action Underground", and explaining "how to get to the site and leave undetected"). Secondly, the members of Palestine Action do not vouch their sincerity by accepting the penalties imposed by the law. Thirdly, on a fair analysis, Palestine Action has little or nothing in common with the suffragettes or the anti-apartheid or Iraq War protest groups (see [149]-[150] above).*"

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d. At CA Judgment, §§205-6:

"*205. ... Palestine Action overtly promotes unlawful violence amounting to terrorism. It is not, as it claims, a direct action civil disobedience protest group like the suffragettes operating transparently in the open. It is a covert organisation that operates using secret cells to avoid the detection and prosecution of those using violence to destroy the property of third parties. Palestine Action's activities have caused injury as well as property damage.*

206. As the Divisional Court commented at [J137], at no stage has Palestine Action suggested that its terrorist activities were either a mistake or an aberration. Rather, Palestine Action has lauded those who took part. The contents of the Underground Manual provide good evidence of Palestine Action's continuing intention to promote the use of violence regardless of the risk that this will result in serious damage to property or serious violence against members of the public."

29. In that context, the Court of Appeal rejected the Appellant's challenge to the Divisional Court's findings of fact (which had been raised by a Respondent's Notice): see CA Judgment, §45. Unless the Court decides to undertake a fresh assessment of proportionality (*per* Shvidler), the scope of the grant of permission to appeal to this Court is such that there is no proper basis for the Appellant to impugn or otherwise gainsay the findings of the Divisional Court and the Court of Appeal in these proceedings. Even if such a fresh assessment of the proportionality balance were to be carried out, there is no warrant, as part of that assessment, to remake findings of fact that have been made consistently by both the Divisional Court and the Court of Appeal.

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(c) The Decision

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30. The account of the process leading to the Decision at CA Judgment, §§46-55, and DC Judgment, §§31-46, is adopted.

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HB/1895 31. On 26 March 2025, by a ministerial submission supported by various annexes, the Secretary of State was notified of the Proscription Review Group's ("**PRG**") unanimous recommendation to list PA as a proscribed organisation in Schedule 2 to the TA 2000 ("**the March MinSub**"). The expert PRG had been tasked by the Secretary of State with considering certain candidate organisations for proscription, including PA. The PRG included Counter Terrorism Policing ("**CTP**"), comprising specialist police officers from many police forces. The following documents were annexed to the March MinSub:

HB/1909 32. **JTAC assessment dated 7 March 2025 (Annex B, "the JTAC Report")**: JTAC's assessment was summarised in the 26 March MinSub as follows:

a. The volume and seriousness of PA's activity increased in 2024: There were two significant incidents that year, both resulting in property damage of more than £1 million. The Elbit Systems UK incident in Bristol involved the use of violence and weapons against security staff and responding police officers.

b. PA commits or participates in acts of terrorism: The group had committed serious property damage with the aim of influencing both the Government and certain businesses it perceived to support Israel. Whilst some incidents involved serious violence against people, PA's activity met the statutory test based on the serious damage to property alone. Although the main target of PA is Elbit Systems UK Ltd, the JTAC assessment at §50 was that: "*PAG has also conducted direct action against other targets in the UK which are not linked to the Israeli defence trade, but are considered symbolic to its wider pro-Palestinian cause. On the anniversary of the Balfour Declaration on 2 November 2024, the group conducted actions at universities, charities and lobby firms.*"

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c. PA was involved in preparing for acts of terrorism: JTAC referred to a PA guidance document, 'The Underground Manual', which provided members with practical advice and advocated for serious damage to property.

d. PA has promoted terrorism: It had publicised the Bristol attack and shared media relating to further incidents of property damage carried out by PA.

e. PA had a large social media following with more than 300,000 followers on Instagram and 220,000 followers on X: The JTAC assessment stated that PA frequently held online training sessions which were highly likely intended to train members and

supporters in PA's direct action strategy. PA was also primarily funded by donations and the sale of merchandise.

HB/1922 33. **CTP's policing report dated 5 March 2025 (Annex C, "the CTP Report")**: The CTP Report considered the benefits and disadvantages of PA's proscription in detail. In terms of benefits, it was assessed, amongst other things, that additional disruptive options would be beneficial in surmounting the high standard of operational security used by PA online and in the real world, which had the effect of frustrating the efforts of law enforcement to detect and prevent its activities. CTP's view was that *"operationally, existing legislation is seen as insufficient to address high-level offences, which meet the definition of terrorism (s.1 Terrorism Act 2000) concerning serious violence and / or serious damage"*.

HB/1931 34. **CTP's letter dated 6 March 2025**: CTP's letter reiterated that criminal charges failed to capture the organisational capability and high culpability of offending "*namely in the complexity of the planning, extent of preparations, severity of offending and intended impact, as well as the network as a whole, including its leadership, influence and funding. We assess that proscribing [PA] under [the TA 2000] legislation would have considerable operational benefits. It would allow CTP to disrupt, deconstruct and prosecute [PA] holistically as a network*".

HB/1933 35. **FCDO's 5th discretionary factor assessment dated 11 March 2025 (Annex E)**: The FCDO assessment considered the foreign policy implications of proscription. It did not identify "*any significant foreign policy factors in favour of proscription*".

HB/1940 36. **Community Impact Assessment dated 6 March 2025 (Annex F, "CIA")**: The CIA considered how the British public were likely to view proscription of PA.

HB/1958 37. **Record of the PRG's meeting on 13 March 2025 (Annex H, "the PRG Meeting Minutes")**: The PRG unanimously agreed that the discretionary considerations weighed
HB/1962 in favour of proscription. The PRG Meeting Minutes recorded: "*Proscribing PAG would offer significant disruptive benefits beyond the current policing powers being utilised to deal with its activity. Proscription could impact PAG's recruitment, financial flows, and operating model and may also support the disruption of the technical and digital security of PAG.*" The PRG's analysis of the discretionary considerations included:

a. The nature and scale of PA's activity. JTAC and CTP both assessed that the group's intent and targets had broadened, and its activity had increased in frequency and seriousness.
b. PA was responsible for three incidents (Bristol, Kent, Glasgow[8]) which involved serious damage to property amounting to terrorism under s.1, TA 2000.
c. The group intended to radicalise individuals to its cause.
d. PA's activities had an impact on individuals, organisations and the Government's strategic defence aims.
e. PA's presence and activity was focused on the UK. The PRG recommended limiting any proscription of PA to the UK based organisation at this time.

HB/251

38. The content of the March MinSub is summarised at CA Judgment, §51. The Secretary of State was advised on the question of exercise of discretion to have regard to the factors set out in her proscription policy "*as well as any other factors (including whether the circumstances justify the interference that proscription would have with the rights of those who are members of, or support the group, specifically ECHR Articles 10 (freedom of expression) and 11 (freedom of association)*". In particular: HB/1906

a. The March MinSub noted that PA had conducted direct action against a range of institutions that it considered facilitated the sale of arms to Israel. The direct action consisted mainly of criminal damage to property and CTP judged the cumulative criminal damage and loss of revenue caused by the group's direct action to be in excess of hundreds of millions of pounds.
b. The volume and seriousness of PA's activity were noted to have increased in 2024 and PA had a large social media following.
c. The March MinSub recorded that the PRG had agreed unanimously that the discretionary considerations weighed in favour of proscription. Such considerations included the evidence of PA's intention to escalate the seriousness of its activity, intention to radicalise individuals, the impact of PA's activity on individuals, organisations and the Government's strategic defence aims, and the risk that proscription would inhibit lawful protest by PA, including expressing pro-Palestine

[8] This was a reference to an incident at the warehouse of Thales, a French weapons manufacturer, in June 2022, which caused more than £1 million of damage.

views. However, the PRG noted that proscription would not prevent former PA members participating in lawful protest or engaging in other activities to show support for Palestine.

d. The PRG also considered whether, beyond limiting PA's proscription to the UK based organisation, it would be possible to proscribe a '*specific, high-harm component*' of the group, but the Secretary of State was told there was no evidence that this would be possible at that time. Owing to the diffuse nature of regional cells and the hierarchical structure and co-ordination, further work was needed. As such, PA in the UK as a whole, rather than any sub-division of it, fell to be considered for proscription.

HB/1900

39. On 2 April 2025, the Secretary of State was provided with additional advice from CTP regarding the benefits of proscription in disrupting PA's organisational infrastructure and deterring future activity ("**the April MinSub**"). The Secretary of State was notified that PA's activity had escalated in seriousness in the previous 18 months.

HB/1965

40. Further advice regarding the feasibility of implementing proscription on different dates, and the impact of proscription on ongoing criminal proceedings, was provided on 9-10 April 2025.

41. On 14 May 2025, the Secretary of State agreed to the recommendation to proscribe PA and requested that the decision be implemented as soon as possible. However, the process of giving effect to the Secretary of State's decision was paused on 16 May 2025 in anticipation of the Secretary of State requesting further information on implementation, and that advice was sought on 30 May 2025.

42. On 4 June 2025, the Secretary of State was provided with supplementary advice ("**the June MinSub**"). The Secretary of State was advised that since August 2024, PA had been responsible for 158 direct action events targeting 48 different business premises. 28 of those incidents were described as 'higher level' in that they had involved significant property damage (over £50,000) and / or prolonged policing resources. Reference was made to "*co-ordinated direct action*" by PA. 158 arrests had been made. The advice concluded that the benefits of proscription (as detailed in the March MinSub) continued

HB/1971

to outweigh the risks, repeating the PRG's unanimous assessment that PA was currently concerned in terrorism.

43. At 2.14pm on 20 June 2025, the Secretary of State confirmed that she had retaken her previous decision and had again agreed with the recommendation to proscribe PA. The Secretary of State was aware of the attack on RAF Brize Norton when taking her decision.

HB/1637 The second witness statement of Jonathan Sinclair at §5 described that attack as follows:

> "*As to the nature of that attack, on 20 June 2025, two members of Palestine Action climbed over a crash gate at the end of the runway at RAF Brize Norton travelled along the runway on e-scooters. Their targets were two RAF Voyager aircraft positioned on the airfield. The individuals sprayed red paint directly into the turbines with repurposed fire extinguishers[9] and used crowbars to inflict further damage. I am aware that Voyager aircraft provide the UK with the ability to respond swiftly with air mobility missions spanning military operational support, medical evacuation, and disaster response. The Voyager fleet is crucial to the UK's contributions to NATO and allied operations.*"

44. On 23 June 2025, the Secretary of State made a written ministerial statement to the House of Commons regarding the events at RAF Brize Norton and the decision to proscribe PA

HB/526 ("**the Ministerial Statement**") (extract below):

> "*I have decided to proscribe Palestine Action under section 3 of the Terrorism Act 2000.*
> *…*
> *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. Palestine Action has also broadened its targets from the defence industry to include financial firms, charities, universities and government buildings. Its activities meet the threshold in the statutory tests established under the Terrorism Act 2000. This has been assessed through a robust evidence-based process, by a wide range of experts from across government, the police and the Security Services.*
>
> *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. The seriousness of these attacks includes the extent*

HB/31 [9] C.f. AWC, §23.

and nature of damage caused, including to targets affecting UK national security, and the impact on innocent members of the public fleeing for safety and subjected to violence. The extent of damage across these three attacks alone, spreading the length and breadth of the UK runs into the millions of pounds.

During Palestine Action's attack against the Thales defence factory in Glasgow in 2022, the group caused over a million pounds worth of damage including to parts essential to submarines. The Sheriff, in passing custodial sentences for the attackers' violent crimes, spoke of the panic among staff who feared for their safety as pyrotechnics and smoke bombs were thrown in the area where they were evacuating. He further recorded the extent of damage to legitimate business activities which included 'matters of nationwide security' and disputed the groups' claims its actions were non-violent. The attacks at Elbit Systems in Bristol and Intro Precision in Kent remain sub judice. To avoid prejudicing future criminal trials the Government will not comment on the specifics of these incidents.

Palestine Action has provided practical advice to assist its members with conducting attacks that have resulted in serious damage to property. In late 2023, Palestine Action released 'The Underground Manual'. The document encourages the creation of cells; provides practical guidance on how to carry out activity against private companies and government buildings on behalf of Palestine Action; and provides a link to a website which contains a map of specific targets across the UK. The manual encourages its members to undertake operational security measures to protect the covert nature of their activity.

…

Given significant public concern over recent activities by this group, including the incident in Brize Norton last week, and balancing the relevant considerations, I have decided to confirm this decision to proscribe to the House in advance of laying the relevant order."

45. The Ministerial Statement acknowledged that the decision was specific to PA and did not affect lawful protest groups and other organisations campaigning on issues concerning Palestine or the Middle East:

HB/527

"It is vitally important that that those seeking to protest peacefully, including pro-Palestinian groups, those opposing the actions of the Israeli government, and those demanding changes in the UK's foreign policy, can continue to do so. The right to peaceful protest is a cornerstone of our democracy. Should Parliament vote to proscribe, that right will be unaffected.

What it will do is to enable law enforcement to effectively disrupt the escalating actions of this serious group…"

46. A draft proscription order was laid before each House of Parliament on 30 June 2025 accompanied by an Explanatory Memorandum. The Order was made on 4 July and came into force at 00:01 on 5 July 2025.

(d) The findings of the Courts below on the effect of the Decision

47. The Divisional Court's particularised findings on the effect of the Decision and the Order included the following:

a. First, PA's proscription (i) "*will not prevent continuing expressions of support through peaceful protest in support of the Palestinian cause or in opposition to actions undertaken in Gaza by the government of Israel and/or the Israel Defence Forces*",[10] (ii) "*will not prevent any or all demonstrations targeted at Elbit*"; and (iii) will not prevent "*particular forms of protest action*": see DC Judgment, §§117 and 136. In those circumstances, the Divisional Court held that the evidence relied on by the Appellant "*overstate[s] the impact of proscription*" (DC Judgment, §117). HB/322 HB/322

b. Secondly, the number of people who were "*very closely associated with Palestine Action*", such that they would be careful not to commit the criminal offences under TA 2000 or may self-censor, was "*small*" (DC Judgment, §122). HB/323

c. Thirdly, "*little weight*" was attached to the interference with Convention rights of those who "*did or ought to have realised that what they were doing was showing support for Palestine Action*", e.g. holding signs expressing support for PA (DC Judgment, §118). HB/322

d. Fourthly, the possibility for policing errors was also not a "*particular feature*" of the interference with Convention rights, not least given the "*appropriate practical steps … taken to reduce the likelihood of error*" and its reduction over time (DC Judgment, §§119-120). HB/322-323

e. Fifthly, no "*significant weight*" was attached to the evidence of the position of journalists or academics. In contrast, s.12 TA 2000 offences "*could cause genuine problems*" for "*campaigning/civil liberties organisations*": see DC Judgment, §123. HB/324

48. The Court of Appeal made like findings, including:

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[10] See also DC Judgment, §136, and similarly, *ABJ* at §§60-61: "*Expressing an opinion or belief which coincides with the aims or beliefs of the organisation is not sufficient. … A person can express support for Palestinian statehood without expressing support for Hamas."* HB/327 HB/3566

HB/271

a. First, at CA Judgment, §153, the Court of Appeal held that the cohort of people whose Arts 10 and 11 rights were relevant included:

> "*… those persons who wish to express pro-Palestinian views, but who may be dissuaded from doing so because of the Proscription Decision, either for fear of committing an offence under the 2000 Act or because of a genuine misunderstanding about what is lawful and what is not. This group of people is likely to be significant in number. It is one thing for people voluntarily to hold a placard supporting Palestine Action which they know to be a proscribed organisation. That is a criminal act. It is quite another thing for a law-abiding person to be deterred from assembling lawfully or making their strongly-held anti-Israel and pro-Palestinian views public for fear of their actions being construed as support for Palestine Action. We accept that there are many people who may be subject to this "chilling effect" as a direct result of the Proscription Decision. That said, however, as a matter of law, the Proscription Decision will not prevent public expressions of support for the Palestinian cause or opposition to Israel and to the Israeli Defence Force, or demonstrations targeted at Elbit."*

b. Secondly, the Court of Appeal also accepted that "*there is a group of people who might wish to support Palestine Action as an organisation, separately from supporting its aims. Their rights of free speech and freedom of assembly under Articles 10 and 11 are curtailed if Palestine Action is proscribed"* (CA Judgment, §154).

HB/272

c. Thirdly, the Court of Appeal nevertheless "*highlight[ed] what the Divisional Court said at [J117]-[J118] about Ms Ammori's overstatement of the impact of proscription*" (CA Judgment, §152). In particular, at CA Judgment, §173, the Court of Appeal held:

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> "*In considering the impact of the proscription of Palestine Action, it is important to recall that proscription does not prevent expressions of support for Palestine or expressions of opposition to Israel or Zionism. As emphasised in ABJ at [61], there is a distinction between (the expression of) an opinion or belief which is supportive of the objectives of an organisation (such as closing down Elbit, for example) and (the expression of) an opinion or belief which is supportive of the organisation itself. Proscription only prevents the expression of opinion or belief which is supportive of an organisation involved in terrorist activity. Thus, the core or essence of the rights to freedom of (lawful) expression and assembly can be said to be untouched*."

(e) Events since CA hearing (28-30 April 2026) and handing down of the CA Judgment (15 June 2026)

49. In the event that the Court undertakes a fresh assessment of the proportionality of the Decision with reference to circumstances at the date of the hearing (per *Belfast City Council v Miss Behavin' Ltd* [2007] 1 WLR 1420 at §31), the following matters reinforce HB/2722 the Court of Appeal's determination that the Decision was lawful and proportionate.

50. On 5 May 2026, Charlotte Head, Samuel Corner, Leona Kamio, and Fatema Zainab Rajwani, who had participated in the Elbit Systems UK incident in Bristol, were each convicted, following trial, of an offence of criminal damage. At sentence on 12 June 2026, the court found that the offence had a "terrorist connection" for the purposes of assessing the seriousness of the offence.[11] Samuel Corner was also convicted of an offence of inflicting grievous bodily harm. The sentence has been appealed (permission for which is to be decided by the Court of Appeal at a rolled-up hearing). In addition, on 14 September 2026, Sean Middlebrough was convicted following trial in his absence (having absconded whilst on bail) of an offence of criminal damage in relation to the same (Elbit Systems) incident.

51. On 26 August 2026, the United States' Department of the Treasury's Office of Foreign Assets Control gave notice of a decision to sanction the "*Palestine Action (a.k.a. Palestine Group), United Kingdom*" pursuant to Executive Order 13224 (as amended)[12] "*for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services to or in support of, an act of terrorism …*"[13]

(f) The fresh findings of fact sought in the AWC

52. Without prejudice to the submissions above, in the event that the Court were to undertake a *de novo* fact-finding exercise as part of its assessment of proportionality, the Claimant's

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[11] An offence has a terrorist connection if it (a) is, or takes place in the course of, an act of terrorism, or (b) is committed for the purposes of terrorism: see s.69(3) Sentencing Act 2020.

[12] https://www.federalregister.gov/documents/2001/09/25/01-24205/blocking-property-and-prohibiting-transactions-with-persons-who-commit-threaten-to-commit-or-support (accessed [16] September 2026).

[13] https://www.federalregister.gov/documents/2026/08/31/2026-17724/notice-of-ofac-sanctions-action and https://home.treasury.gov/news/press-releases/sb0616 (accessed [16] September 2026).

submissions in the AWC regarding PA's structure, activities and membership should be rejected as self-serving and not a fair or accurate representation of the contemporaneous evidence.

HB/249 53. First, at CA Judgment, §42, the Court of Appeal properly observed it to be "*significan[t]*" that "… *the evidence from or on behalf of Ms Ammori provided "surprisingly little information" about Palestine Action.*" Despite the extensive factual submissions in the AWC, the weight that the evidence relied on by the Appellant should bear is necessarily substantially constrained for the reason that she has not addressed fully and candidly matters including: (i) the extent and nature of PA's membership and organisation; (ii) the extent to which guidance on direct action was provided by PA; (iii) PA's deployment of its funds; (iv) the circumstances of, and reasons for, PA's precautions to avoid detection; (v) PA's emphasis on the importance of covert action; (vi) PA's cell structure; and (vii) the breadth of its targets.

54. Even in the AWC, PA's submissions regarding PA's structure, activities and membership remain notably vague and incomplete. For example:

HB/24 a. The non-exhaustive descriptions of PA's targets at AWC, §§7-8, might be read as suggesting that PA's targets were narrowly confined to Elbit Systems Ltd and "*corporate entities providing goods and services to Elbit Systems, and other bodies … with ties to Elbit Systems*". That description fails to recognise PA's widening of its targets as referred to in the Ministerial Statement,[14] the JTAC Report at §50,[15] and the CTP Report.[16] The expanding breadth of those targets is clearly

HB/527 HB/1917 HB/2007

[14] "*Only last month, Palestine Action claimed responsibility for an attack against a Jewish-owned business in North London …*"

[15] "*PAG has also conducted direct action against other targets in the UK which are not linked to the Israeli defence trade, but are considered symbolic to its wider pro-Palestinian cause. On the anniversary of the Balfour Declaration on 2 November 2024, the group conducted actions at universities, charities and lobby firms. Tactics included paint damage and vandalism at locations in London, which were investigated by the Metropolitan Police as hate crimes against the Jewish community. Activity also included the theft of two statues perceived to relate to Israel's first Prime Minister, one of which they 'beheaded' publicly online.*"

[16] "*PA's actions have taken place across the UK, affecting multiple regions. Since October 2023 until September 2024, 54 actions have occurred against Barclays Bank premises including a coordinated action between 10th to the 12th June 2024 when 17 Barclays Bank premises were targeted. PA also branched out and targeted other financial institutions including BNY Mellon and Scotia bank. This was an escalation as Barclays were targeted (according to PA) due to their connection to Elbit Systems, whereas Mellon and Scotia bank were connected more generally to Israel.*"

demonstrated by the incident at RAF Brize Norton on 20 June 2025 (c.f. AWC, §40).

HB/37

HB/46

b. At AWC, §62,[17] the Appellant asserts: "*Evidence before the courts below spoke powerfully to the impact on Palestinians in Britain, whose conduct and expression have been chilled and criminalised …"*. However, the Appellant's assertion as to the alleged strength of her evidence lacks proper foundation. At CA Judgment, §200, when dismissing the Appellant's application for permission to appeal on the basis of the Decision allegedly amounting to an unjustified interference with Art.14 rights, the Court of Appeal correctly held: "… *the evidence did not show that Palestine Action drew members or supporters disproportionately from the Palestinian community. Ms Ammori has provided little or no information about Palestine Action's members and supporters. It would not be appropriate to infer from the purpose of Palestine Action or the witness statements relied upon, that the proscription of Palestine Action has a disproportionate effect on persons of Palestinian ethnicity, origin or nationality.*" That conclusion applies with equal force to the Appellant's assertion at AWC, §113.3, that PA "*comprised … a loose network of activists strongly associated with the broader Palestinian solidarity movement in the UK*".

HB/279

HB/68

55. Secondly, the Appellant's characterisation of PA as a "*direct-action protest group*" (AWC, §6) in scope of the examples in *R v Jones (Margaret)* [2007] 1 AC 136 (AWC, §33) fails properly to reflect PA's tactics and conduct. The three incidents identified as meeting the definition of terrorism under the TA 2000 have not been demonstrated by the Appellant to be outliers. To the contrary, they were consistent with and apparently demonstrative of the instruction in the Underground Manual to: "*Dream up crazy ideas in your cell, remember that your action is to disrupt, damage and destroy your target.*" Further under "*Think Big*", the Underground Manual stated: "*The tactics mentioned are examples of previous actions so by all means think big! Try not to limit your action based on what's been done before. Remind yourself when brainstorming different ideas, what could I do to be creative?*"

HB/23

HB/34

HB/24
HB/68

[17] See also AWC, §§9 and 113.3.

HB/33
HB/36

56. Relatedly, the repeated assertion in AWC, §§31, 38.2, 115.6 that neither PA nor its Underground Manual "*advocate the use of violence*" ignores the violence in fact undertaken during PA's activities. The March MinSub at §18 recorded: "… *members have shown a willingness to use serious violence against individuals.*" The JTAC Report noted that "*those participating in the Bristol attack had "entered the [Elbit] warehouse, using weapons including sledgehammers, axes and whips" and "during the attack two responding police officers and a security guard were assaulted and suffered injuries. One police officer had been assaulted with a sledgehammer and sustained a serious back injury*"." The Ministerial Statement observed: "*Through its media output, Palestine Action publicises and promotes its attacks involving serious property damage, as well as celebrating the perpetrators*." HB/70 HB/1898 HB/527

57. Similarly, the Appellant's submissions on the Underground Manual downplay the significance of its content. For example, the suggestion at AWC, §38.1, that the Underground Manual referred only to "*the use of fire extinguishers filled with paint to spray buildings with water soluble paint*" cannot be reconciled with the attack at RAF Brize Norton, which rendered inoperable two RAF Voyager aircraft and during which further damage was caused using crowbars. HB/36

58. In the circumstances, PA did not undertake, nor did the Underground Manual provide advice on, "*standard forms of direct action*" (c.f. AWC, §38.2). Further, PA cannot be regarded as having undertaken acts of "*civil disobedience*" as defined in *Cuadrilla Bowland Limited v Persons Unknown* [2020] 4 WLR 29 at §97, namely: HB/36 HB/2771

> "… *public, non-violent, conscientious act contrary to law, done with the aim of bringing about a change in the law or policies of the government (or possibly, though this is controversial, of private organisations) … The public nature of the act – in contrast to the actions of other law-breakers who generally seek to avoid detection – is a demonstration of the protestor's sincerity and willingness to accept the legal consequences of their actions. It is also essential to characterising the act as a form of political communication or address. Eschewing violence and showing some measure of moderation in the level of harm intended again signal that, although the means of protest adopted transgress the law, the protestor is engaged in a form of political action undertaken on moral grounds rather in mere criminality.*"

59. Rather, PA's conduct is the antithesis of "*civil disobedience on conscientious grounds*", which was characterised by Lord Hoffmann in *Jones* at §89 as follows: "*The protesters behave with a sense of proportion and do not cause excessive damage or inconvenience. And they vouch the sincerity of their beliefs by accepting the penalties imposed by the* HB/3710

law." The Appellant's view that PA - which was "*concerned in terrorism*" for the purposes of TA 2000 - exercised "*significantly more "restraint" than the suffragettes*" (who were not, of course, subject to the TA 2000) is irrelevant (c.f. AWC, §§8, 33, and 38.2). Neither the legal analysis under TA 2000 nor under the Bank Mellat v. Her Majesty's Treasury [2014] AC 700 ("**Bank Mellat**") test required PA's conduct to be set against historical comparators for the Decision to have been lawful. Further, any historical comparison ought properly to consider PA in the round, including its clandestine structure, its obscure membership, the breadth of its targets, and the trajectory of its activities.

HB/24 HB/34 HB/36

60. Thirdly, the Appellant seeks to diminish the national security justification for the proscription of PA at AWC, §40. That submission was also advanced by the Appellant when seeking interim relief before Chamberlain J and the Court of Appeal (Lady Carr CJ, Edis LJ, Lewis LJ) on 4 July 2026 and was properly rejected at IR Judgment, §94:

HB/37 HB/371

> "*Mr Husain questioned whether, on a proper reading of the written ministerial statement and Explanatory Memorandum, the Secretary of State is actually advancing a national security justification for proscription. In my judgment, there is no doubt that she is. As the Explanatory Memorandum makes clear, PA's targets include both "key national infrastructure" and firms which provide defence supplies to the UK and its allies. The attack which immediately preceded the announcement of the decision to proscribe was on a UK defence facility.*"

61. Fourthly, the Appellant's contention that the contemporaneous record indicates that the trajectory of PA's activities was reducing is materially overstated and, in context, unsustainable. Central to the Appellant's submission are the NPoCC briefings of September and December 2024 (see AWC, §§15, 19, 20, 39, and 115.5). First, those documents significantly pre-date the Decision. Secondly, the reference in the September 2024 briefing document to "*a reduction in direct action*" on which the Appellant relies so extensively should be understood as an observation made in the context of a very short sample period of c.1 month (i.e. from the Bristol incident on 5 August 2024 until September 2024). Thirdly, the NPoCC was not an expert body charged with assessing terrorism threat; relevantly, that body was JTAC. Fourthly, the content of the NPoCC briefings relied on by the Appellant ought to be set against:

HB/29-30 HB/36 HB/70 HB/1989

   a. The gisted observation in the same document: "*There have been two recent incidents where violence has been used, indicating a possible change in rhetoric.*" HB/1989

b. A table in the September 2024 briefing document, which records that: (i) PA's direct action had taken place across 31 forces since its establishment in 2020; and (ii) the number of direct action incidents had increased from 65 in 2023 to 113 in the year up to 2 September 2024 (representing an increase for 18 of the 31 forces as compared to the year before). HB/1990

c. The expert advice to the Secretary of State that PA's activities were on an escalating trajectory of seriousness, as demonstrated by: (i) the March MinSub at §18 ("[*PA] is responsible for an escalatory campaign of direct action across the UK that has crossed the threshold into terrorism*") and §23 ("*Evidence collected through police investigations indicates [PA] members have intended to further escalate the seriousness of the activity*"); (ii) the JTAC Report at §1 ("*Whilst PAG has conducted direct action since its inception, grievances associated to longstanding Israel-Palestine hostilities, including escalations since the attack by Hamas on 7 October 2023, highly likely contributed to an escalation of PAG's activities in 2024*"); (iii) the April MinSub at §4 ("*CTP agree with the assessment that … its activity has escalated in seriousness over the past 18 months*"); (iv) the Ministerial Statement ("*The group has a footprint in all 45 policing regions in the UK and has pledged to escalate its campaign*"). Further, PA's escalatory trajectory was shown by the incident at RAF Brize Norton.[18] The Court is invited to prefer those expert assessments to the selective reliance by the Appellant on the NPoCC documents and her consequent reference to a "*spectre of escalation*" at AWC, §115.5. HB/1898 HB/1898 HB/1909 HB/1965 HB/527 HB/70

62. Fifthly, the Appellant materially overstates the impact of proscription (as is addressed in detail below). In particular:

a. As a matter of law, the proscription of PA does not prevent public expressions of support for the Palestinian cause or opposition to Israel and to the Israel Defence Forces, or demonstrations targeted at Elbit: see DC Judgment, §§117-118; CA Judgment, §153; and *ABJ* at §§60-61 (c.f. AWC, §60). HB/322 HB/271 HB/3566

b. In his second witness statement at §11, Mr Sinclair provided data regarding pro-Palestinian protests, which have taken place since PA was proscribed, thus HB/1640

[18] Sinclair W/S 2, §5. HB/1637

demonstrating the ability of such protests to continue to take place (often in large numbers). NPoCC data recorded that there were 844 pro-Palestinian protest events nationwide between 5 July 2025 and 31 August 2025. At §§14-15, Mr Sinclair contrasted those protests with the calculated acts of individuals apparently seeking to be arrested for terrorism offences relating to PA, many of whom knowingly held signs or other articles that expressed their support for PA specifically (see exhibits JS2/04 and JS2/05). Mr Sinclair stated that, according to reports in the media, the ultimate goal of PA and its supporters undertaking such calculated acts was to overwhelm the police and the courts with the aim of making the Order "*unenforceable*" (see §15 and exhibit JS2/06). Many of the individuals who attend those protests intend to commit terrorism offences and knowingly hold signs or other articles that express their support for Palestine Action specifically (see exhibits JS2/04 and JS2/05).

HB/1641
HB/5250
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HB/5285
HB/5250
HB/5257

c. Further to his second witness statement at §4, Mr Farrant exhibited a list of protests which have taken place since PA was proscribed, primarily against UK-based companies with alleged links to the Israeli arms trade.[19] Notably, this included a number of protests at Elbit's site in Bristol. At §5, Mr Farrant stated that many of these protests have taken place in large numbers, with 24 occurring in October and November 2025 alone. Protests continue to this day.

HB/1617
HB/1646
HB/1622

d. The proscription of PA has not prevented the Appellant herself from expressing her support for the Palestinian cause and activities seeking to bring an end to the Israeli arms trade. Mr Farrant exhibits a number of the Appellant's social media re/posts in which she, amongst other things, opines on events in Gaza and Palestine post-dating the Decision.[20]

e. In his second witness statement at §17, Mr Sinclair observed that it is difficult to assess the reliability of the Appellant's anecdotal accounts of "over-policing" of the

HB/1642

HB/1666 [19] e.g. a social media post in respect of a protest on 26 July 2025 at UAV Systems in Shenstone records "*Hundreds today at Israel's Elbit Arms Factory in Shenstone … Nobody here will stop until all Israel's weapons factoriesare [sic] shut …"*

HB/1876 [20] e.g. On 30 September 2025, the Appellant posted "*You do not speak for us. Traitors*" in response to a post by the account of the Palestinian Mission in the United Kingdom dated 29 September 2025 "*welcom[ing] the sincere and determined efforts of President Donald J. Trump … to end the war on #Gaza …"* On 29 September 2025, President Trump's "*Comprehensive Plan to End the Gaza Conflict*" was published, providing for, *inter alia*, the return of living and deceased hostages.

HB/1642 proscription order. Further, at §18, Mr Sinclair detailed the steps which have been taken since PA was proscribed to provide guidance to police officers to ensure that the proscription of PA was properly policed. First, officials at the College of Policing held a knowledge sharing event on 30 July 2025, the aim of which was to promote a consistent and coordinated policing approach to PA protests and demonstrations. This event included representation from the NPoCC Strategic Intelligence Briefing, CTP, the Crown Prosecution Service, the Metropolitan Police Service, and the College of Policing. A further knowledge sharing event in relation to PA protests was delivered to Gold Commanders on 16 September 2025. Secondly,
HB/1887 CTP drafted a national guidance document to provide direct strategic and tactical advice for local forces and to facilitate the adoption of a consistent approach.

63. The wider impact of the proscription of PA was a matter that was plainly before the
HB/1900 Secretary of State. The March MinSub at §35 and §37 specifically recognised that proscription of PA would inhibit lawful protest by PA, including the expression of pro-Palestinian views, but noted that there remained other avenues for people to support the Palestinian cause, separate from PA. This was a matter that was also discussed at the PRG meeting. The evidence of Mr Sinclair and Mr Farrant demonstrates the contemporaneous assessments of wider impacts of the proscription of PA to have been well-founded.

IV. PROPORTIONALITY

HB/2660 64. The four-stage proportionality test in *Bank Mellat* at §20 is well established. That test was expressly applied by the Court of Appeal (CA Judgment, §99). The Secretary of State addresses each relevant limb of the *Bank Mellat* test below.[21] The Court is invited to follow the particularised findings of fact of the Divisional Court and the Court of Appeal: see §§20-29 and §§47-48 above.

[21] The Appellant does not advance any challenge to the Court of Appeal's conclusion at CA Judgment,
HB/265 §§121-12, that the Decision to proscribe PA was rationally connected to the objective of disrupting PA so as to protect the rights of others and maintain national security.

(a) The Secretary of State's margin of appreciation

65. The TA 2000 reflects Parliament's careful judgements about which acts constitute terrorism, the circumstances in which an organisation may be proscribed, and the consequences that follow if an organisation is proscribed. Parliament did not choose to impose additional constraints on the availability of the Secretary of State's power to proscribe, such as that the acts meeting the definition of terrorism must be at a certain level, or scale, or persistence. There is no challenge to the nature, structure or terms of the primary legislation under which the Secretary of State exercised the powers conferred on her by Parliament under the TA 2000. Accordingly, it is not in dispute that she was entitled to apply the primary legislative tests and not some other, or narrower, set of tests, provided that in doing she acted compatibly with relevant ECHR rights.

66. Under the legislative scheme that Parliament established to permit proscription of an organisation believed to be concerned in terrorism, assessing the nature and level of the risks to national security, as well as what is a proportionate response to such risks, are questions of judgement and policy for the Secretary of State. That is for all of the reasons analysed by Lord Hoffmann in *Rehman v Secretary of State for the Home Department* [2003] 1 AC 153 ("***Rehman***") at §47 et seq; and recently and repeatedly emphasised in a series of cases in this Court: see e.g. *U3 v Secretary of State for the Home Department* [2025] 2 WLR 1041 ("***U3***") at §§65-68; *Shvidler*, and *ABJ*. The Secretary of State can apply a precautionary approach: see *R (Lord Carlile of Berriew QC) v Secretary of State for the Home Department* [2015] 1 AC 945 ("***Lord Carlile***") at §§51 and 71, approved in *Shvidler* at §178.[22] Further, the Secretary of State's decision-making should be accorded appropriate margin in relation to each of the four limbs of the *Bank Mellat* test: see *FTDI* at §112, *Shvidler* at §130, and CA Judgment, §116.

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67. The Court of Appeal, at CA Judgment, §107, correctly held that the Secretary of State "*does have special constitutional responsibilities and institutional competence when it* HB/263

[22] The CTP Report at Annex C to the March MinSub noted: '*the high standard of operational security employed and propagated by PAG both online and in the real world. This high standard of operational security is intended to and promoted as frustrating law enforcement efforts to detect and prevent the network's criminal activity*.' HB/1928

comes to questions of national security". The basis for the Executive's primacy on national security matters derives in part from its institutional expertise on national security matters and the fact that it is democratically accountable to Parliament, and ultimately to the electorate, for decisions on those matters. Accordingly, the separation of powers militates in favour of greater deference to the Executive's decisions in that sphere.[23] This is especially so in a case such as this: (i) requiring an assessment of future risk, which "*in the context of national security is pre-eminently a question of specialist evaluation and judgment for the executive. Such assessments involve consideration of a broad range of facts and events, and often take account of expert reports based on a range of information, some of which may be secret*" (CA Judgment, §115), and (ii) where "*[t]he Home Secretary is thus better placed than the court to adjudicate the balance of the various rights and interests engaged in the context of national security*" (CA Judgment, §116).

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68. The DC Judgment made no reference to that line of Supreme Court authority and did not apply the principles they established. That was a significant error. As the Court of Appeal observed, applying the principles established in the succession of cases identified above, the Court's role is not to usurp the function of the primary decision-maker, "*least of all in a case such as this*" (CA Judgment, §104). That is because the Secretary of State's Decision "*lies in the area of national security which, before the Human Rights Act 1998, would have been regarded as unsuitable for judicial scrutiny at all. Whilst we are not bound by the Home Secretary's decision on proportionality, we must have regard to and may afford an appropriate measure of respect to the balance of rights and interests struck by the Home Secretary*" (CA Judgment, §104). The CA Judgment reflects an entirely orthodox articulation of the approach established by the relevant authorities.

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69. However, the heart of the Appellant's case is the submission that the Court of Appeal erred by not according the Secretary of State a "*significantly attenuated*" margin of appreciation: see AWC, §91. The Appellant's submission comprises the following limbs: (i) that "*the exorbitant deference for which the SSHD has hitherto contended has not been earned*" allegedly because of the limited contemporaneous evidence of her consideration of proportionality (AWC, §91.1); (ii) that the Secretary of State's submissions regarding Art.17 of the Convention before the lower Courts preclude any "*substantial weight*" being

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[23] *Rehman* at §62; *U3* at §107. HB/3994

placed on the contemporaneous consideration of proportionality in fact undertaken by her (AWC, §91.2); (iii) that this Court is "*better placed than the SSHD to conduct the relevant proportionality assessment*" (AWC, §91.3); (iv) that "*[n]othing in the OPEN material evidences any national security case for proscription distinct from the damage to the property of the companies targeted*" (AWC, §93.1) and "… *even assuming the evidence did show that national security interests were engaged by the proscription … they are plainly at the less serious end of the spectrum*"; and (v) that the Court's assessment of proportionality should be limited by reference to the level, nature and persistence of PA's activities constituting "*terrorism*" only prior to the date of the Decision (AWC, §102). As to each of those limbs:

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a. First, Parliament has decided in primary legislation to confer the proscription power on the Secretary of State, who has the democratic authority to take decisions in this area and who has superior institutional competence to make the relevant judgements bearing on national security: see CA Judgment, §108. The Appellant has no answer to that point, which flows from the design of the legislative scheme. HB/263

b. Secondly, none of the authorities supports the Appellant's assertion that the width of the margin to be accorded to the Secretary of State in a case such as this can, or ought to, be materially attenuated. The approach now urged upon the Court by the Appellant is substantially similar to that erroneously taken by the Divisional Court. That approach was deprecated by the Court of Appeal at CA Judgment, §117: HB/265

> "*In this case, the Divisional Court addressed the question of latitude to the Home Secretary only very briefly at [J138], at the fourth stage, when it stated that, when striking the balance, the court must permit "some latitude" to the Home Secretary "given that she has both political and practical responsibility to secure public safety". This was materially to understate the position, and it is not clear from the judgment of the Divisional Court when and how even that limited degree of latitude was afforded. Further, in the light of our conclusions on the Policy Ground, and unlike the Divisional Court, we are assessing proportionality: (i) on the basis of an otherwise lawful decision by the Home Secretary; (ii) on the basis that the nature and scale of Palestine Action's activities as a whole (not just its acts of terrorism) are relevant; and (iii) on the basis that it is open to us to consider the operational benefits of proscription.*"

c. Thirdly, contrary to the Appellant's submissions, the contemporaneous decision-making documents record the Secretary of State's close consideration of matters bearing on each of the limbs of the *Bank Mellat* test, as to which she received advice from expert bodies including JTAC and the PRG. There is no basis to discount the

weight to be accorded to those contemporaneous assessments for the fact that limited passages in the MinSubs were properly redacted for legal professional privilege in these proceedings or that Art.17 ECHR was relied upon in the Courts below.

d. Fourthly, in light of the deficiencies in the evidence relied on by the Claimant in these proceedings (as to which see above, including at §§52-63), it is denied that the Court is materially better placed to assess proportionality than the Secretary of State was when making the Decision, notwithstanding the volume of the evidence (principally adduced by the Appellant).

e. Fifthly, the Appellant's assertion that "*PA posed a material threat to the UK's defence infrastructure was not borne out by the evidence*" (AWC, §93.1) is unsustainable. §60 above is repeated. HB/58

f. Sixthly, the Appellant cites no authority to support the proposition that the width of the Secretary of State's margin should be reduced depending on the substance of her assessment of the seriousness of national security interests affected by the Decision. Not only is there no authority for that proposition but also the Appellant offers no metric by which the Court should assess the seriousness of affected national security interests for itself.

(b) Objective sufficiently important to justify the limitation of a fundamental right

70. When considering the first limb of the *Bank Mellat* test, the appropriate starting point is that the Secretary of State lawfully considered PA to be an organisation concerned in terrorism within the meaning of the TA 2000.[24] Parliament has designed the statutory scheme for proscription under the TA 2000 whereby robust general prohibitions come into effect on the proscription of a terrorist organisation so as to disrupt and degrade its activities as effectively as possible.[25] In making the Decision, the Secretary of State identified its legitimate aims as the protection of the rights and freedoms of others,

[24] The Appellant's submissions to the contrary were held to be unarguable by Chamberlain J when refusing permission on Grounds 1 and 3. The Court of Appeal subsequently refused the Appellant permission to appeal the refusal of permission on Ground 1 (*R (Ammori) v Secretary of State for the Home Department* [2025] EWCA Civ 1311, §§108-109).

[25] See, by relevant analogy, the observations of Lord Sales and Lady Rose when assessing proportionality in the materially similar context of sanctions measures in *Shvidler* at §213. HB/3925

including those whose property is damaged by PA, and the strong public interest in the protection of national security. These are both aims identified in Arts 10(2) and 11(2). The Divisional Court at DC Judgment, §128, and the Court of Appeal at CA Judgment, §§119-122, both held that the objectives of the Decision were sufficiently important to justify the limitation of relevant Arts 10 and 11 rights.

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71. The Appellant criticises the CA Judgment for reasoning that it does not contain. The Appellant's submissions at AWC, §§97-104 criticise an element of the Secretary of State's submissions before the Divisional Court, ignoring that "*The Home Secretary also identified the legitimate aims of the Proscription Decision as the protection of the rights and freedoms of others and the interests of national security*" (CA Judgment, §119). The CA Judgment at §§119-123 approached the legitimate aim and rational connection limbs of the *Bank Mellat* test expressly on that basis, which the Appellant appears to accept was correct in principle at AWC, §§100 and 103.

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(c) Less intrusive measures

72. The question under this third limb of the proportionality test "*is whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective*": see *Bank Mellat*, §20 (Lord Sumption) and §74 (Lord Reed), and *Shvidler*, §203. The Secretary of State ought to be accorded a significant margin when exercising her judgement in this regard. The correct approach to the 'less intrusive means' limb and the principles applicable to it have been summarised by the Court of Appeal (Sir Terence Etherton MR, Singh and Green LJJ) in *R (The Friends of Antique Cultural Treasures Ltd) v Secretary of State for the Department of Environment, Food and Rural Affairs* [2020] 1 WLR 3876, at §80 (citations omitted) ('***FACT***'):

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> "*This is an area where Defra's margin of appreciation or discretion is relevant. The main points arising from case law can be summarised as follows:*
> *(i) The decision-maker has a margin of appreciation or discretion which is highly fact and context specific …*
> *(ii) A measure will be disproportionate if 'it is clear that the desired level of protection could be attained equally well by measures which were less restrictive'…*
> *(iii) The burden of proof lies with the decision-maker. It is not however to be applied mechanically. There is no duty on the decision-maker to prove positively that no other measure could be as effective …*
> *(iv) The decision-maker is not required 'to consider every possibly alternative, including those that were never suggested by consultees' …*

(v) The mere assertion that some other measure is equivalent, and less intrusive is not sufficient … and equally the fact that some other measure can be envisaged is not enough …
(vi) It is relevant that a measure is 'general, simple, easily understood and readily managed and supervised'."

73. Both the Divisional Court and the Court of Appeal properly held that there were no less intrusive measures by which to achieve as effectively the same result as the proscription of PA. CA Judgment, §125, expressly addressed the Appellant's submissions on the basis that the allegedly less intrusive measures identified by her were to be considered on the basis that they "*could have been adopted <u>together</u>*"; the submission to the contrary at AWC, §106, and ft.159 is incorrect. Both the Divisional Court and the Court of Appeal also accorded the appropriate margin to the Secretary of State's judgement in this respect, recognising that the Secretary of State had considered the question of less intrusive measures when making the Decision (CA Judgment, §§137 and 141).

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74. <u>First</u>, a decision to proscribe brings into effect the fixed suite of general prohibitions and criminal offences as provided for by Parliament. The Secretary of State had no power to tailor the penal consequences that Parliament had provided to flow automatically upon an organisation's proscription under primary legislation. When making the Decision, the Secretary of State was therefore choosing either to apply the fixed suite of measures under the proscription regime or not to proscribe an organisation that she lawfully considered to be an organisation "*concerned in terrorism*" within the meaning of the TA 2000 (as to which assessment no challenge lies in this appeal). Of that fixed suite of measures, the Court of Appeal correctly held at CA Judgment, §135:

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"*Proscription directly attacks both the covert and the overt activity in a way that the ordinary criminal law may not. Proscription inhibits recruitment and fundraising; it undermines the ability of an organisation to function. The definition in section 1(5) of the 2000 Act (including actions taken for the benefit of a proscribed organisation …) enhances the efficacy of other provisions, including those relating to funding, terrorist property and training*."

75. <u>Secondly</u>, the expert and experienced PRG and CTP, who advised the Secretary of State, noted the limits of current policing powers in contrast to the disruptive benefits flowing from proscription (see §§33, 34 and 37 above, c.f. AWC, §108). The Court of Appeal summarised the advice of those expert bodies at CA Judgment, §138: "*The clear theme throughout the decision-making process was that proscription would provide powers that*

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would be beneficial in halting or hindering Palestine Action's terrorist activities in a holistic way that could not be achieved otherwise under the existing legislation. It is worth repeating that, according to CTP, 'existing offences and orders' did not 'address the network as a whole given its high-level organisational capabilities, including planning, training, preparedness, coordination, structure, recruitment, online material, communications and financing'." The views of those experts were properly given real weight by the Secretary of State (both on this issue and on the other issues on which they advised). Relatedly, the Court of Appeal correctly observed at CA Judgment, §133: HB/267

> "*…it is right to regard the prevention of crimes in pursuit of a terrorist objective as a very high priority. Leaving an organisation in a position to commit those crimes, knowing that it may prove possible to detect and prosecute the individuals concerned afterwards, is not likely to be an acceptable approach in a case where the organisation is concerned in terrorism. The investigator's dilemma is always about when to act: too early, and there may be insufficient evidence to prove the extent of the plot and the identities of those involved; too late, and the act of terrorism may be complete. There is an advantage to proscription because it enables the disruption of the organisation and the prosecution of individuals for offences which are likely to be easier to prove."*

HB/62 76. Thirdly, the approach adopted at AWC, §106, of identifying a multitude of alternative mechanisms (which the Appellant asserts the Secretary of State could have adopted instead of proscription) and undertaking a relative assessment of their risk and efficacy is misplaced. Upon the Secretary of State having received advice throughout the decision-making process that proscription would provide powers that would be beneficial in halting or hindering PA's terrorist activities in a manner that could not be achieved otherwise under ordinary criminal law, behaviour orders or ordinary policing powers, she was not then under an obligation "*to consider every possible alternative*" (see *FACT* at §80, c.f. HB/3341 HB/65 AWC, §109.1). Rather, "… *there are limits to the burden on a decision maker in this regard and no duty to prove positively that no other measure could be as effective"* (see *R (Independent Workers Union of Great Britain) v Mayor of London* [2020] 4 WLR 112 at §66). The onerous and formalistic exercise now contended for by the Appellant has no place in the less intrusive means limb of the *Bank Mellat* test, still less in a national HB/3307 security context (see *Begum* at §108 and *C9 v Secretary of State for the Home Department* (SC/173/2020, 2 February 2024), at §§49-56).

77. Fourthly and in any event, none of the alleged 'alternative means' identified at AWC, HB/62 §106, either in isolation or in combination, provides the same ability to prevent any involvement in PA, supported by criminal liability in situations of breach, "*without*

unacceptably compromising the achievement of the objective". That is why Parliament has created the bespoke proscription regime; and that is why the Secretary of State has engaged it in this case – acting well within the margin accorded to her in relation to the judgements about whether other courses would as effectively meet the objective. In particular:

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a. The substantive criminal offences identified at AWC, §106.1, and related policing powers identified at AWC, §106.5, are necessarily backward-looking and do not prevent the harmful activity being undertaken in the first place. Leaving an organisation in a position to commit those crimes, knowing that it may prove possible to detect and prosecute the individuals concerned afterwards, was properly considered by the Court of Appeal not to be likely to be an acceptable approach in a case where the organisation is concerned in terrorism: see CA Judgment, §133. HB/267 Accordingly, the Appellant is wrong to assert at AWC, §108, that difficulties in HB/64 identifying and punishing criminal wrongdoing "*will arise equally in relation to proscription offences.*" To the contrary, "*[p]roscription directly attacks both the covert and the overt activity in a way that the ordinary criminal law may not"* . (see HB/268 CA Judgment, §135, and see above at §74).

b. Moreover, the consequences of the approach identified by the Appellant are unclear and potentially troubling. For example, the Appellant and others in her position who claim to support PA would no doubt complain about the consequences of conviction for membership of a serious organised crime group, in circumstances where they had engaged on a one-off basis in a protest in support of PA, had the organisation not been proscribed: c.f. the suggestion of prosecution under s.45 of the Serious HB/63 Crime Act 2015 at AWC, §106.1.

c. The inchoate offences identified at AWC, §106.1, and the terrorism offences HB/63 identified at AWC, §106.2, are also not as effective as proscription in that "*[t]he exercise of powers under the Police and Criminal Evidence Act 1984, the Investigatory Powers Act 2016, the 2000 Act and the Terrorism Act 2006 require not only legal but also operational justification. Their effectiveness depends on skill, judgment, resources and, sometimes, fortune. Sometimes the plan to commit a crime can be concealed successfully such that there is no basis for conducting any* HB/268 *investigation of this sort at all*" (CA Judgment, §136).

d. The various behaviour orders identified at AWC, §106.3, and asset forfeiture powers under the Proceeds of Crime Act 2002 identified at AWC, §106.4, to the extent that they might be applicable at all, are inappropriate for application to large numbers of people, whose participation in activities is often not predicted in advance, and who may choose to target a wide range of businesses or people providing legal, financial and logistical support for defence companies (i.e. in practice, anyone connected to the manufacture of arms for the Israeli military, if not also financial institutions, educational institutions and charities). The Court of Appeal properly held that such measures "… *would not achieve the collective impact of an order for proscription, namely facilitating the disruption and deconstruction of Palestine Action as a network*" (CA Judgment, §129).

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e. The Appellant's reference to "*ordinary powers of search and seizure, and terrorism policing powers under TA 2000*" at AWC, §106.5, does not come close to explaining how such powers and the narrowly circumscribed orders listed in AWC, ft.162, could constitute a less intrusive measure that does not unacceptably compromise the achievement of the objective of proscription. Plainly they fall short of discharging that exacting test.

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f. Contrary to AWC, §106.6, civil injunctions are not appropriate to the widespread range of PA activities, foreknowledge of which was deliberately obscured. Moreover, the Secretary of State would not be in a position to seek such injunctions herself; rather, she would be limited to encouraging potential targets of PA to seek injunctive relief themselves and at their own cost. The Court of Appeal properly held at CA Judgment, §128: "… *the Home Secretary cannot be expected to abrogate her undoubted powers of proscription in the face of terrorist activity on the basis that she could, instead, promote civil self-help remedies for private parties to pursue (at their own risk and cost).*"

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78. The Appellant's contention at AWC, §108, that the Court of Appeal lacked evidence regarding the alleged alternative means such that its conclusions were "*speculative*" is inconsistent with her later submission at AWC, §110, that the Court is "*particularly well placed*" to consider the availability and efficacy of those the alleged alternative means.

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79. Fifthly, the Secretary of State nevertheless did limit the scope of PA's proscription by providing that the Order applies only to "*...the organisation using that name* [i.e.

HB/2257 "Palestine Action"] *that is based in the United Kingdom*" (see Art.3 of the Order). The PRG specifically considered whether it was feasible to proscribe only that subsection of PA involved in the most serious high-level activity but were not satisfied on available information that such a distinction could be drawn by reason of how PA had elected to structure itself and the covert manner in which it conducted its activities (see §§38-39 above).

(d) Fair balance between the rights of the individual and the interests of the community

80. The Court of Appeal framed the issue it had to determine at the fourth stage of the *Bank Mellat* test in the following way: "*... we must ask whether, balancing the severity of the effects of the Proscription Decision on the rights of those affected by it against the importance of the objective of the Proscription Decision, to the extent that the Proscription Decision will contribute to the achievement of those objectives, the former outweighs the latter"* (CA Judgment, §100). Further to the detailed analysis at CA Judgment, §§142-182, the Court of Appeal correctly concluded: "*... having regard to the matters taken into account under the first three Bank Mellat questions, the impact of proscription on the important Article 10 and 11 rights of individuals on the one hand, and the consequences of non-proscription on national security and the interests of the community on the other, the Proscription Decision struck a fair balance*" (CA Judgment, §182). The AWC identifies no error in the Court of Appeal's approach or analysis.

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HB/269-276
HB/276

81. First, the Appellant's submissions on fair balance rest upon PA's activities prior to the Decision only. The Appellant thereby repeats (and relies on at AWC, §111) the Divisional Court's error in that regard at DC Judgment, §140: "… *the nature and scale of Palestine Action's activities, so far as they comprise acts of terrorism, has not yet reached the level, scale and persistence that would justify the application of the criminal law measures that are the consequence of proscription, and the very significant interference with Convention rights consequent on those measures*." In contrast, the Court of Appeal correctly held at CA Judgment, §178: "*We emphasise that the Proscription Decision was not merely a judgment based on Palestine Action's past activities, as the Divisional Court appears to have considered. It involved an assessment of future risk to national security if Palestine Action was not proscribed. A pattern of escalating behaviour was obviously highly material*."

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82. Secondly, the Appellant places considerable weight on PA's alleged aims of "*seeking to prevent (at the very least, the 'clear risk' of) ongoing serious violations of international law ...*" (AWC, §114). However, in *Gul* at §26, the Supreme Court approved the following passage in *R v F* [2007] QB 960 at §27: "*... the legislation does not exempt, nor make an exception, nor create a defence for, nor exculpate what some would describe as terrorism in a just cause. Such a concept is foreign to the 2000 Act. Terrorism is terrorism, whatever the motives of the perpetrators."*[26]

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83. Thirdly, when inviting the Court to make novel factual findings as to the extent of interference with Convention rights at AWC, §113, the Appellant materially overstates the protection afforded to PA itself under Arts 10 and 11 of the Convention. In turn, the Appellant overstates the significance of the interference with PA's own rights (AWC, §51) and those of persons involved in, or associated with it, prior to the Decision (AWC, §52) and its supporters who have elected to express support for PA following the Decision as part of a calculated campaign to breach the TA 2000 (AWC, §§53 and 113.3).

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84. PA's activities were very far from the core of the freedoms protected by Arts 10 and 11: see CA Judgment, §150. By the date of the Decision, PA had conducted three attacks which satisfied the statutory definition of "*terrorism*" and had undertaken the attack at RAF Brize Norton, which was recognised by the Court of Appeal as demonstrating that PA's "*focus had expanded to include the United Kingdom's armed forces as a target*" (see CA Judgment, §179). The attacks on Thales on 1 June 2022, Instro Precision on 17 June 2024 and Elbit Systems UK on 6 August 2024 all resulted in serious damage to property (each incident causing in excess of £1 million loss). The incident in Bristol involved the

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[26] In support of her contention concerning the alleged motivation of the perpetrators of acts of terrorism, the Appellant asserts at AWC, §11, that there is a "*consensus across the international human rights and humanitarian community – and amongst genocide scholars in Israel and worldwide - ... that Israel is committing war crimes, crimes against humanity and genocide in Gaza*". That statement is itself controversial: see e.g. the Divisional Court's judgment in *R (Al-Haq) v Secretary of State for Business and Trade* [2025] EWHC 1615 (Admin). PA should not be seen as seeking to vindicate settled international law rights through acts of terrorism. The Secretary of State seeks permission to rely upon this judgment in accordance with *Practice Direction (Citation of Authorities)* [2001] 1 WLR 1001. It is plainly an important judgment with a comprehensive analysis of a variety of issues; and its conclusions have recently been upheld by the Court of Appeal which rejected Al Haq's appeal: see [2025] EWCA Civ 1433.

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use of serious violence and weapons against security staff and responding police officers. PA's activity was also assessed to be escalating both in frequency and seriousness,[27] in a context in which the tempo of its activity was already high: PA was assessed as having undertaken 385 actions prior to its proscription. There was no suggestion at any stage that PA would cease or reduce its activities; to the contrary, in light of the then ongoing war in Gaza, JTAC considered that "*[w]hilst PAG has conducted direct action since its inception, grievances associated to longstanding Israel-Palestine hostilities, including escalations since the attack by Hamas on 7 October 2023, highly likely contributed to an escalation of PAG's activities in 2024*". The Decision was not merely a judgment based on PA's past activities; rather, it involved an assessment of future risk to national security if PA was not proscribed and, in this regard a pattern of escalating behaviour was obviously highly material (CA Judgment, §178).

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85. Moreover, PA had specifically promoted its attacks and sought to radicalise others.[28] It openly promoted its methods and encouraged others to undertake serious damage to property. The Underground Manual provided members with practical advice and advocated for serious damage to property, including against government buildings, including by using weapons such sledgehammers, which presented very real risks of injury to members of the public (CA Judgment, §45). The JTAC Report at §31 observed that "*many of the tactics and operational security advice contained within the manual were utilised in the 6 August attack*" on Elbit Systems UK. PA had publicised and promoted the Bristol attack.

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HB/1898 [27] E.g. 26 March Min Sub, §18 ('*PAG is responsible for an escalatory campaign of direct action across the UK that has crossed the threshold into terrorism*') and §23 ('*Evidence collected through police investigations indicates PAG members have intended to further escalate the seriousness of their activity*'); and the supplementary advice of 2 April 2025, §4 ('*CTP agree with the assessment that PAG is predominantly involved in direct action that consists of criminal damage to property but that its activity has escalated in seriousness over the past c.18 months.*'). PA's own statements support the assessment of escalatory conduct, which was a feature of the organisation prior to the war in Gaza: e.g. 'Victory in Oldham', 10 January 2022, ("*We want to see Elbit itself shut down for good, and all of their businesses forced out of Britain – we will keep escalating our actions until that happens*").

HB/1965

HB/2150-2151 [28] See Explanatory Memorandum, §§5.5 and 5.7.

86. The fact of engagement by PA in acts of terrorism has the effect of "*significantly weaken[ing] the protections afforded by articles 10 and 11 (and so the weight to be attached to those protections when considering proportionality …)*": see R v Hallam [2025] 4 WLR 33 at §36 (c.f. AWC, §113.4).[29] The limitation on the rights of PA upon proscription, and the related prohibitions provided for in the TA 2000, furthered the legislative objective of controlling acts of terrorism and organisations involved in them. Absent the restrictions consequent upon proscription, people would have been allowed to become members and express their support for PA openly, which would have risked presenting it as a legitimate organisation and creating a permissive environment for it. This would in turn have risked increasing the prospect of PA maintaining funding and continuing to recruit members, with some of them going on to commit further terrorist activities. As the Court of Appeal recognised: "*It is obviously inherently problematic to degrade and disrupt the funding of a secretive cell-based organisation without proscription*" (CA Judgment, §172)[30].

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87. In any event, the Court of Appeal in R v Trowland [2024] 1 WLR 1164 at §75 recognised: "*the article 10 and article 11 protections were weakened by the fact that the disruption here was the central aim of the protesters' conduct, as opposed to a side-effect of the protest. Persuasion is very different from attempting (through physical obstruction or similar conduct) to compel others to act in a way a defendant desires. The distinction between protests which cause disruption as an inevitable side effect and protests which are deliberately intended to cause disruption is an important one.*" Further to the Factual Background section above, the Appellant's assertion that "*[t]he expression and assembly in issue is political expression on a matter of the most acute public importance*" (AWC, §113.1) is unsustainable in light of those authorities.

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88. Fourthly, the Appellant's emphasis of the "*severity of the sanction*" at AWC, §113.2 fails to have proper regard to the legislative scheme and the context of the Decision. In light

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[29] See further Cuadrilla Bowland Ltd v Persons Unknown [2020] 4 WLR 29, at §§94-95. It is well established that states have a broad margin of appreciation when deciding how to respond to violent protests: see Protopapa v Turkey (16084/90) at §§104-111.

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[30] See too the Explanatory Memorandum at §5.8: "*Proscription will enable law enforcement to effectively disrupt Palestine Action. It will help undermine the convert methods that Palestine Action uses and help reduce the risk that Palestine Action radicalises people wishing to demonstrate legitimate support for the Palestinian cause into becoming members or supporters of the organisation*".

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of PA's conduct and its escalatory trajectory (see above), the PRG unanimously recommended proscription and the Secretary of State (upon expert advice) and Parliament (following debates in both Houses) considered its proscription to be appropriate. As *ABJ* recognises, proscription is a gateway to criminal offences whose application turns on a highly fact-sensitive consideration of the individual facts and circumstances of individual actions. As with the sanctions regime considered in *Shvidler* at §213, the severity of the proscription regime is a function of Parliament's having recognised the importance of proscription in disrupting and preventing activities of, and in support of, organisations that are concerned in terrorism. Prohibited activities are not just chilled, they are prohibited in accordance with that legislation. Moreover, a range of other rights fell to be set against the limited Arts 10 and 11 rights relied upon by the Appellant: they include the public interest (and the rights of others) in the protection of national security, as well as the rights of those whose property is damaged by PA. The consequences of proscription on a limited number of individuals' Arts 10 and 11 rights were justified in that context.

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89. Fifthly, the Appellant's submissions at AWC, §§52-63 and 113.3, regarding the breadth of any chilling effect are generalised and must be treated with caution. §62 above is repeated. In particular:

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a. PA's proscription does not affect the right of the Appellant to express her views on Israel's conduct in Gaza and related matters (see CA Judgment, §173); indeed, she herself has continued to express such views (see above, c.f. AWC, §64). The only prohibitions are expressions of support for, or membership of, PA. The same is true of any of PA's supporters or members.

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b. Given the vocal, large-scale and frequent expressions of support for the pro-Palestinian cause, it is evident that the speech which has been chilled by proscription is that speech to which the Secretary of State's decision was carefully directed: namely, speech in support of PA, an organisation "*concerned in terrorism*" (c.f. AWC, §§57-60). Further, "*proscription appears to have had the effect of disrupting PA's pattern of escalatory conduct*"[31] in that, since the date of PA's proscription, the Secretary of State is not aware of PA carrying out attacks of the

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[31] First witness statement of Ben Farrant, §18.

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kind committed against Thales, Elbit Systems, Instro Precision or RAF Brize Norton.

c. In contrast to support for Palestinian causes more widely or different Palestinian causes, a considerable number of the witnesses who have provided statements in support of the claim criticised the proscription of PA on the basis that they would be unable to express support for PA specifically following the Order (see e.g. Sally Rooney, who identified concerns arising from her maintenance of "*committed suppor[t] of Palestine Action*"[32]) or because of historic support for PA (see e.g. Selma Dabbagh, who wrote an opinion piece supportive of PA).[33] As to the former group who seek deliberately to express support for a proscribed organisation following proscription, such restrictions accord with the purpose of Parliament's legislative scheme governing proscription, namely to degrade organisations 'concerned in terrorism' and deprive them of the oxygen of publicity and support. As to the latter group, the concerns are overstated, including because criminal liability under TA 2000 is prospective only.

d. Considerable caution is also needed before giving any weight to anecdotal examples in the Appellant's evidence of individuals attracting police attention, despite allegedly not expressing support for PA (see at e.g. AWC, §§53-55). Paragraph 62.e above is repeated; see also *Arumugam v Secretary of State for the Home Department (2)* (2024 PC/06/2022) at §165. The same is true in relation to claims of a chilling effect based on allegations of uncertainty about the law (see AWC, §55). The law must be complied with. It is for individuals to take the steps they consider appropriate to ensure that they do so. That is not a vice in the system – it is a not uncommon concomitant of the need to comply with the criminal law.

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e. As to the civil society organisations referred to at AWC, §56, and the academics and journalists at AWC, §63, the Secretary of State relies on the Divisional Court's assessment that no "*significant weight*" should be attached to the evidence of the position of journalists or academics, even though s.12 TA 2000 offences "*could cause genuine problems*" for "*campaigning/civil liberties organisations*": see DC Judgment, §123.

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[32] Rooney 1/§9. See also Sayle 1/§5.

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[33] Dabbagh 1/§14.

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90. In the circumstances, the Court is invited to dismiss the appeal on the basis that the Decision to proscribe PA was proportionate.

V. RELIEF

91. By her claim form, the Appellant relevantly sought only the following relief in these proceedings: "*1) Quashing the decision of the Home Secretary to proscribe Palestine Action under Schedule 2 TA 2000; 2) Declaration of breach of Human Rights Act, Articles 9,10,11 and 14 ECHR.*" In the Appellant's Amended Statement of Facts and Grounds at §95, she merely sought quashing of the Decision and omitted any reference to a declaration of breach of the HRA.

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92. The Court's grant of permission to appeal was limited to Ground 1 only. Accordingly, in contrast to the appeal below, there is now no live common law ground of challenge before the Court. In that context and for the reasons below, even if the appeal were to succeed, the quashing relief sought by the Appellant is not available:

a. First, the HRA establishes an exclusive (and exhaustive) remedial regime for challenges to primary legislation which succeed on ECHR grounds only, namely a declaration of incompatibility under s.4 HRA: see *Attorney General's Reference (No 2 of 2001)* [2004] 2 AC 72 at §30 (Lord Bingham), and *RR v Secretary of State for Work and Pensions* [2019] 1 WLR 6430 at §29 (Baroness Hale).

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b. Secondly, Parliament has chosen to include the Order in the definition of the definition of "*primary legislation*" under the HRA: see s.21(1)(f)(iii) HRA.

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c. Thirdly, it follows that s.4 HRA, read with s.21(1)(f)(iii) HRA, precludes the Court from exercising its remedial discretion to grant a quashing order in respect of the Order. Since Parliament has included the Order in the definition of primary legislation for the purposes of the Act, the Court has no jurisdiction to quash it. The fact that the effect of the Order is to amend a piece of primary legislation, is irrelevant: its inclusion in the definition of "*primary legislation*" in the Act means that the Court has no jurisdiction to quash it any more than it would have jurisdiction

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to quash primary legislation in its traditional sense (e.g. a "*public general Act*", referred to in definition at s.21(1)(a) HRA): see *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs* [2009] AC 453 at §34.

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VI. CONCLUSION AND REASONS

93. The Secretary of State invites the Court to dismiss the Appeal and to affirm the CA Order for the following, among other

REASONS

(1) The Secretary of State's decision to proscribe Palestine Action was proportionate by reference to each part of the test in *Bank Mellat*. When applying the conventional four-part test in *Bank Mellat*, the Court of Appeal accorded the proper degree of margin to the Secretary of State in a national security case.

(2) In the event of the Court conducting a fresh assessment of the proportionality of the Decision, upon taking all the facts into account and applying the appropriate margin, it should reach the same conclusion on the proportionality of the Decision as the Court of Appeal.

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07 October 2026