

The provisions of section 37 of the Criminal Procedure and Investigation Act 1996 apply to the proceedings in these cases. No order has been made in the Crown Court that section 37(1) shall not apply. An order is now made that section 37(1) shall not apply to this judgment. Unless and until any further order is made, only this judgment and that of the Court of Appeal, and those particulars identified in section 37(9) of the 1996 Act, may be reported until the conclusion of both sets of proceedings in the Crown Court.



**Hilary Term
[2026] UKSC 8**

On appeal from: [2024] EWCA Crim 1597

JUDGMENT

R v ABJ (Appellant); R v BDN (Appellant)

before

Lord Reed, President

Lord Lloyd-Jones

Lord Sales

Lord Burrows

Lord Richards

JUDGMENT GIVEN ON

26 February 2026

Heard on 20 November 2025

Appellant (ABJ) – UKSC 2025/0079
Michael Mansfield KC
Owen Greenhall
(Instructed by Hodge Jones & Allen LLP)

Appellant (BDN) – UKSC 2025/0059
Henry Blaxland KC
Jacob Bindman
(Instructed by Tuckers Solicitors) LLP

Respondent
Louis Mably KC
Michael Bisgrove
(Instructed by the Crown Prosecution Service Counter Terrorism Division)

Intervener – Secretary of State for the Home Department
Naomi Parsons
(Instructed by the Government Legal Department)

LORD REED (with whom Lord Sales, Lord Lloyd-Jones, Lord Burrows and Lord Richards agree):

1. Introduction

1. In broad terms, these appeals concern the compatibility of section 12(1A) of the Terrorism Act 2000 as amended (“the Terrorism Act”) with the right to freedom of expression protected by article 10 of the European Convention on Human Rights (“the Convention”), as given effect in our domestic law by the Human Rights Act 1998. For the sake of brevity, I shall refer simply to section 12(1A) and article 10. The Court of Appeal certified the following point of law of general public importance as being involved in its decision in each case:

“Do the terms of section 12(1A) Terrorism Act 2000 represent a disproportionate interference with the appellant’s rights under article 10 of the European Convention on Human Rights (ECHR)? In the event that they do, is it possible to read down the terms of the offence to render them compatible?”

2. The issues which this court has to decide can be summarised as follows. The first is to establish the matters which have to be proved before there can be a conviction under section 12(1A): that is to say, the ingredients of the offence. The second is to decide whether, and if so under what conditions, a conviction of the offence is compatible with article 10. In particular, the court has to determine whether the Court of Appeal was correct to hold that, where the elements of the offence under section 12(1A) are proved, the interference with the appellants’ article 10 rights constituted by a conviction of the offence will be proportionate.

3. The parties to the appeal are the appellants and the Crown. The Secretary of State for the Home Department, who has responsibility for national security, and in particular for countering terrorism, has also taken part in the appeal as an intervener.

4. Since these appeals are being heard in advance of a trial to be conducted before a jury, the appellants’ names have been anonymised.

2. The background

(1) The first appellant

5. The first appellant, who has been designated as ABJ, is charged with an offence described in the indictment as “expressing support for a proscribed organisation contrary to section 12(1A) Terrorism Act 2000”. The particulars of the offence are stated as follows:

“[The first appellant], on 8 October 2023, expressed an opinion or belief that was supportive of a proscribed organisation, namely Hamas, by giving a speech in Brighton City Centre, being reckless as to whether a person to who[m] the expression was directed would be encouraged [to] support such a proscribed organisation.”

6. As the case has not yet gone to trial, the facts have not been established. However, it is agreed for the purposes of the appeal that on 8 October 2023 the first appellant, a young woman with no previous convictions, gave a speech in Brighton city centre as part of a Palestine Solidarity Campaign event. It lasted approximately four minutes and was in the following terms:

“This is not a complex situation. They call it complicated or a conflict to confuse the public. Simply, there is one group that has enormous power backed by the United States and the United Kingdom. Israel is occupying the territory illegally and enacting genocide on the Palestinian population. Israel has never been held accountable for its actions because it has been supported by the West, which leaves Palestinians and its freedom fighters scapegoated as terrorists. There is no symmetry in this relationship. There is no equal power or distribution of equal resources. The audacity of calling for a war is disgraceful because Palestine and people in [Gaza] do not have an army resourced by the world. This is genocide and deliberate wiping out of a population. Bombing [women], children, men in their homes is not an act of self-defence; it is an act of terrorism.

“For me, yesterday, yesterday was a victory. As a Palestinian, yesterday was a victory. For freedom fighters and residents to break out of the 15-year blockade so successfully under the inhumane genocide from Israel was so beautiful and inspiring

to see. My father rang me in the early morning. He was like ... 'have you seen the news?' I was like 'No what's going on?' He was like 'they've done it [Arabic]'. He was like 'they've done it, they've done it in our lifetime!' And he's crying and this is a man who, you know, a strong man. And he's crying and he's like 'I can't believe I get to see this, I can't believe my parents—my grandparents—get to see this. I can't believe you get to see this. It shows us as Palestinians, it shows the world that us as Palestinians that we will always fight and always resist. We need to celebrate these acts of resistance because this is a success.'

"And my mum, my mum rang me afterwards, and she's crying. And I'm thinking 'Oh, we're celebrating right?' and she's like 'this is beautiful and this is so scary', because she knows what comes next. And every Palestinian knows that this is both a victory and a devastating massacre waiting to happen. And it's really, really hard to balance the two of them.

"'Violence is wrong' is what the media have been saying about the Palestinian freedom fighters. And I'm thinking: 'So you agree? Keeping people trapped, surveillance, starved, denied electricity, water, food, bombed at our occupiers' will is wrong?' How can you say it's wrong when a Palestinian freedom fighter does it but not when an Israeli international-like funded f-ing genocidal people do it? ... Like ... it's hypocrisy!

"Revolutionary violence initiated by Palestinians is not terrorism, it is self-defence and it is encouraging the liberation of Palestinian people who have been under illegal occupation for 75 years.

"I'm gonna leave you with this. This is not a Muslim issue, this is not an Arab issue, this is not a Palestinian issue ... This is a human rights issue."

7. Police officers present at the demonstration took no action. However, on 12 October 2023 the first appellant was arrested and later charged after edited footage of the speech was published online by the Daily Mail.

8. The first appellant’s case for trial, as outlined in her defence statement, is that when she made her speech she had very limited information regarding events the previous day. In particular, she was not aware that those events were primarily attributed to Hamas. She did not express any opinion or belief that was supportive of a proscribed organisation, namely Hamas, and was not reckless as to whether a person to whom the expression was directed would be encouraged to support Hamas. In particular, she was not aware of a risk that by her act of expression a person to whom the expression was directed would be encouraged to support a proscribed organisation, and any such risk was not an unreasonable one to take in the circumstances as she believed them to be.

9. At a preparatory hearing before the trial judge, HHJ Lodder KC, the defence applied for two rulings. The first was that the prosecution must prove that the first appellant knew that Hamas was a proscribed organisation. The second was that in order to ensure protection of her rights under article 10, the jury must conduct an assessment of the proportionality of a conviction when it considered its verdict. The trial judge ruled against the first appellant on both issues. The first appellant appealed against the ruling to the Court of Appeal, which heard the appeal together with the case of the second appellant.

(2) The second appellant

10. The second appellant, who has been designated as BDN, is also charged with an offence described in the indictment as “expressing support for a proscribed organisation contrary to section 12(1A) Terrorism Act 2000”. The particulars of the offence are stated as follows:

“[The second appellant], on 17 October 2023 at Whitehall London did express an opinion or belief that was supportive of a proscribed organisation, namely HAMAS, and in doing so he was reckless as to whether a person to whom the expression was directed would be encouraged to support said proscribed organisation.”

11. As in the case of the first appellant, as the case has not yet gone to trial, the facts have not been established. However, it is agreed for the purposes of this appeal that the indictment arises out of an incident on 17 October 2023. At around 11.30am the second appellant stood outside the gates to Downing Street holding a placard and a small loudhailer. One side of the placard read:

“HAMAS is the vanguard of the Resistance—Avi Shlaim”.

The other side of the placard read:

“You won’t destroy HAMAS—Tony Blair”.

12. The second appellant asked a passer-by to film him using the second appellant’s phone. He then set off a short alarm sound on the loudhailer and used it to say:

“I support the physical force resistance in Palestine. Cruella Deville, sorry, Suella Fernandez Braverman does not scare me or my brothers. I support armed resistance in Palestine. There’s lots of people talking about horrific things happening there, I’ll leave it for them to talk about it, we can read the newspapers, read history books. But I support armed physical force resistance in the Holy Land.”

The film lasts 50 seconds and was never livestreamed or shared by any means. It was later recovered from the second appellant’s phone. A number of members of the public were present. According to the respondent, some of them appear to have been taking note of or listening to the second appellant. He was arrested later that day while holding the placard in another part of Westminster.

13. The respondent’s case for trial, as set out in the case summary served prior to the commencement of proceedings in the Crown Court, is that by referring to “armed resistance” in his speech while holding up a message that referred to both Hamas and resistance, the second appellant was impliedly expressing support for Hamas. The use of a megaphone, together with his choice of location and the time of day, are sufficient to conclude that while he did not explicitly invite support for Hamas, his purpose was to advertise his support, and thereby, at the least, he was reckless as to whether others would be encouraged to support the organisation as well.

14. The second appellant’s case for trial, as outlined in his defence statement, is that in making his speech he was exercising his right to freedom of expression and voicing his opinion that the inhabitants of Palestine are entitled to defend themselves when subject to unlawful attack, as permitted under international law. The quotations he was displaying were from a prominent Israeli historian and a former British Prime Minister, and refer to the futility of trying to destroy Hamas with all the collateral death and destruction that was well underway at the time of the speech. More particularly, the second appellant’s case is that he did not express an opinion supportive of a proscribed organisation, and he was not reckless, in that he was not aware of a risk that by his act of expression a person to whom the expression was directed would be encouraged to support a proscribed organisation, and any such risk was not an unreasonable one to take in the circumstances as he believed them to be. Furthermore, his prosecution for expressing an opinion on a

matter of high political importance is a disproportionate interference with his rights under article 10.

15. A preparatory hearing was held at which HHJ Lucraft KC, the Recorder of London, heard argument on a number of submissions made on behalf of the second appellant, including in particular a submission that the proceedings violated his Convention rights under article 10. In that regard, it was argued that the offence created by section 12(1A) was too uncertain to be compatible with article 7 of the Convention or to be “prescribed by law” within the meaning of article 10 of the Convention. It was also argued that the prosecution was a disproportionate interference with the second appellant’s right to freedom of expression, and was therefore incompatible with article 10. The judge rejected the second appellant’s submissions. He held that the offence was clearly defined by law, and that proof of the ingredients of the offence in section 12(1A) was sufficient to ensure the proportionality of a conviction for the purposes of article 10. The second appellant appealed against the ruling to the Court of Appeal.

(3) The decision of the Court of Appeal

16. Before the Court of Appeal, it was argued on behalf of the first appellant that the judge should have concluded, first, that the prosecution was required to prove awareness of the fact of proscription; secondly, that the jury should be directed to carry out a freestanding assessment of proportionality under article 10; and thirdly, that the words used in section 12(1A) should be given a “heightened” meaning. It was argued on behalf of the second appellant that the court should make a declaration of incompatibility in respect of section 12(1A), on the basis that the offence was incompatible with articles 7 and 10. Alternatively, it was argued that the jury should be directed to assess proportionality under article 10, and to give a “heightened” meaning to the elements of the offence.

17. The Court of Appeal dismissed both appeals, for reasons explained in a judgment given by Baroness Carr of Walton-on-the-Hill CJ, with which Edis LJ and Murray J agreed: [2024] EWCA Crim 1597; [2025] 1 WLR 1909. The court subsequently certified two points of law of general public importance. The first was set out in para 1 above. The second was the following:

“What is the mental element in relation to the offence under section 12(1A) Terrorism Act 2000?”

This court subsequently granted permission to appeal on all grounds of appeal relating to the first certified point of law. Permission was refused in respect of the grounds of appeal relating to the second question. The point is however considered below in the course of the discussion of the ingredients of the offence.

3. *The legislation*

18. The Terrorism Act replaced previous counter-terrorism legislation, creating a range of measures applicable to all forms of terrorism, whether connected with Northern Ireland (the original focus of earlier legislation) or other United Kingdom affairs, or international terrorism. It 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.

19. Part I of the Act is introductory, and contains a definition of terrorism. In particular, section 1(1) provides that “terrorism” means the use or threat of action where:

“(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.”

Action falls within section 1(2) if it:

“(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person’s life, other than that of the person committing the action,

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

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

20. Section 1(4) makes it clear that “action” includes action outside the United Kingdom, that a reference to any person or to property includes any person or property wherever situated, that a reference to the public includes the public of a country other than the United Kingdom, and that “the government” includes the government of a country outside the United Kingdom.

21. Part II of the Act is concerned with proscribed organisations. Section 3(1) defines a proscribed organisation as one which is listed in Schedule 2 to the Act, or which operates under the same name as an organisation listed in that Schedule. Section 3(3) enables the Secretary of State to add organisations to Schedule 2, or to remove them from the Schedule, by making an order. By virtue of section 123, such an order must be made by statutory instrument, and cannot normally be made unless a draft has been laid before and approved by a resolution of both Houses of Parliament. In cases of urgency, section 123(5) permits the order to be made without such prior approval, but it then ceases to have effect after 40 days unless a resolution approving the order has been passed by both Houses of Parliament before that period expires.

22. In terms of section 3(4), the Secretary of State can only make an order proscribing an organisation if he believes that it is concerned in terrorism. By virtue of section 3(5), an organisation is concerned in terrorism if it:

- “(a) commits or participates in acts of terrorism,
- (b) prepares for terrorism,
- (c) promotes or encourages terrorism, or
- (d) is otherwise concerned in terrorism.”

23. Hamas is one of the proscribed organisations listed in Schedule 2 to the Terrorism Act. The military wing of Hamas was added to Schedule 2 in 2001, by the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001, SI 2001/1261, under the name “Hamas-Izz al-Din al-Qassem Brigades”. The entire organisation was proscribed in 2021, by the Terrorism Act 2000 (Proscribed Organisations) (Amendment) (No 3) Order 2021, SI 2021/1318 (“the 2021 Order”), by substituting the name “Harakat al Muqawama al-Islamiyya (Hamas)”. That followed an assessment that there was no sound reason to distinguish between Hamas’s military and political wings. Each order was made only after a draft had been laid before Parliament and approved by a resolution of both Houses.

24. The reasons for proscribing Hamas were explained to Parliament by the Government in the Explanatory Memorandum to the 2021 Order as follows:

“7.2 Harakat al Muqawama al-Islamiyya (Hamas) is a militant Islamist movement that was established in 1987, following the first Palestinian intifada. Its ideology is related to that of the Muslim Brotherhood combined with Palestinian nationalism. Its main aims are to liberate Palestine from Israeli occupation, the establishment of an Islamic state under Sharia law and the destruction of Israel (although Hamas no longer demands the destruction of Israel in its Covenant). The group operates in Israel and the Occupied Palestinian Territories. Hamas formally established Hamas IDQ in 1992. Hamas IDQ was proscribed by the UK in March 2001. At the time it was Her Majesty’s Government’s assessment that there was a sufficient distinction between the so called political and military wings of Hamas, such that they should be treated as different organisations, and that only the military wing was concerned in terrorism. The Government now assess that the approach of distinguishing between the various parts of Hamas is artificial. Hamas is a complex but single terrorist organisation.

“7.3 The Government assess that Hamas commits and participates in terrorism. Two key examples put forward are:

7.3.1. Hamas has used indiscriminate rocket or mortar attacks, and raids against Israeli targets. During the May 2021 conflict, over 4000 rockets were fired indiscriminately into Israel. Civilians, including two Israeli children, were killed as a result.

7.3.2. Palestinian militant groups, including Hamas, frequently use incendiary balloons to launch attacks from Gaza into southern Israel. There was a spate of incendiary balloon attacks from Gaza during June and July 2021, causing fires in communities in southern Israel that resulted in serious damage to property.

“7.4 The Government assesses that Hamas prepares for acts of terrorism. One incident of preparatory activity is that Hamas recently launched summer camps in Gaza which focus on training groups, including minors, to fight. This is evidence of

Hamas being responsible for running terrorist training camps in the region. In a press statement, Hamas described the aim of these camps as to ‘ignite the embers of Jihad in the liberation generation, cultivate Islamic values and prepare the expected victory army to liberate Palestine’.

“7.5 The Government also assesses that Hamas promotes and encourages terrorism.”

25. That explanation illustrates the difference between pursuing an aim, such as Palestinian statehood, by political means, and pursuing the same aim by terrorism. When it was assessed that there were distinct wings of Hamas, and that it was only the military wing which resorted to terrorism, only the military wing was proscribed. When that assessment changed, so that Hamas was considered to be a complex but single terrorist organisation, the entire organisation was proscribed.

26. Section 4 enables any organisation which has been proscribed, or any person affected by the organisation’s proscription, to apply to the Secretary of State for an order removing the organisation from the list of proscribed organisations. A number of organisations have been de-proscribed following such applications.

27. In the event that the application is refused, section 5 provides a right of appeal to the Proscribed Organisations Appeal Commission (“the Commission”), which is directed by section 5(3) to allow the appeal if it considers that the decision to refuse the application to de-proscribe an organisation was flawed when considered in the light of the principles applicable on an application for judicial review. Detailed provision is made in respect of the constitution and administration of the Commission in Schedule 3. One of the members at each sitting must be a person who holds or has held high judicial office or is or has been a member of the Judicial Committee of the Privy Council: para 4(3). Organisations are entitled to be legally represented in proceedings before the Commission: para 5(3). The rules of procedure before the Commission have to be approved in draft by both Houses of Parliament: para 5(5).

28. Section 6 provides that a party to an appeal before the Commission may bring a further appeal on a question of law to the Court of Appeal or the equivalent courts in Scotland and Northern Ireland. Section 6(3) recognises that a further right of appeal lies to this court.

29. 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.

30. Under section 11(1), a person commits an offence if he belongs or professes to belong to a proscribed organisation. Under section 12(1), a person commits an offence if:

“(a) he invites support for a proscribed organisation, and

(b) the support is not, or is not restricted to, the provision of money or other property”

(support of the latter kind being the subject of a separate offence, created by section 15). Under section 12(2), a person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is (a) to support a proscribed organisation, (b) to further the activities of a proscribed organisation, or (c) to be addressed by a person who belongs or professes to belong to a proscribed organisation. Under section 12(3), a person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities. Under section 13, a person commits an offence if he wears an item of clothing or other article in a public place, or publishes an image of an item of clothing or other article, in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation.

31. These appeals are concerned with the offence created by section 12(1A), which is in the following terms:

“(1A) A person commits an offence if the person—

(a) expresses an opinion or belief that is supportive of a proscribed organisation, and

(b) in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.”

32. Under section 12(6), a person guilty of an offence under section 12 is liable, if convicted on indictment, to imprisonment for a term not exceeding 14 years, or to a fine, or to both. On summary conviction, the person is liable to imprisonment for a term not

exceeding six months, to a fine not exceeding the statutory maximum, or to both. The relevant sentencing guidelines for England and Wales indicate that a very wide range of sentences may be appropriate, ranging from a high level community order to 13 years' custody, depending on a number of specified matters, such as the degree of culpability of the offender, the degree of harm caused by the offence, and the presence of any aggravating or mitigating factors.

33. By virtue of section 10, a person cannot be prosecuted under sections 11 to 13 (or other provisions of the Act) in respect of anything done in relation to an application under section 4 for an organisation to be removed from the list of proscribed organisations, or in relation to an appeal to the Commission under section 5, or in relation to an appeal to the courts under section 6.

4. The background to section 12(1A)

34. Section 12(1A) did not form part of the Terrorism Act as originally enacted in 2000, but was inserted by section 1 of the Counter-Terrorism and Border Security Act 2019 ("the 2019 Act").

35. The Bill which became the 2019 Act was introduced into Parliament, accompanied by a statement under section 19 of the Human Rights Act that its provisions were believed to be compatible with Convention rights, following a review of the Government's counter-terrorism strategy in 2017. The background to that review was explained in the Explanatory Notes to the 2019 Act:

"3. The UK national threat level, set by the independent Joint Terrorism Analysis Centre and the Security Service, has been set at SEVERE or higher since 29 August 2014. This means that a terrorist attack is 'highly likely'. Since the murder of Fusilier Lee Rigby, in May 2013, 26 Islamist terrorist attacks in the UK have been foiled, and a further four extreme right-wing plots have been disrupted since March 2017. But in June 2016 there was the terrorism-related murder of Jo Cox MP and, between March and September 2017, London and Manchester experienced five terrorist attacks:

- **Westminster (six deaths including the attacker):** On the afternoon of Wednesday 22 March 2017, Khalid Masood drove a Hyundai Tucson SUV into pedestrians who were crossing Westminster Bridge. Three were killed at the time and 32 admitted to hospital, where one died later and several others were treated for life-

changing injuries. Masood then took two carving knives out of the vehicle and fatally stabbed PC Keith Palmer who was on duty outside the Palace of Westminster. Masood was shot by armed police and died of his injuries.

- **Manchester (23 deaths including the attacker):** On the evening of Monday 22 May 2017, Salman Abedi detonated an explosive charge in the foyer of the Manchester Arena, at the end of a concert attended by thousands of children. Abedi was killed in the explosion along with 22 innocent people, 10 of whom were aged under 20. A further 116 people required hospital treatment.
- **London Bridge (11 deaths including the three attackers):** On the evening of Saturday 3 June 2017, three men (Briton Khuram Butt, Moroccan Rachid Redouane and Italian/Moroccan Youssef Zaghba) drove a Renault Master van into pedestrians on London Bridge, killing two people. Abandoning unused a store of Molotov cocktails and wearing dummy suicide vests, they then left the van armed with large knives, which were used on an apparently random basis to kill six more people in nearby Borough Market and in the vicinity of Borough High Street. Armed police arrived within eight minutes and shot and killed the attackers. A total of 11 people were killed, and 45 required hospital treatment.
- **Finsbury Park (one death):** Shortly after midnight on Monday 19 June 2017, Darren Osborne drove a Citroen Relay van into a crowd of worshippers outside the Finsbury Park Islamic Centre. Makram Ali, who had been taken ill and was lying on the ground, was struck by the vehicle and died soon afterwards. Ten other people received hospital treatment for injuries. Osborne was arrested and charged with murder and attempted murder; he was convicted on 1 February 2018 and sentenced to life imprisonment, with a minimum term of 43 years.
- **Parsons Green (no deaths):** On the morning of Friday 15 September 2017 an explosion occurred on a District

line train at Parsons Green Underground Station, London. 23 people received burns injuries, some significant; and 28 people suffered crush injuries. Ahmed Hassan was arrested in Dover, Kent on 16 September and charged with attempted murder and causing an explosion likely to endanger life or property (contrary to section 2 of the Explosive Substances Act 1883). He was convicted of attempted murder on 16 March 2018 and sentenced to life imprisonment, with a minimum term of 34 years ...

“5. Against the background of this heightened terrorist threat, the Government considered it necessary to update and strengthen the legal powers and capabilities available to law enforcement and intelligence agencies to disrupt terrorism and ensure that the sentences for terrorism offences properly reflect the seriousness of the crimes committed. On 4 June 2017, following the London Bridge attack, the Prime Minister announced that there would be a review of the Government’s counter-terrorism strategy ‘to make sure the police and security services have all the powers they need’. Subsequently, on 3 October 2017, the then Home Secretary announced that counter-terrorism laws would be updated to keep pace with modern online behaviour and to address issues of online radicalisation.”

36. Following the review of the counter-terrorism strategy, in June 2018 the Government presented its revised strategy to Parliament in a document entitled “CONTEST: The United Kingdom’s Strategy for Countering Terrorism” (Cm 9608). This identified the drivers of the future terrorist threat as including ideology and radicalisation (para 70).

37. In addressing the danger of radicalisation, section 12 of the Terrorism Act, as it then stood, was not considered to be adequate. The ambit of the offence created by section 12(1) (set out at para 30 above) covers cases where a person “invites” another person to support a proscribed organisation. It was common ground before the Court of Appeal in *R v Choudary* [2016] EWCA Crim 1436; [2018] 1 WLR 695 that expressing support for a proscribed organisation was not conduct falling within section 12(1): see paras 5 and 35. Sharp LJ, giving the judgment of the court, also explained that the offence created by section 12(1) was to be distinguished not only from the expression of personal beliefs, but also from an invitation to someone else to share an opinion or belief: para 49. She approved a statement by the trial judge in that case (para 51):

“I do not think it is as difficult as the defendants’ counsel suggest, to distinguish between holding a view, which may also be held by members of a proscribed organisation, and supporting the proscribed organisation. Once again, one can easily say that one agrees with certain views, but does not support the proscribed organisation.”

38. As explained below, that remains the position in relation to section 12(1A). That provision does not make it an offence to express a personal opinion or belief, or to invite someone else to share that opinion or belief. Nor does it make it an offence to express support for a proscribed organisation. Proof that a person had done so would not be sufficient to support a conviction. The short description of the offence in the indictments against the appellants is therefore liable to mislead. The offence is not committed by “expressing support for a proscribed organisation”. An offence is committed only if a person expresses such support and “in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation”.

39. It was also common ground in *Choudary* that the Crown had to prove that the defendant knew that he was inviting support for the organisation in question: see para 5. Accordingly, as Sharp LJ said at para 48, the Crown must make the jury sure that the defendant used words which in fact invited support for the proscribed organisation, and that the defendant knew at the time he did so that he was inviting support for that organisation. Summarising the position at para 70, she said:

“it is important to emphasise that the section only prohibits inviting support for a proscribed organisation with the requisite intent. It does not prohibit the expression of views or opinions, no matter how offensive, but only the knowing invitation of support from others for the proscribed organisation.”

40. So understood, section 12(1) did not go as far as was considered necessary to prevent radicalisation, particularly in the digital age. Since the offence required proof of an invitation to support the proscribed organisation, there was no prohibition of encouragement to support such an organisation unless it took the particular form of an invitation. Nor would it be enough if the person acted with recklessness as to the effect of his words on those who listened to them or read them online.

41. This was explained by the Government in the Explanatory Notes to the 2019 Act (para 25):

“The scope of the section 12(1) offence was considered by the Court of Appeal in the case of *R v [Choudary] and Rahman*

[2016] EWCA Crim 61. The Court of Appeal was clear that a central ingredient of the offence was inviting support from third parties for a proscribed organisation and that the offence ‘does not prohibit the holding of opinions or beliefs supportive of a proscribed organisation; or the expression of those opinions or beliefs’ (paragraph 35 of the judgment). This section therefore provides for a new offence which criminalises the expression of an opinion or belief that is supportive of a proscribed organisation (the *actus reus* or criminal act) in circumstances where the perpetrator is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation (the *mens rea* or mental element). The recklessness test is a subjective one, requiring that the perpetrator be aware of the risk.”

Similarly, Circular 004/2019, “Counter-Terrorism and Border Security Act 2019”, published by the Home Office in 2019 to explain the effect of the 2019 Act, stated (at para 7) that section 12(1) of the Terrorism Act was considered, in the light of *Choudary*, “to leave a gap in a case where it is not possible to prove beyond reasonable doubt an *intention* to influence others to support a proscribed organisation, but where a person nonetheless makes inflammatory statements indicating their own support, and where there is a clear *risk* that this will have the harmful effect of influencing others to also support the organisation” (Original emphasis.)

42. These matters, and the need to ensure that freedom of expression was not subject to a disproportionate interference, were examined closely during the Bill’s passage through Parliament. The cross-party Public Bill Committee of the House of Commons took evidence during 2018 from the Assistant Commissioner of the Metropolitan Police, the Director of Legal Services of the Crown Prosecution Service, the Chair of the Criminal Law Committee of the Law Society, the Director of the Law Society of Scotland, the Independent Reviewer of Terrorism Legislation, the Advocacy Director of Liberty (a campaigning organisation for civil liberties), and two members of the Criminal Bar Association.

43. The proposed section 12(1A) was discussed most fully by the Assistant Commissioner, who explained that he was the senior national coordinator for counter-terrorism. He said that there had been a change in the nature and scale of the terrorism threat in the United Kingdom, and significant technological developments, since the Terrorism Act was enacted. People did not attend public assemblies, marches and demonstrations in the same way that they used to. A far wider public could be reached by putting a message online. In relation to the proposed section 12(1A), he said that the biggest problem in counter-terrorism, without a doubt, was radicalisation. He gave some examples of the ability to radicalise by means of speech which could not be prosecuted under the law as it then stood:

“One is of Mohammed Shamsuddin ... On 27 June 2015, Shamsuddin gave a speech. In the context of that speech, it was very clear that he supported Daesh and what they were doing. He did not invite others, which is obviously the current test, so he did not meet a section 12 charge. He shouted anti-kufr rhetoric and said, ‘Allahu Akbar’ in relation to the Kuwait mosque bombing. He said that one should not feel sorry for the British who died in Tunisia or for the kufr killed in Kuwait. He criticised Gay Pride and said that gay people should be thrown from tall buildings. Having spoken on recent shootings in Tunisia, he said, ‘The spark was lit’, and that the listeners knew the rest.

“A second example is Omar Brooks, again in 2015, on 4 July. He gave provocative talks and spoke of jihad and of how Islam was spread by the sword and was not a soft religion about peace. Brooks also mocked a sheikh who had spoken against the killing of Lee Rigby. Again, it was clear, when you look at the full tone of his speech, that he supported the concept and principle of Daesh, but he did not invite others, under the terms of the current legislation, and again it would not have met a section 12 charge.

“Now, were either of those two people reckless in that they would have thought that their deeds would have encouraged terrorism? My contention is that they absolutely would. What we have seen in the rise of terrorism—particularly with the malleable, vulnerable people not well equipped to understand the nuances of religion or ideology—is that this kind of radicalisation speech has really worked to increase the threat to the UK.”

44. The Assistant Commissioner went on to say that he could not stress strongly enough the effect that charismatic, radicalising speakers, who professed to support proscribed organisations and encourage violence, were having on a section of our society. He gave the example of the defendant in *Choudary*, whom he described as a leader of the proscribed organisation al-Muhajiroun. He had been able to speak very persuasively and charismatically over many years. He avoided prosecution by keeping just on the right side of the Terrorism Act as it then stood, inspiring support but not inviting it. Hundreds of disruptions had been caused by people influenced by that organisation’s rhetoric or material. The proposed section 12(1A) was designed to deal with people who used their profile and presence to inspire people recklessly into joining a proscribed organisation or following its beliefs.

45. The Bill was also considered by the House of Commons and House of Lords Joint Committee on Human Rights. It took evidence from a range of sources, including Liberty and the Independent Reviewer of Terrorism Legislation. In its Ninth Report of Session 2017–19, “Legislative Scrutiny: Counter-Terrorism and Border Security Bill”, HC 1208, HL Paper 167 (2018), it observed (para 18):

“There is a careful balance to be struck here to ensure that valid freedom of expression is not unintentionally caught by new offences. In that regard it is important to recall that even speech that offends, shocks or disturbs, is still protected.”

The Committee expressed concern that it was not clear what types of speech would constitute an “expression of support”. It considered it arguable that the phrase could, for example, include an academic debate during which participants spoke in favour of the de-proscription of proscribed organisations (para 12). The Committee also expressed concern that the test of recklessness meant that there was no requirement that the person should deliberately or knowingly encourage others to support a proscribed organisation (para 16).

46. In the Government’s response (HC 1578, 2018), the Minister for Security and Economic Crime observed that the Government had a duty not only to protect the rights of those who are investigated and prosecuted, but also to preserve the fundamental right to life of those who may be targeted by terrorist activity. In relation to the Committee’s concern over the lack of a requirement of deliberate encouragement, the Minister explained that the test of recklessness imposed a requirement that the person must know that their expression of support for a proscribed organisation may generate such support in others.

47. In relation to the Committee’s concern about debates over de-proscription, the Minister said that the Government recognised that people would wish to, and should be able to, have lawful debates on the merits of the proscription and de-proscription of individual organisations. Section 10, discussed at para 33 above, provided clear and unambiguous immunity from prosecution under proscription offences for anything done in relation to an application for de-proscription, including any statements made in support of the organisation.

48. In relation to the Committee’s concern about the clarity of the proposed offence, the Minister said:

“The recklessness test in clause 1 [of the Bill, inserting section 12(1A) into the Terrorism Act] is well-established, and well-understood by the courts. In this context it would require the

prosecution to prove that a person subjectively knew that expressing an opinion or belief in support of a proscribed terrorist organisation in the particular circumstances would cause someone else to support the organisation, and that they nonetheless expressed it where a reasonable person would not do so. On this basis a hypothetical example of a lawful statement might be one to the effect that a proscribed organisation is not, as a matter of fact, concerned in terrorism, and therefore does not meet the legal test for proscription; whereas an example of an unlawful statement, which risks encouraging others to support the same organisation, might be one praising its terrorist activities and suggesting that it should not be proscribed so that individuals in the UK could be free to better emulate such terrorist conduct. Of course, in practice, all the circumstances in which a statement is made will be relevant to its lawfulness.

“It would be impractical to define on the face of the legislation, in more specific and granular terms, particular forms of statement that will or will not be captured. Similarly, it would be extremely difficult to define a valid debate and to distinguish this from a debate that is not valid. Such determinations will always be highly dependent on the facts and circumstances of particular cases, and can only be properly made by a court considering all of those matters in each case. To attempt to do so in legislation would be likely to unhelpfully muddy the position, and would provide no greater legal certainty to individuals.” (Emphasis added.)

5. Subsequent reviews of the operation of section 12(1A)

49. Under section 36 of the Terrorism Act 2006, the operation of the Terrorism Act, including the offences created by that Act, must be reviewed each year by the Independent Reviewer of Terrorism Legislation, whose report must be laid before Parliament.

50. The Independent Reviewer considered section 12(1A) in detail in his Report on Terrorism Legislation and Protests, published in 2023. He noted at paras 43–44 that the offence was only committed if the defendant had the required state of mind:

“He must be reckless as to whether a person to whom the expression is directed ‘will’ be encouraged to support a proscribed organisation (meaning that he knows of the risk, and

nonetheless goes on to take it). Since the word is ‘will’ he must be aware of sufficient likelihood that encouragement will occur.

“This inevitably means that the opinion or belief, even if not expressly supportive of the organisation (for example, praise for terrorist acts on 7 October 2023), must be known by the speaker and his audience to have sufficient connection to a proscribed group.”

51. He added at paras 50–51:

“As a matter of proof, it must be shown that the expressed opinion or belief is supportive of the proscribed organisation itself. It is an offence concerned with organisations not merely with actions carried out by them. So, for example, a demonstration expressing support for IRA weapons-decommissioning would not necessarily be an offence.

“Similarly, the risk must be that a person at whom the expression is directed supports the organisation. Whether a particular sign or slogan might have that effect will depend on the circumstances. Direct reference to Hamas, or praise for events with which Hamas were obviously involved, might demonstrate a sufficient likelihood of encouraging support for Hamas as an organisation.”

The Independent Reviewer concluded by recommending that the provision should not be amended.

52. The Home Office also conducted an assessment of the 2019 Act, which it published in 2025: “Post-legislative scrutiny of the Counter-Terrorism and Border Security Act 2019”. It reported that the offence had been found to be operationally useful. The Crown Prosecution Service provided an example of the successful prosecution of an individual under section 12(1A) for using social media to express support for Daesh, even though the conduct stopped short of deliberately inviting others to support Daesh.

53. In other recent reports, the Independent Reviewer has drawn attention to the fact that the threat of terrorism in the United Kingdom now comes principally from persons who act alone, using bladed weapons or motor vehicles, and have been radicalised via the internet: see, for example, his most recent report to Parliament, “The Terrorism Acts in

2023: report of the Independent Reviewer of Terrorism Legislation” (2025), para 3.1. In other words, attacks are more likely to be encouraged or “inspired” rather than planned or directed by terrorist groups.

54. The reports also make clear the continuing nature of the threat posed by terrorism in the UK and elsewhere. A recent example in the UK is the attack on the Heaton Park synagogue in Manchester on 2 October 2025, during the Jewish holiday of Yom Kippur, in which three people were killed (including the attacker) and another three were injured.

55. There was and remains a heightened tension in the United Kingdom and elsewhere following the 7 October 2023 attacks on Israel by Hamas, in which over 1200 people were killed and 251 people were taken hostage, and the response of the Israeli authorities in Gaza, which has resulted in very large numbers of people being killed or injured, and in a humanitarian crisis. Following the terrorist attack on Jewish families celebrating Hanukkah at Bondi Beach on 14 December 2025, in which 15 people were killed, the Independent Reviewer published a lecture, “The Lessons of Bondi Beach: Terrorism, Hatred and the Law” (2026), in which he described the rise of anti-semitism and hate speech in the United Kingdom since 7 October 2023, and gave numerous examples, such as attacks on Marks and Spencer stores, including the stabbing of customers, because of supposed links to Israel.

6. The issues in the appeals

56. The appeals raise questions, first, as to the matters which have to be proved before there can be a conviction under section 12(1A): that is to say, the ingredients of the offence; and secondly, whether, and if so under what conditions, a conviction of the offence is compatible with article 10. It will be necessary to consider each of those questions in turn.

7. The ingredients of the offence

57. In terms of section 12(1A), a person commits an offence “if the person— (a) expresses an opinion or belief that is supportive of a proscribed organisation, and (b) in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation”.

58. The requirements of subsection (a) can be broken down into four elements: first, that a person expresses an opinion or belief; secondly, that the opinion or belief is supportive of an organisation; thirdly, that the person expresses the supportive opinion or belief knowingly; and fourthly, that the organisation in question is proscribed. Subsection (b) adds a further requirement of recklessness as to the risk that a person to whom the

expression is directed will be encouraged to support the organisation in question. Each of these requirements will be considered in turn.

(1) Expresses an opinion or belief

59. The first point to note is that the offence is not constituted by a person's holding an opinion or belief, no matter how odious or offensive it may be considered. The opinion or belief must be expressed.

(2) The opinion or belief is supportive of an organisation

60. The second point to note is that the opinion or belief must be supportive of an organisation. Expressing an opinion or belief which coincides with the aims or beliefs of the organisation is not sufficient. For example, a person can express support for a united Ireland without expressing support for the IRA. A person can express support for Palestinian statehood without expressing support for Hamas. As the Lady Chief Justice said in an important passage in her judgment (para 53):

“The expression must be of an opinion or belief that is supportive of the ‘organisation’. To express an opinion or belief that is shared by the organisation is not the same thing as to express an opinion or belief that is supportive of the organisation. The organisation does not merely exist to promote a (terrorist) belief. It exists to promote that belief by the means identified in the definition of terrorism in section 1 of the [Terrorism Act]. The offence requires the expression of an opinion or belief that is supportive of Hamas, and not merely that it may be supportive of the achievement of aims which Hamas shares. That is an important distinction which will require the court deciding the case to pay careful attention to what was said and done, the circumstances in which that happened, and the meaning which the speaker intended to convey.”

61. There is, accordingly, a distinction between an opinion or belief which is supportive of the objectives of an organisation (such as a united Ireland, or an independent Palestine), and an opinion or belief which is supportive of the organisation itself. This may in some circumstances appear to be a subtle distinction, but it is important that the jury's attention is correctly focused on the requirements of the statutory offence. The whole focus of Part II of the Terrorism Act is specifically on proscribed organisations, and the purpose of the offences created by sections 11–13 is to take effective steps against proscribed organisations, as explained at para 29 above.

62. As to what is meant by “supportive”, it was explained in paras 40 and 41 above that section 12(1A) was enacted in the light of the judgment of the Court of Appeal in the case of *Choudary*, so as to address limitations in the offence established by section 12(1) which that judgment had highlighted and which were thought to compromise the effectiveness of the legislation in combating radicalisation.

63. The judgment in *Choudary* also addressed the meaning of “support” in the context of section 12(1), under which a person commits an offence if he invites “support for a proscribed organisation”. Since the expression used in section 12(1A), “supportive of a proscribed organisation”, differs only in using the adjective “supportive” instead of the noun “support”, it is helpful to begin by considering the interpretation of the latter word by the Court of Appeal.

64. As Sharp LJ observed in *Choudary* at para 41, “support” is, on the face of it, an ordinary English word with a clear meaning which would be easily understood by a jury. She went on at para 46 to endorse the view of the trial judge that:

“In its ordinary meaning, ‘support’ can encompass both practical or tangible assistance, and what has been referred to in submissions as intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported.”

65. In the context of section 12(1A), an opinion or belief could provide a proscribed organisation with intellectual support if it expressed approval or endorsement of that organisation. As the trial judge explained in *Choudary* (*ibid*):

“An organisation which has the support of many will be stronger and more determined than an organisation which has the support of few, even if not every supporter expresses his support in a tangible or practical way. The more persons support an organisation, the more it will have what is referred to as the oxygen of publicity. The organisation as a body, and the individual members or adherents of it, will derive encouragement from the fact that they have the support of others, even if it may not in every instance be active or tangible support.”

66. An opinion or belief which is supportive of an organisation will often refer expressly to the organisation in question. However, it would be a mistake to require, as a matter of law, that there must be an express reference in every case, as it is possible that a sufficiently clear reference may be made by implication. Legislation of this kind should

not be interpreted or applied in an unduly technical manner. As Lord Bingham of Cornhill emphasised in another case concerned with the interpretation of the Terrorism Act, the court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose: *R v Z (Attorney General for Northern Ireland's Reference)* [2005] UKHL 35; [2005] 2 AC 645, para 17.

67. Whether a person has expressed an opinion or belief which is supportive of an organisation is judged objectively. It depends on how the words would naturally and reasonably have been understood in the circumstances in which they were spoken or written. That is a question of fact. For example, a responsible discussion of the conflict in Gaza, which sought to place the events of 7 October 2023 in the context of the history of Israel's treatment of the Palestinians, would not constitute the expression of an opinion which was supportive of Hamas, even if it tended to make their actions more understandable.

(3) The person knows that the opinion or belief is supportive of the organisation

68. It is a requirement of every statutory offence that the conduct in question is committed knowingly (that is to say, intentionally), unless the legislation shows a clear intention to create an absolute offence: *Sweet v Parsley* [1970] AC 132, 148. That principle was applied to the offence created by section 12(1) in *Choudary*, where Sharp LJ observed at para 48 that someone can only be convicted of an offence under that provision if the jury are sure that the defendant used words which in fact invited support for a proscribed organisation, and that the defendant knew at the time he did so that he was inviting support for that organisation.

69. That reasoning was approved by this court in *Pwr v Director of Public Prosecutions* [2022] UKSC 2; [2022] 1 WLR 789 ("*Pwr*"). At para 43, Lord Hamblen, Lord Burrows and Lady Arden, with whom the other members of the court agreed, said that it was clear from the words of section 11(1) and section 12(1)-(3) that the offences in those sections were not offences of strict liability:

“For example, one cannot belong or profess to belong to a proscribed organisation (under section 11(1)) unless one intends to belong or to profess to belong to the organisation. ‘Belonging’ or ‘professing to belong’ cannot be inadvertent. Similarly, one cannot ‘invite support’ (under section 12(1)) unless one knows that one is inviting support: see *Choudary* [2018] 1 WLR 695, para 48.”

70. That reasoning applies equally to section 12(1A), as was accepted by all parties to these appeals. An offence under that provision is committed only if a person expresses an

opinion or belief which is objectively supportive of an organisation and he or she knows that it is supportive of that organisation. In other words, the defendant must intend to express an opinion or belief which is supportive of the organisation. So, for example, if the first appellant did not know that her words would naturally and reasonably be understood as referring to Hamas, she would not be guilty of an offence even if her words were so understood.

(4) The organisation is proscribed

71. The opinion or belief must have been expressed at a time when the organisation was proscribed. The procedure for proscribing an organisation has been described. Proof that the organisation in question was proscribed at the relevant time should not present any difficulty. In the circumstances of the present appeals, for example, there is no doubt that Hamas was a proscribed organisation at the time of the events with which the charges against the appellants are concerned.

72. It was common ground in *Choudary* that there was no requirement of knowledge that the organisation was proscribed. In *Pwr*, where the issue was argued, this court rejected the contention that it was necessary for the defendant to know that the organisation had been proscribed, saying at para 39:

“There are at least two problems with that submission. First, it appears to run counter to the principle that ignorance of the law is no excuse. If [counsel] were correct, it would be a defence that a defendant did not know that, as a matter of law, the PKK was a proscribed organisation. Secondly, it would render the provision a virtual dead letter because it would be very difficult for the prosecution to prove a defendant’s knowledge of such matters.”

73. Proscription is a matter of law. Whether an organisation is proscribed depends on whether it is included in the list set out in Schedule 2 to the Terrorism Act (or operates under the same name as an organisation listed in that Schedule): see section 3(1) of that Act. Proscription is effected by the amendment of Schedule 2 by a statutory instrument made under delegated powers, as explained at para 21 above. It is a general principle of our criminal law that ignorance of the law is no defence.

74. There are compelling reasons why that principle applies in the present context. First, as was pointed out in *Pwr*, to require the prosecution to prove that the defendant knew that the organisation had been proscribed would render section 12(1A) virtually unworkable, since it would impose a burden of proof on the prosecution which it would generally be very difficult to discharge. Legislation is not to be interpreted in a way which

would deprive it of utility, where another interpretation is reasonably available. Secondly, the conclusion that there is no requirement of knowledge that the organisation was proscribed does not impose a disproportionate burden on persons wishing to exercise their freedom of expression. It is easy for anyone to find out whether an organisation is proscribed. A list of proscribed organisations is published by the Government online, and is the first website listed if an internet search is carried out for “proscribed organisations” using popular search engines. Furthermore, the proscription of an organisation attracts comment and publicity in the media and social media.

(5) Recklessness

75. No offence is committed by a person who expresses an opinion or belief that is supportive of a proscribed organisation unless the person “in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation”: section 12(1A)(b). The necessary recklessness is therefore in respect of a result: that a person to whom the expression is directed will be encouraged to support a proscribed organisation.

76. The word “directed” imports intention. An expression of opinion or belief cannot be said to have been directed to a person if it reached that person accidentally or inadvertently. The defendant must have intended that his or her words should be read or heard by that person. That is not to say that the defendant must necessarily have known of that specific individual. If, for example, the defendant addressed a crowd, the speech will have been directed to every person in the crowd; if the speech was posted on a social media site accessible by the general public, it will have been directed to anyone who read it there. On the other hand, the first appellant cannot be taken to have directed her remarks to persons who viewed the recording which was posted online by the Daily Mail.

77. Recklessness is a well-established concept in English criminal law. It is common ground on this appeal that “reckless”, in the context of section 12(1A), should be understood in the sense which it generally bears in criminal offences, as explained in *R v G* [2003] UKHL 50; [2004] 1 AC 1034, para 41. So understood, recklessness in respect of a result has two elements. The first is that the defendant was aware of a risk that the result would occur. The second is that it was, in the circumstances known to the defendant, objectively unreasonable to take the risk.

78. It follows from the first of these elements that a person can only be guilty of an offence under section 12(1A) if he or she knows of the risk that a person to whom the expression is directed will be encouraged to support a proscribed organisation. In other words, there must in fact be such a risk, and the defendant must be aware of it.

79. Whether there is a risk that a person to whom the expression is directed will be encouraged to support the organisation will depend on the circumstances, including the characteristics of the persons to whom the expression is directed. Determining whether the defendant is aware of the risk that a person to whom the expression is directed will be encouraged to support the organisation depends on an assessment of the defendant's state of mind. To take an example mentioned by the Joint Committee on Human Rights, if an opinion in favour of the de-proscription of an organisation were to be expressed in the context of an academic debate, for example by a university professor taking part in a seminar, then even in the somewhat unlikely event that the professor's words were objectively and knowingly supportive of that organisation, it is difficult to imagine that there would be a more than minimal risk that the other persons participating in the seminar would be encouraged to support the organisation; and, unless the professor was proved to have been aware of such a risk, no question of recklessness could arise. It is also important to bear in mind that, as explained earlier, merely expressing a personal belief which coincided with the aims of a proscribed organisation, for example in an independent Palestine, would not fall within the scope of section 12(1A) even if others were encouraged to share that belief.

80. The second element of recklessness is that it must, in the circumstances known to the defendant, have been unreasonable for him or her, knowing of the risk, to take that risk. Not all risk-taking is reckless. In some circumstances, the perceived risk may be very low; or the consequences, if the risk eventuates, may not be serious (although that can hardly be the position where the risk is that a person will be encouraged to support a terrorist organisation). The reasonableness of the decision to take the risk has therefore to be assessed objectively in the light of the relevant circumstances, including the degree of risk of which the defendant was aware.

81. The ingredients of the offence therefore require proof of two states of mind: first, that the defendant knew that his or her expressed opinion or belief was supportive of the relevant organisation, and secondly, that the defendant was reckless as to whether the person to whom its expression was directed would be encouraged to support that organisation. Both states of mind are culpable.

(6) Conclusions as to the ingredients of the offence

82. In summary, therefore, the ingredients of the offence are as follows:

- (1) The defendant must have expressed an opinion or belief.
- (2) The opinion or belief must be objectively supportive of an organisation. That is a question of fact, depending on how the words spoken or written by the

defendant would naturally and reasonably have been understood in the circumstances in which they were spoken or written.

(3) The defendant must have known that he or she was expressing an opinion or belief which was supportive of the organisation.

(4) The opinion or belief must have been expressed at a time when the organisation was proscribed.

(5) There must have been a risk that a person to whom the defendant's expression of opinion or belief was directed would be encouraged to support that organisation.

(6) The defendant must have known of that risk.

(7) It must have been objectively unreasonable for the defendant to take that risk, in the circumstances known to him or her.

83. In a trial on indictment, the jury must be sure of each of these elements before they are entitled to convict the defendant. If it would be impossible for a reasonable jury to be sure of each of those elements on the evidence before them, then it will be the duty of the judge to uphold a submission of no case to answer. The same applies, *mutatis mutandis*, in summary proceedings.

8. Compatibility with article 10

(1) The issues raised

84. The appellants' trials have not yet taken place, and the relevant facts have not yet been established. The court is not being asked to decide whether, on the facts of their respective cases, the conviction of the appellants would violate their Convention rights. The issues raised under the Convention are of a more abstract and general character.

85. In the case of the first appellant, the issue raised is whether article 10 requires that an assessment of proportionality must be conducted by the jury when they consider their verdict. This can be broken down into two propositions:

(1) that in order for a conviction of an offence under section 12(1A) to be compatible with article 10, it is essential not only that all the elements of the offence must be proved, but in addition that a separate assessment must be carried out of whether the conviction would be a proportionate interference with the defendant's right to freedom of expression; and

(2) that that assessment, in a trial on indictment conducted in accordance with English criminal procedure, must be carried out by the jury.

The first of those propositions raises a question concerning Convention rights. The second raises a question of English criminal procedure.

86. In the case of the second appellant, the court is asked to make a declaration that section 12(1A) is incompatible with Convention rights, on the basis that:

(1) the offence is too vague and uncertain for the interference with freedom of expression resulting from section 12(1A) to be "prescribed by law", within the meaning of article 10; and

(2) the offence does not adequately balance the need to combat terrorism against the rights of individuals to engage in debate on matters of public importance, with the consequence that the interference with freedom of expression resulting from section 12(1A) is not "necessary in a democratic society", within the meaning of article 10.

87. As was explained in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32; [2023] AC 505 ("*Safe Access Zones*"), para 54, where a defendant relies on article 9, 10 or 11 Convention rights as a defence to a protest-related offence with which he or she is charged, the first question which arises is whether those articles are engaged. That may be a live question in some cases concerned with support for terrorism. For example, in *Hizb Ut-Tahrir v Germany* (Application no 31098/08) (2012) 55 EHRR SE12 the European Court of Human Rights ("the European court") held that article 17 applied, and articles 10 and 11 therefore could not be relied on, where the applicant called for the violent destruction of the state of Israel and the killing of its inhabitants. It stated at para 74 that the applicant was attempting to deflect article 11 from its real purpose "by employing this right for ends which are clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life". The same applied in relation to article 10: para 78. A similar conclusion was reached in relation to article 10 rights in *Roj TV A/S v Denmark* (2018) 67 EHRR SE8. In the present cases, however, there is no dispute that the statements made by the appellants, which form the basis of the charges brought against them, fall within the scope of article 10.

88. Accordingly, it is necessary to consider in the first place the question whether the interference with their article 10 rights is “prescribed by law”. I will then consider the requirement that the interference must pursue a legitimate aim. Although there is no dispute that that requirement is satisfied, it is necessary to understand the nature of the legitimate aim in order to determine the proportionality of the means which have been selected to achieve it.

89. I will then consider the compatibility of section 12(1A) with the requirement that an interference with freedom of expression must be “necessary in a democratic society”, and in the course of doing so will address both the second appellant’s general challenge to the proportionality of the offence, and the first appellant’s submission that the proportionality of a conviction must be separately considered over and above the question whether the elements of the offence have been proved. The critical question is that identified in *Safe Access Zones* at para 55, namely whether the ingredients of the offence themselves strike a fair balance between the Convention rights of the defendant and the public interest in the achievement of the legitimate aim pursued, so that, if all the elements of the offence are proved, the conviction of the defendant will not result in a disproportionate interference with those rights (subject, of course, to the proportionality of any penalty imposed following conviction). That was the conclusion reached in relation to the offences created by sections 12(1) and 13(1) of the Terrorism Act in *Choudary* and *Pwr* respectively, and also the view to which the House of Lords inclined, obiter, in relation to section 11(1) in *Sheldrake v Director of Public Prosecutions, Attorney General’s Reference (No 4 of 2002)* [2004] UKHL 43; [2005] 1 AC 264. The question is whether the same is true of section 12(1A).

(2) “Prescribed by law”

90. Article 10 states in paragraph (1) that everyone has the right to freedom of expression, and that this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Paragraph (2) states, so far as material:

“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 ... the ... rights of others ...”

91. The expression “prescribed by law” requires, first, that the impugned measure should have a basis in domestic law. It also refers to the quality of the law in question,

requiring that it be accessible to the persons concerned and foreseeable as to its effects. A law is “foreseeable” if it is formulated with sufficient precision to enable the individual, if need be with appropriate advice, to regulate his or her conduct. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. This is also a general principle of the common law: see, for example, *R v Misra and Srivastava* [2004] EWCA Crim 2375; [2005] 1 Cr App R 21, paras 32–34.

92. The terms of section 12(1A) have been set out at para 31 above. Any sentence which follows on conviction also has to be within the limits set by the legislation. The judge is in addition given more specific guidance by the sentencing guidelines discussed at para 32 above. However, it is argued on behalf of the second appellant that the relevant domestic law is too vague and uncertain to possess the quality of “law” for the purposes of the requirement under article 10(2) that an interference with freedom of expression must be “prescribed by law”.

93. This submission raises an important point. When framing restrictions on freedom of expression, precision matters. Especially in relation to political matters or questions of public interest, members of the public should not be discouraged from exercising their freedom of expression by laws which are vague or which they cannot be expected to understand.

94. However, the jurisprudence of the European court recognises that “in any system of law, including criminal law, however clearly drafted a legal provision may be, there will inevitably be a need for interpretation by the courts, whose judicial function is precisely to elucidate obscure points and dispel any doubts which may remain regarding the interpretation of legislation”: *Terentyev v Russia* (Application no 10692/09) judgment of 28 August 2018, unreported, para 56. Reference might also be made to the judgment in *Alekhina v Russia* (Application no 38004/12) (2018) 68 EHRR 14, para 254:

“... the consequences which a given action may entail ... need not be foreseeable with absolute certainty. Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice.”

The same point has also been made by this court: see, for example, *R v Golds* [2016] UKSC 61; [2016] 1 WLR 5231, para 37.

95. In the context of counter-terrorism legislation, in particular, the European court said in *Internationale Humanitäre Hilfsorganisation eV v Germany* (Application no 11214/19) judgment of 10 October 2023, unreported, para 67:

“It is, however, not possible to attain absolute rigidity in the framing of laws, and many of them are inevitably couched in terms which, to a greater or lesser extent, are vague. The level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question and the field it is designed to cover”.

96. Although the language used to define a legal rule can never achieve absolute precision, the terms of section 12(1A) are clear enough to enable individuals, if necessary after taking legal advice, to regulate their conduct. There is nothing obscure about the meaning of the words “expresses an opinion or belief that is supportive of a proscribed organisation”, or about the meaning of the words “reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation”. As explained at paras 73 and 74 above, whether an organisation is proscribed can be easily ascertained. The elements of the offence have been analysed in detail and are summarised at para 82 above. They are sufficiently clear to meet the standard of being “prescribed by law”. They will be explained to a jury in the legal directions given to them by the trial judge. If the jury require any additional guidance in the circumstances of a particular case, it is the function of the trial judge to provide it.

97. Comparison might be made with other legislative provisions in the field of restrictions on freedom of expression in relation to terrorism, which have been regarded by the European court as meeting the standard of being “prescribed by law”. Examples include “written and spoken propaganda ... aimed at undermining ... the indivisible unity of the nation” (*Erdoğan and İnce v Turkey* (Application nos 25067/94 and 25068/94) judgment of 8 July 1999, unreported); “whoever supports or promotes an organisation [the purpose or activities of which are directed to commit specified offences]” (*Hogefeld v Germany* (Application no 35402/97) (2000) 29 EHRR CD173); or *apologie du terrorisme* (*Leroy v France* (Application no 36109/03) judgment of 2 October 2008, unreported), a phrase which the European court translates literally as “apology of [or for] terrorism” (see, for example, *Taşdemir v Turkey* (Application no 38841/07) decision of 23 February 2010, unreported; *Gül v Turkey* (2010) 52 EHRR 38, para 43; *Kiliç and Eren v Turkey* (Application no 43807/07) judgment of 29 November 2011, unreported, para 28; and *Belge v Turkey* (Application no 50171/09) judgment of 6 December 2016, unreported, para 35). The phrase might more idiomatically be translated as defending or justifying terrorism. Section 12(1A) does not present greater difficulties of definition than any of the foregoing provisions.

(3) *Legitimate aims*

98. As explained earlier, the Terrorism Act is designed 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. In particular, its 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. More specifically, section 12(1A) is intended to address the danger of radicalisation—the use of speech or writing to encourage others to join or support terrorist organisations and to follow their beliefs—which is considered by experts in the field to be the most serious problem facing counter-terrorism at the present time (para 43 above). Section 12(1A) seeks to achieve that aim by criminalising the expression of an opinion or belief that is supportive of a terrorist organisation in circumstances where the perpetrator is reckless as to whether a person to whom the expression is directed will be encouraged to support that organisation.

99. It follows that section 12(1A) pursues a number of the legitimate aims mentioned in article 10(2): the protection of national security and public safety, the prevention of disorder or crime, and the protection of the rights of others. These have been recognised by the European court in many of its judgments as legitimate aims of counter-terrorism legislation. Some examples are given below.

100. An aspect of the Terrorism Act in general, and section 12(1A) in particular, is that it is not confined to terrorism within the United Kingdom, but also seeks to prevent terrorism in other countries, as explained at para 20 above. That has also been recognised by the European court as a legitimate aim.

101. For example, the case of *Internationale Humanitäre Hilfsorganisation eV v Germany* concerned a complaint under article 11 in respect of the proscription of an organisation which provided financial aid to Hamas. In relation to the question of a legitimate aim, which is required under article 11 in the same way as under article 10, the European court noted that the case differed from previous cases in so far as it concerned the fight against international terrorism in general, independently of a tangible threat to Germany in particular. It observed that “the fight against international terrorism may nonetheless serve the cause of preventing disorder, and states must be able to take measures so that their territory is not used to facilitate terrorism and the bringing of violence into conflicts abroad” (para 75). It added (para 76) that article 11(2) was:

“... formulated broadly without limiting states to take measures only for the protection of the rights and freedoms of individuals within their jurisdiction. The protection of the concept of

international understanding as interpreted and applied in the present case therefore constitutes the legitimate aim ... of protecting the rights and freedoms of others, which includes the right to life of individuals living abroad”.

See also *Hizb Ut-Tahrir v Germany*, paras 71 and 73–74.

102. Accordingly, in so far as it may have been implicit in the appellants’ submissions that greater protection should be afforded to speech which is supportive of a terrorist organisation which is not active in the United Kingdom, but focuses its terrorist activities on other countries, that suggestion must be rejected.

(4) “*Necessary in a democratic society*”

103. When considering the proportionality of the interference with freedom of expression resulting from section 12(1A), it is necessary to recognise at the outset that a content-based restriction on freedom of expression, particularly in the context of political speech, requires a compelling justification. However, as explained earlier, it is not in dispute that proceedings based on section 12(1A) pursue legitimate aims, namely the maintenance of national security and public safety, the prevention of disorder or crime, and the protection of the rights of others. It is also clearly established that there is a real risk of terrorist attacks in the United Kingdom and elsewhere carried out by individuals who have been encouraged by the words of others. That is demonstrated by the evidence summarised in paras 35–36, 40–44 and 53–55 above. The gravity of the threat is also demonstrated by the examples given at paras 35 and 43–44 above, and by more recent examples such as the attack on the Heaton Park synagogue, mentioned in para 54 above, the 7 October 2023 attacks by Hamas, mentioned in para 55 above, and the Bondi Beach attack, also mentioned in para 55 above. Against that background, there is clearly a strong public interest in preventing the spread of terrorist ideology through propaganda or public encouragement.

104. In particular, expressions of approval or endorsement of proscribed organisations are especially significant in the light of the growing tendency, mentioned earlier, for terrorist acts to be perpetrated by individuals who have been encouraged or inspired by material they have read or heard. In that context, the expression of opinions or beliefs which are supportive of proscribed organisations can have highly dangerous consequences. It is correspondingly important to address the risk of such encouragement. In the language of the Convention, there is a pressing social need.

105. The competing interests in freedom of expression and the prevention of terrorism were recognised and given careful consideration during the process which led to the enactment of section 12(1A): a matter which is relevant when considering the operation

of the margin of appreciation, as the Grand Chamber explained in *Animal Defenders International v United Kingdom* (Application no 48876/08) (2013) 57 EHRR 21, para 108. Freedom of expression has been protected for centuries in the law of the United Kingdom, and it continues to be a highly valued aspect of our society, particularly in relation to political speech and debates on questions of public interest. Its importance was reflected in the consideration of section 12(1A) during its passage through Parliament, when evidence was taken from civil liberties organisations as well as from the police and other authorities, and concerns were expressed, and responded to, as to the impact of the measure on freedom of speech: see paras 42 and 45–48 above.

106. At the same time, the Government and Parliament recognised their responsibility to address the threat of terrorism both domestically and internationally, and to respond to the particular threat which has emerged, as explained at paras 36–37, 43–44 and 53 above, from the use of freedom of expression in order to encourage support for terrorist organisations. 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”).

107. The next important point to note is the fact that section 12(1A) is only concerned with expressions of support for an organisation that has already been proscribed in accordance with the procedure laid down in the legislation, following a determination that it is concerned with terrorism. In that regard, the submission on behalf of the first appellant, that it is disproportionate that section 12(1A) applies to the entirety of Hamas, when that organisation engages in a range of activities, only some of which involve terrorism, must be rejected.

108. In the first place, relevant and sufficient reasons were provided by the Government, and accepted by Parliament, for the decision to proscribe the entirety of Hamas, as explained at paras 22–24 above. Secondly, measures taken to counter international terrorism, such as the decision to proscribe Hamas, fall within a category of decisions in respect of which the contracting states enjoy a wide margin of appreciation, as the European court has often recognised: see, for example, *Internationale Humanitäre Hilfsorganisation eV v Germany*, para 89. The decision is, furthermore, readily understandable. The terrorist nature of an organisation is not in the least diminished by

the fact that it may gain control of territory, such as Hamas has done in Gaza or ISIL did in Raqqa, and administer it without recourse to terrorism in respect of its internal affairs, while continuing to engage in terrorism externally. Thirdly, the position of Hamas was considered by the European court in the case of *Internationale Humanitäre Hilfsorganisation eV v Germany*. As explained earlier, it concerned the proscription of an organisation which provided financial aid to Hamas. The European court noted that the entirety of Hamas was included by the European Union in the sanctions list of “persons, groups and entities involved in terrorist acts”, and that a challenge by Hamas to the listing had been dismissed by the Grand Chamber of the European Court of Justice (*Council of the European Union v Hamas* EU:C:2021:950; [2022] 4 WLR 26). The same approach had been adopted by the German authorities in the case before the court, which saw no reason to depart from that assessment (para 92). Similarly in relation to the organisation which was the applicant in that case, although it financed other projects which were not of a terrorist nature, the court accepted that its outright proscription was not disproportionate (para 99).

109. The next point to note, in relation to the proportionality of the interference with freedom of expression, is that section 12(1A) only prohibits expressing an opinion or belief that is supportive of a proscribed organisation with the requisite recklessness as to the risk of encouraging other persons to support it. It does not prohibit the expression of views or opinions which are supportive of the aims of a proscribed organisation, such as a united Ireland or the ending of the Israeli occupation of Palestinian territory: it only prohibits the reckless encouragement of support from others for the proscribed organisation.

110. Against that background, it is necessary to consider the compatibility of section 12(1A) with the Convention in the light of the approach which has been adopted by the European court to the application of article 10 in other cases concerned with comparable issues.

111. The earlier jurisprudence of the European court in relation to terrorism and article 10 was mainly concerned with the situation in south-eastern Turkey. General principles were laid down by the Grand Chamber, in terms which have often been repeated in the subsequent case law, in *Zana v Turkey* (1997) 27 EHRR 667. The case concerned an interview given to journalists by the former mayor of the most important city in the region, following attacks by the PKK, a proscribed organisation, in which civilians had been killed. In the interview, the applicant said that he supported the PKK national liberation movement, that he was not in favour of massacres, that anyone could make mistakes, and that the PKK killed women and children by mistake. He was subsequently convicted and sentenced to twelve months’ imprisonment for the offence of having “defended an act punishable by law as a serious crime”.

112. The Grand Chamber observed that his conviction and sentence indubitably amounted to an interference with his exercise of his freedom of expression (para 45). As the conviction and sentence were based on articles of the criminal code, the interference was prescribed by law (para 47). The former mayor's statement that he supported the PKK national liberation movement could have an impact such as to justify the national authorities' taking a measure designed to maintain national security and public safety. The interference therefore pursued legitimate aims (para 50). In relation to the necessity of the interference, the applicant had expressed support for the PKK at a time when that organisation was carrying out murderous attacks on civilians. In those circumstances, the support given to the PKK by the former mayor had to be regarded as likely to exacerbate an already explosive situation (paras 59–60). Having regard to the margin of appreciation which national authorities have in such a case, the court considered that the interference was proportionate to the legitimate aims pursued (para 62).

113. It is to be noted that the European court's decision was based primarily on an assessment of the meaning of the statement in question and its potential consequences in the context in which it was made, rather than on any finding that the application had intended to encourage or incite the commission of terrorist acts, or had intended to encourage support for a terrorist organisation.

114. The case of *Hogefeld v Germany* concerned a number of decisions by German courts. The first was their refusal of a journalist's request to interview the applicant, a former member of a terrorist organisation, the Red Army Faction ("RAF"), who was being detained on remand. The request was refused on the ground that it was to be expected that the applicant would explain and advocate ideological positions of the RAF. The second decision was the court's refusal of a filmmaker's request to film a prison visit by the applicant's mother. The request was refused on the ground that the film could enable the applicant to influence supporters of the RAF in order to strengthen their support, for example by commenting on the conditions of detention. Similar subsequent requests were also refused.

115. The court considered that the German courts had a legitimate aim, namely to prevent the applicant from promoting the ideology of the RAF and influencing its supporters. Every state, it said, had a legitimate interest in fighting terrorism, which included the taking of measures intended to prevent the recruitment of members and supporters for terrorist organisations. Statements made by the applicant could possibly be understood by supporters as an appeal to continue the activities of the RAF. Having regard to the margin of appreciation granted to the national authorities in such cases, the interference was proportionate.

116. In this case, again, the court's focus appears to have been primarily on the potential content and consequences of the anticipated statements—specifically, on the possibility that they might have the effect of encouraging support for a terrorist organisation—rather

than on whether the applicant had intended to encourage support for a terrorist organisation or to incite the commission of terrorist acts.

117. In relation to the more recent case law, counsel for the appellants referred to a number of cases brought against Turkey and Russia in which complaints were upheld. On examination, however, those cases appear to concern circumstances in which national security laws were being used in a disproportionate way with the effect of criminalising political opposition. For example, the first appellant relies on *Novaya Gazeta v Russia* (Application nos 11884/22 and 161 others) judgment of 11 February 2025, unreported, in which the European court reiterated that “while the protection of national security, territorial integrity and public safety may in principle constitute legitimate aims, these concepts must be applied with restraint and interpreted restrictively” (para 103). However, this case concerned systematic and widespread reporting restrictions introduced in Russia following its 2022 invasion of Ukraine. The European court found that the measures were intended to suppress criticism of Russian military actions rather than to mitigate threats to national security (para 118), and its comments should be understood in that context.

118. Two judgments to which the judge referred in the case of the second appellant are of greater relevance to the present situation. The first is the case of *Leroy v France*. The applicant was a cartoonist. On 11 September 2001, the day of the attack on the World Trade Centre, he drew a cartoon showing the attack, with the words “Nous en avions tous rêvé ... Le Hamas l’a fait” (“We have all dreamt of it ... Hamas did it”), a parody of an advertising slogan used by Sony. The cartoon was published two days later. The applicant maintained that it was intended to express his anti-Americanism and to illustrate the decline of American imperialism. He was convicted of complicity in *apologie du terrorisme*, and fined. The French court held that, by attributing the attack to a notorious terrorist organisation, and presenting it as the culmination of a dream which “we” had shared, the cartoonist justified the use of terrorism, and indirectly encouraged potential readers to form a positive view of the success of a criminal act.

119. The European court accepted that there was an interference with freedom of expression, that it was prescribed by law, and that it pursued legitimate aims, namely the interests of public safety and the prevention of disorder and crime (para 36). In considering whether the interference was necessary in a democratic society, the court noted the essential role played by the press in the proper functioning of a political democracy, and the fact that the events of 11 September 2001 fell within the scope of a debate of general interest (paras 40–41). However, it considered that the cartoonist had expressed his support and moral solidarity with those he presumed to be the perpetrators of the attacks. By the terms used, he judged favourably the violence perpetrated against thousands of civilians and undermined the dignity of the victims. The court approved the opinion of the French court that the applicant’s intentions were irrelevant to the prosecution (para 43). The court noted that the cartoon took on a particular significance, of which the applicant could not have been unaware, when it was submitted on the day of

the attacks and published two days later, when the whole world was in shock (para 45). In these circumstances, and having regard in particular to the context in which the cartoon was published, the measure taken against the applicant was not disproportionate to the legitimate aim pursued (para 47).

120. In this case, again, the court's focus was on an objective assessment of the meaning and potential consequences of the statement in question in the context in which it was made, rather than on the applicant's intentions. In particular, as in *Zana v Turkey* and *Hogefeld v Germany*, the fact that a statement, objectively understood, expressed support for terrorism was regarded as justifying the interference with freedom of expression, in the sensitive context in which the statement was made.

121. Another relevant decision to which the judge referred in the case of the second appellant is that of *Taşdemir v Turkey*. In that case, the applicant took part in a demonstration during which he shouted the slogan "Long live Apo! HPG to the front line in retaliation!". Apo was Abdullah Öcalan, the leader of the PKK. HPG was the armed wing of the PKK. The applicant was convicted of offences of approving of an offence committed and praising a person on account of an offence he had committed. The European court found that the conviction constituted an interference with his right to freedom of expression, that it was prescribed by law, and that it pursued legitimate aims, namely the protection of national security and public order. In determining whether the interference was necessary in a democratic society, the court considered that "the slogan shouted ... amounts to an apology of terrorism" and that "the interference in question was therefore compatible with article 10(2)".

122. This decision is consistent with the approach adopted in *Zana v Turkey*, *Hogefeld v Germany* and *Leroy v France*. It has been distinguished by the court in some later cases concerned with the shouting of slogans during peaceful demonstrations, on the basis that the circumstances in those later cases had not involved any apology for terrorism or encouragement of violence: see, for example, *Gül v Turkey*, para 41 and *Kiliç and Eren v Turkey*, paras 29–30.

123. The final authority which needs to be considered in this connection is *Internationale Humanitäre Hilfsorganisation eV v Germany*. As explained earlier, it concerned the proscription of an organisation which provided financial aid to Hamas. In assessing the necessity of the interference, the court said that "its task is not to substitute its own view for that of the national authorities, which are better placed than an international court to decide both on legislative policy and on measures of implementation, but to review ... the decisions they delivered in the exercise of their discretion" (para 80). The court went on to state that "the concept of international understanding is not only a prerequisite of the international legal order but also figures among the core values of the Convention, including in particular the principles of peaceful settlement of international conflicts and the sanctity of human life" (para 87). The court

added that “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” (para 89). The court concluded that the interference was proportionate.

124. In this body of case law, as more generally, the European court has adopted an approach which is sensitive to the facts of particular cases. Although some general principles have been repeated many times, the court has not attempted to distil more specific rules. Nevertheless, a number of factors have generally been treated as important. Amongst others, they include the following.

125. First, the context in which the words in question are spoken or written can be significant: for example, whether the context is the aftermath of a terrorist attack, as in *Leroy v France*, or a location where tensions are high, as in *Zana v Turkey*. Secondly, whether the words can be understood as encouraging violence can be an important factor: the routine chanting of political slogans at a peaceful demonstration, for example, might not constitute such encouragement, and therefore would not justify restrictive measures, even if the literal meaning of what was said suggested otherwise, as in *Gül v Turkey*. Thirdly, the size of the relevant audience may be a material factor, as for example in *Gerger v Turkey* (Application no 24919/94) judgment of 8 July 1999, unreported, para 50. Fourthly, whether the words in question amounted to an “apology for terrorism” was an important factor in a number of the cases mentioned above. Fifthly, the nature and severity of the penalties imposed is an important consideration.

126. In relation to the fourth of those factors, it is to be noted that the court’s decisions in cases such as *Zana v Turkey*, *Hogefeld v Germany*, *Leroy v France* and *Taşdemir v Turkey* were based primarily on an objective assessment of the meaning and potential consequences of the statement in question in the context in which it was made—in particular, on whether it might have the effect of encouraging support for a terrorist organisation—rather than on the applicant’s intentions. The fact that a statement, objectively understood, expressed support for terrorism was regarded as justifying the interference with freedom of expression, at least where the statement was made in a sensitive context.

127. There is a degree of alignment between that approach and the conditions laid down in section 12(1A), although that provision does not confine itself to an objective assessment but also takes account of the defendant’s state of mind. As explained earlier, section 12(1A)(a) lays down the first requirement of an offence under that provision: that a person “expresses an opinion or belief that is supportive of a proscribed organisation”. As has been explained, the person must do so knowingly: para 82 above. Knowingly expressing an opinion or belief that is supportive of a terrorist organisation may be regarded as the essence of an apology for terrorism. The facts of such cases as *Leroy v France* (“We have all dreamt of it ... Hamas did it”), charged as *apologie du terrorisme*,

and *Taşdemir v Turkey* (“HPG to the front line in retaliation!”), treated by the court as “an apology of terrorism”, might in the United Kingdom have formed the basis of a charge under section 12(1A).

128. As explained above, the European court has also paid close attention to the circumstances in which support for terrorism is expressed, including whether there was a risk of encouraging violence: see, for example, *Gül v Turkey*, para 44 and *Kiliç and Eren v Turkey*, para 30. Section 12(1A)(b) also focuses on the circumstances in which support is expressed for the proscribed organisation, requiring that the person “in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation”. As explained at para 82 above, this means not only that there must in the circumstances have existed a risk that a person to whom the defendant’s expression of opinion or belief was directed would be encouraged to support the terrorist organisation, but in addition that (a) the defendant must have known of that risk, and (b) it must have been objectively unreasonable for the defendant to take that risk, in the circumstances known to him or her. This test, focusing as it does on the risk that the expression of support for the terrorist organisation will encourage support for that organisation, and on the defendant’s knowledge of that risk, ensures that expressions of support which carry no such risk will not constitute offences under section 12(1A).

129. Viewed against the background of the foregoing analysis of the European case law, it is reasonable to conclude that, where all the elements of an offence under section 12(1A) are established, as set out in para 82 above, the interference with freedom of expression is in principle justifiable. It is however necessary to add two important qualifications.

130. First, it is relevant to note the statement made by the Government, when the provision introducing section 12(1A) was being considered by Parliament (para 48 above). As was said then, it would be impractical to define on the face of the legislation, in more specific terms, particular forms of statement that will or will not fall within its scope:

“such determinations will always be highly dependent on the facts and circumstances of particular cases, and can only be properly made by a court considering all of those matters in each case.”

131. That aspect of proceedings under section 12(1A) is unavoidable, but it places a particular responsibility on the judge to consider whether a reasonable jury could be sure that all the elements of the offence have been proved. If the judge concludes that a reasonable jury could not be sure, then it is his duty to uphold a submission of no case to answer and to bring the proceedings to an end. In view of the importance of freedom of

expression, and the risk that an overly broad application of section 12(1A) might discourage legitimate public debate, judges should be robust in exercising that power.

132. The present cases illustrate the point. In the case of the first appellant there may, for example, be questions as to whether a jury could be sure that she expressed an opinion or belief which was objectively supportive of Hamas, which she never mentioned; if so, whether she did so knowingly, given her professed lack of knowledge about responsibility for the events of the previous day; and, if so, whether she was reckless as to whether any person to whom her words were directed would be encouraged to support Hamas. In the case of the second appellant there may, for example, be a question as to whether a jury could be sure that there was a more than minimal risk that any person to whom his words were directed—seemingly, tourists and passers-by at the entrance to Downing Street—would be encouraged to support Hamas.

133. The second qualification is that, as already mentioned, the nature and severity of any penalty imposed are important factors to be taken into account when assessing the proportionality of an interference with freedom of expression (see, for example, *Ceylan v Turkey* (Application no 23556/94) (1999) 30 EHRR 73, para 37). There is therefore a responsibility on the judge under the Convention, as well as under domestic law, to ensure that any sentence imposed is proportionate.

Conclusions

134. For the foregoing reasons, the contention that section 12(1A) is inherently incompatible with Convention rights, either on the basis that the offence is too vague and uncertain for the interference with freedom of expression to be “prescribed by law”, or on the basis that the ingredients of the offence do not adequately balance the need to combat terrorism against individual rights to freedom of expression, must be rejected.

135. The contention that, in order for a conviction under section 12(1A) to be compatible with Convention rights, it is essential not only that all the ingredients of the offence must be proved, but in addition that a separate assessment must be carried out of whether a conviction would be a proportionate interference with the defendant’s right to freedom of expression, must also be rejected. An assessment of whether a conviction would be a proportionate interference with freedom of expression, where all the ingredients of the offence were proved, was first carried out by the Government in bringing forward the proposed legislation which became section 12(1A): as explained in para 35 above, the Government stated to Parliament its belief that the provisions of the 2019 Act were compatible with Convention rights. A further assessment was then carried out by Parliament when it considered whether to enact the legislation. That assessment included taking evidence from a wide range of interested parties, including experts in terrorism and counter-terrorism, and bodies with a particular concern to maintain civil

liberties. Concerns were then raised, to which the Government responded, as explained at paras 34–48 above. A further assessment of the proportionality of convictions under section 12(1A) has been carried out by the courts below and by this court in the present judgment.

136. There is no need for any further assessment by a trial court, and no basis in section 12(1A) on which such an assessment might be carried out in any event. The function of the trial court is to examine the facts of the individual case, including all the circumstances in which the statement in question was made, and to determine whether all of the ingredients of the offence, as set out in para 82 above, have been proved to the criminal standard.

137. There is nothing anomalous or even unusual about this result. Where national authorities decide that a criminal measure interfering with a Convention right is necessary in order to meet a pressing social need, the government proposes the legislation, and seeks to persuade the legislature that it is justified. If, after reviewing the justification for the interference, the legislature is persuaded of its necessity, it enacts the legislation. If the compatibility of the legislation with fundamental rights is then challenged in the courts, the justification for the interference will be the subject of judicial examination, as has occurred in the present proceedings. If the legislation withstands that examination, it is then the function of the criminal courts to apply its provisions in the circumstances of individual cases. In doing so, the criminal courts determine whether the provisions apply on particular facts, and thereby determine whether the interference is justified in each case. The performance of that function does not require the criminal courts to undertake a further review of the justification for the interference in the event that the provision is found to be applicable on the facts of an individual case: that question has already been examined, and the justification has been established.

138. However, as explained above, in any proceedings brought under section 12(1A), the judge has a responsibility to ensure that the evidence as to the facts of the individual case is sufficient to prove each of the ingredients of the offence, so that a reasonable jury can be sure. The judge also has an important responsibility, under domestic sentencing law as well as under the Convention, to ensure the proportionality of any penalty imposed following conviction.

139. It is accordingly unnecessary to consider the submission that if, in a trial on indictment carried out under English criminal procedure, it was necessary to carry out an assessment of the compatibility of a conviction with article 10 of the Convention, that assessment would have to be carried out by the jury. The submission is not, however, an immediately attractive one, given that compatibility with Convention rights is a question of law, as was explained in *Safe Access Zones*, para 30, *In re JR123* [2025] UKSC 8; [2025] AC 1256, para 35 and *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30; [2025] 3 WLR 346, para 145. Furthermore,

as was explained in *Safe Access Zones* at paras 56–61, ensuring compatibility may, depending on the circumstances and the nature of the offence, involve the interpretation of a statutory offence in the light of section 3 of the Human Rights Act, or the development of a common law offence so as to avoid incompatibility, if and in so far as that may properly be done; or, if compatibility cannot be achieved by either of those means, it may require the application of section 6(2) of the Human Rights Act or, possibly, if section 6(2) is inapplicable, a stay of proceedings. None of these is a function which would normally or readily fall within the area of responsibility of the jury in an English criminal trial.

140. In the circumstances, it follows that the certified question should be answered in the negative, that the appeals should be dismissed, and that the cases should be remitted to the Crown Court.