Neutral Citation Number: [2021] EWHC 266 (Admin)

Case No: PTA/6/2019 & PTA/7/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 10 February 2021

Before :

MRS JUSTICE FARBEY

- -

Between :

SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Applicant**
- and -	
JM	**First Respondent**
&	
LF	**Second Respondent**

- -
- -

Ms Cathryn McGahey QC & Mr Steven Gray (instructed by **Government Legal Department**) for the **Applicant**
Mr Hugh Southey QC & Mr Richard Thomas (instructed by **Ahmed & Co**) for the **First Respondent**
Mr Dan Squires QC & Ms Joanna Buckley (instructed by **Birnberg Peirce**) for the **Second Respondent**
Special Advocates for the First Respondent: Mr Ashley Underwood QC & Mr Dominic Lewis (instructed by the **Special Advocates' Support Office**)
Special Advocates for the Second Respondent: Mr Martin Goudie QC & Ms Rachel Toney (instructed by the **Special Advocates' Support Office**)

Hearing dates: 30 October 2020 – 10 November 2020

Covid-19 Protocol: This judgment will be handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down will be deemed to be 10 February 2021 at 4:00pm.

REPORTING RESTRICTIONS APPLY

MRS JUSTICE FARBEY:

Introduction

1. This is my OPEN judgment in which I carry out a statutory review of the terrorism prevention and investigation measures ("TPIM") imposed in 2019 on each respondent by the Secretary of State for the Home Department under the TPIM Act 2011 ("the 2011 Act"). In accordance with anonymity orders and reporting restrictions read out in court at the commencement of the hearing, the respondents shall be known only as JM and LF. Their cases were listed together because there is some common background: both are said to be members and senior leaders of Al-Muhajiroun ("ALM"). ALM has been a proscribed organisation (albeit under different names) since 25 July 2006.

2. I heard evidence and submissions in OPEN and CLOSED session over the course of eight days. Owing to the need for social distancing in the Covid-19 pandemic, it was necessary to deploy two courtrooms linked by video as well as additional external video links in the OPEN sessions, reducing to one courtroom in CLOSED sessions. In order to conserve public funds (and to optimise the number of people having to come to court on any one day in the pandemic), I heard as much as was practicable of JM's case before hearing LF's case though there were some days in which part of the time was spent on JM's case and part on LF's case. Given the number of people involved, the logistics were complex. I express my gratitude to counsel, solicitors and court staff whose efforts meant that we completed the case efficiently and within the allocated timeframe.

3. On behalf of the Secretary of State, Ms Cathryn McGahey QC (with Mr Steven Gray) submitted in both JM's and LF's cases that the imposition of the TPIM and all of the individual obligations were necessary and proportionate for the protection of the public from terrorism-related activity ("TRA"). JM and LF are leadership figures within ALM. On the expiry of previous TPIM imposed in 2016, both JM and LF re-engaged with ALM associates and continued their activities for the benefit of ALM.

4. On behalf of JM, Mr Hugh Southey QC (with Mr Richard Thomas) challenged the lawfulness of the imposition of the TPIM notice. In the alternative, he submitted that the full gamut of measures was neither necessary nor proportionate: any perceived risk is capable of being managed by more limited measures. His submissions were supported in CLOSED session by Mr Ashley Underwood QC and Mr Dominic Lewis as Special Advocates.

5. On behalf of LF, Mr Dan Squires QC (with Ms Joanna Buckley) challenged the lawfulness of reporting and appointments measures. His submissions were supported in CLOSED session by Mr Martin Goudie QC and Ms Rachel Toney as Special Advocates.

6. Both JM and LF attended the hearing on the relevant days. Both made witness statements but neither gave oral evidence. I heard evidence in OPEN and CLOSED from Witness JS on behalf of the Security Service. Witness JS is a member of the Security Service who has since October 2017 worked in the section responsible for

investigating threats emanating from individuals and networks inspired by a radical interpretation of Islam.

7. I heard evidence in OPEN session from Ms Jessica Deacon who is the current Head of the TPIM and Passport Seizure Team in the Office for Security and Counter-Terrorism at the Home Office. Ms McGahey had intended to call her in CLOSED session but Ms Deacon became suddenly and unexpectedly indisposed. Given her indisposition, all questions in CLOSED session were directed to Witness JS. I am satisfied that the Special Advocates put all relevant matters to Witness JS such that it was not necessary to adjourn the hearing for Ms Deacon to be cross-examined; and no adjournment was sought.

The 2016 TPIM

8. Both JM and LF were subject to previous TPIM from 2016 to 2018 (which I will hereafter call the 2016 TPIM). JM's TPIM was imposed on 20 June 2016 and reviewed by Nicol J in *Secretary of State for the Home Department v LG, IM and JM* [2017] EWHC 1529 (Admin) handed down on 30 June 2017. He found that the Secretary of State had been right to decide that JM was a senior leader in ALM. He had encouraged and (through the radicalisation of others) facilitated the travel of others to join Islamic State of Iraq and the Levant (ISIL). JM's 2016 TPIM was extended on 13 June 2017 and expired on 19 June 2018.

9. LF's TPIM was reviewed by Elisabeth Laing J (as she then was) in *Secretary of State for the Home Department v LF* [2017] EWHC 2685 (Admin) handed down on 30 October 2017. She found that the Secretary of State had been right to decide that LF was a senior leader in ALM, having a leading role in communications and logistics. His talks encouraged others to travel to ISIL-controlled territory and to join ISIL.

10. LF's 2016 TPIM was extended on 30 October 2017 and expired on 29 October 2018. On 3 June 2018, LF breached his TPIM by failing without reasonable excuse to report by telephone to the electronic monitoring services company ("EMS"). On 4 April 2019, he was convicted of the breach following a Crown Court trial. On 13 May 2019, he was sentenced to 2 years' imprisonment suspended for 2 years. The terms of his sentence included a twelve-hour curfew for 12 months in a specified residence; 150 hours of unpaid work; and attendance for 18 months at an Extremist Risk Guidance and Healthy Identity Intervention programme covering 33 modules. The curfew imposed by the court was subsequently varied so that it was shorter on Tuesdays and Sundays to permit LF to undertake a part-time driving position which he no longer holds.

The 2019 TPIM

11. By orders dated 4 November 2019, Supperstone J granted the Secretary of State permission to impose new TPIM on JM and LF respectively for a period of one year (which I will hereafter call the 2019 TPIM). He granted permission to the Secretary of State to withhold CLOSED material from JM, LF and their legal representatives where disclosure would be contrary to the public interest. On 5 November 2019, the Secretary of State served notice of the TPIM and a schedule of measures imposed by the notice on JM. She did likewise in relation to LF.

12. On 16 September 2020, LF was remanded in custody on account of alleged breaches of his TPIM on 15 September 2020. He is due to stand trial on six charges in February 2021. The Secretary of State did not maintain before me that the alleged breaches were relevant to the questions which I must decide. In light of the impending criminal trial, I do not regard it as appropriate to make any findings one way or the other in relation to events that may found the criminal charges, which will be a matter for the jury. I will say no more about that aspect of the evidence.

13. On 24 September 2020, the Secretary of State revoked LF's TPIM notice under section 13(1) of the 2011 Act. The TPIM was revoked on the ground that the risk which LF posed to the public was mitigated by his being in custody so that the TPIM notice was no longer necessary. When LF is released from custody, the Secretary of State will consider whether his circumstances at that time justify the revival of the TPIM notice under section 13(6). The revocation does not affect my task in the present review in any material way.

14. By notice dated 23 October 2020 and served on 27 October 2020, the Home Secretary extended JM's TPIM notice for another year, until 4 November 2021.

Legal framework

15. Section 2(1) of the 2011 Act gives the Secretary of State power to issue a TPIM notice and to impose TPIM on an individual for a second time if five conditions are satisfied. Those five conditions are set out in section 3:

> "(1) Condition A is that the Secretary of State is satisfied, on the balance of probabilities, that the individual is, or has been, involved in terrorism-related activity (the 'relevant activity').
>
> (2) Condition B is that some or all of the relevant activity is new terrorism-related activity.
>
> (3) Condition C is that the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for terrorism prevention and investigation measures to be imposed on the individual.
>
> (4) Condition D is that the Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified terrorism prevention and investigation measures to be imposed on the individual.
>
> (5) Condition E is that-
>
> (a) the court gives the Secretary of State permission under section 6…"

16. For present purposes, “new terrorism-related activity” in Condition B is defined under section 3(6)(b) as meaning:

> “if only one TPIM notice relating to the individual has ever been in force, terrorism-related activity occurring after that notice came into force…”

17. The term “terrorism-related activity" is defined in section 4 which provides in so far as material:

> “(1) For the purposes of this Act, involvement in terrorism-related activity is any one or more of the following-
>
> (a) the commission, preparation or instigation of acts of terrorism;
>
> (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
>
> (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;
>
> (d) conduct which gives support or assistance to individuals who are known or believed by the individual concerned to be involved in conduct falling within paragraph (a);
>
> and for the purposes of this Act it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism in general.”

During the period that a TPIM notice is in force, the Secretary of State must keep under review whether conditions C and D are met (s.11).

18. Section 10(1) of the 2011 Act requires the Secretary of State to consult the chief officer of the appropriate police force as to “whether there is evidence available that could realistically be used for the purposes of prosecuting the individual for an offence relating to terrorism” (s.10(2)). The chief officer must consult the relevant prosecuting authority before responding to the Secretary of State (s.10(6)). Under s.10(5) the chief officer must “secure that the investigation of the individual's conduct, with a view to a prosecution of the individual for an offence relating to terrorism, is kept under review throughout the period the TPIM notice is in force" and report on that review to the Secretary of State.

The court’s function and powers

19. On a review hearing such as the present one, the function of the court is to review the decisions of the Secretary of State that the relevant conditions (i.e. conditions A-D above) were met and continue to be met (s.9(1) and (8)). In doing so, the court must apply the principles applicable on an application for judicial review (s.9(2)).

20. By virtue of s.9(5), the court has only the following powers on a review hearing: (a) power to quash the TPIM notice; (b) power to quash measures specified in the TPIM notice; (c) power to give directions to the Secretary of State for, or in relation to, the revocation of the TPIM notice, or the variation of measures specified in the TPIM notice. If it does not exercise any of these powers, the court must decide that the TPIM notice is to continue in force (s.9(6)).

21. In *Secretary of State for the Home Department v QT* [2019] EWHC 2583 (Admin), para 88, Supperstone J cited earlier case law and summarised the approach to be adopted by the court as follows:

> "In the ordinary case the court must assess the situation as it stands at the date of the hearing as well as when the Secretary of State made her decisions. However, the Secretary of State revoked the TPIM notice on 11 March 2019. In these circumstances the function of the court is to review the decision of the Secretary of State that the relevant conditions were met and continued to be met up to the time at which the revocation notice took effect on 11 March 2019.
>
> The court is required to perform a review of the Secretary of State's decision to impose a TPIM notice. The intensity of the review differs according to the relevant condition under review (*Secretary of State for the Home Department v LG, IM and JM* [2017] EWHC 1529 (Admin) at paras 34-52). When considering condition A the court is required to consider whether the Secretary of State was and continued to be satisfied that QT was or had been involved in TRA and whether on the balance of probabilities the court is also satisfied of that fact. The Secretary of State accepts, for the purposes of these proceedings, that the same considerations apply to a review of Condition B.
>
> Different principles apply to Conditions C and D. The relevant question is whether, on conventional public law grounds, the Secretary of State was entitled to consider that the measures were necessary and proportionate in pursuit of the lawful statutory objective, and the Secretary of State is entitled to due deference as primary and expert decision maker assigned to the task by Parliament (*LG, IM and JM* at paras 45-52). There are, however, limits to the deference to be shown (see *CF v Secretary of State for the Home Department* [2013] EWHC 843 (Admin), per Wilkie J at para 26).
>
> In *MB v Secretary of State for the Home Department* [2006] EWCA Civ 1140, the Court of Appeal addressed the issue of 'necessity' and held as follows:
>
> '63. Whether it is necessary to impose any particular obligation on an individual in order to protect the public from the risk of terrorism involves the customary test of proportionality. The object of the obligations is to control the activities of the

> individual so as to reduce the risk that he will take part in any terrorism-related activity. The obligations that it is necessary to impose may depend upon the nature of the involvement in terrorism-related activities of which he is suspected. They may also depend upon the resources available to the Secretary of State and the demands on those resources. They may depend on arrangements that are in place, or that can be put in place, for surveillance.'"

22. The court will, therefore, consider the necessity and proportionality of the TPIM and its individual obligations. The term "necessity" is not to be equated with "useful", "reasonable" or "desirable" (*CF v Secretary of State for the Home Department* [2013] EWHC 843 (Admin), para 26).

23. The burden lies on the Secretary of State to demonstrate that the TPIM and its individual measures are necessary and proportionate. In imposing a TPIM notice and the individual measures, the Secretary of State is making an evaluative and predictive judgment of risk, to which there is more than one legitimate response (*LG v Secretary of State for the Home Department* [2016] EWHC 3217 (Admin), para 17).

Comparison with sexual harm prevention orders

24. It was common ground between the Secretary of State and JM that the law governing the approach of the court to a TPIM review is now largely settled, and that it was correctly summarised by Supperstone J in *QT* as I have set out above. Mr Squires made an additional submission that the TPIM regime is similar to the regime for sexual harm prevention orders ("SHPOs") which may be imposed pursuant to s.103A-K of the Sexual Offences Act 2003 following a conviction for a specified sexual offence. A court may only impose a SHPO if it is satisfied that it is necessary to do so for the purpose of protecting the public from sexual harm from the defendant (s.103A(2)(b)). Individual prohibitions imposed on a defendant by a SHPO must each be necessary for protecting the public from sexual harm from the defendant (s.103C(4)).

25. Mr Squires emphasised that the purpose of SHPOs is, like TPIM, the protection of the public: in the case of SHPOs, protection from sexual harm; and in relation to TPIM, from TRA. Breach of a SHPO without reasonable excuse (like breach of a TPIM) amounts to a criminal offence punishable by imprisonment (s.103I of the 2003 Act).

26. Given these similarities between the two statutory schemes, which both concern issues of great public concern, I was directed to case law about the lawful limitations of SHPOs. In *R v Parsons; R v Morgan*, Practice Note, [2017] EWCA Crim 2163, [2018] 1 WLR 2409, para 5, Gross LJ (who gave the judgment of the court) held that the prohibitions imposed by a SHPO must be effective; otherwise their statutory protective purpose would not be achieved. They must be clear and realistic, and "readily capable of simple compliance and enforcement." They must not be oppressive and, overall, must be proportionate.

27. I was also directed to *R v Hemsley* [2010] EWCA Crim 225, [2010] 3 All ER 965 which concerned Sexual Offences Prevention Orders (which were in broad terms the statutory predecessor of SHPOs). In that case, the court held that it was essential for such orders

to be "clear on their face; capable of being complied with by the subject thereof without unreasonable difficulty and/or the assistance of a third party and free of the real risk of unintentional breach." Mr Squires submitted that these Court of Appeal cases in the sphere of sexual offences are binding on me, or at least highly persuasive, unless there is some good reason not to treat TPIM in the same way.

28. In my judgment, case law relating to sexual offences does not bind this court in its interpretation of the TPIM Act. Mr Squires cited no authority requiring me to interpret the 2011 Act in light of a different Act. Parliament has in the 2011 Act laid down a comprehensive scheme for the operation of TPIM on which the courts have provided guidance. I see no advantage in entering the highways and byways of a different statutory scheme, which may be superficially enticing but which may nevertheless lead the court to skim over important contextual differences.

29. It is in any event not necessary for me to do so. TPIM measures, like those in SHPOs, must be proportionate. The Secretary of State accepts that proportionality includes a consideration of whether it is reasonable and practicable for the TPIM subject to comply with those measures. I agree. I would in any event gratefully adopt Gross LJ's observation in *Parsons* that public protection relies on the effectiveness of the relevant measures. If a person is unable to adhere to a measure for some particular reason, it may be more difficult for the Secretary of State to maintain that the measure is effective, and therefore necessary, for public protection. Each case will turn on its facts.

The welfare and interests of the respondents' children

30. Both JM and LF emphasise that the burdens of their TPIM obligations have had adverse effects on their family life, including the welfare and interests of their children from whom they live apart. I shall return to consider their respective submissions below but set out here the legal framework.

31. Ms McGahey submitted that the interests of the children were not relevant (or were at least less relevant) to the imposition of TPIM as opposed to the individual measures. As a matter of principle, I disagree: there is no relevant conceptual difference between the exercise that the Secretary of State and the court must carry out in considering the need for a TPIM notice and the need for individual measures. However, in practice, the interests of children are more likely to call for close scrutiny in relation to the individual measures that affect them, such as an overnight residence measure ("ORM") which takes a parent away from them.

32. In *LG, IM and JM*, Nicol J cited the significant authorities and held that, in TPIM cases, the interests of the children are a primary consideration and so must be afforded substantial importance by the Secretary of State and by the court. They are not the only consideration and other considerations may prevail. There is no particular order for considering competing considerations.

33. Nicol J noted that, in the extradition context, the Divisional Court has encouraged district judges to draw up a balance sheet and list the factors favouring extradition and then those factors (often including the adverse impact of extradition on children) which militated against extradition (*LG, IM and JM*, above, para 80, citing *Celinski v Poland* [2015] EWHC 1274 (Admin), [2016] 1 WLR 551). I do not understand Nicol J as

setting down a prescriptive approach which would require the court in TPIM reviews to adopt the sort of *Celinski* lists which are commonly seen in extradition cases. Nicol J does however hold that the welfare of affected children does not automatically prevail in TPIM reviews.

34. Nicol J's approach is consistent with earlier authority in relation to control orders made under the Prevention of Terrorism Act 2005. In *BX v Secretary of State for the Home Department* [2010] EWHC 990 (Admin), para 8, Collins J held that a balance must be struck between the need to relocate a controlled person away from his family and the effects on the family.

Approach to the evidence of JM and LF

35. That neither JM nor LF gave oral evidence cannot be used to strengthen the Secretary of State's case. However, the court is entitled to attach less weight to an untested statement.

36. As I have indicated, LF's challenge to the TPIM was considerably narrower than the challenge by JM. As a consequence of that narrower challenge, LF did not challenge the allegations of TRA made against him. I am not persuaded by the Secretary of State's submission that LF's failure to challenge the national security case should, to the extent that there is an overlap between the two cases, be used as evidence against JM. LF has adopted a different approach to the litigation, and it would be unfair to hold that difference against JM. Save in relation to the Secretary of State's general and common material about ALM, I have given individual consideration to each case. (I have structured my analysis and conclusions in different ways below in order to reflect the different ways in which the respective cases were presented to me.)

37. That I may not accept an individual's evidence in some respects does not mean that his evidence falls to be rejected in all respects: different parts of an individual's evidence fall for different consideration. A person who refuses to admit TRA may nevertheless give reliable evidence about the effects and impact of the TPIM on him and his family.

Information relating to ALM

Background

38. At paras 77-108 of her judgment in *LF*, Elisabeth Laing J provided a detailed description of the threat to national security posed by ALM at that time (as assessed by the Security Service in its statements on ALM). I was not asked to depart from any part of her description and see no reason why it should not still apply.

39. Since then, the evidence about ALM has been updated by the Security Service in the Amended Security Service Statement on the threat posed by ALM and the Security Service Update, which takes the material up to 26 August 2020. In her evidence in chief, Witness JS adopted both these statements and there was no serious challenge in OPEN about ALM's aims, objectives and activities. Mr Underwood on JM's behalf made a focused challenge in CLOSED session which I have rejected in my CLOSED judgment. On the basis of the OPEN evidence, I accept that the Secretary of State has established the following evidential picture.

40. ALM in the United Kingdom was founded by Omar Bakri Mohammed in 1996. Its aim was and remains the establishment of an Islamic caliphate governed by sharia. The Secretary of State assesses (and there is no good reason for me to disagree) that ALM continues to function and that its activities pose a threat to national security. ALM primarily engages in the radicalisation of others and creates a permissible environment for followers of its ideology to carry out Islamist extremist activities, by which I mean acts of violence as opposed to any particular theological or religious activities or the expression of legitimate opinions or beliefs. ALM's extremist activities include support to others to travel to join Islamic State ("IS") overseas and to engage in planning terrorist attacks in the United Kingdom.

Attacks or planned attacks in the United Kingdom

41. ALM members have carried out the following fatal attacks in the United Kingdom:

    i. On 22 May 2013, Michael Olumide Adebolajo and Michael Adebowale murdered Fusilier Lee Rigby in Woolwich. Both were found guilty of murder. Adebolajo was a member of ALM.

    ii. On 3 June 2017, Khuram Butt and two others carried out a terrorist attack starting on London Bridge. They used a vehicle to collide with pedestrians before exiting the vehicle and attacking members of the public with knives, killing eight people and injuring 48 others. Butt had been a member of ALM.

    iii. On 29 November 2019, former ALM member Usman Khan conducted an attack at Fishmongers Hall, London Bridge, which led to the death of two people.

42. There are numerous examples of terrorist attack-planning in the United Kingdom by individuals who have been influenced, encouraged or given tacit approval by ALM members. These include:

    i. Brusthom Ziamani who was found in possession of a knife and a hammer when arrested in August 2014 and who was sentenced to 22 years' imprisonment for a terrorism offence. The sentencing judge remarked that Ziamani was an impressionable 18-year old at the time of the offence with no previous convictions who had intended to kill a serving solider;

    ii. Nadir Ali Syed, who was arrested in November 2014 and convicted of planning an IS-inspired knife attack for which he received a life sentence;

    iii. A 15-year boy known as S who was convicted of inciting another person to commit an act of terrorism and who had exchanged a number of messages with ALM senior leader Shakil Chapra;

    iv. Lewis Ludlow who pleaded guilty in August 2018 to preparing to commit an IS-inspired vehicular attack;

    v. Safiyya Shaikh who pleaded guilty to preparation of a terrorist attack and dissemination of terrorist publications on 21 February 2020 and who had collated talks by senior ALM leadership figures.

43. In the August 2020 Update, the Security Service concludes that "there is a significant risk that ALM-linked attacks will take place against the UK and UK nationals." Given the history of ALM-linked deadly attacks in the United Kingdom and the evidence relating to ALM generally, there is no reason for me to interfere with that conclusion. It follows in my judgment that both the recruitment of individuals to ALM, and activities which cause individuals to support the objectives of ALM, amount to support for carrying out terror attacks which may take life.

Recruitment and radicalisation activities

44. From many years of investigating ALM and contextual knowledge, the Security Service assesses that ALM's recruitment and radicalisation process is well-established. This assessment is at least broadly supported by a handwritten note relating to recruitment which was found by police in November 2015 when searching the home of Jahirul Islam following his arrest. The note refers to multiple stages of recruitment and an action plan. The view of the Security Service (which I accept) is that radicalisation by members of ALM is a progressive process, most commonly with an early focus on building a supportive social relationship and developing trust. The Security Service assesses that, having identified a recruit, ALM members will invite the recruit to one-on-one or small meetings with senior members of the group.

45. Over time, the recruit will be encouraged to nurture a hatred for the United Kingdom. By this part of the recruitment process, meetings will take place in private settings largely hidden from public view. The final stage of the process involves transferring concepts into action, such as educating fellow Muslims about jihad and challenging man-made law and institutions through public activism.

Disruptive actions by the United Kingdom authorities

46. The United Kingdom authorities have carried out a number of actions designed to disrupt ALM. In 2015, ALM senior leadership figures Anjem Choudary and Mizanur Rahman were prosecuted for terrorism offences. In 2016, TPIMs were imposed on four other ALM senior leadership figures (including JM and LF as I have mentioned above). Further nationwide ALM disruptions occurred following the London Bridge attack in 2017. These disruptive measures included the arrests of ALM members; overt police presence at ALM da'wah events (broadly speaking, events fulfilling a communal obligation to bring people closer to Islam, sometimes but not always referred to as proselytising) which are exploited by ALM members as a recruitment and radicalisation tool; removal of online media; and disruptive messages being delivered by police to ALM members.

47. In August 2018, ALM member QT was served with a TPIM notice. In August and September 2018, three further members of ALM were served with TPIM notices. Following these disruptive actions, the group's ability to function was limited. However, the resilience of the group meant that its members continued to engage in activities to benefit the group, albeit at a reduced level. Its members continued to radicalise others.

48. In 2018, some of the executive actions taken in previous years expired or ended which led to an increase in ALM activity. In October 2018, Choudary and Rahman were released from prison on licence conditions. The Security Service assesses that the expiration of TPIM against ALM senior leadership figures and the release of Choudary and Rahman led to an increase in ALM-related activity.

49. On 5 February 2020, Rahman was recalled to prison for breach of his licence conditions. The Security Service assesses (and I have no reason to reject the assessment) that disruptive actions against leadership figures in ALM (including JM and LF) have contributed to an overall decrease in ALM activity across the UK.

Allegiance of ALM and/or its members to Islamic State

50. In July 2014, Bakri, Choudary and other ALM leaders signed a pledge of allegiance to Islamic State ("IS") leader Abu Bakr Al-Baghdadi in support of the caliphate state which IS had on 29 June 2014 declared in the areas under its control in Syria and Iraq. By 2019, ISIL had lost the territory of the caliphate and Al-Baghdadi had died.

51. On behalf of JM, Professor Martin Gleave (who specialises in Arabic and Islamic Studies, currently at the University of Exeter) has supplied a report dated 10 May 2020 in which he explains the Islamic institutions of (among other things) the caliphate and the pledge of allegiance. Professor Gleave concludes that the pledge of allegiance is a pledge to an individual caliph. It is thought of as a contract which only the parties to that contract can fulfil. A new caliph will always require a new pledge. Following Al-Baghdadi's death, IS embarked on a concerted campaign to get all those who had pledged allegiance to Al-Baghdadi to do so to the new caliph Abu Ibrahim Al-Hashimi Al-Qurashi, whose selection by shura (broadly meaning committee) of IS leaders was not uncontroversial. ALM leaders such as Bakri and Choudary have expressed no opinion on Hashimi's succession.

52. Mr Southey relied on Professor Gleave's report in submitting that the silence of ALM leaders on Hashimi's succession showed that ALM did not support the new caliph and that ALM had thereby distanced itself from IS. The Secretary of State accepts that, in Islamic law, allegiance always exists between individuals. She assesses that Al-Baghdadi's death does, theologically, render void the pledge of allegiance to IS. However, it is assessed that ALM members will continue to support IS, its affiliates and its ideology because of the historic pledge. In cross-examination, Witness JS said that ALM has not yet revoked support for ISIL. IS still retains a presence overseas and is a threat to national security.

53. In my judgment, this discussion of the effect of Al-Baghdadi's death is somewhat arid. I am concerned with the protection of the public and with TRA. JM's actions may or may not be coloured by his view of the concepts discussed by Professor Gleave but this sort of ideological investigation is secondary to my task. The TPIM regime is concerned with the protection of national security. If a person persists in actions that undermine national security, the ideological underpinning may make little or no difference to the risk that he poses.

54. In JM's case, the Secretary of State relies on a great deal of evidence other than the pledge of allegiance to establish the national security case. JM's objection to the

Secretary of State's analysis is a red herring and makes no difference to the outcome of this review.

New York Times article

55. The Secretary of State placed before the court an article from the New York Times ("NYT") dated 18 May 2019. The article's theme is that ALM is re-emerging in the United Kingdom as a home-grown militant cell. The article indicates that the NYT interviewed "a handful of former members" who confirmed that ALM has begun to remobilise, as many members (including Choudary) have been released from prison. ALM members have adopted lower-profile tactics and meet in secret or inconspicuous locations. Some senior activists have vaunted about the laxness of their TPIM and one has commented that TPIM may make people more "hard-core."

56. The respondents submitted that this article is vague and some of its sources - former ALM members - are plainly not objective or reliable. The Secretary of State did not place the article at the centre of her case and there is ample evidence on which I am able to draw all material conclusions without it. The article presents a highly worrying picture but I accept that not all its sources are objective and prefer to reach my conclusions on the basis of other evidence.

JM: Introduction

57. JM was born in London where he lived before the imposition of the 2019 TPIM. When the 2019 TPIM was imposed, it contained the following measures:

    i. An ORM requiring JM to reside in a Home Office provided property in City Y away from his family home and to remain in that residence overnight between 21:00 and 07:00.

    ii. A travel measure requiring JM to surrender travel documents and prohibiting him from leaving Great Britain without permission. This measure also prevented JM from leaving a specified area of City Y.

    iii. An exclusion measure that prevents JM from entering specified areas or places unless the Home Office has given him permission.

    iv. A movements and directions measure requiring JM to comply with any directions given to him by a police officer.

    v. A financial services measure.

    vi. A property measure requiring him to take certain steps in relation to any property that he owns or rents.

    vii. A weapons and explosives measure.

    viii. An electronic communication device measure that sets out restrictions on JM's use and possession of communications and electronic devices and that of others living at or visiting his residence.

ix. An association measure that restricts JM's ability to meet and communicate with listed individuals.

x. A work or studies measure.

xi. A reporting measure that requires JM to report in person to a specified police station, and by telephone to the EMS from the monitoring unit in his residence on days and at times notified by the Home Office.

xii. An appointments measure that requires JM to attend appointments with persons notified by the Home Office.

xiii. A photography measure requiring him to permit the police to take photographs of him.

xiv. A monitoring measure that requires JM to wear an electronic tag which uses satellite tracking technology and to keep the tag charged.

58. Under the reporting measure, JM is required to report to a police station every weekday between 12:30 and 13:30 and to report to the EMS every weekday between 16:30 and 17:30 and every Saturday and Sunday between 12:30 and 13:30. His appointments measure requires him to attend appointments under the Home Office Desistance and Disengagement Programme ("DDP"). Since 27 November 2019, JM has been mandated to attend a session with a "practical mentor" for two hours per week. Since 20 December 2019, he has been mandated to attend a session with a "theological mentor", also for two hours per week. JM has seen two theological mentors since he was served with a TPIM notice. The original mentor was replaced on 24 July 2020 after the relationship between JM and the mentor broke down. There is a degree of flexibility as to where the sessions take place.

59. JM married his wife in October 2001. The couple have five children, the oldest of whom was born in 2002 and the youngest in 2019. One of his children (whom I shall call Child Z) has special needs and suffers from a number of illnesses including epilepsy. As confirmed by appropriate medical evidence, he suffers from Global Development Delay. This has led to delay in his cognitive and physical development affecting his mobility, speech, cognitive skills and social and emotional development.

60. On 15 March 2017, one of JM's daughters (whom I shall call Child A) was assessed by a clinical psychologist. No diagnostic conclusions were formally identified but attention-deficit and autistic spectrum disorder were excluded.

61. I have read and considered the report of Tim Francis dated 5 February 2020. Mr Francis is an educational and child psychologist. He assessed Child A on 4 February 2020 and diagnosed her with dyslexia. She has illegible handwriting and difficulties with note taking. Mr Francis recommended that she visit an optician to deal with visual problems. His report states that there has been no formal exploration of a parental report of anxiety.

JM: The national security case

62. In her evidence in chief, Witness JS adopted the Security Service's Amended First TPIM Statement and the Amended Second TPIM Statement which set out the Secretary of State's case on the national security risk which JM is alleged to pose. JM's activities prior to the imposition of the 2016 TPIM are set out in Nicol J's judgment and so I shall not repeat them here. The Security Service assesses that, after the imposition of the 2016 TPIM, JM continued to act for the benefit of ALM. As a member and senior leader of ALM, he has participated in activities which have served to further the aims and ambitions of ALM. He has given encouragement to the commission, preparation or instigation of acts of terrorism including while subject to the 2016 TPIM. He has re-engaged in activities of national security concern to an extent similar to that prior to the imposition of the 2016 TPIM.

63. During the 2016 TPIM, JM was relocated to City X where it is alleged that he made new associations with (in particular) ten named individuals who are assessed as holding an Islamist extremist mindset (the list originally contained the names of 11 individuals but the Secretary of State now accepts that one name should be removed). The Security Service assesses that he exerted influence on these individuals and played a key role in their association with ALM, encouraging some of them (for example) to access extremist media.

64. Since the expiry of the 2016 TPIM, JM has, with LF and with another senior leadership figure within ALM whom I shall call IM, made concerted efforts to galvanise ALM with trips to, and meetings in, different regions of England and Wales, as well as online activity. The Security Service assesses that some of the meetings attended by JM were designed to recruit people to ALM and others were used to discuss ALM matters among established members. Meetings which involved small groups of people in inconspicuous locations were part of a tactic to avoid scrutiny. That JM remained willing to meet individuals assessed to be ALM members so soon after the expiry of the 2016 TPIM is assessed to be demonstrative of his entrenched involvement. Witness JS described JM as attending ALM meetings on a weekly basis.

65. On 15 September 2018, JM travelled from London to four different cities in a different region of England. He travelled with IM in order to meet other ALM members. The trip included a visit to City X, indicating JM's desire to continue to exert influence on those he met in City X while he was living there. (Witness JS made clear that JM is assessed as having sought to influence individuals while residing in City X despite his request to move away from City X during the 2016 TPIM.) On 22 November 2018, JM met LF in a London café. On 26 November 2018, JM met LF and IM in a London suburb. He has made at least one other trip to City X.

66. Witness JS accepted that, to date, JM has abided by the "Covenant of Security" (the contract of mutual security between a Muslim and a non-Muslim host country which means that a Muslim does not carry out attacks in that country). However, she expressed her concern that his involvement as a senior leader of ALM has encouraged others potentially to conduct acts that may breach the Covenant. She said that JM has learnt from experience what will get him into trouble; he now seeks to hide his activities from the public domain to avoid prosecution and other measures. She did not accept that JM's family would be a prophylactic against extremist activity.

67. Mr Southey asked Witness JS why the 2019 TPIM imposed more stringent reporting requirements than Nicol J had ordered in 2017. She said: "It is our assessment that due to JM's activity on his previous TPIM, where we assess…he likely shared ALM ideology with other individuals that the reporting requirement is required to be stricter in order to prevent him from spending long periods of time in one location where he could engage in TRA."

68. In response to further questions from Mr Southey, Witness JS said that the risk posed by JM had not changed due to Covid-19 but added that his ability to radicalise or influence others may have reduced slightly.

69. Witness JS – through a prepared form of words read out in court by Ms McGahey – said that it was not the Secretary of State's case that everyone whom JM met when he visited City X after the expiry of his 2016 TPIM was an extremist. The Secretary of State accepts that he had innocent social contacts in City X. When JM's electronic devices were seized on 5 November 2019, no material was found on them for which JM could have been prosecuted for possessing. During the 2016 TPIM, he did not comply at all times with his TPIM conditions (indeed he has admitted some non-compliance). He met others with whom he is likely to have promoted ALM ideology. JM was not prosecuted for any breach of that TPIM.

70. JM is therefore assessed to have continued to carry out TRA: he has (i) taken action for the benefit of a proscribed organisation and (ii) undertaken conduct which encourages the commission, preparation or instigation of acts of terrorism, or which is intended to do so.

71. The OPEN assessment of JM's activities and the risk that he poses to national security is supported by the CLOSED material which I have considered in my CLOSED judgment. Following the rigorous process undertaken by the Special Advocates under CPR 80.25, Mr Underwood did not maintain that JM had had inadequate disclosure under *Secretary of State for the Home Department v AF (No3)* [2009] UKHL 28, [2010] 2 AC 269.

JM: Proportionality of individual measures

72. Ms Deacon gave evidence about the proportionality of the individual measures under the TPIM in her witness statements dated 27 August 2020, 15 October 2020 and 29 October 2020. She also adopted the witness statement of her predecessor Ms Rebecca Harvey dated 29 October 2019. Her witness statements contained lengthy exhibits with some repetition. I do not propose to deal with all the topics covered by her evidence but to set out some of the more relevant aspects below, in the context of my analysis of, and conclusions in, JM's case.

73. JM accepts that he has breached his TPIM twice but maintains that the breaches were not significant. Ms Deacon accepted in cross-examination that JM's compliance with his 2019 TPIM has been good and I proceed on that basis.

JM's evidence

74. JM's witness statements are dated 1 June 2020 and 22 October 2020. He denies that he has been involved in TRA. He denies that he has acted for the benefit of ALM since the 2016 TPIM was imposed. He denies being a member of ALM and denies a leadership role. He denies the allegations made against him and denies involvement in any activity that would pose a threat to national security. He has always abided by the Covenant of Security.

75. He has however (in his words) "taken on board" Nicol J's judgment on the basis that his previous actions could be misconstrued. He has therefore curtailed his da'wah to a very large degree. He does not attend da'wah stalls, religious lectures or talks. His only da'wah since the 2016 TPIM has been handing out leaflets for the Islamic Europe Research Academy, a respected and international charity whose aim is to spread knowledge about Islam. He does not make online videos and has given up charity work for Muslim prisoners. He has not posted any material to social media since December 2018.

76. JM says that prior to the 2019 TPIM, he was working part-time but also helped to look after his children, particularly Child Z. Keeping up with Child Z's medical appointments and managing his behaviour took up a lot of time.

77. JM says that he has not had any contact with Choudary or Rahman for about five years. In late 2019, Omar Bakri Mohammed telephoned him on three occasions but the calls were unsolicited. JM answered two of the calls which related to innocuous matters.

78. JM says that during the 2016 TPIM, when he lived in City X, he attended various mosques. As he was prohibited under the TPIM from meeting people without Home Office permission, he would not engage in conversation at mosques but he would suggest that people call him on his mobile telephone. He was not aware that anyone he met at a mosque was an extremist. He was unaware of any secret ALM meetings and his own behaviour was not in any way covered up. He used WhatsApp (which is encrypted) but only in the usual way. He got into the habit of sending "round robin" text messages – like mini-blogs – about his life in City X. His associations were therefore discoverable by the police who had the power to check his phone.

79. JM accepts that he has kept in contact with people he had met through his involvement in ALM decades ago. They had since then become friends. As an example, he states that in August 2018 he went on holiday with (among others) Anjem Choudary's wife and a prominent Islamist.

80. Responding to the allegation that he quickly resumed contact with ALM associates after the expiry of the 2016 TPIM, JM says that some of his friends had been on his list of prohibited associates under the 2016 TPIM. Having not seen them for two years, it was only natural that he would want to meet them as soon as he had the opportunity to do so. It was natural that he should wish to meet up specifically with friends who had been the subject of TPIM so that they could share experiences: it probably brought them closer together. In any event, his previous TPIM expired in June 2018 and he did not start to see friends until September 2018, apart from some occasions on which friends visited him.

81. He seeks to explain the assessment that he has organised and hosted ALM meetings by saying that he would once a week alter his WhatsApp status message to say that he would be breaking his regular religious fast in a café or restaurant. He would invite anyone who was free to join him, which on occasions included LF and IM.

82. He accepts that he travelled to City X on 15 September 2018. He says that he went back there in order to express his gratitude to those who had helped him cope with his relocation there under the 2016 TPIM. He happened to travel with IM because IM was the only person to respond to a WhatsApp invitation to keep him company on the journey. The two men stopped on the way at another city for a convenient break where they met family and friends. They then stopped at another city where JM gave his new bicycle to a friend who had provided help during the 2016 TPIM. Despite these two stops, they manage to reach City X at lunchtime where they visited two mosques and then a church where JM had undertaken voluntary work in the church café. They remained at the church for about 10 minutes. They went thereafter to visit JM's former neighbours but they were not at home. JM left a note for them with his contact number.

83. Following a visit to another mosque, they went to have an early dinner in a fourth town at the house of someone who happens to be suspected by the Security Service of ALM involvement. At around 6pm, they returned to London. The whole trip was entirely social.

84. In relation to the allegation that he hosted ALM meetings at home, JM says that these too were gatherings for the purpose of breaking the fast. He says that he has hosted other religious and social events at home which are not mentioned in the national security case against him because "they do not fit the narrative being put forward by the security services."

85. He accepts that he got to know eight of the 10 men named by the Security Service as ALM associates in City X but claims that they were casual acquaintances of the sort that one would expect when becoming involved with a mosque.

86. He accepts that he visited City X on more than one occasion following the expiry of the 2016 TPIM. He says that he made a trip with LF for the inauguration of a mosque. He made a third trip after dropping off his daughters in another nearby city where they met friends.

87. JM says that he made other trips to other parts of the United Kingdom mainly in order to collect money for charity. In the summer of 2018, he and his family travelled to Wales for a celebration of the birth of a friend's son. On 9 October 2018, he travelled to Cardiff to attend the funeral prayers for the sad death of a friend's son. This part of his evidence is supported by a screenshot of a text message to his employer (on 8 October 2018) seeking time off work in order to travel to Cardiff for the funeral of a friend's ten-month old baby. The Secretary of State accepts that he travelled to Cardiff for that purpose.

88. He and LF collected charitable donations in a particular area of London on Sunday evenings between December 2018 and February 2019. In relation to travel elsewhere in the UK, he is not sure what the Security Service is referring to though believes that

one trip of concern to the Security Service may have been an outing while on the 2018 holiday with family and friends.

ORM

89. JM's witness statements deal with the effect of the ORM. JM lives outside London in City Y, away from his family. His wife has to care for their five children. Three children are home-schooled, which brings substantial additional work and challenge. Managing the care and welfare of five children has been a huge strain on her that has in turn affected their relationship. Child Z's health has worsened since the 2016 TPIM as he has recently begun to suffer from seizures. Educational trips to Legoland have not been possible as his wife cannot manage all five children on her own.

90. Both JM and his family began to suffer from additional stress during the Covid-19 pandemic as they are each worried about each other's health. They feel that they need to be together to provide support for each other. This prompted JM's wife and children to live with him in City Y for an extended period. The family did not regard this as a long-term solution as one daughter is educated at school and could not manage her education from JM's residence. Child Z needs to be in London for medical reasons and finds it hard to manage in a residence where he cannot use his gadgets freely, especially his Nintendo Wii. It has taken much time and effort to obtain the medical referrals which Child Z needed for his care package. He is under the care of a physiotherapist, occupational therapist, and eating and drinking clinic. He is the subject of ongoing hospital and local authority interventions.

91. In those periods in which his family is not with him, social distancing measures mean that JM is even more isolated in City Y than before. JM's view is that the opportunity for meeting people associated with ALM, or for undertaking the sort of activities which the Secretary of State alleges are dangerous, has been removed by the restrictions that have been in place during the pandemic: the justification for the ORM has been overtaken by events. JM points to his considerable family ties to contend that he does not present a risk of absconding.

Reporting requirements

92. JM says that the reporting requirements under the 2019 TPIM are more onerous and disruptive than under the 2016 TPIM, making it more likely that there will be an inadvertent breach. He believes that the regime imposed by Nicol J (reporting three times to the police station during the week and twice to the EMS by phone over the weekend) would be appropriate.

Association measure

93. In relation to the association measure, JM claims that the Security Service has just trawled through a watch-list and placed their names on the list.

Voluntary work

94. It is to JM's credit that he sought and obtained permission from the Home Office to undertake voluntary work at two food banks and a food kitchen. As at the date of the

hearing before me, he had not yet started any such work because he wanted to complete the hearing before taking on other commitments. His second witness statement expresses his intention to start after the hearing. Subject to finances, he would like to attend courses to improve himself and to increase his prospects of employment. He mentions in particular a Food Hygiene course. I take the view that a combination of voluntary work in a food bank and a food hygiene course gives JM comprehensible and cogent objectives, bearing in mind that JM already has experience of working with food in the church café.

Mentoring sessions

95. It is encouraging to see that JM has been able and willing to engage with his practical mentor. The session reports show that, on 1 July 2020, JM gave his practical mentor a box of chocolates to say thank you. Mr Southey submitted that the gift was a sign of JM's positive attitude towards his mentor. Ms McGahey emphasised the date of the gift and pointed out that, by that time, JM was aware of the timetable for this hearing so that the gift could have been strategic. I agree with Ms McGahey and am not persuaded that the gift is indicative of a change of mindset.

96. JM complained about his first theological mentor, and it took around six months for a substitute to be appointed. During that time, JM stopped engaging with the sessions but he has confirmed that he is happy and engaging with the substitute. At his practical mentor session on 12 August 2020, JM spoke about his positive interactions with his new theologian sessions which at that time could take place in a congenial atmosphere over fish and chips. The session report for 14 August 2020 shows that the theological mentor challenged JM on his theological attitudes towards the protection of life. JM responded by saying that the protection of life includes every human being regardless of faith, colour or gender. He continued to express views consistent with a tolerant and multi-cultural outlook at the session on 21 August 2020.

97. I give some weight to the fact that JM is prepared to engage with the DDP in these various ways, but that does not mean that I accept that he has changed what he does for ALM to the extent that his TPIM should be changed. His views about tolerance were expressed just a few months ago and I am not persuaded that they can yet be regarded as secure or as long-lasting. Ms Deacon observed in cross-examination that "there is information that going forward we will consider that may lead us to review some of the individual measures, but we are not at that stage yet."

JM's wife

98. JM's wife provided witness statements dated 3 June 2020 and 22 October 2020 that were not tested in cross-examination. She describes the hard work needed for home schooling. She gives a further description of Child Z's medical problems. On 30 March 2020, he was admitted to hospital for monitoring following multiple epileptic seizures within days of each other. In April 2020, he suffered from a massive nosebleed while sleeping, leaving his pillow soaked in blood. There are concerns about his being underweight. He has trouble drinking and is registered as visually impaired.

99. When the family visit JM, Child Z's routine is disrupted and he becomes very frustrated as he cannot undertake his usual play activities or see his best friend. He has temper tantrums and hits his sisters.

100. JM's wife initially made an effort to ensure that the family visited JM almost every weekend but the children remained very upset that he was not living at home. She found it too difficult to take the five children to City Y by public transport and so came to rely on friends and family to drive them on one day and collect them on the next day. This sort of arrangement was not viable in the longer term, so she started to take a cab.

101. During the first national "lockdown" of the pandemic, the family went to live with JM in City Y. Since then, they have only visited JM twice a month because of the cost of travel and because of household demands and disruption caused to the children's activities in London. Child Z's occupational therapeutic needs cannot be met in JM's residence.

JM: Independent social work report and its addendum

102. On 14 March 2020, JM, his wife and children were assessed at JM's residence by Christine Brown who is an independent social worker and who has worked on TPIM and deportation cases since 2015. The assessment lasted just over three hours. In a report dated 31 March 2020 (and subsequently updated to take account of the family's situation in the pandemic), she notes that, although the family has been advised that they can relocate to City Y to live with JM until the expiry of his TPIM, this would be highly disruptive for the family as all their systems of support are in the London area. She comments:

> "A parent with a child with a disability will, over time, become very reliant on a known quality, that is the health care provider to educational advisor who will come to know their child and their needs well and be a reassuring feature…Reallocation of services does not necessarily flow from one area to another and both Child A and Child Z would likely become the subject of further fundamental assessments that would costly of both time and emotion and risk a very necessary provision being unavailable immediately or longer term…"

103. Ms Brown observes that living away from home in City Y is unsettling for Child Z who does not understand why it happens and who has struggled without forms of entertainment that are important to him. Child A's needs are not met in City Y and she is insecure. Ms Brown describes the disruption and fear of authority from which all the children suffer.

104. Ms Brown assessed the family again on 9 October 2020. This second meeting lasted over 4 hours. Her subsequent report is described as an addendum report but is in fact a revised version of the previous report updated on 20 October 2020. It reaches (as I understand it) the same conclusions as the first report.

Family visits to JM in City Y

105. It appears that the most comprehensive account of the family's visits to JM is contained in Christine Brown's Addendum Report. Prior to the national "lockdown" in March 2020, JM's wife and the five children went to stay with JM in City Y every weekend. Just before the lockdown came into effect, they went to live with him on a temporary basis. They returned to London on a few occasions for legitimate and sensible reasons (i.e. for the avoidance of doubt, there is no suggestion whatsoever that they breached the lockdown restrictions). In due course, they moved back to London and began to visit JM on a fortnightly basis. At the time of Ms Brown's addendum report, they were staying with JM for four days at a time – from Thursday to Sunday – so that there were ten days apart between their visits. JM's wife says that she did not have the funds to make the return journey any more frequently.

106. Ms Deacon says that, under the TPIM travel reimbursement policy, JM's wife qualifies for reimbursement of fares for visits twice per calendar month. On 19 December 2019, the Home Office agreed that one visit per month could be undertaken by mini-cab rather than public transport as ordinarily expected. The Home Office imposed a £500 cap on the total cab fare.

107. By email dated 14 January 2020, JM's solicitors informed the Home Office that JM's wife had (resourcefully) located a taxi firm willing to make two return journeys per month for a maximum of £480. By letter dated 16 January 2020, the Home Office refused to pay for two taxi journeys per month and cut the maximum fare for one journey to £250 (apparently in light of the efforts of JM's wife).

108. By letter dated 20 May 2020, the Home Office refused the reimbursement of the costs of a journey from City Y to London for Child Z's medical appointment on 18 April 2020. The justification given in the letter was that, at that time, the family had relocated to live with JM in City Y. The costs of travel back to London fell outside the terms of the reimbursement policy which applied only to those visiting JM.

109. When reviewing JM's wife's witness statement as part of her preparation for these proceedings, Ms Deacon decided that it is proportionate to reimburse her with the cost of two return taxi journeys per month, subject to a limit of £250 per return journey and sight of receipts. That decision took effect on 12 October 2020.

110. By email dated 18 October 2020, JM's solicitors explained to the Home Office that JM's family could not afford to pay the taxi fares for two return journeys each month in advance. By letter dated 20 October 2020, the Home Office refused to provide JM's wife with the funds for taxi fares in advance on the grounds that the TPIM reimbursement policy was operated in line with the Government's general policy of reimbursing costs after they have been accrued. The Home Office regard it as reasonable to operate the TPIM reimbursement policy in line with the general policy. The Home Office undertook to process reimbursement claims within one working day of the claim being made, in order to ensure that the money may be credited to JM's wife account in time for her to fund the next taxi journey.

JM's separation from Child Z

111. Ms Deacon accepted in cross-examination that JM's relocation away from Child Z would cause difficulty. JM's wife has reported that in February 2020 Child Z was non-responsive after suffering an epileptic fit. First responders asked about JM's whereabouts and Child Z asked for his father. I have no doubt that this was a frightening experience for JM's wife and for Child Z, and that JM would have helped his family considerably in this crisis.

112. Child Z was scheduled to be admitted to hospital on 30 March 2020 for a period of four nights to undergo video telemetry monitoring. The Secretary of State refused JM's application for permission to stay in the hospital with him, his wife having been refused permission to do so by the hospital because she was a nursing mother and there were no facilities for a baby. The Home Office offered to take JM to the hospital so that he could visit for eight hours each day. JM was not content with that offer which was subsequently withdrawn owing to the Covid-19 pandemic. In the event, the hospital cancelled the monitoring, owing to the pandemic, but it was rescheduled for 30 November 2020.

113. By letter dated 23 October 2020, the Secretary of State granted permission to JM to travel under police escort to London and to remain at the hospital, accompanied at all times by a police officer, for the duration of his son's admission (scheduled for four nights). The grant of permission was made subject to any material change in Covid-19 restrictions and to the availability of police resources in the pandemic. The letter stated that JM would be given the necessary privacy to be with his son. If his son were admitted to a private side room or a sectioned-off part of the ward, the escorting officers would not enter the private area but would remain close to it.

JM: Children's access to a computer and Child Z's access to his Nintendo Wii

114. The Home Office has offered to provide JM with a laptop which he and his children could use in his residence in a pre-approved manner, including broadband connections to approved websites. The laptop was adapted at JM's request to access Netflix and Disney Plus. JM has however rejected the laptop on the ground that if he or his children clicked a link from an authorised website – such as Disney – to an unauthorised website, he would run the risk of prosecution. I am sceptical about the proposition that JM cannot safely watch Disney or Netflix with his children on a laptop without straying onto other websites. The laptop has been modified to prevent unauthorised internet access. In any event, I am not persuaded that the problem – if it exists – could not be solved by the application of common sense and a willingness to co-operate with the Home Office.

115. Ms Deacon accepted in cross-examination that Child Z's Nintendo Wii machine is particularly important to him because playing with his Wii gives him an important sense of familiarity. Under the TPIM, JM's family cannot bring the Wii into JM's residence in City Y without the permission of the Secretary of State. As the Wii is Wi-Fi enabled, the Secretary of State has indicated that she would not be minded to give permission. The police have considered whether the device will operate properly if the Wi-Fi is disenabled but they cannot be sure. As the machine may be damaged by removing the

Wi-Fi capability, JM has felt unable to progress a request to bring the machine into his residence.

116. Mr Southey asked Ms Deacon why the Wii could not safely be brought into JM's residence if it was switched off (like the children's phones which may be brought into the house if they are switched off). She said that she was not best placed to answer questions relating to the risk that different devices may carry.

117. I note that JM has purchased a second-hand Sky Plus box which the police have modified so that the Wi-Fi capability has been removed – which should help to entertain the children to some extent.

JM: employer's statement

118. JM's former employer says in a written statement that JM would regularly send him WhatsApp messages which would be headed "General broadcast message." These included requests for help for people in need and reminders about non-Ramadan fasting on Mondays and Thursdays. JM would also send invitations to break fasts with him at various venues. The employer estimates that he would receive these messages weekly. He never accepted any of these invitations because he was too busy. He exhibits a very large number of screenshots of messages of which a proportion are relevant to the issues in this case. Some of the messages are general invitations to join JM to break the fast at certain London cafes and restaurants. I regard these screenshots as inconclusive.

JM: café manager's statements

119. The Secretary of State did not dispute the statements (dated 30 March 2020 and 19 October 2020) of the manager of the church café where JM worked in City X. She confirms that JM volunteered at the café for a few months in 2017/2018. He left in the summer of 2018 because he was leaving City X. In September 2018, he returned to visit people he knew at the café and church. He stayed for a short while.

120. The manager confirms that the café seeks to bring together people from all walks of life. It serves the community, in particular those who have fallen on hard times, refugees and members of the LGBTQ+ community. A number of those who work or volunteer at the café are members of the LGBTQ+ community and the café advertises itself to this community. I accept Mr Southey's submission that JM's willingness to volunteer in a café whose customers come from a community other than his own is a sign that he is capable of integrating. I do not accept that his time in the café is sufficient to mark a durable move away from extremism but it shows that JM is capable of integration when he wants to integrate.

JM: Former neighbour's statement

121. One of JM's former neighbours in City X has provided a statement in which he confirms that he and his wife found a note signed by JM pushed through their letterbox on 16 September 2018. The note said that JM had come to see them but they had been out, and it gave a contact number.

JM: Report of Stuart Banks

122. JM has provided the text of a large number of downloaded WhatsApp messages which date from 1 November 2019 and 5 November 2019. The downloaded messages are the subject of a report by Stuart Banks of Digital Forensics Consultancy Ltd dated 20 May 2020. The report appears to have been produced for other proceedings but downloads are exhibited for the purpose of demonstrating that JM broadcast his messages widely – including invitations to break the fast. I was not taken to any particular passage and regard this part of the evidence as inconclusive.

JM: Review of prospects of prosecution

123. In accordance with s.10 of the 2011 Act, the Secretary of State consulted the chief officer of the appropriate police force about whether there was evidence available that could realistically be used for prosecuting JM for an offence relating to terrorism. On 11 October 2019, the Metropolitan Police Service wrote to the Home Office, as required by s.10(6) confirming that they and the Crown Prosecution Service had concluded that there was no admissible evidence that could realistically be used to prosecute JM. The police confirmed that the prospect of prosecuting JM for an offence relating to terrorism would be kept under review. On 5 November 2019, following the making of the TPIM notice, the Home Office wrote to the police regarding the duty of ongoing review. The minutes of meeting of the multi-agency TPIM Review Group ("TRG") for the quarterly period to 10 December 2019 confirm that the prospects of prosecution would be kept under review. Both the Home Office and the police attend TRG meetings.

124. Mr Southey directed my attention to the minutes of the most recent TRG meeting of 25 September 2020. The minutes are set out in a series of boxes. The box entitled "Prospects of prosecution of individual relating to terrorism" has been left blank. Mr Southey submitted that this lacuna means that (contrary to the requirements of s.10(5)(b) of the 2001 Act) the police have not reported to the Home Secretary as to whether there is an ongoing police investigation into JM's activities with a view to his prosecution. I regard this submission as tendentious.

125. My attention was drawn to the report of the Independent Reviewer of Terrorism (Mr Jonathan Hall QC) on the Terrorism Acts in 2018 which was critical of compliance with s.10(5) of the 2011 Act as being something of a tick box exercise. Ms Deacon accepted in cross-examination that the TRG did not know the state of the police investigation or what it had generated, and the view of the Independent Reviewer was (at least in the 2018 Report) that the attendance of the police at TRG meetings was not sufficient to discharge the Home Office's obligations under s.10 to consult the police and receive police reports on the prospects of prosecution.

126. I do not accept that, in the circumstances of this case, the report by police to the Secretary of State under s.10(5)(b) was or became a "tick box" exercise. I accept Ms Deacon's evidence that, had there been any police investigation likely to lead to prosecution, the police would have reported it to the TRG as they attended TRG meetings. The statutory obligation is to keep the prospects of prosecution under review (and not to report it to the TRG meeting). I am not persuaded that there has been any breach of any statutory obligation under s.10 of the 2011 Act.

JM: Analysis and conclusions

Condition A

127. Mr Southey accepted that it would not be appropriate to re-open Nicol J's findings and therefore made no submissions on Condition A. JM says that he has never been involved in TRA. But that is not correct: it ignores the findings of Nicol J which Mr Southey very properly felt unable to challenge. What JM says is not credible. I am satisfied that the Secretary of State was and continues to be satisfied that JM is or has been involved in TRA, and I am also satisfied of that fact. I find that Condition A is satisfied.

Condition B

128. Mr Southey submitted that I should accept JM's evidence that he has not engaged in any new TRA. JM has done everything he can to be frank and to respond to the case against him. There are no suspicious gaps in his evidence. He has been open with the court by producing not only his own WhatsApp downloads but also those of his employer. He willingly told the court about the phone calls from Omar Bakri Mohammed without being prompted to do so by anything in the Secretary of State's material. His assertion that he has changed his behaviour since Nicol J's judgment is borne out by the significantly narrower and vaguer case against him now (to which he has done his best to respond) and his generally good compliance with his TPIM obligations. While JM does not admit that he had extremist views, actions speak louder than words.

129. In relation to the allegation about weekly ALM meetings, Mr Southey submitted that many people have a social life by meeting up with friends weekly in different places which are private. JM has known a number of Islamists throughout his adult life. The sort of evidence on which the Secretary of State relies is consistent with an ordinary social life and is not inconsistent with JM's evidence that he has taken on board Nicol J's judgment. Mr Southey pointed to JM's explanation that he meets people to break the fast once a week. He submitted that the WhatsApp evidence supported JM's account.

130. I accept that JM's longstanding ALM associations mean that he is more likely to socialise with ALM members than someone who has never been exposed to extremists. It is natural for people who have known each other through being part of a wider group to become friends. However, I do not accept (on the balance of probabilities) that the weekly occurrences (to use a neutral term) were merely social events. JM's evidence is untested. I do not accept that he has been frank and honest.

131. Context is important. Ms McGahey points to the ways in which the alleged meetings were consistent with the Security Service's intelligence about, and contextual assessment of, ALM meetings. She points to the external forces in play (namely disruptive actions against Choudary, Rahman and others) which would have affected the ability of others to play a meaningful leadership role. She points to JM's intransigent refusal to admit any previous ALM involvement which undermines his evidence about the weekly occurrences. I agree with Ms McGahey and infer on the

balance of probabilities that JM hosted and attended meetings for the purpose of encouraging terrorism.

132. JM says that he travelled for social reasons to City X with IM because IM had responded to a WhatsApp invitation to travel with him. I accept that he made a brief and legitimate visit to the café in City X where he had worked and that he tried (but failed) to see his former neighbours (who were out). I do not believe that one brief and one failed visit (or any legitimate re-acquaintance with others who had supported him in City X) were the only or even the key purpose of the trip. I agree with the Secretary of State that it is very significant that JM took such a high profile ALM leader as IM with him. I accept that the trip demonstrated JM's wish to retain an influence over those he had met in City X during the TPIM.

133. The Secretary of State accepts that JM went to a funeral in Wales in 2018. It does not follow that all of JM's cross-regional trips (whether to Wales or elsewhere) were benign.

134. JM accepts that, in August or September 2019, Omar Bakri Mohammed telephoned him on three occasions. He was JM's Islamic teacher and a person whom JM admired (see Nicol J's judgment, para 242). It is hard to understand why, if JM had genuinely taken on board Nicol J's judgment, he would receive these phone calls from ALM's founder.

135. For these reasons, I accept the Secretary of State's assessments about JM's past activities and reject JM's account. My conclusions are supported by the CLOSED evidence.

136. As to whether these activities amount to new TRA, I do not need to collate each activity with a specific part of the definition of terrorism under s.4 of the 2011 Act. While the Secretary of State and the court must be satisfied on the balance of probabilities that JM has engaged in TRA, neither the Secretary of State nor the court needs to make more specific findings of fact as to the precise nature of any TRA (*LG, IM and JM*, above, per Nicol J, para 44).

137. Mr Southey submitted that the allegations of new TRA were conspicuously vaguer than in the case before Nicol J. He warned me against uncritical acceptance of terms such as "extremism" and "radicalisation" which may be used in ways that do not meet the requirements of s.4. Association with those who promote ALM ideology does not by itself mean that JM himself has undertaken new TRA. For example, someone may have little control if others at a dinner start to influence people to follow terrorist objectives: it all depends on the facts.

138. In my judgment, JM's activities - which I have set out above - mean that he has committed acts for the benefit of a proscribed organisation and has engaged in conduct which gives encouragement to the commission, preparation or instigation of acts of terrorism. The Secretary of State is entitled and right to conclude on the balance of probabilities (as do I) that JM is or has been involved in new terrorism-related activity, and she is still entitled and right to take that view (as do I). Condition B is satisfied.

Condition C

139. Mr Southey submitted that the Secretary of State's decision – read with the information on which it was based – was poorly reasoned. It was therefore less worthy of the weight which is usually afforded by the court to decisions based on institutional expertise (*R (A) v Chief Constable of Kent Constabulary* [2013] EWCA Civ 1706, para 39, referring to *Belfast City Council v Miss Behavin' Ltd* [2007] UKHL 19, [2007] 1 W.L.R. 1420). The decision in the present case had failed to give adequate consideration to the independent social worker's report which had provided key evidence of the impact of the TPIM notice on vulnerable children. The TRG is the formal process for considering such evidence and the documents show no real consideration of that report. The failure to complete the box in the TRG minutes relating to the police was also indicative of less than adequate decision-making processes.

140. Mr Southey submitted that there had been no adequate re-assessment of the need for TPIM under the conditions of the pandemic. For example, JM would have little incentive to leave home for meetings or any other purpose for fear that he would catch Covid-19 and then infect his children. The Secretary of State has a public law duty to ensure that she is properly informed while exercising her powers and Covid-19 has fundamentally changed the way in which society operates. Some attempt should have been made to consider the impact of Covid-19 at the start of the "lockdown" in March 2020.

141. Mr Southey submitted that JM's acceptance of the Covenant of Security was a significant factor in any assessment of the need for TPIM. There is no evidence that any harm has ensued from JM's activities (such as his trips to other places in the country) which are alleged to justify the TPIM. JM's risk has in the past been managed by restrictive bail conditions, which shows that the full range of more onerous TPIM measures is not necessary.

142. I was asked to consider the proportionality of the TPIM notice which had failed properly to balance the benefit to the State of the TPIM (which is not great) against the harm to JM's children (which is great, particularly in relation to Child Z).

143. In my judgment, the Secretary of State was entitled to conclude that the imposition of the TPIM notice was necessary and proportionate. I reach this decision on the OPEN evidence though it is supported by CLOSED evidence. Given JM's activities since the 2016 TPIM expired, which have included the organisation of, and attendance at, weekly meetings of a group whose members and associates have espoused violent attacks in the United Kingdom, the Secretary of State was reasonably entitled to consider that it was necessary for purposes connected with protecting the public from a risk of terrorism to impose a TPIM on JM. She is reasonably entitled to consider that the TPIM continue to be necessary for such a purpose. Condition C is satisfied.

Condition D

144. As to the individual measures, the greatest interference with JM's family life has been caused by the ORM. This has had two serious consequences. First and most importantly, JM's wife has taken on the full burden (save when the family visit JM) of caring for their children. Child Z has serious medical and developmental problems such

that his welfare would benefit from having two parents at all times. Secondly, Child Z is unsettled when the family visit JM because stabilising factors such as his Wii and his best friend are not available.

145. I have taken into consideration the family's problems and their decision not to relocate permanently to City Y. I have given very careful and close scrutiny to their situation and to the welfare of the children – particularly Child Z and Child A – which are a primary consideration to which substantial weight must be given. But I must consider the interests of national security as well. ALM is an organisation whose members and associates have carried out fatal attacks in the United Kingdom. I have listed those attacks above. The organisation is still functioning and active. JM's history of close involvement with, and leadership within, ALM means that he has an entrenched involvement with an organisation that represents a threat to people's lives. I have concluded that that grave analysis of what he has done must outweigh the very real difficulties that his family are experiencing.

146. The ORM has restricted but not removed family life. Although there have been some difficulties with taxi fares, the Home Office has in my judgment taken reasonable steps to facilitate family visits which take place regularly. The Home Office has granted all JM's requests to attend outpatient hospital appointments with Child Z. While the Home Office initially refused to let JM stay with Child Z in hospital, there was a change of mind which in my judgment indicates some flexibility of approach and which will enable JM to be with his son at a critical time. There is scope for the Home Office to allow reasonable variations to the TPIM to deal with family emergencies as they arise.

147. The Security Service assesses that the ORM mitigates the risk of JM engaging in TRA. It limits his ability to organise and attend ALM meetings and talks in London. It limits his ability to act in a leadership role by removing his physical association with many other ALM affiliated individuals. It limits the likelihood of him meeting Islamist extremists by chance. In my judgment, the Security Service assessment is reasonable. The ORM has been and still is necessary and proportionate.

148. Mr Southey submitted that the Secretary of State had failed to give adequate weight to the significant changes to interactions within the community that the present public health situation has caused. The Covid-19 pandemic means that the general population has on various occasions lasting for various periods of time been instructed to stay at home. It is therefore – at least to some degree – more difficult to hold meetings. But JM's entrenched behaviour means that I am sceptical of his assertions that he would avoid meeting ALM associates in London because he would not take the risk of transmitting Covid-19 to his family. In any event, the public health situation has at all material times been fluid and it remains so. The pandemic cannot warrant granting permission to JM to live in London.

149. Mr Southey submitted that the ORM is an example of illegitimate "defensive thinking" – a term used by Mr Hall QC in his 2018 Report reflecting a concern of his predecessor (Mr Max Hill QC). I understand Mr Hall to mean that the Security Service may impose measures under a TPIM that assume some generalised kind of risk (such as the risk that a TPIM subject may abscond) that is not indicated on the facts of a particular case. I have considered the various reasons advanced for the ORM in the First National Security Statement. I do not regard them as overly-defensive.

150. Mr Southey submitted that other conditions within the TPIM deal with the harm for which the ORM was imposed. Those other conditions would entirely eliminate the risk of harm or would at least reduce the risk of anything other than insignificant contact with ALM members such that the balance would favour the interests of his children. For example, the association measure would suffice to stop JM from having contact with risky individuals while enabling JM to live with his family at their home in London.

151. In my judgment, the ORM in this case has its own discrete and protective function that cannot be replicated by a combination of the other measures. The Amended First National Security Statement refers to the necessity of relocation for the effective management and successful implementation of the TPIM, away from other key ALM figures in London. In circumstances where I am satisfied that JM has engaged in private meetings with a view to avoiding detection, the Secretary of State was reasonable and right to take into consideration the physical distancing of JM from London associates. Other measures (such as the association measure) may well support the objective of the ORM but they too have their own, separate protective functions.

152. Having considered all the evidence, I have reached the conclusion that the Secretary of State was reasonably entitled to impose the ORM and that she is still reasonably entitled to do so.

Electronic communication devices measure

153. The electronic communication devices measure in its current form permits JM's family to use some internet-enabled devices (e.g. a mobile phone) while inside a residence that he occupies providing that he is outside. It also permits them to use these devices in his presence, provided that they are all outside the residence. I accept that these devices are central to the children's access to information and entertainment.

154. Mr Southey submitted that the children should be allowed to bring electronic devices, including a Wi-Fi enabled laptop and the Wii, into his residence in City Y and to use them. At the least, they should be permitted to bring them into the house, in the same way as a mobile phone. The current restrictions are unnecessary and disproportionate. The Secretary of State submits (in brief) that it is necessary to restrict JM's ability to use electronic communications devices to engage with ALM and to participate in activities which further the aims and ambitions of ALM.

155. In my judgment, the restrictions under the electronic communication devices measure are necessary and proportionate. As I have set out above, the Home Office has offered JM a laptop designed to entertain the children and there is a Sky Box. Overall, this measure within the TPIM has been and continues to represent a lawful and (in my view) appropriate balance between the needs of the children and the protection of national security.

Reporting measure

156. Mr Southey submitted that the reporting measure in its current form requires a frequency of reporting that is unnecessary and disproportionate. JM is required to report on 12 occasions per week (five in person at a police station, seven by telephone

to the EMS). This is stressful for the family as they all fear he will forget. Nicol J decided that JM should report on seven occasions per week (three times in person and four times by telephone). I should afford a degree of respect for Nicol J's conclusion from which there would need to be good reason to depart.

157. I have taken into consideration that the reporting measure has at all times been substantially more onerous than that imposed by Nicol J in 2017. However, the Secretary of State is not required to engage in a mathematical exercise in assessing the necessity and proportionality of individual measures by a sort of pro rata calculation. The Secretary of State will consider a package of measures in the round and in light of the relevant intelligence assessments at the time she imposes the measures. The Secretary of State may lawfully depart from the conclusions reached by a judge in previous proceedings if she lawfully concludes that the protection of the public requires it.

158. There are material differences between the situation as at the date of Nicol J's judgment and the situation under the present TPIM. As I have set out above, JM continued to engage in TRA after the expiry of the previous TPIM. In my judgment, his entrenched activities – despite the attempt to disrupt him by the 2016 TPIM – shows a persistence with which Nicol J would not have been confronted (or not to the same degree). The Secretary of State assesses that JM's willingness to befriend and influence individuals in an Islamist extremist context even under the restrictive measures of the 2016 TPIM is another indicator of his entrenched views and activities. The passing of time since Nicol J's judgment enables me to put this into a broader context and I draw the same conclusion as the Secretary of State.

159. In addition, as Ms McGahey forcefully submitted, the ALM context is relevant. The hearing before Nicol J was completed by 7 April 2017. Since then, there have been two deadly attacks in the London Bridge area (the Khuram Butt attack on 3 June 2017 and the attack at Fishmongers Hall on 29 November 2019 – see above). Ziamani has been charged with attempted murder. As ALM activities have proved resistant to disruptive measures, it is proportionate for the Secretary of State to impose sterner measures on ALM leadership figures such as JM.

160. Mr Southey made no specific submissions on other measures but submitted more generally that the full gamut of the measures is neither necessary nor proportionate. In my judgment, the various measures, collectively and individually, were and are necessary to protect national security. I am not persuaded that the interference with JM's and his family's rights outweighs the legitimate aim of protecting the public.

161. Mr Southey submitted that JM's conditions will need to be relaxed at some stage. There is no reason why that process of relaxation should not begin now in the light of JM's compliance with the TPIM and his positive attitudes. By failing to relax any of the measures, the Secretary of State was again guilty of defensive thinking. An exit strategy should be put into place now so that JM may be tested for a period before the 2020 TPIM expires.

162. In cross-examination, Ms Deacon accepted that the obligations under the 2020 TPIM (which is now in force) may change. I have no doubt that that will depend on JM's progress in distancing himself from ALM's activities. He has shown himself capable

of progress towards respect for those who hold different views to him. I have taken into consideration his work at the church café with its multi-cultural and LGBTQ+ clientele; his willingness to undertake voluntary work in a food bank (which is laudable); his willingness to engage with his mentors; and his concern to devote time to caring for his particularly vulnerable son. These factors show that spending time on worthwhile activities is not impossible for him. These aspects of the evidence – which are consistent with the Home Office observations at JM's TPIM Extension Meeting on 25 September 2020 - may be the seeds of a realistic exit strategy from the full burdens of the 2020 TPIM and a gradual return to a more normal life. At present, I agree with the Secretary of State's assessment that there is insufficient evidence of JM having moved away from extremism for his risk to be managed without the TPIM and its measures.

163. I conclude that the Secretary of State was entitled reasonably to conclude that each of the measures included in JM's TPIM was necessary for purposes connected with preventing or restricting JM's involvement in TRA and that this continues to be the case. Condition D is satisfied.

164. Conditions A-D having been satisfied, I do not exercise any power under s.9(5) of the 2011 Act. JM's TPIM notice is to continue in force (s.9(6)). My conclusions on Conditions A-D are reinforced by the CLOSED evidence.

LF: Introduction

165. LF was born outside the United Kingdom and came to live here as a child. After his A levels, he undertook an apprenticeship and worked in his chosen field until he was forced to stop work as a result of ill-health. He is married with two young children. His wife and children have continued to live at the family home while he has been relocated. When the 2019 TPIM was initially imposed, it contained the following measures:

i. An ORM requiring LF to reside in a Home Office provided property in a city away from his family home and to remain in that residence overnight between 21:00 and 07:00.

ii. A travel measure requiring LF to surrender travel documents and prohibiting him from leaving Great Britain without permission. This measure also prevented LF from leaving a specified area of the city in which he had been relocated.

iii. An exclusion measure that prevents LF from entering specified areas or places unless the Home Office has given him permission.

iv. A movements and directions measure requiring LF to comply with any directions given to him by a police officer.

v. A financial services measure.

vi. A property measure requiring him to take certain steps in relation to any property that he owns or rents.

vii. A weapons and explosives measure.

viii. An electronic communication device measure that sets out restrictions on LF's use and possession of communications and electronic devices and that of others living at or visiting his residence.

ix. An association measure that restricts LF's ability to meet and communicate with listed individuals.

x. A work or studies measure.

xi. A reporting measure that requires LF to report in person to a specified police station, and by telephone to the EMS from the monitoring unit in his residence on days and at times notified by the Home Office.

xii. An appointments measure that requires LF to attend appointments with persons notified by the Home Office.

xiii. A photography measure requiring him to permit the police to take photographs of him.

xiv. A monitoring measure that requires LF to wear an electronic tag which uses satellite tracking technology and to keep the tag charged.

166. The details and individual extent of some of those measures has changed from time to time. Under the reporting requirement, LF was initially required to report to a named police station between 11:00 and 12:00 every weekday. He was required to report to the EMS every weekday by telephone between 16:30 and 17:30, and between 12:30 and 13:30 on Saturday and Sunday. It follows that he was required to report 12 times per week. Under the appointments measure, he was required to attend an appointment with a DDP practical mentor for two hours per week. From 20 March to 9 July 2020, as a result of the pandemic, the requirement to report in person to the police station was replaced by a requirement to telephone the EMS. LF's appointments with his mentor were conducted by telephone.

167. On 24 August 2020, LF's reporting requirement was varied so that he was not required to call the EMS on Monday and Wednesday afternoons when he was also required (under his suspended sentence order) to speak to the Probation Service.

LF: The national security case

168. In her evidence in chief, Witness JS adopted the Security Service's Amended First TPIM Statement and the Amended Second TPIM Statement which set out the Secretary of State's case on the national security risk which LF is alleged to pose. LF's activities prior to the imposition of the 2016 TPIM are set out in Elisabeth Laing J's judgment and so I shall not repeat them here.

169. In deciding to impose the 2019 TPIM, the Secretary of State considered the Security Service's assessment that, despite being previously subject to a TPIM notice, LF had

continued to engage in terrorism-related activity. The new TRA is set out in three core allegations:

i. Core Allegation A: acts for the benefit of a proscribed organisation (ALM);

ii. Core Allegation B: possession of Islamist extremist material, including material condoning acts of violence; and

iii. Core Allegation C: encouragement of terrorism through advocating that the Covenant of Security is broken, such that attacks on the host country are allowed.

170. The Security Service assesses that LF's activities facilitate and encourage the commission, preparation and instigation of terrorist acts. He has been a member and a senior leader of ALM since the 2016 TPIM came into force. During the first TPIM, LF remained a member of ALM and maintained his senior leadership role, albeit that his ability to engage in activity of concern was significantly limited. He was able to engage with individuals and seek to radicalise them and draw them into ALM.

171. Choudary and Rahman were released from prison on licence on 19 October and 24 October 2018 respectively. In light of his time in prison, and then his strict licence conditions, Choudary has been unable to remain as a key leader in ALM. In his absence, LF has resumed the role of senior leader, together with JM, though they are not the only ones to have a leadership role.

172. Since the 2016 TPIM expired, LF has met other ALM members on a number of occasions both in London and elsewhere. The Security Service assesses that his meetings with ALM members involve the discussion and promotion of ALM ideology. On 22 November 2018, LF met JM and XYZ who is a prominent radicaliser who has historically worked to an Al-Qaeda agenda (and who is subject to a UN asset freeze). On 26 November 2018, he met JM and three other ALM members. He attended further meetings with ALM members (including two further meetings with JM) on 28 November 2018, 6 December 2018, 20 December 2018 and 8 January 2019. He has twice hosted ALM meetings in his own home (on 10 February 2019 and 8 May 2019).

173. The Secretary of State relies on material recovered from a computer sold by LF in May 2019. The computer was purchased by police and subject to forensic examination, which revealed that it contained several documents based on speeches made by Omar Bakri Mohammed in addition to documents and videos attributable to ALM. The material promotes violence. One document advocates the killing of American soldiers and civilians. Another document argues that terrorism is obligatory in Islam. Another glorifies the terrorist attacks of September 11, 2001. Other documents incite violent jihad. Five documents incite violent attacks including suicide attacks.

174. In her evidence, the Secretary of State was not able to demonstrate based on the police analysis undertaken whether or not the material had been accessed after 21 February 2016 which was over three years before the imposition of the current TPIM. I accept that the age of the material means that it should carry less weight in the assessment of the necessity and proportionality of the TPIM. However, it is not irrelevant: Ms McGahey is right to say that it forms part of the background and throws light on LF's

fixed mindset. He has said or done nothing to distance himself from the ideas expressed in this dangerous material.

175. LF has posted or maintained extremist videos on his YouTube channel more recently. Shortly after the shootings at the Christchurch mosque in New Zealand (which took place on 15 March 2019), LF uploaded a video called "Analysis of New Zealand attacks" in which he stated that the Covenant of Security had been broken. A video called "Touch of Prison" states that the Covenant of Security was violated in December 2015 when he awoke to find police officers with a search warrant. The Security Service assesses that, by posting videos to YouTube, LF is seeking to influence a wider audience than the ALM members he associates with. He expresses views which are intended to encourage his audience to adopt views which legitimise attacks, including attacks in the United Kingdom.

176. While the Security Service does not assess that LF would himself conduct an attack, his videos may be regarded as an encouragement to others to do so. The videos have the potential to encourage TRA by viewers who, by dint of choosing to watch such material, are susceptible to radicalisation. LF is assessed as having been aware of the effects and impact of his actions: he has knowingly attempted to encourage others to engage in TRA.

177. Setting aside the extant criminal charges, LF is said to have committed three breaches of the measures since the TPIM notice was served on 5 November 2019. On 25 December 2019, he failed to report to the EMS. On 2 January 2020, he failed to attend a mandatory mentoring session. On 4 January 2020, he failed to report to the EMS. He has explained the first two breaches as honest mistakes and says that, in relation to the third breach, he called the EMS but the line was busy. He was subsequently charged in relation to the second and third breaches, and is due to stand trial in the near future. In light of the impending criminal trial, I do not propose to say more about these breaches save that in my judgment they do not materially add to the national security risk which LF has posed and continues to pose.

178. The OPEN assessment of LF's activities and the risk that he poses to national security is supported by the CLOSED material which I have considered in my CLOSED judgment.

179. Although LF does not challenge the decision to impose the TPIM or the national security case on which that decision is based, he does not accept that the allegations made are true. He is entitled to avoid the risk of incriminating himself in these proceedings, which may affect his criminal trial; and he is in any event entitled to mount a focused challenge to the TPIM. Nevertheless, I have seen or heard no evidence to contradict the allegations made against him. Subject to the compliance of these proceedings with the fair trial guarantees of article 6 of the Convention, there are no grounds for me to disagree with the Secretary of State's national security assessments. The next question is, therefore, whether these proceedings comply with article 6.

LF: Compliance with article 6 of the Convention

180. Mr Squires submitted that it had become clear during the evidence of Witness JS that the reason that the Secretary of State had considered that it was necessary to impose

significantly more onerous reporting requirements on LF, in comparison to the level of reporting ordered by Elisabeth Laing J in 2017, was LF's alleged activity during his previous TPIM. He referred me to a paragraph in the Amended First National Security Statement in which the Security Service sets out its assessment that, during the previous TPIM, LF remained a member of ALM and maintained his senior leadership role. He was able to engage with individuals whom he was seeking to radicalise on behalf of ALM and draw them into the group. Mr Squires emphasised Witness JS's evidence in cross-examination that she was not able to provide any evidence in OPEN as to when and how often that occurred, whom LF was seeking to radicalise, and in what ways. He submitted that the Secretary of State's reliance on these allegations to justify the increase in the reporting requirements gave rise to clear disclosure obligations under *AF (No 3)* which had not been satisfied.

181. Mr Squires submitted that there had been insufficient disclosure in relation to the allegations as to LF's activity during the previous TPIM to enable him to give sufficient instructions to the Special Advocates and to have a real opportunity to rebut them, contrary to the fair trial guarantees of article 6 as expounded in *AF (No 3*). As the Secretary of State had provided no evidence supporting the necessity and proportionality of the level and frequency of the reporting measure, the allegations should either be withdrawn or further disclosure provided in the OPEN case.

182. I reject that submission. I agree with Ms McGahey's submission that Witness JS's oral evidence should be considered as a whole. Although Witness JS emphasised at one point in cross-examination the risk that LF poses in light of his activity during the last TPIM, she had earlier justified the necessity of frequent reporting obligations by referring the court to a passage in the Amended Second National Security Statement. The Security Service in that passage sets out its assessment that ALM - and therefore LF who is assessed to be a senior leader of ALM - is using new tactics to further its aims and ambitions, including the use of inconspicuous, secret locations to carry out recruitment. The same tactics are used for radicalisation, which requires spending extended time with individuals in order to build relationships. On that basis, it is assessed that "the current requirement to report is necessary to prevent LF from spending prolonged periods of time in one location, potentially with the same associates and to mitigate the risk that he uses his time to form relationships and attempt radicalisation." I agree with Ms McGahey that this assessment is not rooted in what LF did during the previous TPIM. The Secretary of State has adequately justified the level and frequency of reporting in the OPEN case by reference to matters other than LF's activities during the previous TPIM.

183. I also agree with Ms McGahey that the evidence about LF's activities during the last TPIM is but one aspect of Core Allegation A. Neither the substance of Core Allegation A nor the justification for the level and frequency of the reporting obligation depends solely or decisively on closed material, which therefore does not meet the test for disclosure in *AF (No 3).* There is no need for LF to be provided with further material for the purpose of giving instructions to the Special Advocates or for the purpose of rebutting the case against him (*AF (No 3)*, para 59). Nothing in *AF (No 3)* requires him to be given any further disclosure and there has been no breach of article 6 of the Convention.

184. In CLOSED session, the Special Advocates made a different but connected submission that LF has not received adequate disclosure under *AF (No 3)*. I have rejected that submission for reasons set out in my CLOSED judgment.

185. It follows that I accept the allegations made against LF. He has been and continued to be involved in TRA some of which is new TRA. He does not challenge the imposition of the TPIM. I find that Conditions A-C are satisfied. The key question – which arises in relation to Condition D - is whether the obligations imposed by the reporting and appointments measures were and continued to be necessary and proportionate.

Necessity and proportionality: The Secretary of State's case

Security Service assessment

186. The Amended First National Security Statement shows that the Security Service recommended a reporting measure on the basis that it was "necessary to provide assurance on LF's whereabouts and reduce his ability to engage in terrorism-related activity, and reduce the risk of him absconding." There is no recommendation as to the number of times per week that LF would need to report to reduce those risks. The same statement justifies the appointments measure in the following terms: "Such appointments may be used to distance LF from Islamist extremism through PREVENT and DDP strategies."

187. In the Amended Second National Security Statement, the Security Service added (and Witness JS essentially agreed in cross-examination) that "regardless of whether or not LF chooses to engage with his mentor, the sessions still provide national security benefits. These include providing assurance around his location for a specific period of time. Additionally, the appointments offer an ongoing opportunity for LF to re-integrate into UK society should he decide to engage in the sessions." Witness JS said in cross-examination that the primary reason for the mentoring requirement is to assist LF in reintegrating into UK society.

Home Office assessment

188. Ms Deacon gave evidence about the proportionality of the individual measures under the TPIM in her witness statements dated 27 August 2020 and 15 October 2020. She also adopted the witness statement of her predecessor Ms Rebecca Harvey dated 31 October 2019. Her witness statements contained lengthy exhibits with some repetition. I do not propose to deal with all the topics covered by her evidence but to set out some of the more relevant aspects in the context of the issues to which they are relevant.

189. Ms Deacon's view in cross-examination was that, when LF was required regularly to meet other public authorities such as the Probation Service, it was not proportionate that he should also be required to report twice a day under the TPIM. As LF was (as at August 2020) required to accept telephone calls from the Probation Service every Monday and Wednesday afternoon, she had granted LF permission not to report to the EMS on those afternoons. From 24 August 2020, LF's reporting events reduced from 12 to 10 per week.

LF's evidence

190. LF has provided two witness statements in which he gives a detailed account of the effects of the TPIM on him and on his family.

Non-engagement with the mentor

191. Since the commencement of the practical mentoring sessions on 28 November 2019, LF failed to engage at the sessions with either of the two successive mentors who have been allocated to him. He understands that, although required by the TPIM to attend the sessions, his engagement with the DDP was voluntary so that he could refuse to engage while he was physically present at the sessions.

192. LF's understanding appears to be correct in that his failure to engage with the mentor did not amount to a breach of the TPIM. However, by failing to engage, he has denied himself one potential way of demonstrating that he is willing to change his behaviour away from risky extremism. Topics for discussion at mentoring sessions are designed to assist participants to move away from extremist actions and the content of sessions may indicate a person's progress. LF's failure to say anything during his sessions means that I have less information before me about his willingness and ability to avoid extremism than I may otherwise have had.

193. LF explains why he chose not to engage with the mentor by saying that he did not know what relevant skills or qualifications the mentor had or what the purpose of the DDP was. He did not think there was any benefit in the mentoring sessions, particularly when he was already working with his Probation Officers under his criminal sentence: he completed the Extremist Risk Guidance assessment and participated in the Healthy Identity Intervention programme.

194. LF says that he was aware from his previous TPIM challenge that any information he provided to the mentor was recorded and shared with the Home Office and could be used to justify his TPIM being extended after 12 months or to justify the measures imposed on him. He was not satisfied with his mentor's attempts to reassure him about the confidentiality of the process. For these reasons, he responded to every question put by the mentor in every session with "no comment" or he remained silent.

195. It is plain that undertaking a programme such as the DDP was not what LF wanted to do. His objections to it may be genuine and his views about it may be strongly held. But that does not mean that what the mentor did was unreasonable or that I should disregard LF's attitude towards engaging with the sessions.

196. It is not the case that he had tried his best but had a specific personal problem with (say) a particular mentor or with a discussion at sessions about a particularly sensitive aspect of his private life. He had not even tried to speak to the mentor (at least in any meaningful way). At an oral review of LF's sentence which took place on 7 July 2020, the Judge commented on LF's less than full engagement with the Probation Service – so his failure to engage with the mentor under the TPIM is not out of character. I regard his failure to engage with the mentor as being attitudinal: it is indicative of someone who tests the boundaries of his TPIM. I regard this attitudinal factor as some evidence

that it would have been premature to relax his TPIM obligations at any time before the TPIM was revoked.

Number of obligations overall

197. LF sets out in his first witness statement that, since the start of his TPIM on 5 November 2019 until the date of the statement (10 July 2020), he had reported either to the police or to the EMS 411 times and attended 23 mentoring appointments. Based on the obligations set out in the TPIM schedule as then in force, by the end of the first year of his TPIM, he would have been required to report 613 times and attend 39 mentoring appointments. By the end of a second year under the TPIM, he would have been required to report 1239 times and attend 91 mentoring appointments in total. These obligations were on top of the very considerable obligations of his suspended sentence order.

198. While these numbers are large when stated in this manner, they must be put in context. They represent the potential sum of the obligations which – as a matter of mathematics - the TPIM would yield. They do not however shed a new light on those obligations. LF points out that obligations under a TPIM are all the more onerous when coupled with the requirements of a suspended sentence order. It is however predictable - and not unfair - that a person convicted of a criminal offence is liable to a set of additional obligations that would not exist if he had not committed a crime.

199. Mr Squires relied on these large numbers in support of his submission that the reporting and appointments measures were so onerous that LF was bound to breach his TPIM. In a witness statement dealing with the difficulties of compliance, the appellant's solicitor Ms Anne McMurdie says that the Secretary of State has all the information to show that individuals subjected to onerous requirements under TPIMs and other counter-terrorism measures "almost invariably end up breaching the measures imposed upon them at some point." She goes on to say:

> "As far as I am aware from my own clients and from information provided to me by my colleagues, almost all our clients have at some point breached the reporting or mentoring obligations either by being late or by failing to attend. As far as I am aware from my own experience and from information provided to me by my colleagues the reporting obligations imposed on LF, requiring him to report 12 times a week in addition to attending a weekly mentoring session and twice weekly probation meetings, are the most onerous we have seen."

She says that, following LF's breaches in January 2020, LF was in a state of great anxiety bordering on panic about breaching again. For that reason, she and a colleague provided support, assisting LF to remember his reporting obligations, for a period of two months, both during working hours and in their own personal time.

200. Mr Squires referred to the report of Dr Sam Gilbert together with an addendum report that I invited Dr Gilbert to provide by way of clarification of one mathematical aspect of his report. Dr Gilbert is an Associate Professor at the Institute of Cognitive Neuroscience, University College London. He has been conducting research on human

cognition and brain function for over 20 years. He has a special interest in the ability to remember future plans and intentions ("prospective memory") and the ways in which individuals use reminders to support this form of memory. His credentials as an expert in the field of memory were not challenged. Nor did the Secretary of State challenge any aspect of his report or its addendum.

201. Dr Gilbert provides general evidence of the likelihood that a person will forget to complete routine tasks over a period of time. He provides general evidence of the likelihood of a person breaching the TPIM to which LF is subject, particularly the reporting and appointment measures.

202. As of 10 August 2020, when Dr Gilbert received his instructions, LF had successfully reported to the police or to the EMS on 99.6% of the occasions on which he was required to do so (i.e. a "forgetting rate" of 0.4%). He had successfully attended 96.4% of his mentoring appointments (i.e. a forgetting rate of 3.6%). Dr Gilbert holds the opinion that, for a task approximating the requirements of LF's TPIM, a typical individual would be expected to forget the task on about 3% - 10% of occasions. The very lowest level would be a forgetting rate of 1.2%. Dr Gilbert has calculated the probability of remembering all the reporting requirements and mentoring appointments as requiring a remembering rate (for each individual reporting or appointment) of 99.89% over the course of one year and 99.94% over the course of two years. On this analysis, even the very lowest forgetting rate (1.2%) would be exceeded. In short terms, Dr Gilbert concludes that the probability of LF forgetting about one of his TPIM requirements was near certain.

203. In my judgment, LF does not need to resort to expert evidence to establish that the more things that a person is required to do in the course of day, the more likely he or she is to forget one or more of them. Nor does he need to resort to expert evidence to establish that the longer a person is subject to measures, the more likely he or she is to forget one or more of them over the course of time. These are common sense propositions which I accept.

204. I do not know whether LF has a good memory or not: there has been no individualised assessment. At the time of Dr Gilbert's report, LF had missed only one mentoring appointment (on 2 January 2020). Dr Gilbert notes LF's explanation that he missed the appointment because he believed it had been cancelled; but this is treated by Dr Gilbert as a forgotten appointment "in order to use consistent terminology." At the time that Dr Gilbert wrote his report, LF had missed only two reporting requirements out of 465. It is therefore not obvious that LF was incapable of organising his daily routine to ensure compliance with his TPIM (and I recognise here the very considerable assistance he has had from his dedicated and able solicitors in ensuring compliance through systems of text messages).

205. There is little evidence to support the proposition that LF's obligations were so onerous that they caused him to breach his TPIM. Sentencing LF for the breach of his reporting condition, HHJ Lodder QC described how analysis of LF's GPS tag revealed that he had left home at 13:24 and walked to his mosque, arriving at about 13:30. After leaving the mosque, he walked in a nearby wooded area and only began to return home after 15:00 when the police were attempting to speak to him. LF claimed at trial that he had overlooked the reporting requirement and believed that he had complied. The Judge

had no doubt that he knew he had not made the call and that he was fully aware that his location would be obvious to the monitoring company from the GPS tag that he was wearing. It follows from the Judge's remarks that, far from forgetting his obligation to report, LF took a calculated risk by deliberately spending time away from home even though he knew that the GPS tag would show this. Further, as Ms Deacon indicates in her witness statement, the breach took place at a time when LF was subject to the reduced reporting requirements ordered by Elisabeth Laing J.

206. Dealing with this and with evidence of other breaches, HHJ Lodder QC concluded: "The picture which emerges is of a person who has tested the boundaries of this order, knowing full well that these contraventions would be detected." In my judgment, LF's behaviour under the TPIM was consistent with a person testing the boundaries and not consistent with a person who has cognitive or other intellectual deficits that prevented him from complying with his obligations.

207. Nor do I accept that the nature or level of obligations under the TPIM undermined or put in doubt the protective purpose of the TPIM. The statutory scheme is intended to provide protection for the public by means of a menu of obligations backed up by criminal sanction for breach. Nothing in the TPIM under review suggests that the Secretary of State imposed any measure in a way that was outside the contemplation of the statute. Part of the burden of any TPIM is likely to consist of having to remember each obligation and to devise strategies for compliance.

208. As to the impact of the reporting requirements, LF says that, as soon as he was served with his TPIM, he was shocked at the frequency of the reporting obligations. Under the 2016 TPIM, the maximum that he was required to report was 7 times per week (including reporting at the police station once every weekday and to the EMS at the weekend). This was reduced to a total of 5 times per week by the court at the review hearing. The current reporting measures are more than double the amount the court decided was necessary in 2017.

209. His immediate reaction was that of anxiety and panic as to how he would manage. He says that he knew that, despite his best efforts, he might struggle to comply because the increase in the frequency of reporting would increase the chances of inadvertently breaching the measure. LF says that this caused him to exist in a state of significant anxiety: if he were to be late or fail to report on any occasion, this could constitute a criminal offence. He says that he felt as if he was being asked to do something which is not humanly possible: to fulfil multiple and often changing obligations over possibly a two-year period without making one single mistake. He felt as if he was in a trap: if he were to breach any of the TPIM, he would be convicted and imprisoned. The TPIM would then be re-imposed, perhaps with even more requirements, and he would once again be at risk of breaching them.

210. LF says that he was particularly anxious about having to report twice on weekdays. The reporting obligation was constantly on his mind. Every morning he had to think about what day it was and how and when he needed to report. He planned his day around reporting and his other obligations.

211. LF says that he felt that the TPIM obligations were choking him "like a rope around [his neck] getting tighter and tighter in circumstances where the consequences for

unintentional human error could be a catastrophe." He claims that the stress and isolation of the TPIM made him physically unwell though this claim is not supported by medical evidence.

212. LF says that his level of stress was much less during the "lockdown" period (which started in March 2020), when he was only required to report to the EMS. He has felt physically and mentally better since being remanded in custody on 16 September 2020 where he does not have to comply with the TPIM conditions and is less isolated.

213. Mr Squires emphasised that the combined effect of his TPIM and his criminal sentence meant that LF had to be at a certain place at a certain time 14 times per week from November 2019 to March 2020; 15 times per week from March 2020 to 24 August 2020; and 13 times per week from 24 August to 16 September 2020 (when he was arrested). I accept that the frequency and number of LF's reporting obligations – particularly those at the police station – constituted a significant interference. The question is whether that interference was proportionate, to which I shall return below.

Impact of obligations on daily life and activities

214. LF says that the time spent each day in complying with his obligations did not leave adequate time for the other activities of a normal life. His longstanding medical problems made it hard for him to mobilise in the morning. It took between 45 minutes and 1 hour to walk to the police station which was about 2.4 miles away from his residence. He tried at one stage to use public transport but this was unreliable. The travel time alone of a return journey took between an hour and 80 minutes.

215. LF says that he decided to purchase a bicycle in mid to late November 2019 and that it took around 20 minutes to cycle to the police station. Data obtained from LF's electronic tag broadly supports this estimate but LF says that he set aside an hour or more to get there, in case of unforeseen problems such as a puncture. He claims to have been too anxious about the risk of non-compliance with the reporting condition to leave less travel time.

216. After his arrival at the police station, he waited up to 30 minutes because of queues. However, data from his electronic tag indicated that his average waiting time was six minutes (though this would presumably include time spent actually reporting which could not be separately measured). He had to make sure that he was at home in time to report to the EMC in the afternoon. On Thursdays, he had to attend the mentoring session. On Mondays and Wednesdays, he attended his probation appointments. After that, he needed to get home in time for the 9pm curfew. He feels that this regime left him with very little time in the day to do anything but comply with his obligations. He was able to attend the local mosque for midday prayers and was able to eat lunch at home. He tried to attend the afternoon prayers at the mosque. He says that he was unable to do anything else constructive with his days such as employment or voluntary work. He had no time for hobbies.

217. As he had fewer obligations, his days were slightly more flexible at the weekend so he tended to leave housework and shopping until then. His life was monotonous and isolated. LF found it particularly difficult when his reporting obligations were temporarily varied or altered because this interrupted his routine and tested his memory,

making it much more difficult for him to be sure whether he had complied with a requirement. Variations occurred (for example) when he had another commitment such as needing to attend court or when he was unwell. Sometimes the requirements changed because the mentor needed to vary the time or day of the appointment.

Impact on LF's family

218. LF's wife and children visited him both during the school holidays and during Ramadan. LF says that caring for the children alone was a huge burden on his wife who had to undertake all household tasks and childcare on her own as there was no available family support.

219. LF says that the "difficult decision" was made not "to uproot the family" when he was relocated "because it would be very unfair" for his wife and children to live under the measures "as they would not be able to live a normal life." They would not have been able to bring their iPads to the house. They would have been removed from their schools and friends for a temporary period before having to return after two years. The family would potentially have lost their home as it is social housing.

220. The time taken to report to the police station interfered significantly with family visits. He had to make up an excuse to his son who would ask where he was going. LF is concerned that these unexplained absences will have a large impact on how his son may view him.

LF: Analysis and conclusions

221. In his skeleton argument, Mr Squires submitted that the TPIM notice was not necessary from 16 September – when LF was arrested and remanded in custody – until its revocation. He did not pursue this submission orally. It lacks realism in so far as the Secretary of State must be permitted some time to take a revocation decision after a person is arrested.

Article 5 of the Convention

222. Mr Squires submitted that the 2019 TPIM breached article 5(1) of the Convention because it amounted to an unlawful deprivation of liberty. He relied on the well-established principle that a deprivation of liberty may take numerous forms other than classic detention in prison or strict arrest (*Secretary of State for the Home Department v JJ* [2007] UKHL 45, [2008] 1 AC 385, para 15). Account should be taken of a whole range of factors such as the nature, duration, effects and manner of execution or implementation of the penalty or measure in question. There may be no deprivation of liberty if a single feature of an individual's situation is taken on its own but the combination of measures considered together may have that result (*JJ*, para 16, citing *Guzzardi v Italy* (1981) 3 EHRR 33, paras 92, 94 and 95). The difference between deprivation of and mere restriction upon liberty is one of degree or intensity, and not one of nature or substance. There is no bright line separating the two (*JJ*, para 17, citing *Guzzardi*, para 93). It is the particular individual's "concrete situation" and the life the person would have been living otherwise that must be considered (*JJ*, para 15, citing *Guzzardi*, para 59; *JJ*, para 18). Mr Squires made reference to other dicta in the case

law but upon analysis his submissions raised no novel point of law and there is no need for me to dwell longer on the relevant principles which are not in doubt.

223. In relation to the facts of LF's case, Mr Squires emphasised the onerous nature of the reporting and appointments measures between 5 November 2019 (the date of the imposition of the 2019 TPIM) and 24 August 2020 (when Ms Deacon reduced the reporting requirements), particularly when combined with the additional requirements of the criminal sentence. Combining the obligations of the TPIM and his suspended sentence, LF was required to be in a particular place at a particular time on up to 15 occasions per week before 24 August 2020 and 13 occasions thereafter.

224. In addition, Mr Squires relied on evidence that the police tended to visit LF two or three times per week for so-called welfare checks. LF would need to be at home for these checks, which were an additional obligation in themselves. The Secretary of State had identified no legal power to require LF to remain at home for checks outside the hours that he was required to be at home under the TPIM. Mr Squires submitted that LF had therefore been subjected to "an extraordinary level of control by the state" coupled with isolation from family and from ordinary social contact. Taking into consideration all these factors and the effect of the TPIM as a whole, the 2019 TPIM had deprived LF of his liberty.

225. I agree with Ms McGahey that these submissions are not well-founded and that the measures imposed under the TPIM restricted LF's liberty but did not deprive him of liberty. LF was relocated to Town B which has all the facilities of a major town (unlike the dilapidated fraction of the island of Asinara which was considered in *Guzzardi*, above, para 95. His inclusion zone covered the vast majority of Town B. Unlike the circumstances set out in *Guzzardi*, LF was not subject to constant supervision and was free, subject to complying with reporting and residence measures, to travel within Town B as he chose. Subject to permission from the Home Office which may not be unreasonably withheld, he was free to undertake study or volunteering work. He had time for communal prayer outside his home. Unlike the island in *Guzzardi*, to which access was difficult, LF's family could visit him with comparative ease (a journey from one urban area to another). LF's residence was large enough to accommodate his family if they had wanted to live with him, and the Home Office was willing to modify the property in order to promote family life there.

226. I accept that the police should be cautious before asking a TPIM subject to remain at home for welfare checks – the nature and purpose of which was unclear. But I am concerned with the terms of the TPIM. The police visits were ad hoc and did not form part of the TPIM. In my judgment, the police visits did not turn the exercise of the Secretary of State's powers to impose a TPIM into a deprivation of liberty.

227. Nor is it obvious that a person who is sentenced for a criminal offence is entitled to lighter TPIM obligations on the basis that the TPIM will otherwise deprive him of his liberty. It seems to me that a person subject to the penal measures of a criminal sentence starts from a different concrete situation to someone who is subject only to the administrative measures of a TPIM. The life that LF would otherwise have been living would have included the completion of his suspended sentence requirements in any event. The effect of the additional TPIM measures must be considered in this context. Mr Squires did not make any specific submission that the ORM (which was intended

to, and did, confine LF to his home for a substantial period of time each night) was excessive and I do not accept that anything else in the particular TPIM obligations was "unusually destructive" of the life LF would otherwise have been living (*Secretary of State for the Home Department v AP* [2010] UKSC 24, [2011] 2 AC 389, para 4, per Lord Brown).

228. For these reasons, the TPIM measures, whether taken individually or cumulatively, did not breach article 5.

The Padfield *principle*

229. Mr Squires submitted that the number and frequency of appointments under the reporting measure combined with the appointments measure amounted to restrictions in the nature of a daytime curfew. The TPIM was therefore inconsistent with Parliament's intention in the 2011 Act which had replaced control orders with TPIMs. The 2011 Act had introduced the ORM as a measure of confinement but had removed the possibility of a curfew encroaching into daytime hours. It followed that the reporting and appointments measures amounted to the exercise of a discretion contrary to the policy and purposes of the 2011 Act, which was unlawful on the now conventional public law principle set out in *Padfield v Minister of Agriculture, Fisheries & Food* [1968] AC 997, p.1030. This submission lacks merit. LF was at no time subject to anything comparable to a daytime curfew. There is nothing to suggest that the Secretary of State thwarted Parliament's intention in the 2011 Act. On the contrary, the Secretary of State deployed the menu of measures enacted to protect the public from terrorism.

Necessity and proportionality

230. Mr Squires submitted that the extent and frequency of the reporting and appointments measures was almost bound to lead to LF breaching at least one of those measures over the course of the life of the TPIM. The risk of prosecution for a criminal offence by such onerous and intrusive TPIM was oppressive conduct and unlawful. He submitted that the change to the reporting requirements which Ms Deacon made in August 2020 demonstrated that the requirements before then were disproportionate. There was no national security benefit to reporting to the police station in person. There was, for instance, no suggestion that reporting to the EMS had been problematic when it happened for the period of the national "lockdown". Ms Deacon had put forward no proper justification for such frequent in-person reporting. The documents demonstrated that the Secretary of State had not properly considered the proportionality of these very onerous measures and the paperwork provided to LF had contained errors. There was no justification for the several-fold rise in the reporting requirements when compared to the 2016 TPIM (in-person reporting on five days per week) and to Elisabeth Laing J's order (three times per week in person and twice per week to the EMS).

231. In my judgment, it was necessary and proportionate for the Secretary of State to impose the reporting and appointments measures in the terms in which they were imposed, and it continued to be lawful for the life of the TPIM. I have taken into consideration that the reporting requirement was at all times substantially more onerous than that imposed by Elisabeth Laing J in 2017. However, as I have set out above, the Secretary of State is not required to engage in a mathematical exercise in assessing the necessity and proportionality of individual measures by a sort of pro rata calculation. The Secretary

of State will consider a package of measures in the round and in light of the relevant intelligence assessments at the time she imposes the measures. The Secretary of State may lawfully depart from the conclusions reached by a judge in previous proceedings if she lawfully concludes that the protection of the public requires it.

232. There are material differences between the situation as at the date of Elisabeth Laing J's judgment and the situation under the present TPIM. As I have set out above, LF continued to engage in TRA after the expiry of the previous TPIM. In my judgment, his entrenched activities – despite the 2016 attempt to disrupt him by TPIM – shows a persistence with which Elisabeth Laing J would not have been confronted (or not to the same degree). The serious breach of his TPIM – for which LF was convicted and sentenced to a suspended sentence of imprisonment – took place during the period when the lesser reporting conditions ordered by Elisabeth Laing J were in force. LF's criminal offence came about because LF wanted to test the boundaries of the TPIM in a way which would not have been as clear to Elisabeth Laing J. He has continued to test the boundaries by failing to engage with the mentor.

233. In addition, since Elisabeth Laing J's judgment, there has been a second deadly attack in the London Bridge area (at Fishmongers Hall – see above) and Ziamani has been charged with attempted murder. As ALM activities have proved resistant to disruptive measures, it was proportionate for the Secretary of State to impose sterner measures on ALM leadership figures such as LF.

234. The impact on LF's wife and children may well have caused both sadness and real difficulties for them. However, even taking the welfare of LF's young children as a primary consideration, it cannot outweigh the need to protect the lives of those who reside in the United Kingdom.

235. I do not accept that Ms Deacon's decision to vary the reporting requirements in August 2020 demonstrates that, prior to then, the reporting measure was disproportionate. She addressed her mind to the measure at a particular time and made a particular assessment based on the evidence before her (including evidence which LF provided for these proceedings which was by that time available). As at 5 February 2020, HHJ Lodder QC remained concerned about LF's engagement with the Probation Service, commenting in a sentence review that LF was not co-operating. By the sentence review that took place on 7 July 2020, LF had received a warning from the Probation Service. In my judgment, the Secretary of State would have been entitled to conclude that, at that stage, LF's criminal sentence was not operating as it should have been, and to proceed with the utmost caution before treating the requirements of the sentence – which were managed by a third party agency taking its own discrete decisions within the criminal justice system - as a reason for reducing the requirements of the TPIM.

236. I reject the submission that the risk to national security could have been managed by less intrusive measures than in-person reporting and that the period of EMS reporting during the lockdown demonstrates that in-person reporting was disproportionate. In my judgment, the Secretary of State was at all times entitled and correct to conclude that the visibility provided by in-person reporting and its ability to interrupt TRA provided a national security benefit, such that it was necessary and proportionate. As I have said above, the public health situation has at all material times been fluid. The conditions of the pandemic did not warrant a permanent change to LF's reporting

requirements - which were at all times necessary and proportionate on national security grounds.

237. There is nothing in Mr Squires' pursuit of points relating to paperwork errors that causes me to have any different view of the necessity or proportionality of measures under the TPIM.

238. I conclude that the Secretary of State was entitled reasonably to conclude that each of the measures included in LF's TPIM was necessary for purposes connected with preventing or restricting LF's involvement in TRA and that this continued to be the case until revocation. Condition D is satisfied.

239. I am satisfied that the TPIM that was imposed on LF was and remained lawful until the time it was revoked by the Secretary of State on 24 September 2020. My conclusions are reinforced by the CLOSED evidence.