

**SPECIAL IMMIGRATION APPEALS COMMISSION**

**APPEAL NUMBER: SN/147/2018**

**DATE OF HEARING: 20 November 2019**

**DATE OF JUDGMENT: 19 December 2019**

**BEFORE:**

**THE HONOURABLE MR JUSTICE LANE**

**BETWEEN:**

**O3**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

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**MR H. SOUTHEY QC and MR A. BURRETT** (instructed by JD Spicer Zeb Solicitors) appeared on behalf of the Appellant.

**MR J. GLASSON QC and MS C. STONE** (instructed by the Government Legal Department) appeared on behalf of the Respondent.

**MR M. GOUDIE QC and MR A. WATKINS** (instructed by the Special Advocates' Support Office) appeared as Special Advocates.

**OPEN**

**JUDGMENT**

**BAIL APPLICATION**

MR JUSTICE LANE:

1. This is my open judgment in the application for bail by O3. On 28 November 2017, O3 was served with notice of the respondent's intention to deport him from the United Kingdom. On that date, O3 was detained pursuant to para.2(2) of Schedule 3 of the Immigration Act 1971. On 3 January 2018, O3 was served by the respondent with a deportation order on the grounds that his presence in the United Kingdom is not conducive to the public good for reasons of national security. O3 has been in detention since 28 November 2017.
2. Following the submission of his amended deportation appeal grounds on 12 December 2018, O3 claimed asylum and humanitarian protection. Those claims were refused by the respondent on 28 March 2019. O3 has appealed against that refusal decision.
3. The hearing in the Commission of O3's appeal was due to occur on 20 June 2019, but was adjourned as a consequence of what the respondent says was O3's repeated failure to serve his evidence. O3's evidence was, however, served on 18 November 2019 and it is now anticipated that the substantive appeal will take place in June 2020. Mr Southey says that the delays in serving evidence are attributable to problems in O3 obtaining legal aid and obtaining documentary material from the police.
4. The respondent opposes O3's application for bail. An open national security statement opposing bail was produced by the respondent on 3 September 2019, along with a Home Office statement. Following a hearing held pursuant to r.38 of the Commission's Procedure Rules on 7 October 2019, the respondent served on 21 October 2019 an amended national security statement.
5. The Home Office statement summarises the reasons why the respondent opposes the grant of bail:-

“(a) [O3] is assessed to be an ISIL-aligned Islamist extremist who aspires to engage in some form of attack-planning. There is, therefore, a real risk that he will commit an offence if granted bail;

(b) as such, [O3's] continued detention is necessary for the protection of the public;

(c) there is a real risk that [O3] will abscond, thereby rendering conditions of bail ineffective and protecting the public - both in terms of potential attack-planning and ensuring [O3] is not able to frustrate his deportation;

(d) [O3] has a previous conviction for failure to surrender;

(e) there is a real risk that [O3] will fail to comply with one or more bail conditions.”

6. For present purposes, the relevant primary legislation concerning the Commission’s bail functions is as follows.

Section 3 of the Special Immigration Appeals Commission Act 1997 provides:

“3. -

**Jurisdiction: Bail**

(1) In the case of a person to whom subsection (2) below applies, the provisions of Schedule 1010 to the Immigration Act 2016 specified in Schedule 3 to this Act shall have effect with the modifications set out there.

(2) This subsection applies to a person who is detained under the Immigration Act 1971 or Nationality, Immigration and Asylum Act 2002 if -

(a) the Secretary of State certifies that his detention is necessary in the interests of national security,

(b) he is detained following a decision to refuse him leave to enter the United Kingdom on the ground that his exclusion is in the interests of national security, or

(c) he is detained following a decision to make a deportation order against him on the ground that his deportation is in the interests of national security.”

7. Pursuant to Schedule 3 to the 1997 Act and para.3(2) of Schedule 10 of the 2016 Act,

the matters to which the Commission must have regard in determining whether to grant bail are -

“(a) the likelihood of the person failing to comply with the bail conditions:

(b) whether the person has been convicted of an offence (whether in or outside the United Kingdom or before or after the coming into force of this paragraph);

(c) the likelihood of a person committing an offence while on immigration bail;

(d) the likelihood of the person’s presence in the United Kingdom, while on immigration bail, causing a danger to public health or being a threat to the maintenance of public order;

(e) whether the person’s detention is necessary, in that person’s interests or for the protection of any other person; and

(f) such other matters as the Secretary of State or the Special Immigration Appeals Commission thinks relevant.”

8. In D2 (SC/116/2012) Keith J, giving the judgment of the Commission on D2’s bail application, said:-

“9. The lawfulness of D2’s detention until his appeal is heard is not in doubt. It is not suggested, for example, that the time it will take for his appeal to be heard means that his removal from this country cannot be effected within a reasonable time. The question is whether his detention until his appeal is heard is appropriate. The test to be applied in a case of this kind is not controversial. We can neither form nor express a firm view about the nature or extent of the risk which D2 poses to national security at this stage. The time for forming and expressing a concluded view about this is following the hearing of the appeal. All we can do at this stage is to consider whether the assessment of that risk is sufficiently compelling to justify for present purposes proceeding on the assumption that the assessment of the risk is correct. In that event, the critical question becomes whether there is a real risk that, if D2 is released on bail, he

will continue to pose such a risk to national security, whatever conditions were imposed. In other words, could the risk he is assessed to pose be sensibly managed by permitting him to be released on bail but subject to suitable (and if necessary onerous) conditions? On that issue, respect, but not undue respect, should be accorded to the views of the Security Service, which has, of course, considerable expertise in assessing how the risk which someone like D2 is assessed to pose can be managed.”

9. In her open bail application judgment in Z3 , the SIAC appeal number SC/157/2018 (29 November 2018) Elisabeth Laing J said:-

“10. Z3 is currently detained pending his deportation under a power conferred by para.2(2) of Schedule 3 to the Immigration Act 1971. Schedule 3 to the Special Immigration Appeals Commission Act 1997 gives the Commission power to grant bail in cases such as these. The factors to which the Commission must have regard in deciding whether or not to grant bail are:

- (a) the likelihood of Z3 failing to comply with bail conditions;
- (b) whether he has been convicted of an offence;
- (c) the likelihood that Z3 will commit an offence on bail;
- (d) the likelihood of his presence in the United Kingdom, while on bail, causing a danger to public health or being a threat to the maintenance of public order;
- (e) whether his detention is necessary in his interests or those of another person;
- (f) such other matters as the Commission considers relevant.

That last heading confers, in my judgment, a broad discretion on the Commission to give such weight as it thinks fit to any further factor which it considers is significant and relevant on the facts of a particular case. In this case, in my judgment, the risk which Z3 poses to national security is an

obvious relevant factor and it is one to which I will give weight.”

10. Elisabeth Laing J described her approach to the bail application as follows:

“16. I cannot form or express a final view either about the merits of Z3’s appeals or about the risk which opposes to national security. I can make no more than a provisional assessment of that at best; nor, as I have emphasised to counsel in the course of their submissions, am I in a position where I can make any findings of fact about Z3’s intentions or likely behaviour. I have adopted the approach articulated in para.9 of the Commission’s decision in *D2* to this bail application.”

11. I respectfully adopt and follow the approach articulated in D2 and Z3. I would merely add that, in deciding whether the assessment of risk to national security is sufficiently compelling to justify proceeding on the assumption that that assessment is correct, “respect but not undue respect” falls to be given to the views of the Security Service, given its responsibilities and expertise; just as such respect is to be given to the views of the Security Service as to whether the risk an individual is assessed to pose to national security can be satisfactorily managed by the imposition of bail conditions.

12. Before me, there was disagreement between Mr Southey and Mr Glasson as to the correctness of the approach taken by the Commission (per Mitting J) in XC and Others (SC/77/81/82/79/80/2009) and M1 SIAC appeal number SC/101/10 (28 February 2011). In those cases, Mitting J took the approach that the national security assessment of the Security Service should, for the purposes of bail applications, be accepted unless that assessment was “clearly wrong” (XC and Others para.2) or “obviously erroneous” (M1 para.11). Whilst the use of such shorthand expressions can sometimes be helpful, it is not without its dangers, particularly in the immigration field: see e.g. Huang v. Secretary of State for the Home Department [2004] UKHL 11 in relation to the use of the word “exceptional”. For my part, I do not intend to adopt the terminology used in XC and Others and M1.

13. The second area of legal disagreement between the parties is over the question whether there is a presumption in favour of bail. Mr Glasson submits that the primary legislation relating to the Commission contains no such presumption. Mr Southey,

however, points to the respondent's own published policy, which acknowledges a presumption. That acknowledgement is only to be expected, given that we are, here, in territory with which Article 5 of the ECHR is concerned.

14. I proceed on the basis that O3 is entitled to bail unless the risk to national security is such that even the imposition of the most stringent conditions would fail satisfactorily to address that risk. Starting from that position, the Commission's task is, therefore, at heart a balancing exercise. That is, in essence, how Mr Southey put O3's case for bail.
15. Prior to his detention in November 2017, O3's home was searched. The respondent removed a number of electronic devices, including a computer and mobile telephones. The devices contained a significant quantity of extremist material, ranging from ISIL propaganda videos to images of conflict and armed fighters with ISIL iconography.
16. Selections included extremist texts from Muhammed Al-Quahtani including a chapter on jihad; *An instruction manual on how to behave whilst fighting for ISIL in Syria*; an image of children with an overlaid text, "We're going to kill you, o uffar. Insha'allah [God willing] we'll slaughter you"; mocked-up images of an ISIL passport and ticket to Islamic State; a video featuring Abu Bakr Al-Baghdadi and individuals assessed to be ISIL fighters; an image of the decapitated body of a person assessed to be James Foley, kidnapped in Syria in 2012 and executed in 2014; an ISIL propaganda video depicting an alleged Jordanian pilot being burned alive in a cage; images of the persons who in November 2015 committed a terrorist attack in Paris, with the words "Let Paris be a lesson for those nations that wish to take heed ..."; an ISIL propaganda video entitled "The Fertile Nation" featuring a speech by Abu Muhammed Al-Adnani, praising fighting against non-ISIL-aligned individuals; a document which discussed the ways in which it was permissible to kill Kuffar; and an image featuring a hand holding a rifle and a London Routemaster bus with the text "Sometimes you just got to get up and go".
17. As well as the Paris attack, the respondent noted that in July 2016, a lorry was deliberately driven into crowds celebrating Bastille Day in Nice, with ISIL claiming responsibility; that on 19 December 2016 a truck was driven into a Berlin Christmas market, killing 12 people, which was also linked to ISIL; on 22 March 2017, Khalid

Masood drove at pedestrians at speed in Westminster, before fatally stabbing a police officer in the Palace of Westminster; on 3 July 2017 eight people were killed and 48 injured when three individuals used a van to run over pedestrians on London Bridge, with the assailants continuing their attack on foot using knives; on 3 June 2017, an Algerian student attacked a police officer at Notre Dame Cathedral in Paris, armed with a hammer, being described as also in possession of kitchen knives and other unsophisticated weapons; in August 2017, an individual drove a van into pedestrians in Barcelona, Spain, before fleeing on foot, killing a person in order to steal a car and escape, altogether, 15 people were killed and at least 130 injured; later the same day, five men thought to be part of the same terrorist cell, drove into pedestrians in Cambrils, Spain, killing one and injuring six; in August 2017, an individual found in possession of ISIL propaganda material stabbed 10 people in Finland, killing two and injuring eight; in October 2017, an individual drove a rented vehicle into pedestrians and cyclists in Manhattan, New York, killing eight and injuring 11, before emerging from the vehicle brandishing weapons; in March 2018 an individual shot at a car in Carcassonne, France, killing a passenger and injuring the driver before driving the stolen car to a police barracks and then to a supermarket, where he took hostages, killing three and injuring three others (he had pledged allegiance to ISIL); on 12 May 2018 an individual stabbed several people in Paris, killing one and injuring 11, with ISIL claiming responsibility for the attack.

18. At para.19 of the open national security case opposing bail, the respondent assesses that O3

“aspires to engage in some form of attack-planning in the UK. It is further assessed that the focus of an ISIL-inspired attack is most likely to be a high-profile, heavily-populated city, such as London.”

19. At para.20, the assessment states that, based on the nature of previous acts of terrorism, the activities to which O3 aspires could, in its most extreme form, include attacks using explosives, firearms, vehicles, knives or other bladed weapons, blunt instruments; or any combination of these.

20. Drawing on the history of attacks between 2015 and 2018, to which I have made



reference, the respondent considers that targets of Islamist extremist action can be either the general public and/or military, police and law enforcement personnel. Attacks can be multiple and coordinated. They can be unsophisticated and spontaneous, or carefully planned. Target locations might be of national significance or crowded areas with many human targets. Many of the perpetrators expect to die or “martyr” themselves in the process.

21. The respondent assesses that O3

“aspires to engage in some form of attack planning which may relate to planning any of the modes of attack set out [above]. In light of the variety of methodologies employed in the attacks ... this could be as part of a group or individually.”

22. The statement describes how police checks were carried out to identify whether O3 presented any risk factors, when judged against known ISIL methodology:-

“These checks reveal that [O3] has previously been arrested for knife crime. On 6 August 2010, police were conducting a knife operation at Finsbury Park station, which identified [O3] as a suspect. Following a search, a surgical knife was found in the rolled-up area of his shorts, and [O3] was arrested for possession of an offensive weapon.

24. [O3] was due to appear at Highbury Corner Magistrates ... in relation to this offence, but did not attend, and a warrant for his arrest was issued. [O3] was subsequently arrested at his home address ... for this failure to attend; he pleaded guilty and was detained at the court house for one day. In January 2013, [O3] pleaded not guilty to the original offence and was acquitted as no evidence was offered.”

23. Enquiries with the police also revealed the following. In September 2017, O3 was seen to drive a “high-powered Mercedes S500”. The car had been obtained earlier by O3’s brother, who was a passenger in the car. It appeared that O3 was receiving a driving lesson from his brother. The vehicle was stopped by officers in a marked police vehicle. Checks demonstrated that neither O3 nor his brother had full driving

licences or insurance. They told the police that they did not believe that they required these, as O3 was only learning to drive. The car was not displaying learner driving plates. The vehicle was seized and subsequently sold at auction.

24. Paragraph 26 of the open assessment contained the respondent's assessments by reference to the methodologies described earlier in connection with terrorist attacks in 2015 to 2018:-

“a. Attacks using explosives. In addition to the material relating to the Paris attacks (which included four suicide IED explosions) detailed at paragraph 15(b), a document found on a Samsung mobile seized from [O3's] home referenced the Manchester attack in which explosives were also used, with a comment stating ‘u can't pray for a dead kaffir tho’ (sic). This material is consistent with an aspiration to commit an attack using explosives;

b. Attacks using firearms. Material found on the devices seized from [O3's] home is consistent with an aspiration to commit attacks using firearms. The document entitled ‘Advice for those going Ribat’ referenced in paragraph 14(b) above includes advice about the use of and etiquette relating to firearms, e.g. the use of single shot shooting and automatic shooting. Further, the images referred to at paragraphs 15(a) and (e) also depict firearms (a gun and a rifle) alongside wording consistent with an aspiration to conduct an attack involving firearms;

c. Attacks using vehicles. The numerous images of large high powered vehicles found on the Dell computer seized from [O3's] home are consistent with him conducting research about obtaining and using vehicles to carry out an attack. When stopped in September 2017 by police driving a high powered vehicle, O3 stated that he was learning to drive. We assess that [O3's] actions in searching for vehicles and practising driving were possibly with a view to committing an attack.

d. Attacks using knives. The image of a decapitated body referred to at para.14(f) found on the Nokia Lumia phone associated with O3, is assessed to be James FOLEY who was executed by ISIL with a bladed weapon. Together

with O3's arrest in August 2010 for possession of an offensive weapon, this material is consistent with an aspiration to conduct an attack using a weapon, specifically a bladed weapon such as a knife.

e. Attacks using blunt instruments. As set out in paragraph 15(c) above, amongst the significant quantity of extremist material found on [O3's] devices is an ISIL propaganda video 'The Fertile Nation', featuring an introduction by AL-ADNANI, the official public spokesman for ISIL. In a significant speech, of which we assess O3 is likely to be aware given his commitment to ISIL, AL-ADNANI has previously called for ISIL supporters to engage in attacks by a variety of means, including the injunction to 'smash his [the disbeliever's] head with a rock'. As O3 is assessed to be aligned with ISIL, it is possible that O3 may also seek to conduct this type of attack."

25. Paragraph 28 of the assessment noted that ISIL-inspired attacks can take a number of forms, both coordinating group attacks and "lone actor" attacks. O3's possession of pictures of the nine attackers responsible for the Paris attack was, according to the respondent, consistent with an aspiration to engage in a group attack, whilst other material was consistent "with a spontaneous and potentially lone actor attack". O3 was assessed as having aspirations in respect of both of these forms.

26. Part e. of the assessment dealt with the necessity of detention. The respondent considered that the risk O3 poses to national security is such that his continued detention is the only way to fully manage this threat whilst the appeal proceedings are ongoing. If released on bail, the respondent considered that there is a real risk that O3 will engage in terrorism-related activity of a very serious nature, thereby posing a significant threat to public safety. There was a "potentially limited window of opportunity within which [O3] could orchestrate and execute his attack-plans prior to his deportation", which heightened the risk he would pose on bail.

27. It was further assessed that O3 would abscond if released on bail, either to frustrate his removal from the United Kingdom or to engage in attack planning. Despite his detention since his arrest in 2017, the respondent maintained the assessment that O3 is an Islamist extremist and aligned with ISIL and that, in fact, the risk of him engaging

in terrorism-related activity was heightened compared with late 2017, given his pending deportation, the refusal of his asylum claim and the fact that he now had a potentially limited window of opportunity to carry out an attack.

28. At para.35, the assessment concluded that, whilst stringent bail conditions “would provide some insight into [O3’s] activities, we assess that he will continue pose a significant risk to national security if released on bail.” The proposed bail address, which is where O3 lived prior to his arrest and is a little to the north of London, “would present a particular risk to national security given the easy access it would provide [O3] to London, based on the proximity of [O3’s] previous place of residence to London. We assess that [O3] will have travelled in London and will have knowledge of London.” From this address, he would also have easy access to several international airports, rail ports, the London underground and international coach ports. Furthermore, “London presents a particularly high concentration of high-profile targets and ample opportunities to conduct an attack”. The proposed bail address would, accordingly, provide O3 easy to access to London and potential targets for an attack.
29. Turning to the risk of absconding, the assessment concluded that O3’s past conduct showed a pattern of disregard for the law. He failed to appear at court following arrest for possession of an offensive weapon and a warrant had to be issued for his arrest. For nearly two years he remained at large, ignoring the court order, and was only arrested in July 2012 after the police attended his home for other reasons.
30. In 2017, he had been observed driving without a driving licence or insurance. According to the respondent, this further demonstrated a disregard for the law and, thus, a risk of absconding and failing to comply with other bail conditions which might be set.
31. Paragraphs 41 to 43 of the assessment concern “security conscious behaviour”. The document “Advice for those going Ribat” found on a device seized at his home, included a section entitled “Speak in coded words over the radio”, dealing with the possibility of communications interception and the use of guarded language to defeat this. Other material found on devices at O3’s home included material that indicated

that he had been filming on his mobile phone whilst travelling on public transport. It was also considered that, given his mind set and aspirations, O3 may also have engaged in security-conscious behaviour in order to attempt to frustrate the authorities' monitoring of him, potentially including the use of guarded language, encrypted communications apps and other methods of attempting to avoid both communication and physical surveillance.

32. I have mentioned that O3 has filed evidence in connection with his substantive appeal. This includes a statement from him dated 19 November 2019. In this, O3 described his conversion to Islam in 2007, shortly after the conversion of his brother. O3 considered that he would be regarded as a "conservative Muslim", even though he would describe himself as a "neutralist". In O3's view, violence "has no place in the Islamic faith" and that violent attacks that had taken place in the name of Islam, such as at Manchester and Westminster, have been "completely senseless and did not achieve anything". O3 disputed that at least some of the graphic images said to have been found on devices at his home, were downloaded by him. Other material, which he accepted had been downloaded, had been shown on TV. Furthermore, no more than one per cent of the material on his devices was of the kind described by the respondent. O3 had held the relevant material for research purposes which would lead to him writing a book and later producing a film based on the book.
33. O3 said he had been told by the staff at the Magistrates' Court that he was not required, which is why he had left those premises without attending his hearing. He pleaded guilty to the offence of failing to attend. He disputed that the Mercedes S500 was "high powered". He did accept that he had driven the car without having a licence.
34. The statement goes into detail regarding certain aspects of the material found in O3's home. The overall thrust of the statement is that O3 has innocent explanations for having this material. O3 denies that he is a supporter of ISIL or that he is an Islamist extremist.
35. Mr Southey said that he did not know whether there had, in fact, been sufficient disclosure under the r.38 process, for the purposes of the bail application, having

regard to the principles enunciated by the House of Lords in Secretary of State for the Home Department v. AF (No.3) [2010] 2 AC 269. In that case, the House of Lords held that a person in the position of O3 must be given sufficient information about the allegations against him to enable him to give effective instructions to his Special Advocate. As long as that requirement is satisfied, there can be a fair hearing without the need for detailed disclosure of the sources of evidence on which the allegations are based. However, if the disclosed material consists of only general assertions and the case against the individual is based solely or to a decisive extent on undisclosed materials, the requirements of a fair trial under Article 6 of the ECHR will not be satisfied.

36. Mr Glasson informed me that there had been a short r.38 hearing in October 2019, following which amendments had been made to the open national security case. There was, he said, no suggestion that there had been a failure to give disclosure compatible with AF (No. 3).
37. Mr Southey's submission on this issue is, I consider, best seen as a precursor to his more general submission that, adopting the balancing approach to which I have earlier referred, the weight to be given to the respondent's national security assessment falls to be reduced because that assessment is, to use Mr Southey's expression, "merely speculative". If that is right, then, bearing in mind the length of time that O3 has been detained and the period before which his substantive appeal will be heard, O3 is entitled to be released on bail, given that strict bail conditions would address the national security case, as it exists in reality.
38. For the purposes of this application (and I emphasise that limitation), I consider that O3 has been given sufficient information in the open national security case, compatibly with AF (No. 3). In particular, he knows the respondent's concern that O3 "had an aspiration to conduct an attack in the UK and had taken steps towards doing so" (para.32, by reference to para 26). O3 knows why the respondent takes the view that O3 now poses a heightened risk, "given his pending deportation, refusal of his asylum claim and the fact that he now has a potentially limited window of opportunity to carry out an attack".

39. The real issue is whether this assessment is, as Mr Southey says, no more than speculation on the respondent's part or whether it is (in Keith J's words in D2) "sufficiently compelling to justify for present purposes proceeding on the assumption that the assessment of the risk is correct".
40. Mr Southey submits it is important to appreciate that the respondent's case is essentially that O3 has not "stepped over the line" so as to engage in "actual activity" as opposed to merely having extremist material that might (but in no sense has to) lead to physical preparation and planning for an attack. In this regard, Mr Southey points out that he is unclear at present whether any of the material found (or alleged to have been) on the devices to which O3 had access was inherently unlawful. Furthermore, O3 appears to have taken no steps to encrypt or otherwise conceal the material to which others in his household, including his mother, apparently had access. This point is, in itself, such as to negate the respondent's reliance upon "security conscious behaviour" which, Mr Southey says, amounted to no more than mobile phone footage of people on public transport.
41. I remind myself that I am not, in the present proceedings, making any findings of fact. O3 may, in due course, be able to make good all that Mr Southey has said. I do not, however, consider that, as matters stand, the respondent's position properly falls to be categorised as speculative, with the consequences that I have described above. The nature and extent of the material which O3 accepts was on the devices are such as to give rise to legitimate concern. Whether or not its possession was inherently unlawful, it remains problematic. It is at least reasonably capable of suggesting to an objective third party that O3 holds Islamist extremist views.
42. O3's possession of the material has to be seen in the light of what was obtained from the police checks. So far as possession of the surgical knife is concerned, O3's case, based in part on the evidence of his mother, is that there is an innocent explanation. Again, that may be so; but for the purposes of this application it is something to which the respondent is legitimately entitled to point as indicative of O3's ability to undertake one of the forms of attack encouraged or sanctioned by ISIL.

43. The same point is true of O3's misuse of his brother's car. For present purposes, the respondent is entitled to draw attention to the illegal nature of the alleged driving lesson. On its own, a young man's interest in high-performance cars is, of course, unexceptional. It is, however, legitimate for the respondent to draw attention to it in the light of the fact that attacks by Islamist extremists have involved the use of motor vehicles; in particular, the attacks at London Bridge and Westminster.
44. I bear in mind Mr Southey's submissions that O3 considers that he has a good case to put to the Commission in 2020, not least by reference to his claim to be in need of international protection. That does not, however, in my opinion eliminate the validity of the respondent's concern which, conversely, is that, if released on bail, O3 may form the view that his time in the United Kingdom could well be limited and so act in a way described in the national security statement.
45. Overall, balancing all relevant matters, I conclude that the respondent's assessment of the risk posed by O3 to national security ought to be treated for the purposes of this application as correct. O3 has not advanced a successful case that the respondent's assessment must be given limited weight.
46. Having reached that conclusion, I turn to consider whether bail conditions might adequately address that risk. In so doing, I have regard to the expertise of the Security Service in this area. The overall assessment, however, remains the responsibility of the Commission.
47. O3's mother proposes to stand surety for him. I do not doubt her good intentions; but the respondent is entitled, in my view, to point out that O3 was living with her at the time of his arrest and that O3's activities, as described in the national security case, took place while he was living under her roof.
48. Mr Southey counters that O3's mother would, on the case advanced by O3, not have had any reason to be concerned about the material being assembled on the devices kept at her home. There is, however, an element of circularity with this submission. Whilst, again, I stress that I am not here making findings of fact, the respondent has, for the purposes of this application, identified a legitimate problem with the proposed



surety.

49. The same is true of the proposed address. The respondent has identified a particular risk to national security given the easy access it would provide O3 to London.
50. Mr Southey says that the respondent can require O3 to live somewhere else and make appropriate provision for that to happen. The difficulty with these submissions lies in the nature of the feared attacks. As is evident, an attack of the kind described in the national security case can take a variety of forms. It can, in particular, be spontaneous, in the sense of requiring no more than commonly-available things, such as knives and cars. Such an attack could be mounted anywhere, albeit that less heavily-populated areas might result in fewer casualties. Furthermore, even stringent bail conditions would not reduce the risk to an acceptable level.
51. I acknowledge what Mr Southey says about the alleged “security conscious behaviour” of O3. Again, the Commission’s findings of fact may in due course prove Mr Southey right. But as matters stand, the concern of the Security Service, based upon the kind of filming in which O3 has chosen to engage, has to be given weight, when considered in the round with the other evidence.
52. The closed judgment in respect of the application for bail contains findings in respect of risk to national security and the inability of bail conditions to address that risk, which not only underscore the findings in this open judgment but also (were it necessary to do so) constitute a discrete set of reasons why O3 is not, as matters stand, entitled to bail.

The Honourable Mr Justice Lane