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Case No: 2015/05516/A1, 2015/01799/C5, 2015/05639/C1,
2016/00589/A1, 2015/05192/A3, 2015/05300/B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AND CENTRAL CRIMINAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/05/2016

Before:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
PRESIDENT OF THE QUEEN'S BENCH DIVISION
MR JUSTICE SWEENEY
MR JUSTICE HICKINBOTTOM
and
MRS JUSTICE CHEEMA-GRUBB DBE

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Between:

Regina	**Appellant**
- and -	
(1)Mohammed Abdul Kahar	**Respondent**
(Reference by the Attorney General under s.36 of the Criminal Justice Act 1988)	
Regina	**Respondent**
- and -	
(2) Brusthom Ziamani	**Appellants**
(3)Abdurraouf Eshati	
(4)Yahya Rashid	**Applicants**
(5)Silhan Ozcelik	
(6) Sana Khan	

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Her Majesty's Solicitor General (Robert Buckland QC) and Duncan Penny QC appeared on behalf of **Her Majesty's Attorney General**
S Mehta for the **Respondent Kahar**
Naeem Mian and Sultana Tafadar for the **Appellant Ziamani**
Abdul Iqbal QC and J Anders for the **Appellant Eshati**
M McDonald for the **Applicant Rashid**
P Rowlands for the **Appellant Ozcelik**
Henry Blaxland QC for the **Applicant Khan**
Annabel Darlow QC for the **Prosecution**

Richard Whittam QC for the **Secretary of State for the Home Department**

Hearing dates: 11 February, 15 March 2016 and 14 April 2016

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Approved Judgment

Lord Thomas of Cwmgiedd, CJ:

This is the judgment of the court to which each of us has contributed.

INTRODUCTION

1. This court has had a number of appeals in cases where offenders have been convicted and sentenced under s.5 of the Terrorism Act 2006 ("the 2006 Act"). On 11 February 2016, during the course of argument in the Reference by the Attorney General of the sentence imposed on Kahar, the issue as to the absence of other than broad general guidance from this Court as to sentencing in such cases was raised. We learnt that there was in existence for management purposes a schedule which contained a record of terrorist cases and the decisions in the cases, including Crown Court sentences imposed; it had been used in one of the appeals. The Crown Prosecution Service was also providing judges with details of first instance cases to assist judges in sentencing. It is not in the public interest that judges should be guided by unauthoritative decisions or by the use of such a schedule for sentencing. Open and fair justice requires that all guidance is in the public domain and given by either the Sentencing Council or decisions of this court.

2. We ascertained that it was unlikely that the Sentencing Council could produce guidelines on the Terrorism Acts for some time. We therefore decided to adjourn the Reference, together with the appeal in Ziamani which had been listed with it, and to list, before a five judge court, these appeals and other applications pending before the Court of Appeal Criminal Division. Our purpose in so doing was to enable this court to give more detailed guidance in relation to sentences that should be imposed under s.5 until the Sentencing Council can address the issue in Guidelines.

I: GENERAL

(1) The wide definition of terrorism

3. Section 5 of the 2006 Act provides:

> "(1) A person commits an offence if, with the intention of -
>
> (a) committing acts of terrorism, or
>
> (b) assisting another to commit such acts
>
> he engages in conduct in preparation for giving effect to his intention.

> (2) It is irrelevant for the purposes of subsection (1) whether the intention and preparations relate to one or more particular acts of terrorism, acts of terrorism of a particular description, or acts of terrorism generally…"

4. By virtue of the combination of s.20 of the 2006 Act; the definition of "terrorism" in s.1 of the Terrorism Act 2000 ("the 2000 Act"); and the decision of the Supreme Court in *R v Gul* [2013] UKSC 64, [2014] A.C. 1260 [2014] 1 Cr.App.R. 14 at [26] to [41], s.5 requires proof that an individual had a specific intent (albeit that it may have been general in nature) to commit an act or acts of terrorism (which include the use or threat of serious violence, or serious damage to property, or creating a serious risk to public safety or health; which is designed to influence the Government of the UK or any other country, or an International Governmental Organisation, or to intimidate the public; for the purpose of advancing a political, religious, racial or ideological cause) in this country or abroad, or to assist another to do so, and that he or she engaged in conduct in preparation for giving effect to that intention.

5. It is a 'specified violent offence' within Chapter 5 of the Criminal Justice Act 2003 ("the CJA 2003"), with a maximum sentence of life imprisonment. It is also, as this court has observed, an offence which can encompass a wide range of different levels of criminality. For that reason, this court has declined hitherto to issue any guidance in relation to ranges of sentence. For the reason we have given, we have reconsidered this approach and set out our views below.

(2) The use of s.5 where specific offences could have been charged

6. Mr Blaxland QC, on behalf of the appellant Sana Khan, submitted (by reference to the Explanatory Note to the 2006 Act and to *Iqbal & Iqbal* [2010] EWCA Crim 3215 at [10]) that the offence under s.5 was enacted in order to extend the ambit of the criminal law in the context of contemplated acts of terrorism; that one of the problems which has arisen in sentencing in s.5 cases is where the conduct of the offender amounted to a different offence under the terrorism legislation, but with a lesser maximum sentence. Against that background, he invited the Court to state that prosecuting authorities should only charge offences under s.5 after consideration had been given to what other charges could appropriately be brought against the defendant – which would confine the breadth of the offence to those cases for which the offence was enacted, and would also help to avoid the difficulty of the sentencing judge having to make findings of fact.

7. We decline the invitation. As a matter of constitutional principle, it is generally for the prosecutor to decide what charge to prefer. Whatever may have been the purpose of Parliament, the offence under s.5 is clearly on its ordinary language wide enough to cover conduct that might otherwise be charged as conspiracy or even attempt to commit particular offences and/or (given the overlap recognised in *Roddis* [2009] EWCA Crim 585 at [9] and in *Iqbal & Iqbal*) to cover conduct that might otherwise be charged as another offence under the anti-terrorist legislation itself. It would, in our view, be inappropriate, both legally and practically, to confine the discretion of the prosecution as to the choice of charge (as embodied, for example, in paragraphs 6.1-6.5 of the Code for Crown Prosecutors) in the way suggested – albeit that there may be some cases in which it might be necessary to take into account, as one factor, the maximum sentence that could have been imposed for the offence(s) that could otherwise have been charged.

(3) The purpose or aim of the terrorism

8. *R v F* [2007] EWCA Crim 243, [2007] QB 960; [2007] 2 Cr.App.R. 3 was concerned with an offence of the possession of documents containing information likely to be useful in committing or preparing an act of terrorism, contrary to s.58 of the 2000 Act. Sir Igor Judge P (as he then was), in giving the judgment of the court said, at [27] & [32]:

> "…Finally, the legislation does not exempt, nor make an exception, nor create a defence for, nor exculpate what some would describe as terrorism in a just cause. Such a concept is foreign to the 2000 Act. Terrorism is terrorism whatever the motives of the perpetrators…
>
> …the terrorist legislation applies to countries which are governed by tyrants and dictators. There is no exemption from criminal liability for terrorist activities which are motivated by, or said to be morally justified by, the alleged nobility of the terrorist cause."

This approach was expressly confirmed by the Supreme Court in *Gul* at [26].

9. The issue was considered again, this time in the context of s.5 offences, in *Sarwar & Ahmed* [2015] EWCA Crim 1886, in which the offenders had travelled to Syria to assist Al-Nusra (a group that was involved, as part of the Free Syrian Army, in the armed conflict with President Assad's regime, and was proscribed in the UK shortly after the offenders had arrived in Syria). They had spent six months there, during the course of which they had, amongst other things, received weapons training and had handled weapons (for example, on armed patrol duties close to the combat zone) but were not involved in actual combat. Eventually, they had returned to the UK. On their behalf it was argued that the sentence imposed upon them should be reduced because, amongst other matters, their involvement with the Free Syrian Army could be regarded as noble cause terrorism. By reference, in part, to [27] & [32] of the judgment in *R v F*, the court rejected, at [40]-[47], that and other arguments (as to which see below) advanced in mitigation. In particular, at [41] and [43] Treacy LJ said:

> "….We were urged to accept that based on political considerations, the appellants' admitted involvement with the Free Syria Army could be regarded as some form of noble cause terrorism. It seems to us that it would be wrong for this Court to endorse such an argument. It would involve a consideration of the policies of Her Majesty's Government, an area which courts have hitherto been very wary of entering into. To adopt such an approach would necessitate the court having to consider fine political arguments in a situation which is inherently fluid and uncertain, and where loyalties are not fixed or clear-cut. It was acknowledged that the situation in Syria is one which has been constantly changing. What is clear to us is that the appellants' conduct clearly came within the ambit of terrorism as defined in section 1 of the 2000 Act…

> ....Whilst we recognise that F was concerned with whether there was criminal activity under s.58, those observations are persuasive in the present context. Accordingly, we are not prepared to regard so-called noble cause terrorism as mitigating sentence."

10. The court is aware that, nevertheless, mitigation is still being advanced in s.5 cases along the lines that the offender, and/or the terrorist organisation to which the offender was affiliated, was acting in a "good" or "just" cause, and that sentence should be reduced accordingly. It was alluded to in the appeal of Eshati (see paragraph 98 below) on the basis that he was supporting a moderate faction in the non-international armed conflict in Libya.

11. Against that background, at the outset of the hearing on 15 March 2016 we posed a number of questions to the Attorney General and to Her Majesty's Ministers with the purpose of obtaining their observations on the approach a court should adopt to the identity of the organisation or terrorist cause in whose name(s) terrorist offences were committed. In particular:

    i) Should an offence committed in favour of one organisation or terrorist cause be regarded more seriously than an offence committed in favour of another, and should this be a relevant factor in sentencing for terrorist offences?

    ii) If so, how might material be placed before the court in order to enable the assessment of the issue?

12. On behalf of the Secretary of State for the Home Department Mr Whittam QC, in written submissions, drew our attention, amongst other matters, to s.1 of the 2000 Act, *Gul, R v F* and *Sarwar & Ahmed*, and to [24]-[27] & [60] of the judgment in *R v C & R* [2016] EWCA Crim 61 – in which this court set out the legislative history in relation to proscription, and concluded that such matters are for Parliament, not the courts. Against that background, Mr Whittam submitted that:

    i) Some offenders, such as in *Adebolajo & Adebowale* [2014] EWCA Crim 2779 (the murder of Lee Rigby) fall to be sentenced for offences that are serious and connected with terrorism but which involve no finding as to any association with any terrorist group or organisation.

    ii) In proscribing an organisation under the 2000 Act the Secretary of State will necessarily have determined that the organisation is concerned in terrorism. The Secretary of State is not required to determine the relative seriousness of the terrorist activity of that organisation.

    iii) If the relevant offence is one contrary to the general terrorism legislation, it will involve a finding that the definition of terrorism in s.1 of the 2000 Act has been met.

    iv) There are particular difficulties with regarding criminal activity on behalf of one terrorist organisation or cause as being more serious than another, including:

        a) Parliament has legislated against all terrorism (as defined) and does not distinguish between causes or aims.

b) To do so would arguably introduce a new element into an offence.

c) Even if the particular offence was related to a terrorist organisation, it might not be clear as to which organisation.

d) It would be invidious, in dealing with law enforcement agencies and partners, here and abroad, to publicly rank terrorist organisations or causes.

e) In any event, the security situation in England and Wales and elsewhere can change rapidly.

f) It is not a fanciful suggestion that some terrorist organisations may perceive any ranking to be an incentive to commit further atrocities.

g) It would not be possible, for Public Interest Immunity reasons, to disclose in public the information behind any such decision.

h) In any event, it would not be practicable to provide information to the court, which was not provided to the offender, but which would have a direct impact on the sentence to be passed.

13. We entirely agree with the reasoning, quoted above, in both *R v F* and *Sarwar & Ahmed*, and are fortified in that conclusion by the submissions made on behalf of the Secretary of State. It must be clearly understood, in relation to all terrorist offences and terrorist related offences, that so-called just or noble cause terrorism is irrelevant to sentence and does not provide any mitigation. We have applied this principle in the appeal of Eshati – see paragraph 106 below.

(4) The factors relevant to sentencing in cases under s.5

14. In *Barot* [2007] EWCA Crim 1119 [2008] 1 Cr.App.R 31, against the background of the increased gravity of the threat posed then, as now, by extremist terrorism, and given the increase in minimum terms for murder as a result of the enactment of Schedule 21 to the CJA 2003, this court concluded that the levels of sentence in the most serious terrorist cases should be very substantially increased beyond the broad bracket previously identified in *Martin* [1999] 1 Cr.App.R.(S.) 477.

15. The combined effect of the decisions in *Martin, Barot, Usman Khan & others* [2013] EWCA Crim 468 and *Dart & others* [2014] EWCA Crim 2158, is that the following broad principles are applicable in the consideration of sentence for a s.5 offence:

i) Conduct threatening democratic government and the security of the state has a seriousness all of its own.

ii) The purpose of sentence in s.5 cases is to punish, deter and incapacitate (albeit that care must be taken to ensure that the sentence is not disproportionate to the facts of the particular offence) and, save possibly at the very bottom end of the scale, rehabilitation is unlikely to play a part.

iii) In accordance with s.143(1) of the CJA 2003, the sentencer must consider the offender's culpability (which, in most cases, will be extremely high), and any

harm which the offence caused, was intended to cause, or might foreseeably have caused.

iv) The starting point is the sentence that would have been imposed if the intended act(s) had been carried out – with the offence generally being more serious the closer the offender was to the completion of the intended act(s).

v) When relevant, it is necessary to distinguish between a primary intention to endanger life and a primary intention to cause serious damage to property – with the most serious offences generally being those involving an intended threat to human life.

16. It is clear that, in recent years, s.5 cases have fallen into two broad factual categories (in each of which the ultimately intended act has, more often than not, been murder), namely:

i) Those in which the conduct in preparation for the intended terrorist act(s) and the intended terrorist act(s) take place, or are intended to take place, wholly or mainly within the UK.

ii) Those in which the act(s) of terrorism (often involving providing, or intending to provide, violent support to non-international armed conflict) are intended to take place abroad – encompassing variously, for example, offenders who reach the intended country; offenders who engage in preparation to travel but who do not reach the relevant country; and those who provide assistance to others who are intending to, or do, travel with the requisite intention.

17. There may, of course, be cases that involve both categories, which may add to their gravity – for example, if an offender returns from fighting abroad in a non-international armed conflict intending to commit one or more further acts of terrorism in the UK.

18. However, as this court has said in a number of the cases to which we have referred, it makes no difference to the seriousness of the offence whether the intended act or acts were to take place in this country or abroad. Thus, for example, if the ultimate intended act was murder, then whether that was to be in the UK or abroad would make no difference – the starting point would generally be life imprisonment.

19. In addition to the number, nature and gravity of the intended terrorist acts(s), and to aggravating factors of general application, and depending on the facts of the particular case, the following are also likely to require consideration:

i) The degree of planning, research, complexity and sophistication involved, together with the extent of the offender's commitment to carry out the act(s) of terrorism.

ii) The period of time involved – including the duration of the involvement of the particular offender.

iii) The depth and extent of the radicalisation of the offender (which will, in any event, be a significant feature when considering dangerousness – see below) as demonstrated, for example, by way of the possession of extremist material, and/or the communication of such views to others.

iv) The extent to which the offender has been responsible, by whatever means, for indoctrinating, or attempting to indoctrinate others, and the vulnerability or otherwise of the target(s) of the indoctrination (actual or intended).

19. As to cases in which the act(s) of terrorism are intended to take place abroad, we agree with the additional conclusions reached at [40]-[47] in *Sarwar & Ahmed* that it will aggravate the offence if the preparatory conduct was carried out with a view to fighting UK armed forces; that it may do so if the intention is to fight forces closely allied to UK forces (but that it will not mitigate the offence that there was no prospect of ending up fighting allied forces); and that any assertion that the intention was to engage only with armed forces, rather than to direct activity against civilians, must be judged in the common sense light of the likely extent of collateral damage being caused to civilians. Indeed, in the Syrian context, that it is appropriate to take judicial notice of the general nature of the conflict and the fact that there have been appalling consequences for the citizens of that country arising from the armed conflict - such that the likelihood of significant collateral damage being caused to civilians is great.

20. Other matters that are likely to be of particular relevance in a case involving acts of terrorism that are intended to take place abroad include:

i) The relative degree of sophistication of the route and the means adopted by the offender to reach the intended country.

ii) Whether the offender travelled, or intended to travel, alone or with others and the extent of any assistance by the offender to the others.

iii) The nature of any property taken or intended to be taken – with the taking or intended taking of equipment that might be used directly or indirectly for violent action, and/or the possession or intended possession of significant funds, or the wherewithal to obtain such funds on route, or to do so in the ultimate destination country, being potential aggravating features.

iv) If the offender reached the country, the period of time that they were there; the conduct that they engaged in whilst there; what their reason for returning was; and the method of their return.

21. Whichever of the broad factual categories identified above that they fall into, offences involving an intention to assist one or more others to commit acts of terrorism may be just as serious, or even more serious (for example, in the case of a mastermind who has no intention of carrying out the intended acts themselves) than the offence of the person who the offender assists. Each case will depend on its own facts, but the general principles identified above will apply. Two types of commonly encountered offenders are:

i) Those who provide finance – where the amount(s) provided, or intended to be provided, and their significance, or intended significance, in the achievement of the intended act(s) of terrorism will be amongst the factors to be considered.

ii) Those who assist others who travel abroad, or assist others who intend to travel abroad – where the number of those assisted, the nature and value of the assistance (including whether the traveller was encouraged into conduct that they would not have undertaken if left to their own devices), the motivation behind the assistance, and whether or not the assistance was an isolated act or

formed part of a pattern of behaviour, will be amongst the factors to be considered.

22. As to mitigation generally, and in addition to mitigating factors of general application, the particular vulnerability of the offender and, if particularly vulnerable, the extent to which they were groomed, and any voluntary disengagement, may be amongst the factors to be considered. That said, the extent to which, if at all, any such factors do mitigate sentence will be highly fact sensitive.

II: THE APPROACH TO SENTENCE IN S.5 CASES

(1) Culpability and harm

23. The sentences that were imposed in the cases to which we were referred were necessarily based on their own facts, some after a trial, some after a plea and with the latter involving differing levels of discount depending on when the plea was first intimated. In all but one case, namely *Attorney General's Reference (No.7 of 2008)* [2008] EWCA Crim 1054, they involved an appeal by the offender(s) and thus the ultimate question was whether the sentence was manifestly excessive – albeit that in *Dart & others* the court opined, and we agree, that in the case of *Dart* himself, there could have been no realistic complaint if a significantly longer notional custodial term had been identified.

24. As the range of conduct, both in terms of culpability and harm caused, is so broad, the levels in to which we have divided the criminality that may be encompassed within the offence must be regarded as points on a scale of offending which can merit a life sentence with a very long minimum term to offending which may properly be marked with a relatively short determinate sentence.

25. In accordance with the principles that we have identified, the levels which we set out are differentiated by two principal factors:

    i) the culpability of the offender principally by reference to proximity to carrying out the intended act(s) measured by reference to a wide range of circumstances including commitment to carry out the intended act(s); and

    ii) the harm which might have been caused measured in terms of the impact of the intended act (or series of acts) or the intended number of acts, including not only the direct impact intended on the immediate victims, but also the wider intended impact on the public in general if the act had been successful.

26. In each case given that, as noted above, the offence is a 'specified violent offence' within Chapter 5 of the CJA 2003, the judge will have to consider whether the offender is:

    i) dangerous within s.225 (as amended) so as it would be a proper exercise of the discretion to impose a life sentence or extended sentence (under the principles considered in *R v Burinskas* [2014] EWCA Crim 334, [2014] 1 WLR 4209); or

    ii) whether a life sentence should otherwise be passed under the principles examined in *R v Saunders* [2013] EWCA Crim 1027, [2013] Crim LR 930 [2014] 1 Cr App R (S) 45 at paragraph 11.

27. In deciding whether an offender is dangerous the extent and depth of their radicalisation / extremism and the likelihood of its continuance will, obviously, be very important factors and an offender who is in the grip of idealistic extremism is likely to pose a serious risk for an indefinite period.

(2) Levels of offending

28. The judge should then turn to identifying where on the scale the offending falls, taking into account the six levels which we set out below. In each instance the range that we have identified relates to the sentence (actual or notional) after trial, and the cases are cited as illustrations, on their particular facts, of conduct which we regard as coming within the relevant level, rather than as expressing our necessary agreement with the sentence actually imposed, particularly (though we have included some of them) in relation to those decided before, or without reference to, the general increase in sentence consequent upon *Barot.* Whilst a number of the examples involve multiple offenders, a lone wolf offender's offence may be just as serious. Equally, in the usual way, there is a degree of overlap between the levels, and aggravating and mitigating features may move the ultimate sentence up or down within a level, or may move it to another level:

Level 1

29. The highest level in our view is where the offender has taken steps which amount to attempted multiple murder, or something not far short of it, or to a conspiracy to commit multiple murder if it is likely to lead to an attempt that is likely to succeed – but no physical harm has been caused. Given the particular gravity of terrorist offences, the Definitive Guideline issued by the Sentencing Guidelines Council in relation to attempted murder is not directly applicable. We would include within this level cases which, if charged under s.5, would have included the circumstances in *Ibrahim & others* [2008] EWCA Crim 880 (Conspiracy to murder - the 21/7 plot in which four bombs were detonated on the London Underground but failed to explode, and life sentences with minimum terms of 40 years, imposed after trial, were upheld on appeal); *Abdullah Ahmed Ali & others* [2011] 2 Cr App R 22 (Conspiracy to murder by causing explosions on transatlantic airliners - where life sentences with minimum terms of between 32 and 40 years were imposed after trial and the sole appeal against sentence was dismissed); and *Barot* (conspiracy to murder, where the minimum term which this court imposed, after a plea attracting 10% discount, was 30 years). For such an offence a sentence of life imprisonment with a minimum term of 30 to 40 years or more is appropriate.

Level 2

30. A little below on the scale are those who may not get quite so near in preparation or where the harm which might have been caused was not quite as serious. Examples from the cases to which our attention was drawn include *Khyam & others* [2009] 1 Cr App R (S) 77 (Conspiracy to cause explosions intended to result in multiple deaths, in which some of the offenders had received explosives training - where life sentences with minimum terms from 17½ to 20 years, imposed on conviction, were upheld, but all without reference to *Barot*); *Islam & others* (part of *Ali & others*) (Conspiracy to murder in which the objective was to blow up an uncertain but potentially large number of victims - where life sentences with minimum terms from 18-22 years, imposed after a trial on offenders in the role of foot soldiers, were upheld); *Asiedu* [2008] EWCA Crim 1725 (Conspiracy to cause explosions, in which the offender had

purchased 450 litres of hydrogen peroxide for the 21/7 plot, had taken part in boiling it down, but had abandoned his bomb on the day - where 33 years' imprisonment, imposed after an eventual plea, was upheld on appeal); *Karim* [2012] 1 Cr.App.R.(S.) 85 (Pleaded guilty to five terrorist offences and found guilty of four, the most serious of which were concerned with him being a long-term sleeper at British Airways - where an extended sentence involving a custodial term of 30 years was upheld on appeal); *Jalil & others* [2009] 2 Cr.App.R.(S.) 40 (The co-defendants of *Barot* who pleaded guilty to conspiracy to cause explosions of a nature likely to endanger life, who did not intend to kill, but in relation to whose intended explosions the potential for loss of life and massive injury was significant - where extended sentences with custodial terms from 15-26 years were upheld). Examples in the present appeal are the case of Khan (see paragraphs 145 to 180, particularly at paragraph 178) where, although the harm may have been very considerable, the acts performed were not as proximate and Ziamani (paragraphs 67 to 87, particularly at paragraph 86) where the act to be performed was imminent, but a single person was the subject of the attack. In such a case a life sentence will generally be called for with a minimum term in the range of 21-30 years or a very long determinate sentence and an extension period of five years.

Level 3

31. A little further down the scale are cases examples of which include the principal s.5 offence in *Parviz Khan* [2010] Cr App R (S) 35 (The offender, who pleaded guilty, was a fanatic with a leadership and recruiting role, and had planned to identify, kidnap and murder a soldier, to film the murder and to distribute the film. He also pleaded guilty to a further s.5 offence involving the supply of equipment to those fighting in Afghanistan/Pakistan and to two offences contrary to s.58 of the 2000 Act - which took the overall offending into Level 2 and resulted in a sentence of life imprisonment with an overall notional minimum term of 21 years, which was upheld on appeal); *Usman Khan & others* (Section 5 offences where, amongst other matters, the Cardiff and London offenders were planning a pipe bomb attack on the London Stock Exchange in order to cause terror, damage to property and economic harm, but had yet to acquire the necessary materials; and the Stoke offenders were trying to raise funds to build a madrassa in Kashmir, to enable men, including one of the Stoke offenders, to undergo firearms training there before joining the fighting in Kashmir, and contemplated that, in due course some of the trained men might return to the UK and engage in some sort of terrorist activity here - where following pleas by all the offenders that attracted a 20% discount, the Cardiff and London offenders were sentenced to extended sentences with custodial terms from 17 years to 21 years 10 months, against which they did not appeal, and this court imposed extended sentences, with custodial terms from 16 years to 17 years 8 months, on the Stoke offenders); such cases are also likely to include those in which the offender travels abroad and participates in actual combat. The offender will invariably be dangerous. In such cases we consider that the appropriate sentence will be a life sentence with a minimum term of 15-20 years or a long determinate sentence of 20-30 years or more with an extension period of 5 years.

Level 4

32. The typical case will be an offender who joins, or otherwise supports, a terrorist organisation, usually engaged in a conflict overseas, and either participates on the periphery of the actual combat or trains, whether in the UK or abroad, to that end, or

with a view to carrying one or more acts in the UK out at some point in the future. Examples from the cases to which we were referred are *Sarwar and Ahmed* (a s.5 offence, where the intended act was to assist Al-Nusra in Syria, the offenders received limited firearms training there and had handled firearms, for example, on patrol close to the combat zone - where following pleas of guilty that attracted a 20% discount, this court imposed extended sentences with custodial terms of 10 years and 3 months); and *Dart & others* (a s.5 offence, where the offenders Iqbal and Ahmed, whose involvement took place over an extended period, each intended both to commit an act of terrorism himself and to assist others to do so. Iqbal assisted Ahmed to travel to Pakistan to attempt to obtain terrorist training with a view to terrorist action, gave Ahmed £850 to be passed on, they each downloaded electronic files containing practical instructions for terrorist attacks and took part in serious, albeit embryonic, discussions in relation to targets in this country and intended, until prevented, to go for terrorist training with a view terrorist action, with Ahmed taking part in physical training in this country in preparation, and Iqbal intending to take around £10,000 in cash with him, some of which was to be used for terrorist purposes - where following pleas of guilty that attracted a 25% discount, extended sentences with a custodial term of 11 years and 3 months were upheld. In the same case the offender Dart pleaded guilty to another section 5 offence, in his case involving travel to Pakistan for terrorist training and to commit acts of terrorism abroad, as well as assisting others by providing information to them about travel to Pakistan and terrorism training and operational security whilst there. He and another offender Alom had been stopped at Heathrow and Dart was found to be in possession of £4,800 in cash – where following a plea of guilty that also attracted a discount of 25%, an extended sentence with a custodial term of 6 years was upheld). However, as foreshadowed above, we take the view that a significantly longer notional custodial term was appropriate in Dart's case. Such an offender is likely to be dangerous and a determinate sentence in the range of 10-20 years or more with an extension period of 5 years is likely to be appropriate.

Level 5

33. The typical case is an offender who sets out to join a terrorist organisation engaged in a conflict overseas but does not complete his journey or an offender who makes extensive preparations with a real commitment, but does not get very far, or who does not get very far in his preparations for an intended act, which will usually be in the lower realms of seriousness, in the UK. Examples from the cases to which we were referred would include *Tabbakh* [2009] EWCA Crim 464 (A s.5 offence in which the offender, who had mental health issues, did his best to make a bomb, but did not have the right grade of ingredients or a detonator - where his sentence, on conviction, of 7 years' imprisonment was upheld); *Attorney General's Reference (No.7 of 2008)* (a case including a s.5 offence, in which the offender, who had jihadist material on his computer, was arrested as he was about to board a flight to Islamabad with equipment and £9,000 in cash, but where he was a Walter Mitty character and it was not clear precisely where he was going or what he was going to do, or whether he himself was to act or whether he was assisting others - where following a plea of guilty that attracted a discount of 25%, this court declined to increase a total sentence of 4½ years' imprisonment. An example in the appeals before us is Rashid – see paragraphs 110 to 128. In such a case, where the offender is not dangerous, the range of a determinate sentence is likely to be 5-10 years. With effect from 13 April 2015, the provisions of s236A/244A of the CJA 2003 (inserted by the Criminal Justice and Courts Act 2015) will apply, as the offence under s.5 is listed in Schedule 18A. A

court is required to pass the appropriate custodial term (which we have identified) and a further period of 1 year when the offender will be on licence.

Level 6

34. The typical offender will be one who never sets out or who sets out, but the circumstances are such where it is unlikely that he will go very far, or returns without going far, or who has a minor role in relation to intended acts at the lowest end of seriousness in the UK Sentences in the range of 21 months to 5 years are likely to be appropriate. Examples in the current appeals are Kahar (see paragraphs 36 to 66, particularly at paragraph 64) and Ozcelik (see paragraphs 129 to 144). Again, the provisions of s.236A/244A of the CJA 2003 will apply.

35. Whatever the sentence imposed, the notification requirements imposed by sections 47-56 of the Counter Terrorism Act 2008 will apply, along (when relevant) with the forfeiture order provisions in ss.23A & 23B of the 2000 Act.

III: THE SPECIFIC APPEALS

(1) ATTORNEY GENERAL'S REFERENCE: KAHAR

36. On 13 November 2015, in the Crown Court at Newcastle before Andrews J and a jury, Kahar was convicted of 10 counts alleging various offences under the Terrorism Act 2006 and the Terrorism Act 2000. He received a total term of imprisonment of five years; the judge explained to Kahar the effect of s.236A of the CJA 2003 (as we have set out at paragraph 33). The sentences passed were referred to this court by HM Attorney General under s.36 of the Criminal Justice Act 1988. We grant leave.

The facts

37. Kahar was, at the time of sentencing, a 37 year old British Muslim. He led to all outward appearances a normal life, living in a terraced street in Sunderland with his wife and five children. He had a business interest in a local office and worked as a chef in an Indian takeaway restaurant. In addition to the house in which he lived, he owned and rented out another house in Sunderland.

Count 1: Preparing to travel to fight in Syria

38. The prosecution case was that there was evidence from late 2013, continuing through 2014 and until March 2015 that Kahar was preparing to travel to Syria in order to join in and fight for Islamic State. The messages found on his computer and iPhone showed that throughout this period he made various plans which were recorded in messages on his computer. In the spring of 2014 his wife became pregnant and this affected his plans; he told those with whom he was in communication that he would have to wait until after the delivery of the child. He sought advice about taking his entire family and during the course of the latter part of 2014 progressed his efforts to obtain information about travelling through Turkey, with or without his family. In May 2014 and in January and February 2015 he particularly focussed on his chats with strangers whom he believed were either already with Islamic State or were seriously intent on getting there.

39. Amongst the matters on which the prosecution relied were downloading and making as secure as possible secret and other messenger applications, seeking information

about preparations for travel to Syria, including travel routes, forms of transport, stopping places, the ability to travel with family, hotel contacts, border points and other matters. He also downloaded onto his iPhone information thought to be useful to those wanting to travel to Syria to join Islamic State; the information included, "44 ways to support Jihad" and "Hijrah [immigration] to the Islamic State, what to pack up, who to contact, where to go, stories and more". On 24 February 2015 he telephoned a travel agent and made enquiries about visas for Turkey.

40. Although there was no evidence that the offender had purchased any ticket in order to travel and fight, from early 2014 he sought genuine guidance from others about the appropriateness of leaving the UK when he was in debt and about whether he could or should take his wife and children with him.

41. For this offence he was sentenced to 5 years imprisonment.

Count 2: Proposal to fund terrorism (s.17 of the 2000 Act)

42. In June 2014 Kahar chatted on WhatsApp with a contacted called "Slave of Allah". He offered to fund that person to travel from the Indian sub-continent to Syria. "Slave of Allah" provided him with his financial details. There was no evidence that any money was actually transferred and it appears that the person ran into difficulties in being able to leave India without attracting the attention of the authorities.

43. Kahar also chatted to others about offering money. For example on 22 January 2015, during a conversation on KIK, a chat application, Kahar offered to provide funds.

44. For this offence he was sentenced to 12 months imprisonment, concurrently with the sentence on Count 1.

Counts 3 to 5: Inviting support for a prescribed organisation (s.12(1)(a) and (b) of the 2000 Act)

45. Count 3 related to Kahar urging his nephew living in Bangladesh to join Islamic State, providing him with various materials using an internet chat application.

46. Count 4 related to Kahar urging his brother-in-law to support Islamic State through WhatsApp. He sent his brother-in-law various document inviting support for Islamic State but it appears that his brother-in-law did not agree with his views.

47. Count 5 related to Kahar's urging of a friend, Ruhel, to support Islamic State through WhatsApp. He sent Ruhel videos and other materials, but it appears that Ruhel was opposed to Islamic State.

48. For these offences he was sentenced to 3½ years imprisonment, concurrently with the sentences on Counts 1 and 2.

Counts 7 to 11: Dissemination of terrorist publications (s.2(1) and (2)(d) of the 2006 Act

49. In Count 7 he was charged with posting on his Facebook account the fifth issue of an Islamic State magazine, *Dabiq*. This magazine glorified Islamic State and included pictures of those who were to be murdered or had been murdered by Islamic State. It also contained speeches by the leaders of Islamic State urging Muslims to strike at

citizens of countries participating in the US led coalition. One passage included the following:

> "If you can kill a disbelieving American or European – especially the spiteful and filthy French – or an Australian or a Canadian or any other disbeliever from the disbelievers waging war against the Islamic State, then rely upon Allah and kill him in any manner or way however it may be."

50. In Count 8 he was charged with posting a video entitled, *What are you waiting for?* produced by Islamic State. He posted this on 9 November 2014. The video contained messages from Islamic State fighters in French, directed at urging them to kill and paralyse people in France.

51. In Count 9 he was charged with posting a video on Facebook entitled, *ISIS Missbraucht Kinder*, on 29 December 2014. This showed children handling firearms and saying they were going to kill the Kuffar.

52. In Count 10 he was charged with posting on 21 January 2015 a video entitled, *Mensuura Inshallah*. This glorified Islamic State and its leader, al Baghdadi, and glorified the killing of Americans.

53. In Count 11 he was charged with sending e-mails attaching four documents – *The Book of Jihad, This is the Promise of Allah, A Message to the Mujahidin and Muslim Ummah in the Month of Ramadan* and *Indeed your Lord is Ever Watchful*. These documents urged slaughter and death to non-Muslims.

54. For these offences he was sentenced to 3½ years imprisonment, concurrently with the sentence on Count 1 and the other sentences.

The course of proceedings

55. Kahar was arrested on 4 March 2015. At first he said he did not believe in terrorism and was not even a practising Muslim. He said he was wanting to learn more about Islamic State and Sharia Law. He was then released on bail. He was re-arrested on 27 April 2015.

56. It was clear on his re-arrest that he had been accessing publications since his original arrest and had viewed the most recent edition of *Dabiq*. On his second interview he claimed he only wanted to travel and live in Syria as it provided free housing. Although initially he said he had stopped viewing and looking at material after his first arrest, he then confirmed accessing, downloading and possessing the material.

The sentence passed by the judge

57. The judge approached the sentences she had to pass on the basis that the sentence passed on count 1, the s.5 offence, would reflect the totality of the conduct. She decided that the offender was not dangerous within the meaning of the CJA 2003 as amended.

58. She concluded in relation to Count 1, that he had rapidly become convinced that the cause of Islamic State was the right cause. If he had gone through with his intention,

"Well you would have ended up in Syria as one more fighter. Possibly you would have got cold feet at the border."

59. In relation to the counts of incitement (Counts 3-5), Kahar would brook no argument against Islamic State and told those who disagreed with him that they would be condemned as apostates. The judge concluded that he had persisted in the attempts with the result that there might have been serious consequences.

60. In relation to the counts of disseminating materials (Counts 7-11), the judge considered that he genuinely believed the material to be true. As to its dissemination:

> "Was it reckless or was it intentional? I take the view it was a mixture of both. I think you intended that people would look at the material and be inspired to go to Syria and probably that they would be inspired to fight there. It is very difficult to come to any different conclusion in the light of the nature and content of what was being posted."

The submissions by the Solicitor General and of Kahar

61. The Solicitor General identified the following aggravating features:

i) The period of offending lasted 15 months.

ii) The width of the range of offending.

iii) The radical position of Kahar had hardened over time.

iv) There was every risk that by disseminating terrorist publications he might have tipped one or more enthusiast for Islamic State over the edge.

v) There were four different types of terrorist related offences, none of them were isolated events.

vi) He offered to fund others.

vii) He tried to encourage members of his family to go.

62. The only mitigating factor was his previous law abiding life.

63. In submissions on behalf of Kahar, it was argued that Count 1 was very low on the scale of s.5 offences and the nexus between the conduct and any terrorist act was low. He had made no concrete plans. In relation to the counts of incitement and dissemination, reliance was placed on observations made by the judge to counsel in the course of the mitigation as to his intention and as to what he might have done. On occasions, judges may make such observations in the course of argument to test the submissions of counsel. Although in the course of mitigation, it will rarely be opportune to do so, this court cannot attach any consideration to such observations as this court is concerned with the final decision of the judge as set out in the sentencing remarks.

Our conclusion

64. In our judgement the total sentence passed by the judge was unduly lenient. Whereas the course followed by the judge in imposing a sentence on Count 1 that reflected the totality of the criminal conduct may have been appropriate in other contexts, we consider that in the context of the offending by this offender, it would have been better to have passed consecutive sentences to reflect the fact that the conduct on Count 1, for the reasons we have given at paragraph 34, was towards the bottom end of the scale on s.5 offences, but that the conduct on Counts 3-5 was serious offending of its type, given his persistence in attempting to persuade others to join Islamic State and fight for them or to join in their terrorism.

65. We therefore conclude that a sentence of 4 years would have been the appropriate sentence on Count 1 and a consecutive sentence of 4 years the appropriate sentence on Counts 3-5, taking into account on those counts, the closely linked offences of disseminating terrorist material (Counts 6-11).

66. We therefore quash the sentences on Counts 1 and 3-5 and impose (1) a sentence of 4 years on each of Counts 3-5, concurrent with each other and concurrent with the existing sentences on Count 2 and Counts 6-11 and (2) a sentence consecutive to these sentences of 4 years on Count 1, to which the provisions of s.236A of the CJA 2003 apply. Kahar must therefore serve a total sentence of 8 years and the licence period under s.236A.

(2) ZIAMANI

67. On 19 February 2015 in the Central Criminal Court before HH Judge Pontius and a jury, Ziamani, then aged 19, was convicted of a s.5 offence. On 20 March 2015 he was sentenced by the trial judge to an extended sentence of detention of 27 years, comprising a custodial term of 22 years with an extended licence period of 5 years. He appeals against sentence by leave of the single judge. His renewed application for leave to appeal against conviction has been dismissed.

The factual background

68. Ziamani was born on 18 August 1995. His family were Jehovah's Witnesses, and he was brought up under a strict religious regime. However, he became involved in group criminal activities involving robberies, fighting and fraud, although none of this resulted in any criminal convictions.

69. In March 2014, he began a relationship with a young woman whom we shall refer to as X. His family ostracised him and he left home, living on the streets. Many of his friends were Muslims, and he had developed an interest in Islam. Whilst living rough, he was taken in by a member of the proscribed organisation then known as Al-Muhajaroun ("ALM"). He attended study circles and demonstrations, and generally spent time with ALM members. He quickly became radicalised.

70. In April 2014, about 6 weeks after Ziamani's relationship with X began, that relationship ended. Ziamani said that this was because he had become a Muslim and he did not consider it to be right to continue such a relationship. X said the relationship finished because Ziamani had begun to express radical views, saying that he respected the people who murdered Fusilier Lee Rigby and that he (Ziamani) wanted to die a martyr and go to heaven. After the relationship had ended, Ziamani

sent X a message via WhatsApp to the effect that he would "wipe her out", which she understandably took to be a death threat, which suggests that X's version of why the relationship ended was nearer the truth.

71. On 27 June 2014, a warrant was executed at the premises where Ziamani was living in relation to matters entirely unrelated to him. However, Ziamani was there when the police attended. He was told that he was free to leave whilst the police executed the search warrant. Ziamani was not dressed, and he pointed out the clothes he wished to wear. However, before passing the identified jeans to Ziamani, a police officer searched them; and, in the front left trouser pocket, he discovered a number of handwritten pieces of paper that appeared to have originally been a single letter addressed to Ziamani's parents. It contained references to Jihad, and contained various other extremist views. It said that Ziamani would

> "wage war against the British Government on this soil", and that "British soldiers' heads will be removed".

It went on to say:

> "we should do a 9/11 and a 7/7 and Woolwich all in one day every day for 8 years…."; and that Lee Rigby's killers were "[his] brothers".

The diatribe was aimed mainly at the military, but also at Shia Muslims, gay men and lesbians, all of whom, it said, should be killed.

72. Ziamani was asked by the police officer who had found the letter whether he had written it and he confirmed that he had. He was then arrested on suspicion of committing an offence contrary to s.5 of the Terrorism Act 2006, and taken to Wandsworth Police Station. Two mobile phones, which Ziamani had indicated were his, were also seized. Analysis of one revealed that, a week before, he had web-searched the location of cadet and army bases in South East London and, on the same evening, *The Souls Journey after Death in Islam* and the term *Jannah* (a reference to Muslim paradise).

73. At the police station, he asked to be referred to as *Mujahid Karim, Mujahid* meaning "fighter for Islam". In interview, he said that he had written the letter because he was angered by the plight of Muslims. He said that he had sympathy for the murderers of Lee Rigby, but such a murder was not something that he himself would do. The references in the letter were to the future, in case he died fighting abroad or in an uprising in the UK. He accepted that he had made the web searches, to which we have referred.

74. Ziamani was released on bail the following day. Whilst on bail, he continued to make Facebook postings under the name *Mujahid Karim.* These espoused Jihad and included, for example, a photograph of detached heads on the ground and a cartoon showing a man in military attire with a knife held against the throat of a woman. It was the prosecution case against Ziamani that his Facebook posts were designed to encourage others to commit acts of terrorism. They received a number of endorsements from other Facebook users.

75. The police and other authorities attempted to engage with Ziamani in a constructive way. He was approached on three occasions by Prevent Engagement Officers, whose

purpose is to dissuade individuals from pursuing a radical agenda involving criminal acts, who attempted to dissuade him from the radical path he was taking. On each occasion Ziamani was unresponsive, saying that he needed no help with his faith.

76. On 15 August 2014 Ziamani got back in touch with X by text and telephone, apologising for the threats he had made and asking if he could see her. On 18 August he said to her that, if he left this world, he did not want there to be any hatred left between them. Later that night he called her and told her he needed to tell her something, but could not do that over the telephone in case someone was listening in.

77. The following morning, at 7 a.m., he went to X's home address with a black rucksack. In X's presence he opened the bag and pulled out a large hammer and a 12-inch knife, saying: "Me and the brothers are planning a terrorist attack". She asked him if he meant an attack like that on Lee Rigby and he confirmed he did. He denied that innocent people would be hurt, "Just the soldiers and government people". He then proceeded to show her videos on his mobile phone of people being blown up and killed and preached to her about converting to Islam. She asked him to leave, which he did.

78. Ziamani was stopped by police at about 4.30 p.m. that day, 19 August 2014. He had his rucksack with him. Inside were a hammer and knife, matching the description given by X, together with an Islamic flag. He was arrested. He made no comment answers in interview. An examination of his telephone revealed that he had web searched for detailed information about the murder of Lee Rigby and about his killers, and on how to leave the country by car via the Eurotunnel.

79. The police visited X shortly afterwards, at about 6.30 p.m. that day. They told her that Ziamani had been arrested. She said that she needed to report something to them anyway, and told them what had happened in the morning.

80. Ziamani was taken to HMP Wandsworth. Paul Morris (a prison officer within the Security Department which specifically deals with people arrested under the Terrorism Act) gave evidence at Ziamani's trial. He offered Ziamani the chance to speak to one of the Imams attached to the prison, but he declined. Ziamani told him that the murder of Lee Rigby "was for the benefit of all Muslims" and, when he (Ziamani) was arrested he was on his way to an army barracks to behead a soldier and hold up the head in the air whilst a friend took a photograph. Mr Morris said that, whilst telling him this, Ziamani's manner was very calm, matter of fact and polite.

The trial

81. The following conduct was relied on as conduct preparatory to committing acts of terrorism:

    a) researching locations of military bases;

    b) researching *jannah* and how to achieve this aim;

    c) encouraging others to engage in Jihad;

    d) writing a letter expressing his intention to commit a terrorist act upon British military or government personnel;

e) making peace with X and

f) arming himself in public with a knife and a hammer.

82. At the trial the prosecution relied upon the evidence of X and Mr Morris, as well as the letter, Facebook postings and web searches. Ziamani gave evidence in his own defence. He said that the letter was written in case he was killed in the future, in circumstances we have already described; the weapons in his bag were carried defensively, to protect himself from a potential gang attack; the vast majority of what he wrote on Facebook was out of desperation to foster friendship with his new friends, many of whom held those views and with whom he was then spending time; he wanted to show off in order to become a more valued member of the group and he was looking at Army Cadet locations on the web, as he planned to set up there dawah stores (i.e. places of proselytisation) in an attempt to deter individuals from joining the armed forces.

The sentence passed

83. The judge concluded that Ziamani was a dangerous offender within the meaning of the CJA 2003. The judge found, as he was entitled to do, that, had Ziamani not been arrested on the late afternoon of 19 August 2014, he would have carried out that intention "within hours at most" by using the hammer and knife to commit a terrorist attack on the streets of London in imitation of the murder of Lee Rigby, "ideally a beheading, so that a picture could be taken of him holding 'his trophy' in one hand and the Islamic flag in the other". If he had not found a soldier, he would have found a policeman or other figure of authority.

The submissions made on behalf of Ziamani

84. The principal submission on behalf of Ziamani was that the judge was wrong in concluding that he was dangerous, that he should in any event not have passed an extended sentence on so young a person and that the custodial term was far too long. The effect of the extended sentence was that Ziamani would not be eligible for parole until he had served 2/3rds of his sentence, a period of some 14 years and 8 months. He would then be subject to licence for a further 12 years. Such a custodial term was too long for such a person. No specific person had been identified and there was no evidence that an attack was imminent. The judge had not taken sufficiently into account his young age or the radicalisation of him by others. The judge had not paid sufficient regard to the conclusions of the author of the pre-sentence report who had concluded that, although he posed a high risk of harm to the public and to any member of the UK armed forces, he was not dangerous.

Our conclusion

85. We are entirely satisfied that the judge was right in concluding that Ziamani was dangerous; he had heard the evidence, including that given by Ziamani. Furthermore in the light of that evidence, given his youth and the uncertainty as to how the risk might change over time, an extended sentence was entirely appropriate.

86. As we have explained at paragraph 30 this offending was towards the very top end of the scale for offences under s.5 but, given his youth, we consider that the custodial part of the sentence, namely 22 years, was too long. We consider that the appropriate

custodial term should have been 19 years. The extension period at the maximum of 5 years was entirely correct.

87. We therefore quash the sentence of 27 years and impose in its place a sentence of 24 years, comprising a custodial term of 19 years and an extension period of 5 years.

(3) ABDURRAOUF ESHATI

88. On 27 October 2015 Eshati, then aged 29, having changed his plea to guilty, was sentenced in the Central Criminal Court by HH Judge Bevan QC to 4½ years imprisonment for possession of a document containing information likely to be of use to a terrorist contrary to s.58 (1)(b) of the 2000 Act. He had pleaded not guilty to the more serious offence under s.57 of the Terrorism Act based on the same matters as the count under s.58; the count under s.57 was left on the file. He was sentenced to a consecutive sentence of 1½ years imprisonment for seeking to remain in the UK by deception. He appeals against sentence by leave of the Single Judge.

Factual background

89. Eshati, a Libyan national born in March 1986, came to the UK in 2009, entering on a general student visa. That visa was extended in 2010 and 2011. A day before the visa ran out, in April 2012, Eshati returned to the UK via Heathrow Airport and applied for asylum. He claimed that his father had been close to the regime of Colonel Gaddafi, that the rebels had taken his family, that he had travelled to Libya to try and find them but had been advised to leave and he was scared that if he returned to Libya he would be taken to a secret location and disappear. In the course of that asylum application he submitted documentation in support of his case. His application was refused in May 2012, his appeal failed and a further application to remain was refused in December 2012.

90. Nonetheless it appears that he remained in the UK and became an Imam at a mosque in Wrexham.

91. On 30 November 2014 he was one of 20 people found hidden in a trailer when a lorry destined for France had been stopped by armed police at Dover. His mobile phone was seized and the address he gave in Wrexham and his mosque were searched. From examination of his phone and other enquiries the evidence against him on the counts to which he pleaded guilty was assembled.

The offence under s.58(1) of the 2000 Act

92. The counts under s.57 and s.58 of the 2000 Act were based upon electronic records found on his phone relating to the purchase of ammunition and the hire of a cargo plane. As we have explained, the more serious offence under s.57 was left to lie on the file in view of the plea to s.58.

93. It appears that Eshati was a supporter of the Zintan Militia in Western Libya, one of the factions engaged in the strife in Libya that has followed the fall of Gaddafi in late 2011. From the evidence before the court, the Zintans were in alliance with General Haftar who was subsequently named Commander-in-Chief of the Libyan military by the Government based in Tobruk called the House of Representatives. General Haftar had a loose alliance with the Zintans who were based in an area close to Tripoli, the base of the other Government, the General National Congress, which comprised

various Islamist and revolutionary militias. In 2011 the UN imposed an arms embargo on the importation of any ammunition into Libya.

94. There was found on Eshati's phone:

i) An electronic copy of an invoice for orders of ammunition weighing 1,104 tonnes, and comprising rifles, light cannon, heavy machine guns and anti-aircraft ammunition. The value of the consignment was $28.5m.

ii) An electronic copy of a document relating to the chartering of a cargo jet at a cost of $250,000 for use in Libya.

The two documents had been sent by a person named Ibrahim El-Tumi who, it appears, wanted to import this quantity of arms into Western Libya for the Zintan Militia. Eshati had translated the documents into Arabic.

95. There were also records of electronic conversations between Eshati and El-Tumi and a number of other photographs and documents which included photographs of activists from the militia group known as Ansar Al-Sharia (an Islamist group, with which the Zintan Militia was not in conflict), photographs of a beheading, photographs of armaments in action and other documents. When interviewed Eshati denied any intention to support terrorists

96. From enquiries made by the police and an enquiry made in Italy by the Italian police, it appears that El-Tumi had attempted to buy arms in Italy and fly them to Libya. It was also clear that Eshati knew the documents related to arms which it was intended would be used. It was the prosecution case that Eshati, who wanted to support the Zintan Militia, was prepared to offer his whole-hearted support to the Zintan Militia in their fight against the Islamists.

97. It was the case for the prosecution that Eshati knew the ammunition invoice related to arms that would be used for terrorist purposes in Libya and he provided assistance by translating the documents. They contended that the aggravating factors were the fact that Eshati had, with detailed knowledge of the political situation in Libya, helped with a transaction of such a significant value, the only purpose of which can have been for terrorist purposes.

98. It was contended on behalf of Eshati that as a man of good character, he was working for, and hoping for, stability in Libya through the faction he supported. He had always favoured the more moderate factions; there was no evidence of his doing anything other than acting as a translator. He was simply a patriot disseminating information, most of which could be found on the Internet.

The immigration offence

99. It was the prosecution case that Eshati provided false information to the authorities with the intention of bolstering his claim for asylum. In particular the prosecution case was that his father had not been arrested and imprisoned. His family, with the exception of Farthi, was living in Tripoli until August 2014 and he was in regular communication with them. His brother Sobhi, although captured by the rebels, had been released and escaped to Tunisia. From the documents found by the police, it was clear that he had discussed the preparation of documents for his asylum claim and had asked a friend for assistance. Included amongst the documents were blank

letterheads and blank documents which were used in the deception of the Immigration Service.

100. It was submitted on his behalf that he would have had a credible claim to asylum because of the risk to him due to his family's support for Gaddafi.

The sentence imposed by the judge

101. The judge was satisfied that the documents relating to the arms and the hire of the cargo plane concerned with ongoing terrorism in Libya. Eshati had realised what was in the documents as he translated them from English and Italian into Arabic. It was clear that Eshati had discussed the deal with El-Tumi. Eshati had given untruthful accounts of why he held the documents.

102. The judge said he found that it was not an easy sentencing exercise. He said that he was doing the best he could by imposing the least sentence possible, whilst noting the gravity of the offending, and both offences were serious examples of their kind, he passed the sentences we have set out.

The submissions on the appeal

103. It was submitted to us by Mr Abdul Iqbal QC, on behalf of Eshati, that Eshati was culpable solely on the basis of simple possession of electronic documents rather than collection or making of such documents. He had not sought the documents and they had not been sent to him by prior arrangement. He had only received them and then translated them, using Google Translate. There was no evidence that he knew the details or the background to any transaction involving El-Tumi beyond what was stated in the documents found on his phone. He had not been radicalised. He had, therefore, played a very limited role. He had not distributed them. The offence was thus at the bottom end of the scale for s.58 offences.

104. The prosecution had accepted a plea to s.58 (which carried a maximum sentence of 10 years imprisonment) as opposed to the more serious offence under s.57 (where the maximum sentence was 15 years). The offence under s.57 was much more serious.

105. Although the immigration offence had a maximum penalty of 2 years, it could not be contended on his behalf that the starting point taken by the judge of 20 months and the discount of 10% applied were wrong and therefore, viewed on its own, the sentence was not manifestly excessive. Viewed however as a matter of totality, the sentence was too long.

Our conclusion

106. It cannot be doubted that the transaction in question involved significant quantities of armaments of a very high value. The judge was entitled to conclude that the role of Eshati was to aid the terrorist cause he espoused and was not as limited as was claimed on his behalf, given the conversations with El-Tumi, the value of the consignment and what could be inferred from the background. As we have set out at paragraphs 8-13 above, the courts cannot assess the purpose of the terrorist cause he was supporting; it is irrelevant to sentence.

107. Although the sentence was severe, we cannot say that it was manifestly excessive.

108. As was accepted, the sentence passed for the immigration offence was not wrong in principle viewed in isolation; we cannot see, taking into account the other sentence, that there was any breach of the principle of totality. The prosecution had accepted a plea to s.58 as opposed to the more serious offence under s.57; the offence under s.57 was much more serious as, in those circumstances, the possession had to be in circumstances which gave rise to a reasonable suspicion that the offender intended it to be used for the purpose of the commission, preparation or instigation of an act of terrorism.

109. The appeal is dismissed.

(4) YAHYA RASHID

110. On 13 November 2015 at the Crown Court in Woolwich before HH Judge Katz QC and a jury, Rashid, then aged 19, was convicted of two counts of engaging in conduct in preparation of terrorist acts contrary to s.5(1)(a) and (b) of the 2006 Act. On 18 November 2015 he was sentenced to five years detention on each of the counts under s.5, those sentences being concurrent and a further four month sentence, also to be served concurrently, for an offence of fraud to which he had pleaded guilty; the sentences for the offences under s.5 are subject to s.236A of the CJA 2003.

111. His application for leave to appeal against sentence has been severed from his application to appeal against conviction and has been referred to the Full Court by the Registrar.

Facts

112. The applicant was born on 29 March 1996 and is a British national. He was one of eight children and lived at home with his mother and father in London. He attended school and obtained GCSEs at Ealing College. On 6 October 2014 he started a Design and Electronic Engineering course at Middlesex University where he attended courses until late February 2015. He obtained a pass on course work.

113. That place, however, had been obtained fraudulently as he only had GCSEs. There was evidence before the court that he was of lower than average intelligence. He obtained a student loan of £6,000.

114. By the end of 2014, at the latest, Rashid had developed interests in radical Islamic ideology and became friendly with three men - Ibrahim Amouri, Khalid Abdul-Rahman and Swaleh Mohamed.

115. It appears that a number of postings were made in his name on the Internet. The prosecution could not say whether he had made those, as they may have been made by his friends, but he did not take them down. Amongst the postings were a number of YouTube videos that were broadly supportive of Islamic State.

116. On 25 February 2015 Rashid purchased flights for Morocco for himself, Khalid Abdul-Rahman, Ibramim Amouri, Swaleh Mohamed and Deqo Osman, Swaeh Mohamed's wife at a total cost of £906. It appears that the funds were derived from the student loan he had obtained. The funding of the others was the basis of the count of an offence under s.5(1) (b) of the 2006 Act.

117. On arrival in Morocco he changed his name on Facebook to Muhammad Al-Haznawi and made a posting on Facebook saying he wished to give up "his life of comfort to a life of severe trials so I may achieve a share of the hereafter seriously".

118. Rather than returning to the UK from Morocco on 6 March, all five flew to Istanbul on 3 March 2015.

119. As he had not returned to the UK his parents became concerned and reported the matter to the police. He engaged in Facebook chat with his father, deceiving him as to what was actually happening. He and his group then went by coach to Gaziantep, a large city in South East Turkey which is used as a staging post by those who intend to fight for Islamic State in Syria, as it is only a short distance by road from the Syrian border. He stayed in Gaziantep with his companions at a safe house. His evidence was that he had been reassured by his companions that they would be travelling to an Islamic state where they would follow Sharia Law. There would be no drink, drugs or temptations. They would go to Syria and they would live in peace. When he watched the news and told them his doubts about this, they told him that the news was made up. When in Gaziantep he said he heard conversations between others who were there and he realised Syria was not safe and realised that people were going to fight there. He decided to leave his friends and come back to the UK.

120. He was advised by his family to seek help from the British Embassy in Istanbul. He then purchased a flight from Gaziantep to Istanbul on 22 March 2015 and on 23 March 2015 went to the British Embassy. On 31 March he was put on a flight to return to the UK where he was arrested on arrival.

121. Before the court there was evidence from a chartered clinical psychologist, Dr Karen Hathaway, a psychological report by Dr Brendan O'Mahoney and reports from Dr Martin Lock, a Consultant Forensic Psychiatrist. Dr Hathaway concluded that he had low intellectual functioning and he was suggestible. He presented as more able than he actually was. She believed he did not understand the seriousness of the situation he was in. Dr Lock's view was that Dr Hathaway had significantly underestimated Rashid's true IQ and, although his IQ was below average, he understood what he was doing.

The sentence

122. The judge, who had heard the evidence, accepted that Rashid was of below average intelligence. He was very much a hanger-on rather than a leader and was rather immature and naïve. However, he knew what he was doing and made his own decisions. No-one had pushed him into his fraudulent conduct in obtaining a place at Middlesex University. He was "street smart". Once he had embarked on his journey to Morocco and Turkey, he was able to lie to the authorities and to attempt to cover his tracks by disposing of his laptop and mobile phone. Although he had never held a gun in his life, it was not possible to say what he would have done had he gone on to become a foot soldier for Islamic State. The Facebook status update suggested that he may have had martyrdom in mind. Although the judge was not sure why he changed his mind, the judge concluded it was probably to save his own skin and because he felt bad about what he was doing to his family. The judge was satisfied that he had not obtained a student loan to fund the plans to join Islamic State.

123. The judge found he was not dangerous. Because of his low intelligence and his youth he would pass a lower sentence than he otherwise would have passed.

The submission on the application for leave to appeal

124. It was submitted to us that the judge had failed to give sufficient weight to his low intelligence, to the fact that he had been led along by others and to his decision not to go to Syria but to return to the UK.

Our conclusion

125. Rashid was found guilty of two separate offences – the offence under s.5 (1) (a) which he committed by going as near to Syria as he could have done and the offence under s.5 (1)(b) of funding others to make the journey which enabled them to go to Gaziantep and, as they did not return, it is to be inferred, to join Islamic State.

126. As will appear from what we have already said at paragraph 33, the judge was right in saying that the sentence passed on him had been significantly reduced because of his low intelligence and his age; it was at the lowest end of what we have described as level 5. Both offences committed by him would have merited a custodial sentence in the region of 10 years in the light of the funding he provided for the others, together with, if a finding of dangerousness had been made, an extension period of 5 years.

127. The application for leave is without merit. The judge's findings as to Rashid's intelligence are unassailable as he was plainly entitled to make that finding on the evidence before him. The sentence passed was generously merciful to Rashid and duly reflected the mitigating circumstances.

128. The application for leave to appeal against sentence is refused.

(5) SILHAN OZCELIK

129. On 20 November 2015, Ozcelik, then aged 18, was convicted at the Central Criminal Court before HH Judge Bevan QC and a jury of an offence under s.5 (1) of the 2006 Act. She was sentenced to 21 months detention.

130. She renews her application for leave to appeal against sentence after refusal by the single judge.

The factual background

131. Ozcelik was born on 14 December 1996 to a Kurdish Turkish family and brought up strictly by that family in England.

132. On 27 October 2014 when she was 17 years of age she told her brother she was going to college that morning but when her mother looked in her room, she found a letter and a 25 minute long video declaring that she had left to join the Kurdistan Workers' Party (the PKK). The letter claimed that she had made an informed decision and that no-one had influenced her. She said that she had wanted to join the PKK since she had been aged 13 and was leaving in order to do so. The video said that as there was a war in Kabani (a town in north Syria under the control of the PKK) and, as men were not joining in the fight while thousands of Kurdish people were being killed, she was going as a guerrilla and wanted to fight but it was up to PKK as to whether she would.

133. She had that morning purchased a ticket from St Pancras on the Eurostar to Brussels. She travelled with a male, Tasyurdu.

134. A friend of the applicant who travelled to St Pancras with her and Tasyurdu made a statement that Ozcelik had told him that she intended to travel to Europe with her boyfriend and that she would return in a few days. Tasyurdu, when interviewed, stated that he had accompanied Ozcelik to meet her uncle in Belgium. There they had met a man that he did not know. She had left her mobile phone at home and recovery of data from it showed that there had been texts between her and someone in Belgium.

135. On 16 January 2015 she returned to Stansted from Germany. She was arrested. She commented, "That will teach me for running away from home." Police seized a digital camera and an MP3 player that she had with her, but nothing relevant was recovered. She made no comment during her interview.

136. Her defence at trial was that she had left the letter and video for her parents but her travelling to Belgium had nothing to do with terrorism or joining the PKK. She said she had lived a very restricted controlled life with her family. She had no freedom but had met an older man, Mehmet Orhan, with whom she had become enamoured. She had travelled to join him. Her evidence was that her parents would have been ashamed if they had thought she had run away with a man, whereas they would be less critical if she had left home to join the PKK. She said that once she had arrived in Brussels she had stayed with Orhan and his friends. Over time she became disillusioned as her hopes of a relationship failed to materialise. She then telephoned her mother to tell her where she was and met her uncle in Frankfurt. He had given her the money to return home.

137. The short issue for the jury was whether the prosecution had proved that her journey to Belgium was conduct in preparation for committing an act of terrorism or whether her account of running away to meet a man with whom she was enamoured was or might be true.

138. The jury's verdict showed that they were satisfied that her journey to Brussels was undertaken with the intention of committing acts of terrorism and she was going to join the PKK.

139. In his sentencing remarks the judge concluded that despite her intelligence, she was a stupid, feckless and deeply dishonest young woman who had lied to the jury and lied to her family. He was not satisfied that the PKK was necessarily the only motive for travelling but the jury had found that travelling to join the PKK for a short time at least was part of the intention. A suspended sentence was not realistic. However, taking into account that she had been in custody for eight months, the equivalent of a 16 month sentence, the least sentence he could impose was one of 21 months custody.

The application for leave to appeal against sentence

140. It was submitted to us that as there had been no evidence that she had joined the PKK or attempted to do so, and given her previous good character and youth, her offending must be on the bottom rung of s.5 offences. The sentence of 21 months was too long.

141. It was also submitted on her behalf that the sentence was inconsistent with what the judge had done after his rejection of the submission of no case to answer. The judge had invited counsel into his room without a shorthand writer and told both counsel

that what he was about to do was "most irregular". He went on to say that in his view she was a silly girl and he wished to reassure her that, if she changed her plea, the sentence of imprisonment would be equivalent to the time she had served. Counsel told the applicant this and treated it as if it was a *Goodyear* indication.

Our conclusion

142. We agree with the judge's description that his intimation to counsel of his attitude at the end of the prosecution case was "most irregular". We wish to reiterate once again that judges should not at any stage in a case give any indication of sentence, save in accordance with the approved procedure. It must have been appreciated by Ozcelik's counsel that what had happened could not in any way be relied upon.

143. We consider this renewed application to be without merit. The jury, having carefully considered the evidence, had been sure of Ozcelik's intention to commit acts of terrorism and had rejected her account of why she had gone to Brussels. The judge therefore had to sentence on that basis. The judge was again right in saying that this was the least possible sentence he could have passed. It was an offence at what we have described in paragraph 34 as level 6 and at the very lowest end of that level.

144. This application is therefore dismissed.

(6) SANA KHAN

145. In December 2015 Khan was tried with her co-defendant, her then husband Mohamed Rehman, for an offence under s.5 of the 2006 Act at the Central Criminal Court before Jeremy Baker J; both were convicted. Rehman was also convicted of possessing articles for terrorist purposes, contrary to s.57 of the 2000 Act. On 30 December 2015, Khan was sentenced to life imprisonment with a minimum term of 25 years, less time on remand. Rehman was also sentenced to life imprisonment with, in his case, a minimum term of 27 years, less time spent on remand.

146. Khan's application for leave to appeal against sentence has been referred to the Full Court by the Registrar. The basis of that application was that the minimum term was manifestly excessive. Prior to the hearing on 15 March 2016, Khan had told the court that she no longer wished to be represented by either leading or junior counsel who had represented her at trial. On the court's direction trial counsel attended and, after a conference over the video link with Khan, made clear to the court that Khan wished to appeal against the imposition of a life sentence as well as the minimum term. In the circumstances, leading counsel felt obliged to withdraw.

147. Exceptionally, we granted a representation order for leading counsel to make an application in respect of the sentence passed in the light of Khan's age, the fact that her family had refused to support her, and the fact she had been sentenced to life imprisonment with such a lengthy minimum term. Mr Blaxland QC was instructed to appear on her behalf. He made submissions to us orally and subsequently in writing. We grant leave.

The factual background

148. Khan was born in August 1991. At the time she was sentenced she was 24 years of age. Her co-defendant and husband, Mohammed Rehman, was 25 years of age. They were born and raised in Reading and had met at secondary school. They commenced

a relationship which they kept from their respective families. Khan went to university at Greenwich and obtained a 2:1 in English. After leaving university, she obtained employment. Rehman had, in contrast, few academic qualifications, had no consistent pattern of work and by 2014 was unemployed and openly smoking cannabis.

149. Although Rehman had undergone a marriage ceremony with another woman in Pakistan, he divorced that wife and married Khan in a secret Muslim ceremony on 31 October 2013. They concealed the marriage from their families, who disapproved of their relationship; each continued to live with their own family, but to communicate and meet in secret, until they were arrested in May 2015.

150. Although neither had shown much interest in Islam, it was clear that from the early summer of 2014 both appeared to be showing more interest. Khan encouraged Rehman to refocus his life on Islam.

151. By late autumn 2014 Khan began to transfer money to Rehman who used part of the monies to purchase chemicals and laboratory-type equipment for the purpose of manufacturing explosive substances. The first transfer took place on 17 November 2014; various chemicals and equipment were bought by Rehman. About a week later, on 25 November 2014, Rehman sent Khan a video of a test explosion which had been carried out in the back garden of his home, using explosive substances and an improvised electronic detonator. On 30 November 2014 a second transfer was made by Khan to Rehman which enabled Rehman to purchase two mobile phones. When one of those phones was subsequently seized, a hole had been drilled into its outer casing in a position which was consistent with its potential use as part of an improvised electronic detonator.

152. In the period between 23 December 2014 and 26 February 2015 three further transfers took place which enabled Rehman to purchase further chemicals and equipment. In consequence, in the period running up to their arrests, he successfully manufactured and tested a number of explosive substances and improvised detonators. By the end of this period, the amount of explosive was sufficient to be able to cause multiple fatalities and significant damage to property.

153. From March 2015 onwards Rehman and Khan were viewing Islamic State material which had been sourced from the Internet. Rehman was regularly viewing materials showing graphic images of extreme violence. At one stage, Khan repeatedly accessed a film featuring Shehzad Tanweer's martyrdom video which he had made prior to taking part in the 7/7 bombings in London. By early May 2015 Rehman was also viewing films featuring suicide bombings. On 17 May he made a series of Internet searches for websites featuring the type of articles and instructions which would be required to make a martyrdom video similar to that which had been made by Shehzad Tanweer. He also used bomb making instructions that had been downloaded from the internet.

154. Neither Khan nor Rehman gave evidence at trial. Rather, each relied on what they had said during the course of their police interviews.

155. Khan's defence was that, although she had married Rehman, she had thought that the money that she was sending him was being spent on drugs. She did not know that he had used any of the money that she had provided to him to buy items for the manufacture of explosives, nor about any wider plan. She had had no intention of

committing acts of terrorism and had not assisted anyone to do so. She had often seen things in the media about Islamic State, but she was a moderate and westernised Muslim.

156. Rehman's defence was that she, Khan, had been radicalised and had herself sought to radicalise him; that his activities had been deliberately designed to attract the attention of the authorities so as to enable him to escape from the life that he was living. He had undoubtedly, at one stage, indicated his intentions on Twitter.

The judge's sentencing decision

157. In his clear and detailed sentencing remarks the judge, who had heard the evidence, said that he was satisfied that Rehman had produced explosive substances and detonators and that he had intended that they should be deployed in a way which would have the maximum effect – i.e. by way of a suicide bombing in a crowded public area in Central London (such as the underground system or a large shopping centre) and with a pre-recorded martyrdom video via which he had hoped to encourage further serious acts of terrorism in the cause of Islamic State. Whilst Rehman had not selected a specific date or location, preparations had been at a relatively advanced stage when the police had intervened.

158. The judge observed that, on the search of Khan's home, copies of the Quran had been found where passages had been highlighted which had been used to seek to justify terrorism. She had also accessed material concerning other Quranic themes by which Islamic State sought to provide itself with further theological justification for its actions.

159. Khan had no previous convictions. There was evidence of positive attributes to her character, as she had been raised to be an open and honest individual, tolerant and respectful of other religions. However, whilst the reasons for her conversion might never be fully known (although the judge envisaged that they may have included disaffection with her family) by the end of 2014 she had become a radicalised Islamist, committed to the ideology of Islamic State, and had brought influence to bear on Rehman in the development of his Islamic ideology. She knew and shared what Rehman's aims had been (including not only his preparedness, but also the fact that he was intent on carrying out a suicide bombing in a crowded Central London location with a substantial quantity of high explosive so as to cause multiple fatalities and injuries); without the funds that she had provided to him he would have been unable to purchase the chemicals and other equipment, or to make the very real preparations that he did.

160. Once Khan had gained the mindset through becoming interested in the theological justification of the aims of Islamic State, she was determined to fulfil Islamic State's cause for Jihad by the carrying out of an act of terrorism within the UK. Although the judge was unpersuaded that she would physically take part in an act of terrorism, leaving that to Rehman, the judge concluded that that was of limited significance because she had provided funds to him, knowing the purpose for which he was using them.

161. The judge rejected Khan's attempt to limit her role, stating that he was satisfied that she had had full knowledge and had taken a full and active part in encouraging and planning. He also rejected the sentiments in a letter that Khan had written to him – in which she had asserted, amongst other things, that she had been in a controlling and

abusive relationship, that she had been using drugs every day and that she had since divorced Rehman.

162. Against that background, the judge was satisfied that Khan posed a significant risk of serious harm to members of the public, occasioned by further violent specified offences; that the level of danger posed to the public by her was of such a degree, and of a duration, that could not be reliably estimated; and that neither a determinate nor an extended custodial sentence would provide sufficient public protection. Thus a sentence of life imprisonment was required.

163. In determining the length of the minimum term the judge took into account Khan's good character and the fact that she had not been charged (as Rehman was) with a s.57 offence.

The submissions on behalf of Khan

164. Mr Blaxland advanced two broad submissions, as follows:

i) The finding of dangerousness was wrong; in any event, it was a proper case for the imposition of a determinate sentence (with an additional licence extension period of one year under s.236A of the CJA 2003) rather than an indeterminate sentence or an extended sentence.

ii) The custodial period was far too long.

165. As to his first submission, Mr Blaxland underlined that the judge's decision on dangerousness had been made without Khan giving evidence and without a Pre-Sentence Report (albeit that counsel then representing Khan had not asked for one). Hence the judge's assessment had necessarily been limited to the evidence presented by the prosecution. That evidence suggested that Khan's conversion to radical Islamist ideology was inextricably linked to her relationship with Rehman (potentially, as the judge observed, via family disaffection). There was no evidence that she was part of or had engaged with a wider group of terrorist sympathisers, nor that she had sought to influence anyone else.

166. In the result there was, Mr Blaxland submitted, insufficient material before the court to justify a finding of dangerousness. It could not properly be said of Khan (as it could of *Barot*) that she had been in the grip of Islamic extremism "over a prolonged period". Equally, it was at least possible (given the enforced separation from Rehman whilst in custody) that by the time of the trial she had genuinely broken with the ideology and sought to be reconciled with her family – and if that may have been the case, the finding of dangerousness would not have been justified

167. In any event, given that one of the considerations in imposing a life sentence is the availability of alternative sentences, the alternative of a determinate sentence combined with the mandatory additional licence extension period of one year required by s.236A of the CJA 2003, would also ensure that Khan would not be released until it was safe to do so.

168. Given Khan's good character, and the evident difficulty in understanding how she became involved in such a serious offence, it was important that additional information about her background was made available to the court. Therefore, Mr Blaxland submitted, the court should consider whether to obtain such information –

whether by way of a report from the National Probation Service or from the relevant prison authorities.

169. As to his second submission, Mr Blaxland drew attention to the minimum terms variously imposed in *Ibrahim & others*, on the airliner plot offenders in *Ali & others*, and on *Barot* and submitted that all those cases involved plots that were on a wholly different level, and at a much more advanced state of preparation, than in this case. Thus, he submitted, the minimum term of 25 years imposed on Khan was manifestly excessive.

170. We ordered the provision of a Prison Report and required that it be written by a Governor. We have been provided with both a Prison Report dated 20 April 2016 and a forty nine page OASys Risk Assessment, completed by a Probation Officer, dated 22 April 2016.

The Prison Report and the Risk Assessment

171. The Report indicates, amongst other things, that there have been no behavioural concerns since Khan was transferred to the relevant prison on 4 January 2016; that her imprisonment has had little effect on her and she goes about her normal day to day activities – engaging well with her Offender Supervisor and other staff; that she has recently been promoted to the role of assistant in the prison's social enterprise centre; that she attends Islamic studies; and that no concerns have been raised in relation to her attendance at Muslim prayers.

172. The Risk Assessment includes, amongst others, the following observations and conclusions.

i) Khan's secret wedding in 2013, and the way in which she kept her continuing relationship with Rehman secret from her family, shows that if she feels strongly enough about an issue she is prepared to lie and manipulate to achieve her goal, and is skilled in deception and lying.

ii) Drug taking was not the overriding activity in Khan's life.

iii) Khan's claim that she was very ignorant of extremist Muslim ideology was inconsistent with the clear evidence to the contrary. She continued to blame Rehman for the position she was in. She did not comment on the offence and the effect it would have had on others. Her concerns related to herself.

iv) In view of her continuing denial of guilt, against the strong weight of the evidence that she played a full part, it was appropriate to presume that her thinking, attitudes and motivations remained unchanged from the time of the offences.

v) Against that background, and given the protracted and focussed nature of the plan and the stage that the preparations for the bombing had reached, Khan poses a very high risk of causing serious harm to the public.

Further submissions

173. In further written submissions in relation to the Governor's Report and the Risk Assessment, Mr Blaxland underlined the positive aspects. As to the Report, he

submitted that there was nothing to indicate that Khan is a radicalised extremist whose ideological beliefs would lead to the conclusion that there is a significant risk that she would commit offences of terrorism now or in the future. There was therefore no background material, other than the facts of the offence, to suggest that Khan poses such a risk – particularly given that:

i) The offence was committed because of her relationship with Rehman, which is now over.

ii) There remains no material to suggest that she was involved with anyone other than Rehman in pursuing an Islamist agenda.

iii) She was taking drugs at the time of offending – which is strictly prohibited within the Muslim religion and suggests very strongly that she was not a committed radical Islamist.

iv) She has no previous convictions and there is nothing in her background to suggest that she would commit further offences.

174. As to the Risk Assessment, Mr Blaxland relied upon:

i) The author's opinion that the underlying features of the offence seemed to be linked to the secret relationship between Khan and Rehman who, in their isolation and with no hope of approval, believed that if one of them was martyred that their relationship would be celebrated.

ii) The fact that the author had not considered the point that Khan's drug taking militated strongly against her having an entrenched radical Islamist ideology.

iii) The fact that Khan had stated that her family are now supporting her, which was important because of the prior rift between them caused by her relationship with Rehman.

175. Mr Blaxland further submitted that the author's conclusion that Khan posed a very high risk of serious harm to the public appeared to be based to a significant extent, if not exclusively, on her denial of guilt, which did not, alone, provide a sufficient basis to impose a sentence of life imprisonment (not least because her motivations were tied up in her relationship with Rehman) and that it should not be assumed that her attitudes "remain unchanged". This was, he submitted, a highly unusual case in which the commission of the offence came about not because of a deep seated commitment to an ideology, but as a consequence of a personal relationship – hence, so far from there being a significant risk that Khan would commit further terrorist offences, there are good reasons to believe that she would not.

Our conclusion

176. Albeit that Khan did not give evidence, the judge, having presided over the trial, was entitled to reach conclusions of which he was sure as to the factual basis upon which to pass sentence. The clarity and detail of his sentencing remarks show that he did so with considerable care. Given the weight of the evidence those factual conclusions are, in our view, unassailable. In particular, he was entitled to reject Khan's assertion that she was not an extremist.

177. Khan thus fell to be sentenced upon the basis that she had become, and remained, an extremist; that she had brought influence to bear on Rehman in the development of his ideology; that she had provided the finance for the plan with Rehman that he carry out a suicide bombing in Central London causing multiple deaths; that without that finance the plan would not have got off the ground; that the plan was viable; that she also gave encouragement to Rehman during the course of his preparations; and that those preparations had reached a relatively late stage when the police intervened.

178. Accordingly it seems to us that this was a Level 2 case as we have stated at paragraph 30 above. Equally, we have no doubt that, based on his factual conclusions, the judge was clearly entitled to conclude both that Khan was dangerous and that a sentence of life imprisonment was required. We are fortified in that view by the conclusion of the Probation Officer in the OASys Risk Assessment, for what seem to us to be sound reasons, that Khan posed a very high risk of serious harm to the public. Given Khan's propensity to deceive and lie, and the obvious incentive, for the purposes of this appeal, to present herself as non-extreme, we do not regard her current conduct in prison, or any aspect of the Report and Risk Assessment, as undermining the judge's conclusions. Nor, for example, does the fact that she chose to adopt certain tenets of radical Islam without adopting others (e.g by continuing to dress in a western-style way and taking drugs) indicate any diminution of her commitment to furthering the aims of radical Islam.

179. As to the length of the minimum term, the only mitigation was her previous law abiding life. There are none of the specific factors to which we have drawn attention in paragraph 22. However we consider that taking into account her previous good character and her role in contrast to that of Rehman, the appropriate minimum term should have been 23 years.

180. We therefore allow the appeal to the extent only of quashing the minimum term of 25 years and substituting a minimum term of 23 years.

IV: OUR OVERALL CONCLUSION

181. Those who involve themselves in terrorism whether by commission, the provision of assistance or engaging in conduct in preparation must expect a severe sentence. Until the publication by the Sentencing Council of a guideline on terrorist offences, this judgment provides direction that will achieve consistency of approach in these difficult cases where there is otherwise little Court of Appeal guidance.

182. In summary, therefore, the application by the Solicitor General in relation to Kahar is allowed and his sentence is increased from 5 to 8 years' imprisonment. The appeal by Ziamani is allowed to the extent that that the extended sentence of 27 years' imprisonment is reduced to 24 years' imprisonment made up of a custodial term of 19 years and an extension of 5 years. The appeal by Khan is allowed only to the extent that the minimum term of the sentence of life imprisonment is reduced from 25 to 23 years. The appeal of Eshati is dismissed and the applications of Rashid and Ozcelik are refused.