Claim No. AC-2025-LON-002122

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
B E T W E E N:

THE KING
on the application of
HUDA AMMORI

Claimant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant

-and-

(1) UNITED NATIONS SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM
(2) THE NATIONAL COUNCIL FOR CIVIL LIBERTIES ("LIBERTY") and AMNESTY INTERNATIONAL UK ("AMNESTY UK")

Interveners

WRITTEN SUBMISSIONS
ON BEHALF OF LIBERTY AND AMNESTY UK

References: *to paragraph numbers of the Secretary of State's Detailed Grounds of Defence are in the format [DGD/§x]*

to paragraph numbers of the Second Witness Statement of Sam Grant are in the format (Grant 2, §x) and the Second Witness statement of Sacha Deshmukh are in the format (Deshmukh 2, §x)

INTRODUCTION

1. This claim raises an issue of general importance about the proportionality of using counter-terrorism powers against organisations engaged in direct action protest. The Interveners, who have themselves been directly affected by the decision to proscribe Palestine Action ("**PA**"), seek to assist the Court on the issues arising under Arts. 10 and 11 of the European Convention on Human Rights ("**ECHR**"). These submissions are accompanied by the second witness statements of Sam Grant, the Director of External Relations at Liberty, and Sacha Deshmukh, Amnesty International UK's CEO.
2. The Interveners submit that: (1) The decision of the Defendant dated 23 June 2025 to proscribe PA ("**the Decision**") represents a substantial interference with the rights protected by Art. 10 and Art. 11 (§§3-18); (2) The Court is well-placed to assess the proportionality of the Decision and considerations of relative institutional competence do not require significant weight to be afforded to the views of the Defendant or Parliament (§§19-20); and (3) Having regard to the factors relevant to the proportionality assessment, which are set out below, the Decision was disproportionate (§§21-32).

(1) ENGAGEMENT OF AND INTERFERENCE WITH ARTS. 10 AND 11 ECHR

3. In a case concerned with organised protesters who broke into a US airbase with the intention of destroying or damaging a runway, setting fire to aircraft, and obstructing and disrupting the maintenance of security, Lord Hoffmann, in well-known comments which nonetheless bear repeating, referred to the fact that civil disobedience *"on conscientious grounds has a long and honourable history in this country"*: *R v Jones (Margaret)* [2007] 1 AC 136, §89. He referred to the suffragettes—whose campaign of direct action included deliberate property destruction (Grant 2, §5; see Deshmukh 2, §§9-19 for other examples)—and said that it *"is the mark of a civilised community that it can accommodate protests and demonstrations of this kind."* His Lordship described the way that protesters *"vouch the sincerity of their beliefs by accepting penalties imposed by law"* and that police and magistrates recognise the conscientious objections, acting with restraint in sentencing such individuals. The courts recognise a "*moral difference*" between the actions of those engaged in civil disobedience as a form of protest and acts of ordinary lawbreakers: *Cuadrilla Bowland v Persons Unknown* [2020] 4 WLR 29, §98 (Leggatt LJ, as he was then).
4. Proscribing a protest group organised to pursue forms of direct action on conscientious grounds represents a clear and substantial restriction on a recognised form of political expression by preventing and impeding members and supporters of the group from engaging in such protest. Direct action is a form of protest which can include damage to property such as, for instance, damage to perimeter fencing to access a site for the purposes of protest or limited damage to military aircraft

(see *R v Jones (Margaret)*). Arts. 10 and 11 apply to non-violent expression and peaceful assembly and association. The Claimant's evidence is that PA, as a network which uses direct action to disrupt the arms industry in the UK, has not advocated violence against persons; and that is consistent with the Defendant's evidence.[1] Protest-related damage to property, even if significant, is not equivalent to violence, nor does it render a protest non-peaceful. As set out in §§9-14 below, the authorities are clear that protests which cause property damage—even significant property damage—still engage Arts. 10 and 11. Insofar as the Interveners are aware, there is no European Court of Human Rights ("**ECtHR**") authority which has regarded property damage as a form of protest to be violent such as to take the conduct outside the protections of the Convention.[2] The *manner* in which a protest is conducted is ultimately a question of fact, but the concept of non-peaceful protests should be narrowly construed (see *Venice Commission Guidelines on Freedom of Peaceful Assembly,* 3rd Ed. 15 July 2020, §51).

5. The Decision to proscribe a direct action protest group therefore represents an eschewal of the *"restraint"* described by Lord Hoffmann in *R v Jones (Margaret)* to conscientious civil disobedience. The effect of proscription is that it becomes a terrorism offence to belong to the proscribed organisation (s 11 Terrorism Act 2000, ("**TA**")); to recklessly express support for the organisation (s 12(1A) TA); to display or publish an image of any article if it could arouse reasonable suspicion the individual supports the organisation (s 13 TA); to assist in arranging a meeting to support or further the activities of a proscribed organisation (s 12(2) TA). Such measures, when used against a direct action protest group, are squarely directed at precluding a form of political expression—direct action on conscientious grounds—that the members of the organisation engage in, by fundamentally changing the manner in which the criminal justice system responds to such actions.
6. Furthermore, the ability of people to associate and combine together to pursue political goals is *of itself* of fundamental importance in a human rights-respecting society. It is usually only through combining with other persons that political pressure can be brought to bear so that it has impact and resonance in society; i.e. so that protest can be co-ordinated and so amplified. Disbanding an association formed to coordinate the political protests of its members and supporters under compulsion of law is thus itself a serious interference with freedom of association as well as

[1] See, for example, OPEN submission on PA proscription, §5 and JTAC Assessment of 7 March 2025, §7 as well as Third Witness Statement of Huda Ammori, §13. The Explanatory Memorandum which accompanied the draft proscription Order laid on 30 June 2025 provides that the UK Government "*assesses that [PA] commits and participates in acts of terrorism"* by reference to actions in which members committed *"acts of serious damage with the aim of progressing its political cause and influencing the Government".*

[2] To the contrary: in *Murat Vural v Turkey* (App. No. 9540/07, 27 October 2014), the Court rejected the respondent State's characterisation of the damage caused by pouring paint on statues as "violent" or as otherwise falling outside the protections of Art. 10 (§43). The Court of Appeal held in *Attorney General's Reference (No. 1 of 2022)* [2023] 2 WLR 651, §87 that damaging property may, in certain circumstances, be considered violent (while also recognising that it is possible to cause significant damage without being violent: §88).

expression. It cannot be said that such association remains possible post-proscription (in the same way that the Defendant argues that pro-Palestine protest remains possible), since association as PA is excluded absolutely, and re-associating under a different banner would risk *"furthering the activities"* of the proscribed organisation contrary to s 12(2) TA.

7. The Defendant's position, which if accepted would have serious negative consequences for the protection of freedom of expression and association, can be summarised as: (i) there is no impact on freedom of expression because individual members and supporters of PA can continue to protest and express their opposition to the actions of the Israeli and UK Governments, (ii) the expression of support for *"terrorist activity"* falls outside Art. 10 altogether, and (iii) associations of people who have violent intentions or incite violence are not protected by Arts. 10 and 11 (DGR §§49-51).
8. As to the first limb of this argument, the fact that individuals can continue to protest against the actions to which they object as long as it is not done through the medium of the proscribed organisation ignores: (i) the importance of the ability of people to form associations for the effective communication of political views, (ii) that Art. 10 protects not only the substance of views expressed but also the form in which they are expressed (see e.g. *Oberschlick v. Austria (no. 1),* 23 May 1991, §57, Series A no. 204) and (iii) the very purpose and object of the proscription decision is to prevent the direct action that the members and supporters of PA engage in from occurring.
9. The Defendant's second contention, that the expression of support for terrorism is not protected expression, is a bootstraps argument that ignores the distinction between an organisation employing direct action tactics in support of a legitimate cause as compared to a group employing violent tactics for illegitimate purposes. The basis for the contention is case law of the ECtHR which finds that Art. 17—the prohibition on abuse of rights—can delimit the scope of Arts. 10 and 11. The limited class of expressive acts or associations/assemblies which fall within Art. 17 are removed entirely from the scope of Arts. 10(1) and 11(1) and concern the "*destruction of the rights and freedoms*" of the Convention itself. Art. 17 imposes a high threshold applicable only to the "*gravest forms of 'hate speech'*" (*Lilliendahl v Iceland,* App. No. 29297/18, 11 June 2020, §34), assessed by reference the *substance* of the impugned statements or conduct (*Hizb ut Tahrir and Others v Germany,* App. No. 31098/08, 12 June 2012, §73) irrespective of any label applied by a State. Art. 11 has thus been held to apply to groups that a Government designates as *"terrorist"* (*Herri Batasuna v Spain,* App. No. 25803/04, 30 June 2019, §52). The only case the Defendant cites to make good her argument (*Roj TV AS v Denmark*. App. No. 24683/14, 17 April 2018) is in fact an illustration of the ECtHR assessing whether the speech in question—repetitive incitements to violence in support of the PKK—was in substance sufficiently extreme to engage Art. 17.
10. It is thus evident from the authorities that the classification by the State of conduct or expression as

undesirable, unlawful, criminal, or *"terrorist"*, does not, without more, take speech or conduct outside the scope of Arts. 10 or 11. That is not surprising: any contrary conclusion would fail to afford the Convention the autonomous meaning that is central to ensuring the rights are protected in substance.

11. The third limb of the Defendant's argument takes an unduly narrow view of the protections afforded by Arts. 10 and 11. These rights have been described as *"fundamental in a democratic society"* and "*one of the foundations of such a society"* and as such "*should not be interpreted restrictively*" (*Taranenko v Russia*, App. No. 19554/05, 15 May 2014, §65) The ECtHR has said that "*any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles do a disservice to democracy and often even endanger it*" (*Taranenko*, §67).

12. Art. 10 applies to any "*expressive act*" assessed by reference to both its "*expressive character seen from an objective point of view"* and the "*purpose or intention of the person performing the act*" (*Murat Vural v Turkey,* App. No. 9540/07, 27 October 2014, §54, as cited by the Court of Appeal in *Attorney General's Reference (No. 1 of 2022)* [2023] 2 WLR 651, §96). It includes not only the substance of the expression but "*the mode by which it is conveyed*" (*Oberschlick, §57*). It applies to protests involving criminal conduct which causes "*significant*" disruption of the "*utmost seriousness*" costing hundreds of thousands of pounds (*R v Trowland* [2024] 1 WLR 1164);[3] those which "*physically [impede] the activities of which the [protesters] disapproved*" (*Steel v United Kingdom* (1999) 28 EHRR 603, §92); demonstrations involving *"forceable entry"* to secure locations or acts of protest causing property damage, such as pouring paint on valuable items (*Murat Vural*, §§7-10, 56; *Taranenko v Russia,* §70); or causing irreparable damage to the antique frame holding Vincent Van Gogh's Sunflowers painting by throwing tomato soup on the "*literally priceless….cultural treasure*" in an act described as *"shocking"* (*R v Hallam* [2025] EWCA Crim 199, §§43, 173). As noted above, substantial property damage was in issue in *R v Jones (Margaret)*, where toleration of such conduct by a measured criminal justice response was associated with the cultural traditions of this country.

13. The ECtHR has held that Art. 10 also encompasses shouting slogans in support of the PKK i.e. an "*armed, illegal organisation*" (*Gul v Turkey* (2011) 52 EHRR 38, §35); possession of propaganda material from the PKK which "*advocated and glorified violence and aimed at winning over as many persons as possible for the armed struggle*" against the authorities (*Kaptan v Switzlerland*, App. No. 55641/00, 12 April 2001, §1); and delivering a speech paying tribute to a former member of a terrorist organisation insofar as it did not recommend the use of violence or armed resistance (*Erkizia Almandoz v Spain,* App. No. 5869/17, 22 June 2021).

[3]The appellants had suspended themselves on a bridge across the M25 carriageway for 36 hours and displayed a "*Just Stop Oil*" banner, delaying a minimum of 564,942 vehicles accruing to a period of 60,547 hours and causing disruption valued at around £917,000 (§§1, 12, 74). The Court of Appeal held that the Art. 10/11 protections while "*weakened on the facts*" were not removed (§74).

14. Art. 11 has a similarly broad scope of application, applying to the dissolution of political organisations declared illegal because the government assessed they had ties to terrorist organisations (*Herri Batasuna v Spain*), demonstrations which the government claimed breached domestic law (*Navalnyy v Russia*; App. No. 29580/12, 15 November 2018, §99), and protests marked by violence against persons (*Primov v Russia*, App. No. 17391/06, 12 June 2014, §119; *Shmorgunov v Ukraine*, App. No. 15367/14, 21 January 2021, §§492, 504). If some individuals act in a violent manner it does not deprive an association as a whole of the protection of Art. 11 (*A-G's Reference No 1 of 2022* [2023] KB 37, §84), nor necessarily the individuals themselves, depending on their intentions and the nature of the circumstances (*Barabanov v Russia*, App. Nos. 4966/13 and 5550/15, 30 January 2018, §75).
15. In considering whether any such actions go so far as to represent a rejection of *"the foundations of a democratic society"* so that Art. 17 would apply, it is also important to have regard to the specific tradition of toleration of certain types of conscientious protest in the United Kingdom, as explained in Lord Hoffmann's comments in *R v Jones (Margaret)*.
16. Arts. 10 and 11 are also engaged where a measure "*could have*" or even is "*capable of having*" a "*chilling effect*" on the exercise of expression and association (*Baczkowski v Poland*, App. No. 1543/06, 3 May 2007, §67; *Various Claimants v NGN* [2019] EWCA Civ 350, §18; *Shmorgunov v Ukraine*, §493). Having a chilling effect has been described as having at "*deterrent impact"* on a person exercising their rights (*R (Leigh) v Commissioner of Police of the Metropolis* [2022] 1 WLR 3141, §76) or as being "*capable of discouraging participation"* in the expressive or associative rights in question (*SIC-Sociedade Independente De Comunicação v Portugal,* App. No. 29856/13, 27 July 2021, §69).
17. As set out in the evidence of the Interveners, the measure under challenge has deterred them from expressing views, campaigning, and organising in relation to a contentious government decision and matter of public concern. Mr Grant states that Liberty considered the use of counter-terrorism powers against a protest group to be an "*important civil liberties issue, representing a major extension of the use of executive anti-terrorism powers"* (Grant 2, §8) and it therefore conducted "*considerable"* advocacy and campaigning work between the Defendant's announcement of her intention to proscribe PA and the proscription taking effect (Grant 2, §9). This included writing to the Defendant, briefing Parliamentarians, and commenting widely in the press (Grant 2, §§11-16). But after the coming into the effect of the proscription order, its activities had to be severely scaled back given the "*breadth of the related criminal offences and the [organisation's] senior leadership team's understandable unwillingness for Liberty and its staff to be exposed to any risk of breach of the criminal law*" (Grant 2, §19). While in normal circumstances Liberty would have "*continued to carry out influencing work in respect of a government decision with a significant impact on civil liberties*" the risks of inadvertently committing serious offences meant Liberty did not engage further with Parliamentarians and refused a large number of media requests

(Grant 2, §§22-26). Similarly, see Mr Deshmukh's evidence at §§23-27. Mr Grant and Mr Deshmukh explain that, in addition, the decision inhibited the internal workings of both human rights organisations (Grant 2, §20; Deshmukh 2, §28). As Mr Grant puts it, Liberty has ultimately been compelled to "*conduct its campaigning work in a materially different – and less effective – manner than it has in respect of previous Government decisions and legislation on counterterrorism which we assess seriously impact civil liberties*" (Grant 2, §27).

18. Against this backdrop, the Defendant's argument that there is "*no interference*" with Arts. 10 and 11 and "*no weight*" should be given to the rights of individuals impacted by the proscription decision is contrary to authority and fundamentally wrong in principle.[4]

(2) PROPORTIONALITY: RELATIVE INSTITUTIONAL CONSIDERATIONS

19. The question whether the proscription decision is proportionate is "*a question of substance for the court itself to decide*", giving appropriate weight to the assessment of the executive and Parliament having regard to "*the extent to which the courts are more or less well placed to adjudicate, on grounds of relative institutional expertise and democratic accountability*" (*Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30, §§120, 124). The court in this case is well placed to adjudicate the issue of proportionality:

    19.1. The Court has more information and evidence than was considered by the Secretary of State and Parliament, including access to closed material and focused submissions on Arts. 10 and 11.

    19.2. Whilst the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2025, was approved by resolution of each House of Parliament, it is nonetheless an executive measure (*Bank Mellat v HM Treasury* [2014] AC 700, at §42 (Lord Sumption), §54 (Lord Reed)), which received very limited scrutiny (*R (PLP) v Lord Chancellor* [2016] AC 1531 at §§22-24).[5] The constraints on Parliamentary scrutiny were accentuated here by the inclusion in the Order of two other unconnected organisations which are not protest groups, which—given that SIs cannot be amended—meant parliamentarians could not vote against the proscription of PA without also voting against the proscription of the other two named organisations.

    19.3. Parliament is not itself subject to the HRA (HRA s.6(3)) and the consideration given to

[4] See heading on p.15 of the DGD and [DGD/§§47, 54-56].

[5] The Commons last rejected a negative resolution SI in 1979 and the Lords in 2000: https://guidetoprocedure.parliament.uk/collections/PtBJuBiU/negative-procedure. The Commons last rejected an affirmative resolution SI in 1978 (https://guidetoprocedure.parliament.uk/collections/9CcpWjdj/affirmative-procedure) and the Lords in 2015 (by voting to amend in a way that undercut the resolution) a move which led to the Strathclyde Review to ensure Commons primacy over secondary legislation.

the measure by Parliament was not directed (e.g. by standing orders), to the issue of proportionality or impact on Arts. 10 and 11. Indeed, the Government's position is—erroneously—that Arts. 10 and 11 are not even engaged by the proscription. The explanatory note that accompanied the draft Order did not address the impacts of the measure or the question of proportionality and it noted that a full impact assessment had not been conducted.[6]

20. For all of these reasons, the court should not afford any significant weight to the views of Parliament and the Government on the issue of proportionality.

(3) PROPORTIONALITY BALANCE

21. The fact that conduct meets the requirements for proscription does not demonstrate its proportionality, which depends on the precise facts and circumstances. The following factors are relevant to the proportionality assessment and render the proscription of a direct action protest group disproportionate.
22. First, as set out in §§3-18 above, proscription represents a significant interference with both Arts. 10 and 11. In the case of organisations who advocate or engage in violence to persons, those rights would not be engaged, but that is not the case in relation to direct action protest groups, even where they cause significant property damage as a form of protest.
23. Second, assuming that direct action involving property damage satisfies the statutory definition of terrorism, it is at one end of the spectrum and not comparable in nature with the sort of activities to which the legislation is directed. By encompassing actual or threatened damage to *property*, the definition of terrorism under the TA 2000 extends beyond international definitions and standards relating to the combating of terrorism, which generally require violence against *people* i.e. death, serious injury, use of explosives or hostage taking.[7] The courts have recognised that this definition is, on its face, "*striking*" in its breadth (*R v F* [2007] QB 960, §§27-28, endorsed in *R v Gul* [2013]

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[6] The SI was accompanied by the statement which accompanies all SIs and draft SIs that the Minister considers the instrument to be compatible with the ECHR, however, as noted in the preceding sentence, this was premised on an erroneous view as to the (non-)engagement of Arts. 10 and 11.

[7] See, for example: **International Convention for the Suppression of Terrorist Bombings** (ratified by the UK on 7 March 2001), providing universal jurisdiction over the unlawful and intentional use of explosives and other lethal devices in public places with intent to kill or cause serious bodily injury, or with intent to cause extensive destruction of the public place; **International Convention for the Suppression of the Financing of Terrorism** (ratified by the UK on 7 March 2001), Art. 2 of which defines terrorism including as "*any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act*"; **UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism's model definition of terrorism** (Report on ten areas of best practices in countering terrorism, A/HRC/15/51, 22 December 2010), by which terrorism means an action or attempted action which constitutes the intentional taking of hostages; or is intended to cause "*death or serious bodily injury to one or more members of the general population or segments of it*"; or involves "*lethal or serious physical violence against one or more members of the general population or segments of it*".

WLR 1207, §26) and "*very far reaching*", capable of including activities which might command a measure of public understanding or support (*Gul*, §29). Given this wide definition of terrorism, the power to proscribe an organisation is extremely broad and capable of applying to a very wide spectrum of organisations. Where an organisation lies on that spectrum is highly relevant to the question of whether imposing the restrictions on it that are concomitant with proscription is proportionate.

24. Third, it is also relevant to consider the objectives of the organisation which is proscribed, and whether its aims are compatible with or repugnant to a human rights-respecting democratic society. Whereas some organisations are committed to overthrow of democratic institutions or other goals which are abhorrent to human rights-respecting society, the objectives of PA are directed to upholding *jus cogens* norms of international law—that is, the prohibitions of war crimes, crimes against humanity, and genocide.
25. Fourth, the criminalisation of all members of, and those who express support for, a protest group is a very substantial interference. A criminal conviction has been held to be one of the "*most serious forms of interference*" with the rights to freedom of expression and assembly (*Perinçek v Switzerland* (2016) 63 EHRR 6*,* §27; *Yordanovi v Bulgaria*, App. No. 11157/11, 3 September 2020, §50). Arrest of protesters (*Steel*, §92) and even the risk of being criminally investigated (*Altuğ Taner Akçam v Turkey,* App, No. 27520/07, 25 October 2011, §70-82) represent an interference. The criminal offences under the TA are extremely serious, and a criminal conviction for a terrorism offence is clearly of a different order to a conviction for a public order or property damage offence. The likely penalties are much more severe, as are the reputational and ancillary consequences. For example, most countries will not allow entry to individuals who have a conviction for a terrorist offence. And while some individuals in this category may be engaging in provocative acts of civil disobedience to protest the Decision, they are still exercising legitimate expressive rights which, contrary to the Defendant's submission, *do* have weight in the proportionality balance.
26. Fifth, proscription is essentially a form of prior restraint, intended to prevent further action meeting the definition of terrorism, through deterrence and disruption. Whereas the traditional criminal justice response to direct action protest tolerates protests occurring and imposes (appropriately attenuated) penalties afterwards, the purpose and effect of proscription is to deter, prevent and disrupt the activities to which it is directed. The ECtHR has stated that prior restraints *"present such great dangers that they call for the most scrupulous examination by the Court"* (*Kaos GL v Turkey*, App. No. 4982/07, 22 Nov 2016, §50).
27. Sixth, the Secretary of State has failed to explain why criminal prosecutions of the law-breaking members of PA are not a less intrusive but equally effective means of pursuing the same legitimate

aim. That some members of an organisation have caused high-value criminal damage does not provide sufficient justification, in and of itself, for proscribing the entire organisation, given the far-reaching effect of proscription on all members of the organisation including those whose membership is a legitimate peaceful expression of political opinion. Further, the fact that pre-proscription prosecutions did not prevent further instances of direct action protest from occurring is not itself a sound basis for contending that the orthodox criminal justice response is not effective. As Lord Hoffmann explained in *R v Jones (Margaret)*, that approach strikes an appropriate balance between freedom of expression and upholding the law, by tolerating such actions and penalising them afterwards, with the fact that the offences have been committed as a form of protest factored into the sentencing exercise on conviction. In the case of PA, a number of juries have acquitted individuals accused of offences arising from protests. The ability of juries to acquit protesters is a further legitimate way that the domestic criminal justice system balances freedom of expression and association with upholding the law. The fact of such acquittals cannot properly form any part of the justification for proscription. On the contrary, it is a factor pointing strongly *against* proscription, since acquittals demonstrate that the effect will be to prohibit many protests that have not been found to be contrary to the criminal law by juries following fair trials conducted according to law.

28. Seventh, the analogy drawn by the Defendant with sanctions regimes is inapt. Sanctions regimes, such as the regime directed at the Russian government, are intended to exert pressure in support of foreign policy goals, such as seeking to bring to an end the unlawful occupation of Ukraine by Russian forces. The objective of preventing forms of political protest is entirely different, not least because such forms of protest are, unlike the Russian occupation of Ukraine, consistent with a human rights-respecting democratic system and protected against prior restraint.

29. Eighth, the impact of the various corollary criminal offences under ss 12, 12(1A), 12(2) and 13 TA created by the decision to proscribe an organisation and the attendant counter terrorism powers arising must be taken into account. These are broad offences which do not admit Art. 10 defences (*R v ABJ* [2024] EWCA Crim 1597, §61 and *R v Choudhary* [2016] EWCA Crim 61, §70). Section 13 TA 2000, for example, creates a strict liability offence which provides that a person commits an offence if, in a public place, he "*carries or displays … an article … in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organisation*". Thus, an individual can be convicted of a terrorism offence for the peaceful display of a sign, with no proven risk of or incitement to violence, even when they do not intend to support the organisation. Similarly, s 12(2) criminalises the arranging of a meeting to *"further the activities of"* a proscribed organisation which, where a direct action protest group is proscribed, potentially criminalises any attempt by individuals and organisations to coordinate in continuing direct action protest under an alternative banner post-

proscription. Accordingly, it is only proportionate to proscribe an organisation if it is proportionate for these activities to be criminalised, which is a very significant restriction on freedom of speech and association. A decision with such consequences will only be proportionate in the most limited of circumstances, and responding to the activities of a protest group, even one which has committed criminal offences, is not such a circumstance. The Defendant's decision-making documentation does not adequately identify or weigh these considerations.

30. Ninth, the uncertainty as to the scope of the offences is also relevant to the proportionality assessment. For example, there is no authority or guidance on whether public statements opposing proscription, or advocating for de-proscription, of a proscribed organisation constitute one or more of the offences under TA 2000. Section 12 (1A) TA 2000 criminalises the expression of an opinion or belief that is supportive of a proscribed organisation. It is clear from the authorities that "*support*" includes "*intellectual support: that is to say, agreement with and approval, approbation or endorsement of, that which is supported*" (*Choudhary*, §46). But it is not even clear whether a statement such as "[*Proscribed organisation A*] *should not be proscribed*" or "[*Proscribed organisation A*] *should be de-proscribed*" or "[*Proscribed organisation A*] *is a legitimate organisation because they are engaged in direct action protests, which are a legitimate exercise of free speech*" constitute an offence. There is therefore a real risk that legitimate criticism of the exercise of a coercive power cannot be advanced.
31. Tenth, regard must be had not only to the significant consequences for the members of the proscribed organisation itself, but also to the chilling effect on others – see §17 above. The chilling effect is amplified by the high degree of uncertainty as to the scope of the relevant criminal offences.
32. Having regard to these considerations, the Interveners submit that the proscription of a direct action protest organisation is disproportionate; indeed, clearly and significantly disproportionate. The law contains a large range of terrorism offences and measures. Such measures were not enacted to address or restrain the conduct of direct action protesters, and previous attempts to use terror-related offences against direct action protestors have been deprecated by the courts: *R v Thacker* [2021] QB 644, §§111, 113. The proscription power is a "*sledgehammer"* in the anti-terrorism armoury. If the court finds that it can be used to *"crack the nut"* of a direct action protest group, that could precede the wider use of anti-terrorism laws against protesters. At issue in this case is the long tradition in this country of "*toleration*" and moderation shown towards direct action protesters; not treating them as terrorists.

TOM HICKMAN KC
JESSICA JONES
ROSALIND COMYN
13 November 2025