

## **Counter Terrorism Bill 2007 Consultation**

This submission is made on behalf of the Board of Deputies of British Jews, the representative body of the Jewish community, and the Community Security Trust, which provides defence and security advice to the community.

### **Pre-charge Detention**

The terrorism threat to the UK remains high and is unlikely to abate in the near future. The Director General of the Security Service and the Head of the Metropolitan Police Service Counter Terrorism Command have stated publicly that they are currently investigating over 200 terrorist networks, and that over 2000 terrorist suspects are currently the object of some degree of surveillance.

The hierarchical chains of command that characterised Al Qaida operations prior to 9 /11 have been replaced to a large extent by diffused networks which rely on self recruitment, self motivation, and self financing. However, the international element remains with contacts to the Global Jihad Movement (GJM), and the use of foreign training facilities.

The hitherto hidden connections between the 7 July bombers, the 21 July bombers and the Operation Crevice would-be bombers were only revealed after lengthy investigations, and came to public notice sometime after July 2005 following lengthy and painstaking investigations, some of them carried out abroad and in cooperation with foreign security services.

The police need time to pursue the international dimensions of investigations, which may be further hampered by language and accessibility issues.

We note the comments by the Parliamentary Committee on Human Rights, but reject their argument that they see no necessity to extend the current pre charge detention limit.

The police are constrained in their ability to lobby parliament, but when they were asked for their views by the government when it was considering the Terrorism Bill in 2005, the Metropolitan Police Service argued for a 90 day maximum detention period. Parliament saw fit to extend this only to 28 days.<sup>1</sup>

In his inaugural Colin Cramphorn Memorial Lecture, DAC Peter Clarke argued tellingly that the police are hampered in the investigation of terrorism by the current 28 day pre-charge detention limits. He contrasted the extended surveillance and evidence gathering in Operation Crevice with the case of Dhiren Barot, where they did not understand how close he was to implementing his terrorism plan, and they therefore had to arrest him without any shred of admissible evidence.

He states that “ it was only at the very end of the permitted period of detention that sufficient evidence was found to justify charges”.<sup>2</sup>

It therefore seems clear to us that it is vital that the pre-charge detention period should be extended, perhaps to 56 days, subject to regular judicial approval, although it is less than the police originally suggested.

We further recommend that the new regime be made a matter for Lord Carlile of Berriew QC to report on in his annual review of the workings of terrorism legislation.

### **Post-Charge Questioning and Notification Requirement**

The experience of the security services, police and independent investigators is that terrorists who are prepared to murder hundreds of innocent people, and commit suicide in doing so, are not deterred either by police interrogation or long periods of imprisonment.

We believe that the investigation and evidence gathering process must continue after suspects have been charged. The police must be given the power to question suspects after charge on any aspect of the offence for which they have been charged, and that adverse inferences should be drawn from any refusal to answer questions.

Such questioning should be in the presence of suspects' lawyers.

Many GJM terrorists have not been persuaded or deterred by convictions and prison sentences, and therefore should be subject to notification requirements on leaving prison, which are similar to those for sex offenders.

Anecdotal evidence and press reports suggest that notification requirements in respect of sex offenders may not be universally successful. The recent escape of terror suspects who were the subject of control orders also suggests that the police are not well equipped to monitor potential absconders.<sup>3</sup> Electronic tagging for example seems to be of limited use in the case of terrorists, for obvious reasons.

Nevertheless, we would support the government if it wishes to legislate for notification requirements, and if it feels that the police are capable, and willing, to have such a requirement, and note that any such measures should be accompanied by the necessary resources to accompany them.

### **Enhanced Sentences**

We note that in several recent terrorism trials the defendants have been charged variously with conspiracy to cause explosions likely to endanger life (Bluewater plot, April 2007); conspiracy to murder (plot against US financial institutions, June 2007); committing a public nuisance (Ricin plot, April 2005); incitement to murder (El Faisal, February 2003).

In each case, and in several other cases, the aim of the convicted terrorists was to cause mass murder and to spread fear and alarm through the general population. There were however no specific 'terrorism law offences' with which they could be charged, and the common law had to be trawled to find relevant legislation.

In his report on The Definition of Terrorism, Lord Carlile states that

"during the course of my inquiry I received many powerful representations that the provision of special sentencing powers for apparently ordinary offences connected with terrorism would be a useful addition to the criminal law. I agree, and so recommend."<sup>4</sup>

We agree that there should be sentence enhancement for terrorists convicted of non-terrorist specific offences, which will reflect the additional seriousness that terrorist involvement represents, and that it should be the courts who determine whether or not the offence was terrorism related.

We also believe that convicted terrorists who are foreign nationals should be deported, on completion of their sentences, as a matter of course.

### **Control Orders**

Convicted GJM terrorists have not been deterred from communicating with sympathisers and other terrorists while serving terms of imprisonment. If this is the case why should they feel any less inhibited from doing so while living in their own homes, albeit that that are the subject of Control Orders.

We agree that the police should have a self standing power of entry in search of premises to enforce and monitor control orders more effectively.

### **Data Sharing Powers for the Intelligence Agencies**

We agree that specific data sharing powers should be available for the intelligence and security agencies in order to remove barriers to individuals and organisations sharing information with them that is necessary for the proper discharge of the agencies' statutory functions.

We also agree that the police counter terrorist data DNA database be put on a similar statutory footing to the national DNA database.

### **Police Powers to Hold Passports and Travel Document Supports**

According to authoritative media reports suspects in the 7 July and 21 July plots visited Pakistan for extended periods when they had already embarked on the planning of their bombing attacks, and that they were already under some degree of surveillance by the security services. Yet only one of them appears to have been briefly questioned on departure, but not on his return. The reason for this failure has not been fully explained but a power to hold their passports may have enabled the police and security services to make

enquiries in Pakistan and elsewhere more comprehensively, and may have alerted the suspects, and deterred them.

We therefore agree that the police should be given statutory powers to enable them to hold, on a temporary basis, travel documents from individuals suspected of terrorist involvement, but for a limited period only, to enable further investigations to be undertaken.

This should be for the minimum number of days in order not to inconvenience suspects subsequently found not to have any involvement with terrorism, but should be consistent with the time required to make enquiries abroad.

### **Unified Border Force**

We welcome the Prime Minister's announcement on 25 July of a unified border force, which will integrate the work of the Border and Immigration Agency and Customs and UK Visas, and that it will operate both overseas and at the main points of entry to the UK.

This follows the direction taken by other states, who have long had unified agencies, and indeed, in retrospect it now seems foolish for the UK not to have had a unified agency for many years. It is also obvious that the first line of defence has to be at the point of embarkation, wherever that is, rather than when the traveller has landed. In this respect we shall again be following the lead taken by others.

We also welcome the Prime Minister's announcement that all passengers are to be electronically screened as they check in and out of the country. This again is a long overdue measure, and one which other states have had in place for many years. It is quicker and more efficient than the current system of selective screening, mostly of foreign nationals, and is particularly important given that recent terrorist plots have been committed by UK citizens with British passports.

### **Intercept evidence**

We note the use of intercept evidence in most states, particularly in the USA where it has been used to good effect in recent trials of terrorism suspects, and particularly those charged and convicted of terrorism financing.

We believe that the criminal justice system is severely hampered by its failure to use intercept evidence. Other states have not found that the security of their covert sources has been compromised by the use of such evidence in courts. If necessary, such evidence can be brought to closed sessions.

Notwithstanding the reluctance of the security services hitherto to allow intercept evidence to be used in court, we nevertheless note comments by senior police and security service officials that much evidence has been

gathered in this way, in part because of the failure to recruit human sources within the Muslim community, for whatever reason.

We therefore welcome the Prime Minister's statement of 25 July, and the proposed use of intercept evidence.

### **Seizure of Terrorist Assets**

We agree that the courts should have their powers extended to enable them to seize the assets of someone convicted of a terrorist or terrorist related offence, where the court believes their assets might be used for terrorist purposes.

### **Increased Security at Key Gas Sites**

We agree with the requirement to plan for increased security cover for Key Gas Sites, but question why this requirement is limited only to such sites.

Any review of increased security cover must cover all strategic infrastructure and power supply sites.

Terrorists have shown continuously that they think a step ahead and we are concerned that yet again the security services have based a proposition on fighting the last battle rather than thinking ahead to the next.

6 August 2007

### **Notes**

1. Peter Clarke, *Learning from Experience – Counter Terrorism in the UK since 9/11*, Policy Exchange, London, 2007, page 30
2. *ibid*, page 27.
3. Lord Carlile of Berriew QC, *Second Report of the Independent Reviewer Pursuant to Section 14(3) of the Prevention of Terrorism Act 2005*, 19 February 2007, pages 8 – 10.
4. Lord Carlile of Berriew QC, *The Definition of Terrorism*, Cm 7052, March 2007, para 44, page 29.
5. Minutes of the Metropolitan Police Authority meeting, 31 May 2007.