
The Conduct of Terrorism Trials in England and Wales

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The manner in which terrorism trials are conducted is a mark of how civilised a society we are, and a litmus test of our adherence to the Rule of Law. Terrorism trials present unique challenges because of their complexities and subject matter and the heightened public concern surrounding terrorist offences. The role of the courts is to ensure a fair trial within a reasonable timescale. This article seeks to explain the practices and procedures relating to the conduct of terrorism trials in England and Wales. We continue to learn from our colleagues in other jurisdictions in the Common Law world who face similar challenges.

Injustice anywhere is a threat to justice everywhere.

Martin Luther King, Jr (1929–1968)

The manner in which terrorist trials are conducted is a mark of how civilised a society we are, and a litmus test of our adherence to the Rule of Law. As Lord Bingham said:

There are doubtless those who would wish to lock up all those who suspected of terrorist and other serious offences and, in the time-honoured phrase, throw away the key. But a suspect is by definition a person whom no offence has been proved. Suspicions, even if reasonably entertained, may prove to be misplaced, as a series of tragic miscarriages of justice has demonstrated. Police officers and security officials can be wrong. It is a gross injustice to deprive of his liberty for significant periods a person who has committed no crime and does not intend to do so. No civilized country should willingly tolerate such injustices.¹

There is a heavy burden on the courts and the judiciary to conduct trials of those who are charged with terrorist offences in a manner which is both transparently and scrupulously fair, and ensures the process is completed within a reasonable timescale.

A fair trial in a constitutional democracy grants a terrorist of precisely that which they would deprive us of, namely a fair trial. As Lady Hale has observed “compromising the rule of law was not the way to defeat terrorism”.²

TERRORISM ACTS

Terrorism is defined in United Kingdom law as the use or threat of action, both in and outside of the United Kingdom, designed to influence any international government organisation or to intimidate the public and for the purpose of advancing a political, religious, racial or ideological cause.³ Under the *Terrorism Act 2000* (UK) (2000 Act) s 1 (4)(d) “the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom. The following elements need to be proved in a terrorism trial:

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¹ Lord Bingham of Cornhill, *The Rule of Law*.

² Lady Hale, Supreme Court of the United Kingdom, *Terrorism and Global Security: Threats to the Independence of the Judiciary in a Changing World* <https://www.supremecourt.uk/docs/speech_100512.pdf>.

³ *Terrorism Act 2000* (UK) s 1.

- (1) an actual or contemplated use or threat of action involving serious violence against a person, endangering a person's life or creating a serious risk to the health or safety of the public or a section of the public;⁴
- (2) the use or threat of action also involved the use of firearms or explosives; or
- (3) if the use or threat of action did not involve the use of firearms or explosives then it is necessary to consider whether the use or threat of action was designed to influence any government or international governmental organisation or to intimidate the public or a section of the public; and that
- (4) the use or threat of action is made for the purpose of advancing a political, religious, racial or ideological cause.

Parliament has legislated under the Terrorism Acts to create a broad range of terrorism offences, notably:

- Section 5 of the *Terrorism Act 2006* (UK) (the *2006 Act*) – preparation for acts of terrorism;
- Section 6 and 8 of the *2006 Act* – providing and receiving training;
- Section 11 of the *2000 Act* – membership of a proscribed organisation;
- Sections 15 to 18 of the *2000 Act* – fundraising offences;
- Section 54 of the *2000 Act* – providing and receiving weapons training;
- Section 56 of the *2000 Act* – directing a terrorist organisation;
- Section 57 of the *2000 Act* – possession of articles for terrorist purpose;
- Section 58 of the *2000 Act* – possession of information useful to a terrorist;
- Section 59 of the *2000 Act* – inciting terrorism overseas;
- Section 62 of the *2000 Act* – terrorist bombing overseas.

The two most common terrorism charges are s 5 of the *2006 Act* and s 11 of the *2000 Act*. These offences are clearly and simply drafted and juries have not had difficulties in understanding what elements are required to be proved to establish the offences in question. Section 5 makes it an offence for a person to engage in the preparation of acts of terrorism, or to assist others in the preparation of acts of terrorism. The offender must be shown to have the requisite intent, which involves an inquiry into the “mindset” of the defendant. Section 11 of the *2000 Act* creates the offence of membership of a proscribed organisation. The Home Secretary has the power to list proscribed organisations, which currently include the IRA, Islamic State⁵ and National Action.⁶

PROSECUTION GUIDANCE

Prosecutors are required to take the following factors into account when determining whether a prosecution is in the public interest:⁷

- How serious is the offence committed?
- What is the level of culpability of the suspect?
- What are the circumstances of and the harm caused to the victim?
- What was the suspect's age and maturity at the time of the offence?
- What is the impact on the community?
- Is prosecution a proportionate response?
- Do sources of information require protecting?

Terrorism naturally arouses heightened concern by the public and State entities. Terrorism trials are often the subject of particular public and press attention. This all brings its challenges. But the role of

⁴ Relevant offences may include: (1) murder; (2) manslaughter; (3) an offence under *Offences against the Person Act 1861* (UK) s 18 (wounding with intent); (4) an offence under s 23 or 24 of that Act (administering poison etc); (5) an offence under s 28 or 29 of that Act (explosives); (6) an offence under s 2, 3 or 5 of the *Explosive Substances Act 1883* (UK) (causing explosions); (7) an offence under *Criminal Damage Act 1971* (UK) s 1(2) (endangering life by damaging property); (8) an offence under *Biological Weapons Act 1974* (UK) s 1 (biological weapons); (9) an offence under *Chemical Weapons Act 1996* (UK) s 2 (chemical weapons).

⁵ “ISIS” was a popular epithet in 2014–2015 though the entity is now mainly referred to as “Islamic State”.

⁶ Home Office, *Proscribed Terrorist Organisations* (17 July 2020).

⁷ Crown Prosecution Service, *Code for Crown Prosecutors*, [4.14] <<https://www.cps.gov.uk/publication/code-crown-prosecutors>>.

the courts remains a simple one – to ensure a fair trial for all defendants within a reasonable timescale. In this regard, terrorism trials are no different from other criminal trials. Indeed, while recognising the special features of terrorism trials, it is important that terrorism trials are not “special” in any sense but just seen and treated as any other criminal trial. Terrorist offences are criminal offences.

I set out below each stage of the terrorism trial process from the pre-trial investigation to verdict as operated in England and Wales.

INVESTIGATION

Terrorism trials are fortunate to benefit from the highest quality of investigation and investigators. The most advanced techniques of surveillance and forensics are engaged by highly trained individuals from specialist counter-terrorism units in the police force and intelligence services. A lot of resources are often required at the investigation stage because of the sheer volume of material that these cases involve. For every person arrested, often all of the data on their laptops, phones and other devices has to be carefully gathered, processed and catalogued. This is often key to establishing for example, contacts or “mindset” evidence (see below). This involves a substantial amount of time and a considerable expertise to identify what is truly relevant and therefore, potentially disclosable. The substantial volume of information to be sorted is the hallmark of a terrorist investigation. In the National Action membership trial of *Jones, Jack, Cutter and Scothern* (Birmingham Crown Court, 2020), West Midlands counter-terrorist officers interrogated 22 million data files.

Investigators commonly encounter encryption. The use of encrypted technology is standard in most terrorist organisations. Social media apps and specialist private encryption apps are popular.⁸ Suspects are generally reluctant to volunteer their passwords.

A key question in this process for investigating officers is when to seek the advice of specialist counsel. It is well-recognised that there is a need to seek early involvement of counsel in terrorism cases. Prosecuting counsel provide essential guidance at an early stage as to for example, what information is needed for a lawful arrest and subsequently, what evidence will need to be disclosed. They are often required to advise at very short notice in fast-moving investigations.

Recent years have shown an increase in “lone-wolf” attacks by self-radicalised individuals acting outside conventional organisations and a growing number of younger terrorist offenders. A 13-year-old boy from Cornwall became the UK’s youngest terrorist offender in February 2021. He was convicted of disseminating terrorist documents and possession of terrorist material.⁹

A key challenge for the authorities and investigating officers is timing: whether and, if so, when to make the call to intervene and arrest someone identified as a potential terrorist offender. Intervening too *soon* may result in a lack of evidence as to for example, acts preparatory to an act of terrorism. Intervening too *late* may result in a terrorist attack taking place and innocent lives imperilled. Sometimes suspects are charged with lower-level crimes to disrupt them in their radical path. Fortunately, most terrorist acts are foiled by the authorities during the planning stage before an actual attack has taken place.

PRE-TRIAL DISCLOSURE

The pre-trial disclosure regime is an important safeguard which entitles the defence to be provided with material which could assist in the preparation of their case.¹⁰ In terrorist cases the Crown will often, in addition, provide a “Disclosure Management Document” to serve as an open and transparent basis for disclosure decisions and encourage early-stage defence participation in the disclosure process. The prosecution is entitled to refuse to disclose material for national security reasons. The prosecution may apply for Public Interest Immunity, which allows the court to withhold disclosable

⁸ Telegram, Encrochat *etc.*

⁹ “Teenage Neo-Nazi from Cornwall is UK’s Youngest Terror Offender”, *BBC News* <<https://www.bbc.co.uk/news/uk-england-cornwall-55891140>>.

¹⁰ Crown Prosecution Service, *Disclosure* <<https://www.cps.gov.uk/about-cps/disclosure>>.

material from the defence if it is in the public interest to do so. In circumstances where the judge is minded to order disclosure, there are several possible solutions aimed at protecting the interests of the defence, including summaries of the intelligence, edited or anonymised documents and the appointment of a Special Advocate. However, if the limited disclosure will render the trial process unfair, greater disclosure will be ordered. The prosecution may choose to discontinue proceedings so as to avoid having to make particularly sensitive disclosure.¹¹

SPECIALIST BAR AND JUDGES

Terrorist trials in England and Wales have the advantage of highly specialist practitioners. The Terrorism Bar is small, comprising some 20 practitioners. Their lack in numbers is made up by their matchless experience and skill, both forensic and advocacy, and a willingness to burn the midnight oil to master the details of their brief. Barristers in this recondite field usually have to elect between acting as a prosecutor or defence counsel because of the danger of inadvertent disclosure if one has a mixed practice. Prosecutors are security vetted to the highest levels so they can be given access to, and advise on, the disclosure of intelligence. They are closely supported by teams within specialist police force units or the intelligence agencies, including MI5, MI6 and GCHQ. They are better resourced than some other elements of the legal system.

Defence barristers were, regrettably, marginalised to some extent during the 1970s, 1980s and early 1990s. It was said to be harder for defence counsel who had represented IRA terrorists to rise from the Bar to the Bench. It took considerable professional courage to accept defence briefs at that time and the role came at some personal cost. However, a cultural change has now taken place and defence counsel in terrorism cases have for some time been recognised and valued as a key cog in the justice machine. The defence brief nevertheless often remains a difficult brief. Defence counsel sometimes represent dangerous and troubled clients in unpopular causes. They encounter practical difficulties, for instance, in accessing their clients in the high security units of prisons and secure hospitals. The work is invariably publicly funded.

Terrorism trials are entrusted to a cohort of highly experienced Circuit and High Court judges who are familiar with this field and the Chief Magistrate. The reason for the involvement of such senior judges was helpfully summarised by Dr James Renwick SC in his highly impressive 5th Report as INSLM¹² as follows. First, there is a public interest in terrorism cases being case managed by the most experienced judges: (1) to encourage expedition in hearing the cases; (2) to avoid error leading to mistrial or retrial; and (3) so that the public have extra confidence in the conduct of the trial and the appropriateness of any sentences passed. Second, terrorism cases stand apart from “normal” crime because of their exceptional seriousness to society as a whole. Third, very often these cases will involve national security material or security service personnel and may require exceptional orders to close the court for a period of the trial and orders ensuring that national security material or information is not inadvertently released. Fourth, it is quite often the case that there is a vast amount of material discovered by the prosecution which, as one judge put it to me, is beyond the capacity of a single human brain to analyse and therefore requires search by computer (often complicated because the material may be encrypted or in a foreign language) but which therefore also requires at an early stage the active involvement of the case-managing judge to ensure the search terms used by the Crown at the request of the defence are apt.

CASE MANAGEMENT REGIME

A Criminal Practice Direction¹³ issued by the Lord Chief Justice requires terrorism cases to be rigorously and timeously case-managed from the outset. All terrorism cases are originally first case-managed by a

¹¹ *R v H and C* [2004] 2 AC 134, 36.

¹² Independent National Security Legislation Monitor, *Report to the Prime Minister: The Prosecution and Sentencing of Children for Terrorism* <inslm.gov.au>.

¹³ *Criminal Practice Direction* [2015] EWCA Crim 430 (New annex on the management of terrorism cases: CPD XIII Annex 4: Case management of terrorism cases).

High Court Judge nominated by the President of the Queen's Bench Division to be the Judge-in-charge of the Terrorism List.

Immediately after a person has been charged in a terrorism case anywhere in England and Wales, a representative of the Crown Prosecution Service will notify the person on the 24-hour rota for special jurisdiction matters at Westminster Magistrates' Court of the following information: (1) the full name of each defendant and the name of his solicitor or other legal representative, if known; (2) the charges laid; (3) the name and contact details of the Crown prosecutor with responsibility for the case, if known; and (4) confirmation that the case is a terrorism case.

All terrorism cases are first listed before the Chief Magistrate of England and Wales and the first appearance is normally at Westminster Magistrates' Court.¹⁴ A preliminary hearing is normally be ordered in a terrorism case to take place about 14 days after charge.

In cases sent to the Crown Court under s 51 of the *Crime and Disorder Act 1998* (UK), the magistrates' court is required to make directions to facilitate the preliminary hearing at the Crown Court.¹⁵ These directions normally comprise two main elements.

First, three days prior to the preliminary hearing in the terrorism cases list, the prosecution must serve upon each defendant and the Regional Listing co-ordinator: (1) a preliminary summary of the case; (2) the names of those who are to represent the prosecution, if known; (3) an estimate of the length of the trial; (4) a suggested provisional timetable which should generally include: the general nature of further inquiries being made by the prosecution, the time needed for the completion of such inquiries, the time required by the prosecution to review the case, a timetable for the phased service of the evidence, the time for the provision by the Attorney-General for his consent if necessary, the time for service of the detailed defence case statement, the date for the case management hearing, and the estimated trial date; (5) a preliminary statement of the possible disclosure issues setting out the nature and scale of the problem, including the amount of unused material, the manner in which the prosecution seeks to deal with these matters and a suggested timetable for discharging their statutory duty; and (6) any information relating to bail and custody time limits.

Second, one day prior to the preliminary hearing in cases in the Terrorism List, each defendant must serve in writing on the Regional Listing Co-ordinator and the prosecution: (1) the proposed representation; (2) observations on the timetable; and (3) an indication of plea and the general nature of the defence.

PRELIMINARY HEARING

The Legal Aid Agency are required to attend a preliminary hearing at a Crown Court to assist the court. Unless a judge otherwise directs, all Crown Court hearings prior to the trial are conducted by video link for all defendants in custody. The police service and the prison service are required to provide an initial joint assessment of the security risks associated with any court appearance by the defendants within 14 days of charge.

At the preliminary hearing at the Crown Court, the judge will determine whether the case is one to remain in the Terrorism List and if so, give detailed directions setting the provisional timetable for all relevant procedural matters up to trial, including staged disclosure, service of defence statements etc. It is common also for the prosecution to raise the question of press restrictions if investigations or linked cases are ongoing. At this hearing, the Judge-in-charge of the Terrorism List importantly sets the date and location of the trial. Thus, within 14 days of charge, all relevant parties and agencies know when the trial will take place and have a complete timetable to work to.

All adult offenders make their first appearance in a magistrates' court to take their plea and decide whether they will be tried summarily or on indictment before a jury. Westminster Magistrates' Court, the court of the Chief Magistrate of England and Wales, is the designated court for all serious terrorism-related

¹⁴ In order to comply with *Police and Criminal Evidence Act 1984* (UK) s 46, a defendant must be brought before a magistrate as soon as is practicable and in any event not later than the first sitting after he is charged with the offence.

¹⁵ And see *Criminal Justice Act 1987* (UK) s 4(1).

offences. The majority of terrorism cases are sent to be tried on indictment, that is by a jury, at the Central Criminal Court of England and Wales, also known as the Old Bailey.

Terrorism cases are carefully case managed from the outset with a view to laying out a clear timetable for preparation by the parties and ensuring the matter comes to trial within a reasonably swift timeframe. The Judge-in-charge of the Terrorism List conducts case management hearings every fortnight. This Judge will hear each new case and give directions laying down a detailed timetable to trial. The average number of cases received fortnightly and put into the List varies, but is normally around half-a-dozen. Prosecuting and Defence Counsel in each case will be present and make submissions regarding the directions. The standard directions made by the Judge will include, for example, deadlines for service by the prosecution of its initial disclosure (usually in tranches) and deadlines for service by the defence of the defence statement *etc.* A further “preparatory hearing” is normally also directed to take place within 28 days after the defence statement is filed.

At this early preliminary hearing, as explained, the Judge will also direct where the case is to be tried and decide which judge will be allocated the case. There are a number of Crown Court centres in England and Wales which are certified to hear terrorism cases. Generally, the policy is to try to ensure that the case is tried in the locale where the offence(s) took place. This is for a number of obvious reasons, including public reassurance and the convenience of witnesses and those affected by the incident. Thus, if the suspect’s offending actions took place for example, in Manchester, Birmingham or London, we will generally try to arrange for the case to be heard in Manchester, Birmingham or London. However, some of the most serious cases are tried at the Old Bailey or Woolwich Crown Court which have particularly high security facilities, the latter being linked to Belmarsh Prison.

REPORTING RESTRICTIONS

Careful consideration is also given at preliminary hearings to the question of the need to impose reporting restrictions. Section 4(2) of the *Contempt of Court Act 1981* (UK) gives the court power, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, to order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose. This provision is aimed at the postponement of publication rather than a permanent ban.¹⁶

Reporting restrictions are regularly ordered in two circumstances. First, where publication of proceedings might prejudice ongoing investigations. Since preliminary hearing takes place at an early stage – normally within two weeks of the arrest of an actor – there may be other actors who are also being investigated by the authorities in relation to the same or connected matters. Second, where other trials are due to take place for the same or linked offences (so that the outcome of the first trial might prejudice the outcome in the later ones for example, in the Victoria Station murder trials). The Judge will normally invite representations from all sides and any press present on the question of reporting restrictions.

Where reporting restrictions are imposed under s 4(2), they will normally prevent the reporting of the instant proceedings except for certain very basic facts such as the names of the accused and the offences with which they have been charged. These restrictions continue until the conclusion of the trial when they automatically cease to apply. The trial Judge may lift the restrictions on application by the media if satisfied that it is in the interests of justice to do so.¹⁷ Dialogue between judges trying linked cases may be sensible.

THE JURY

Jury selection at the trial will normally involve a questionnaire to elicit whether jurors can hear the case objectively. Questions range from asking whether the juror or anyone known to them has been involved

¹⁶ *R (Press Association) v Cambridge Crown Court* [2012] EWCA Crim 2434.

¹⁷ Judicial College, *Reporting Restrictions in the Criminal Courts*, April 2015 (Revised May 2016). *Criminal Procedure and Investigations Act 1996* (UK) s 37; *Criminal Justice Act 1987* (UK) s 11.

in a terrorist incident to asking whether the juror has beliefs which make them unable to fulfil their oath. In particular cases, the questions may need to be more specific and related to the incident itself. In significant trials, the jury of 12 will be selected from a large pool and sworn together with several “alternates” who will remain until the end of the prosecution opening, in case a substitution is needed. In very rare cases involving national security, there is a procedure to ballot potential jurors by number and not by name.¹⁸

The jury will be reminded by the judge of their oath and the need to approach their task objectively and dispassionately solely by reference to the evidence which they hear and see in court, putting out of their minds anything they see or hear outside the courtroom, including any reports in the press. They will also be reminded of the absolute prohibition against carrying out their own research, whether on the internet or in any other way, and the serious consequences of doing so, including potentially imprisonment. The judge will seek to ensure that the jury feels safe and comfortable throughout the trial in order to be able to concentrate on their task with no distractions. It is common for arrangements to be put in place for jurors to enter and leave the court building using separate entrances to the public.

HEARINGS IN CAMERA

The courts strive for open justice whenever possible. It is rare for hearings to be heard in camera.¹⁹ This will only take place in exceptional circumstances, that is, where very sensitive material is involved and it is necessary in the interests of national security for the hearing to be held in camera. It is sometimes sensible to hold *part* of the proceedings in camera. In *Guardian News and Media Ltd v Incedal*,²⁰ the Court of Appeal rejected an argument that a whole trial should be held in camera but allowed the “core of the trial” to be heard in camera due to national security, but other elements of the trial – including the swearing in of the jury, reading of the charges, part of the judge’s introductory remarks, the verdicts and the sentencing – were heard in open court.

THE TRIAL AND EVIDENCE

Terrorism trials vary greatly in length, from a few days to many weeks depending on the charges involved, the number of defendants and the complexity of the issues. Evidence is presented in a variety of forms – documentary, live factual and expert witnesses, exhibits and agreed facts. Photographs and videos feature increasingly in terrorism trials. Tech teams excel at condensing a mass of data (for instance cell-site evidence or ANPR evidence²¹) into easy-to-follow timelines and chronologies. The full range of “special measures” is available to enable some witnesses to give evidence behind screens or by video link where appropriate. Expert evidence, for example, explosives experts, medical experts, IT experts, experts in the different ideologies, *etc*, often play a significant part in terrorism trials.

There is an increased use of undercover officers in the investigation of terrorist plots and suspects. An undercover officer recently assisted in uncovering a plot to bomb St Paul’s Cathedral. The undercover officer communicated with the offender online, gained her trust and eventually the offender revealed her plans to the officer.²² All the officers involved in this type of operation are required to provide witness statements and appear to give evidence in court but with appropriate special measures to protect their identity. Witness anonymity orders protect the identity of the officer. The officer may be concealed with a screen and sometimes their voice altered so the witness will only be seen by the judge and the jury. Before an undercover officer is sworn, his warrant card is passed to the judge in a sealed envelope. That way the judge can be satisfied that the undercover officer sworn under a pseudonym is a serving police officer.

¹⁸ See “authorised jury checks” in terrorist cases: Crown Prosecution Service, *Jury Vetting* <<https://www.cps.gov.uk/legal-guidance/jury-vetting/>>.

¹⁹ In private.

²⁰ *Guardian News and Media Ltd v Incedal* [2014] EWCA Crim 1861.

²¹ Automatic Number Plate Recognition.

²² “Woman Jailed for Life Following Triple-bomb Plot Conviction”, *Counter Terrorism Policing News* <<https://www.counterterrorism.police.uk/woman-jailed-for-life-following-triple-bomb-plot-conviction/>>.

Jury bundles of the key evidence are very carefully prepared. Jury bundles in terrorism cases often contain material that is referred to as “mindset evidence”. Mindset evidence is a shorthand expression for describing evidence which might assist the jury to come to a conclusion, or draw an inference, about a defendant’s state of mind at the relevant time. It normally comprises extremist material or *memes* held on phones, hard drives, *etc* and links to online extremist websites. Care is taken in relation to the presentation of particularly graphic or explicit material to the jury with the material being appropriately edited, for example, the screen going blank at the moment of violence or the video displaying a description in words of the incident at that moment. The jury are carefully directed in relation to all such materials, and its relevance to the case.

External events and press reports can sometimes potentially affect terrorism trials. In 2015, the tragic Charlie Hebdo shooting in Paris occurred right in the middle of a terrorism trial taking place in London. Defence counsel requested that the trial be immediately adjourned because of the prejudicial impact that the ongoing events might have on the jury. The judge declined the defence application and simply reminded the jury of the importance of objectivity and fairness in our justice system and the trial proceeded uneventfully. In the “Three Musketeers” case of *Ali* and others in 2017, there were three separate terrorist attacks during the trial itself (some within hearing distance of the Old Bailey). Mr Justice Globe rejected each successive defence submission to adjourn.²³

Defence applications to exclude evidence are common. An area of contention in terrorism trials has been the admission of “safety interviews”. A safety interview is an urgent interview conducted by the police or security services with a suspect to elicit whether there are any immediate risks to person or property. Their urgency means that safety interviews are conducted without the ordinary pre-interview procedures, for example, ensuring the suspect has access to legal advice or allowing him to inform a third party of his arrest.²⁴ The admissibility of these interviews was tested in *R v Ibrahim*.²⁵ Ibrahim was one of several involved in an attempted terrorist attack on 21 July 2005. The investigators conducted safety interviews with three of the principal suspects. The Court of Appeal held that safety interviews were properly admissible at the trial judge’s discretion. The Grand Chamber of the European Court of Human Rights (ECtHR)²⁶ found no violation of Art 6 (the right to a fair trial) in relation to three of the four applicants holding that the safety interviews were properly admitted in circumstances where there was a need to avoid a serious danger to life and liberty. However, regarding one applicant, the ECtHR was not satisfied that there had been compelling reasons to deny the applicant legal assistance. Inevitably, the admissibility of evidence in any individual case will turn on its facts.

The trial judge’s overarching role in a terrorism trial is no different from any other criminal trial, namely, to “hold the ring” and ensure a fair trial. This has three key elements. First, to ensure that the atmosphere throughout the trial, remains calm, dispassionate and objective and focused on the evidence. Second, to ensure that applications and issues arising are dealt with fairly and expeditiously so as not to disrupt the flow of the trial. Third, to fairly sum up the law and the facts to the jury before sending them out to retire to consider their verdict(s). Judges invariably provide the jury with written directions of law and a “route to verdict” which will assist them when considering their verdict(s). When summing up to the jury, judges will often repeat the earlier warning against allowing emotion to cloud their judgment and explain the difference between the right to hold unpopular beliefs or extremist views and acting on those beliefs or views so as to commit criminal offences.

SENTENCING

The Sentencing Council of England and Wales has issued sentencing guidelines for terrorism which has greatly simplified and clarified the sentencing of terrorist offenders.²⁷

²³ The remarks on sentence in these matters by Globe J are at Judiciary of England and Wales, *Sentencing Remarks of Mr Justice Globe* (3 August 2017) <<https://www.judiciary.uk/wp-content/uploads/2017/08/sentencing-remarks-mr-justice-globe-ali-others-20170803.pdf>>.

²⁴ The safety interview has a different caution to a normal PACE (Police and Criminal Act) interview: “You do not have to say anything but anything you do say may be taken down and used in evidence etc.”

²⁵ *R v Ibrahim* [2008] EWCA Crim 880.

²⁶ *Ibrahim v United Kingdom* [GC], App nos 50541/08, 50571/08, 50573/08 and 40351/09.

²⁷ Sentencing Council, *Terrorism Offences* <sentencingcouncil.org.uk>.