Neutral Citation Number: [2008] EWHC 3164 (Admin)
Case No: PTA/17/2008 & PTA/31/2008

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
IN THE MATTER OF AN APPLICATION PURSUANT
TO THE PREVENTION OF TERRORISM ACT 2005

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/12/2008

Before :

MR JUSTICE MITTING

- -

Between :

SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Applicant**
- and -	
AR	**Defendant**

- -
- -

MR JAMES STRACHAN & MISS KATE GRANGE
(instructed by **THE TREASURY SOLICITOR**) for the Applicant
MR PATRICK O'CONNOR QC & MR HUGH SOUTHEY
(instructed by **TRP SOLICITORS**) for the Respondent
MR ANDREW NICOL QC & MISS MELANIE PLIMMER
(instructed by **THE TREASURY SOLICITOR SPECIAL ADVOCATE SUPPORT OFFICE**) as Special Advocates

Hearing dates: 27th & 28th November 2008 and 5th & 8th December 2008

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JUDGMENT

MR JUSTICE MITTING :

Background

1. AR is a Libyan national who arrived, with his wife, in the United Kingdom on 27th January 2004, from China, and immediately claimed asylum. The basis of his claim was that he belonged to the Al Bayraaq cell of the Al Tajjamah Group – a group hostile to the Libyan government – and feared capture and execution if he were to return to Libya. He claimed initially to have left Libya on 19th November 1999, a date later amended to 19th November 2000. His claim was refused on 8th March 2004. He appealed to an Immigration Judge, who allowed his appeal in a determination prepared on 25th May 2005 (the date of promulgation is not stamped on the determination): 1/3A/15-20. The Immigration Judge accepted his claim as credible and allowed his appeal on both asylum and human rights grounds. On 3rd October 2005 he was detained under immigration powers and on 14th December 2005 served with notice to deport on conducive grounds on the basis that he posed a threat to national security. He appealed to the Special Immigration Appeal Commission which, in a Judgment dated 27th April 2007 allowed his appeal. It found that he posed a real and direct threat to the national security of the United Kingdom, but that he could not safely be returned to Libya. He was admitted to bail by the Commission in May 2007. The Secretary of State's appeal to the Court of Appeal was dismissed on 9th April 2008. In anticipation of the outcome, the Secretary of State applied for and was granted (by Collins J) permission to make a non-derogating Control Order against AR. The Control Order was served on 4th April 2008 and remains in force. Amongst its provisions, it required him to live at an address in Oldbury, to be subject to a twelve hour curfew and to a boundary encompassing part of the Black Country. A significant modification to the Control Order was notified to him on 7th November 2008: as from 11th November 2008, he has been required to live at an address in Bury and to be confined within a boundary encompassing much of Bury and its immediate surroundings. In these proceedings, AR challenges the Secretary of State's decision to make the Control Order by way of review under Section 3(10) of the Prevention of Terrorism Act 2005 and, by Notice of Appeal dated 25th June 2008, challenges the Secretary of State's refusal to modify certain conditions of the Control Order under Section 10(3). Save as to the geographical boundary (as to which AR may, if the Control Order is upheld and remains in force, seek further modification) the appeal remains live notwithstanding the modifications referred to. The issue in each case is whether or not the decision of the Secretary of State was flawed: Sections 3(10) and 10(5)(b).

The principal issues

2. The principal issues arise under 5 heads

   i) Procedural:

      a) to what extent, if at all, should I take into account the findings of SIAC?

      b) has AR been afforded at least the minimum requirements of procedural fairness to which he is entitled in these proceedings?

ii) Stay: should the proceedings be stayed as an abuse of process?

iii) Substantive: is the Secretary of State's decision that AR has been involved in terrorism-related activity flawed?

iv) Necessity: is the Secretary of State's decision that the making and continuance in force of the Control Order is necessary for purposes connected with protecting members of the public from a risk of terrorism, flawed?

v) Modification: is the decision of the Secretary of State that the obligations challenged continue to be necessary for that purpose, flawed?

There are subsidiary questions which I will deal with under the appropriate head.

The Secretary of State's case on the substantive issue

3. The Secretary of State relies on eight open grounds of suspicion:

i) AR is, and for many years has been, a senior member of the Libyan Islamic Fighting Group (LIFG).

ii) AR has associated with senior Islamist extremists in Afghanistan, Pakistan and China, including the principal leader of the LIFG, Al Sadeq.

iii) since his arrival in the United Kingdom, AR has associated with senior LIFG members based in the United Kingdom, including (by their Control Order initials) AU and AV.

iv) AR's principal role has been the dissemination of information and propaganda.

v) AR has extremist jihadist views, demonstrated by a family website prepared by him, but not posted on the internet.

vi) until his detention on 3rd October 2005, AR had the ability and means to produce forged documents for terrorism-related purposes and may have done so.

vii) AR has a family link to Sharjane Abdelmajid Fakhet, the alleged leader of the group which carried out the bombings in Madrid on 11th March 2004 and may have had advanced knowledge of them.

viii) AR may have carried out an operational reconnaissance of paths under the flight path to Birmingham Airport.

There is one additional significant closed ground.

Procedure

4. Mr Strachan submits that I should give considerable weight to the findings of SIAC about AR's activity and the risk which he posed to national security. Mr O'Connor QC submits that I should ignore SIAC's findings. There is no authority which binds me as to the approach which I should take. It is however, rightly, common ground

that I am not, as a matter of law, bound to accept SIAC's findings, applying the principles of res judicata or issue estoppel. The issues in the two sets of proceedings are not the same: before SIAC, it was whether or not it was conducive to the public good that AR should be deported because he posed a threat to national security. In these proceedings, the issue is whether or not the decision of the Secretary of State that there were reasonable grounds for suspecting that AR is or has been involved in terrorism related activity is flawed. No decision has been made by any Court on that issue. SIAC did make findings, sometimes on the balance of probabilities, about AR's activities. The parties to the proceedings are the same and the topic is closely related. Application of the principle of issue estoppel would, in legal theory, be possible. The result would be that AR could not challenge any finding of fact made on balance of probabilities by SIAC. But such a course is precluded by authority and by considerations of justice. In *Secretary of State for the Home Department v AF* [2008] EWCA Civ. 117, the Court set aside a declaration made by Stanley Burnton J that findings made by the Court on issues arising on a hearing under Section 3(10) are in principle to be regarded as binding between the parties in relation to matters at the date of that hearing at a subsequent under Section 3(10). The Judge at the second hearing had to be satisfied that the facts relied on by the Secretary of State amount to reasonable grounds for suspicion: paragraphs 30 and 60. If that is the case in the same proceedings under the same statutory provision, it must be so in cases in different proceedings under different statutory provisions. The potential differences between the proceedings are not just theoretical. The procedural safeguards for a respondent in Control Order proceedings are different from those for an appellant before SIAC: in certain circumstances, and when necessary to achieve justice, disclosure of material protected by CPR Part 76.1(4) may be necessary (if reliance is to be placed upon it by the Secretary of State) to fulfil Article 6(1) ECHR requirements. (Subject to the anticipated decision of the House of Lords in the SIAC appeals heard in October) no such requirements apply to a SIAC appeal. A respondent may, therefore, be able to address the case against him on fuller information than was given to him in his appeal. More practically, in Control Order proceedings, the respondent does not face the prospect of deportation and may, for that reason, feel freer to be frank about his activities than he would before SIAC. Further, and as has happened in Libyan cases, very significant changes have occurred in the "political" context since SIAC's determination: the "merger" of Al Qaeda and the LIFG, announced on 3rd September 2007; and the opening of negotiations between the Libyan government and imprisoned LIFG leaders with a view to persuading them to renounce violence. These developments are capable of casting new light on earlier activities.

5. I do not accept either of the two propositions about the relevance of SIAC's decisions which have been put to me. I do not really understand how I can "give weight" to SIAC's findings about AR's past activities if, as is common ground, I have to reach my own conclusions about them. I do, however, accept the need, where possible without injustice, for consistent decision making between the same parties on similar issues. I cannot, therefore, accept Mr O'Connor's proposition that I should simply disregard SIAC's findings. I must make my own decisions, but must check them against those made by SIAC. If there are significant differences, I am not inhibited from reaching my own, different, conclusion; but in such a case, I should ask myself, and explain, why the differences exist. In summary, I should check my own findings

against those made by SIAC, rather than treat SIAC's findings as a building block for my own.

6. It is common ground that I am bound by the decision and conclusions of the majority in the Court of Appeal in *Secretary of State for the Home Department v AF AM & AN* [2008] EWCA Civ. 1148, in particular, as summarised in paragraph 64(iv) – (vii):

> "iv) There is no principle that a hearing will be unfair in the absence of open disclosure to the controlee of an irreducible minimum of allegation or evidence. Alternatively, if there is, the irreducible minimum can, depending on the circumstances, be met by disclosure of as little information as was provided in *AF*, which is very little indeed.
>
> v) Whether a hearing will be unfair depends upon all the circumstances, including for example the nature of the case, what steps have been taken to explain the detail of the allegations to the controlled person so that he can anticipate what the material in support might be, what steps have been taken to summarise the closed material in support without revealing names, dates or places, the nature and content of the material withheld, how effectively the Special Advocate is able to challenge it on behalf of the controlled person and what difference its disclosure would or might make.
>
> vi) In considering whether open disclosure to the controlee would have made a difference to the answer to the question whether there are reasonable grounds for suspicion the controlee is or has been involved in terrorist related activity, the Court must have fully in mind problems for the controlee and the Special Advocates and take account of all the circumstances of the case, including the question what if any information was openly disclosed and how effective the Special Advocates were able to be. The correct approach to and the weight to be given to any particular factor will depend upon the particular circumstances.
>
> vii) There are no rigid principles…."

I have applied those conclusions to this hearing. Nevertheless, because, pending the appeal of *AF, AM & AN* to the House of Lords, the law on this topic may not be finally settled, I have also considered whether or not AR has had disclosed to him the gist of the essential features on which the Secretary of State has relied to justify reasonable suspicion that he has been engaged in terrorism related activities. I am satisfied that with one exception, he has. All but one of the grounds of suspicion, summarised in paragraph 3 of this Judgment, are disclosed to AR in the open statements served by the Secretary of State. By no means all of the evidence upon which those grounds are based has been disclosed, but I do not understand that any reasonable interpretation of the majority speeches in *Secretary for the Home Department v MB & AF* produces the answer that disclosure must extend to the whole of the evidential basis for the grounds of suspicion. AR has had ample opportunity to

deal, in such detail as he chooses, with the grounds. By reference to the numbering in paragraph 3 of this judgment:

i) he denies having ever belonged to the LIFG: 1/4E/882KK, paragraph 7 (an unsigned and undated statement bearing a fax header date of 3rd October 2006) not subsequently disowned.

ii) he admits meeting Al Sadeq whom he did not know by that name, in China in 2003, but denies having travelled to Afghanistan or Pakistan or having left Libya earlier than 19th November 2000: 1/4C/882E – 882N, paragraphs 14 – 39 of a signed statement dated 25th April 2005 prepared for the purpose of his appeal to the Immigration Judge, together with the chronology of events at 1/4C/882W – 882Y, implicitly reaffirmed in his most recent unsigned and undated statement, prepared for the purpose of these proceedings in August 2008: 1/4A/841, paragraph 2.

iii) he has said nothing about this allegation.

iv) he admits that he established an anti-Gaddafi website, beginning in October 2002 but implies that this was personal and not on behalf of the LIFG: 1/4C/882J – 882K (paragraphs 26 – 28 of the statement dated 25th April 2005) and 1/4A/841 (paragraph 3 of his August 2008 statement).

v) he denies holding extreme jihadist views and has given a detailed explanation of the nature and content of the family website (1/4F/882OO – 882PP an undated statement produced for the purposes of the SIAC proceedings) and 1/842 – 845 (paragraphs 4 – 11 of his August 2008 statement).

vi) he has given an explanation of an isolated detail, but has not said anything about the substance of the allegation 1/4A/845 (paragraph 12 of the August 2008 statement).

vii) he has provided a detailed answer to this allegation: 1/4D/882EE – 882FF (paragraphs 24 and 25 of a statement dated 25th January 2006 prepared for the purpose of a bail application to SIAC); 1/4E/882MM – 882NN (paragraph 16 of an undated statement prepared for the purpose of SIAC proceedings); and 1/4A/847 (paragraph 16 of his August 2008 statement).

viii) he has answered this allegation at 1/4A/846 (paragraph 13 of his August 2008 statement).

Both I and the Special Advocates know what his case is on the core allegations against him (including that which has not been gisted in the open statements). They, and I, have been able to test the allegations against his answers, where given. In those instances where he has given no answer, any inability on the part of the Special Advocates to mount an effective challenge is based on the absence of any answer or instruction from him, not upon procedural difficulties or unfairness. As to the ground which remains fully closed, I have, with the assistance of the Special Advocates, considered what, in the light of his open case, he might have said (or about which he might have given instructions) about it. I can conceive of no answer which he could

have given which would have been likely to alter significantly the view which I have formed about it.

Stay

7. Mr O'Connor QC submits that these proceedings should be stayed as an abuse of process because, he claims, the Security Service has deliberately allowed the Secretary of State to present a case to the Asylum and Immigration Tribunal which is inconsistent with her case in these proceedings. He relies on the principle, applied in a different context, stated by Lord Nicholls in *R v Looseley* [2001] 1WLR 2060 paragraphs 1 and 36: the Court has an inherent power and duty to prevent abuse of its process or, in other words, to protect its integrity. The facts upon which he founds this submission can be shortly stated. The Immigration and Nationality Directorate of the Home Office rejected AR's claim to asylum by a letter dated 8th March 2004 which rejected his claim to have fled Libya because he belonged to the Al Bayraaq cell of the Al Tajjamah group and feared capture and execution if he were to return, as false; and asserted, in the light of his claim to have spent the period between November 1999 and January 2004 in Turkey, Malaysia and China, that he was an economic migrant and, in the light of his wife's Morrocan nationality, that he could safely be removed to Morroco. The Home Office file, which clearly included the material upon which that letter was based, was summarised, by and for the purposes of, the Security Service in a file note dated 30th April 2004: 1/3A/2i – ii. I have been told, and have no reason to doubt, that the file was requested by the Security Service and that the Security Service did not make any observation to the IND about it. Mr O'Connor accepts that it is inconceivable that the Security Service did tell the IND that it believed that AR was a member of the LIFG (and so at possible risk of persecution or ill treatment if returned to Libya) because, if it had done so, the presenting officer at the AIT appeal could not, consistent with professional honesty and his duty to the Tribunal, have cross-examined AR on the footing that he had not been involved in anti-Gadaffi activity. The decision against which AR appealed to the AIT – refusal of leave to enter – was notified to him on 31st January 2005. At the appeal, the Secretary of State's case was that AR's account of the circumstances in which he came to leave Libya was false, as was his underlying claim that he had ever been involved in anti-Gadaffi activity. That case is, self-evidently, inconsistent with that now advanced by the Secretary of State in these proceedings.

8. Mr Strachan submits that I have no power to stay Control Order proceedings and that my powers on review are limited to those set out in Section 3(6) of the Prevention of Terrorism Act 2005, i.e. quashing the order or one or more of its obligations or confirming it. Because of the view which I have formed about the merits of Mr O'Connor's submission, I have not heard full argument on the extent of my power and do not find it necessary to determine it. My instinctive view is that the power to stay Control Order proceedings as an abuse of process does exist; alternatively, that Control Order proceedings which were an abuse of process would also be an abuse of power, leading to the quashing of the Order on customary Judicial Review grounds under Section 3(11).

9. I am satisfied that Mr O'Connor's submission is without merit. The principal function of the Security Service is defined in Section 1(2) of the Security Service Act 1989: the protection of national security. Under Section 2(2)(a), it is the duty of the Director General to ensure that there are arrangements for securing that no

information is disclosed by the Security Service "except so far as necessary for that purpose (the proper discharge of its functions) or for the purpose of the prevention or detection of serious crime…". Disclosure of information in the possession of the Security Service that AR was a member of the LIFG to the IND would not have been necessary for the proper discharge of its function of protecting national security. Accordingly, it was prohibited from making the disclosure. Further, it had no reason to do so. There were no proceedings before the AIT when it made the file note and returned the IND file whence it came. I express no view about the duty, if any, which the Security Service and/or the Secretary of State may have had to disclose to AR that he was regarded as a threat to national security because (amongst other things) of his membership of the LIFG once that organisation was proscribed. If there was such a duty, it was fulfilled by service of the notice of intention to deport on conducive grounds on 14th December 2005. There can be no question of abuse of process in seeking the permission of the Court to make, in making, and in seeking to uphold, this Control Order.

Substantive

10. Section 1(3) of the Prevention of Terrorism Act 2005 authorises the imposition by a Control Order of obligations considered "necessary for purposes connected with preventing or restricting involvement by that individual in terrorism-related activity." "Terrorism-related activity" is defined in Section 1(9) as:

> "a) the commission, preparation or instigation of acts of terrorism;
>
> b) conduct which facilitates the commission, preparation or instigation of such act, or which is intended to do so;
>
> c) conduct which gives encouragement to the commission, preparation or instigation of such acts or which is intended to do so;
>
> c) conduct which gives support or assistance to individuals who are known or believe to be involved in terrorism-related activities…".

Section 2(1) permits the Secretary of State to make a Control Order against an individual if she

> "a) has reasonable grounds for suspecting that the individual is or has been involved in terrorism-related activities; and
>
> b) considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, to make a Control Order imposing obligations on that individual."

"Act of terrorism" is defined by Section 15(1) as including "anything constituting an action taken for the purposes of terrorism, within the meaning of the Terrorism Act 2000…(see Section 1(5) of that Act)" and "terrorism" "has the same meaning as in the Terrorism Act 2000…(see Section 1(1) – (4) of that Act)". "The public" includes

the public or any section of the public in a country or territory other than the United Kingdom.

By virtue of Section 1(2) and (4) of the Terrorism Act 2000, an act of terrorism means the use or threat of action which

> "a) involves serious violence against a person,
>
> b) involves serious damage to property
>
> c) endangers a person's life other than that of the person committing the action…".

whether inside or outside the United Kingdom: Section 1(4).

By Section 1(5) "….a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation".

11. For a variety of reasons, fully set out at paragraphs 6 – 15 and 35 – 43 of his closing Skeleton Argument, Mr O'Connor submits that if the Secretary of State's grounds of suspicion are founded only on membership of the LIFG and acts lawful in the country or countries in which they were committed (such as the publication of anti-Gadaffi propaganda) in furtherance of its aims, before proscription on 14th October 2005, her decision would be flawed and should be quashed. I need not deal at length with this submission, because I agree with it. Something which was deemed to be action taken for the purposes of terrorism by, and only by virtue of Section 1(5) of the 2000 Act could not, retrospectively, found the making of a Control Order: a person who belonged to the LIFG before 14th October 2005 who did nothing which was then unlawful, who resigned his membership and ceased his support when the organisation was proscribed, could not properly be made the subject of a Control Order. I do not understand Mr Strachan to suggest otherwise.

12. I now turn to the eight open grounds of suspicion identified in paragraph 3 above.

13. I take (i), (ii) and (iii) together. For the reasons set out in the Closed Judgment, I am satisfied that all three grounds are made out and that, at least on balance of probabilities, AR has been for many years a senior member of the LIFG, who has associated in Afghanistan, Pakistan and China with senior Islamist extremists, including Sadeq and has associated with senior LIFG members based in the United Kingdom including AU and AV. I reject as untrue the following claims made by him: never to have belonged to the LIFG (paragraph 7 of his undated statement with the fax header date of 3rd October 2006 at 1/4E/882KK); to have left Libya on 19th November 2000 (or 1999) (paragraph 14 of the same statement and, as to 1999, in his SEF, as noted at 1/3A/16 paragraph 7); as to his whereabouts and activities before 2000 (set out in detail in his statement of 25th April 2005, 1/4C/882A – 882L paragraphs 1 – 30); he did not know Sadeq by his real name and position within the LIFG (1/4E/882KK/ paragraph 7).

14. As to (iv), AR admits creating and posting anti-Gadaffi websites. At the time that this was done, it was not terrorism-related activity. Like SIAC, I do not believe that AR was in some way appointed by the LIFG as a propagandist or communicator. The

conclusions which I have drawn about what precisely he did are set out in the closed Judgment.

15. AR's computer was seized when he was detained on 3rd October 2005. In or with it was a DVD on which materials to be posted on a family website were recorded. There is no evidence that the website was ever put on the internet. It was created on 11th November 2003: 1/3B/9. It contains images of AR's wife with her face revealed, a reference to an image of a pregnancy scan and words which indicate that rights of access are reserved. All suggest that the website, if ever it had been put on the internet, would not have been open to general public access. I doubt that its purpose was propagandist. Much of the material is downloaded from other sites, principally Islam way. Much of its content could be found on the websites of committed Muslims offended and angered by the actions of western powers and Israel in the middle-east. AR has given a detailed explanation of the contents of the family website in his "first statement" dated 26th September 2008: 1/4A/842 – 845. There was detailed exploration of the language of the editorial passages on the website before SIAC, which concluded that, as a matter of language, it did not necessarily have the sinister meaning for which the Secretary of State contended. I am content to accept SIAC's conclusion. Nevertheless, like SIAC, I am unable to accept the benign construction placed on the language and contents of the site by AR. Placed in the context of closed material, I am satisfied that the un-posted website is the work of a committed Islamist extremist and provides some insight into AR's true state of mind when it was created.

16. As to (vi) on 5th October 2005, a photograph of the man known as AU was found on a scanner at AR's home. A doctored photograph of AU was found on the hard drive of AR's computer. (I am satisfied that the image is that of AU, relying on the comparison by an expert at Kalagate Imagery Bureau of the two photographs with AU's driving licence photograph, seized by the Metropolitan Police on 3rd October 2005, presumably from him: 1/3B/67 -68.). The expert concluded that there was powerful support (the highest level of confidence which can be expressed by an expert in this field) that the two photographs were of the same person and some evidence that the doctored image had been produced from the un-doctored image: 1/3B/68. The discovery of these items in equipment seized from AR's home calls for an answer; but AR has given none. He has not claimed privilege against self incrimination. Mr O'Connor submits that, because fraudulently altered documents are commonplace in some foreign born communities whose members have a precarious immigration status in the United Kingdom, no adverse inference should be drawn against AR from his possession of these items or his failure to explain them. I disagree. A central feature of Secretary of State's case against AR in these proceedings is his association with AU. The discovery of his doctored photograph on computer equipment at AR's home is, therefore, of obvious significance. By itself, it gives rise to reasonable grounds to suspect that AR had the capacity to prepare false documents for a senior UK based member of the LIFG and may have done so, or been preparing to do so. By declining to provide any response to that allegation, he has reinforced the grounds for that suspicion.

17. As to (vii) I am satisfied for reasons set out in the closed Judgment that there are grounds for suspicion which fall short of reasonable grounds. As to (viii), I am

satisfied that this ground of suspicion is simply speculative. I have paid no regard to either.

18. For reasons which are set out in detail in the closed Judgment, I am satisfied on balance of probabilities, that AR was involved in terrorism-related activities, as defined in Section 1(9) of the 2005 Act before his arrival in the United Kingdom on 27th January 2004. I am also satisfied on balance of probabilities that he played a senior role in the LIFG in the United Kingdom when it was not proscribed, between his arrival on 27th January 2004 and detention on 3rd October 2005. The principal significance of the latter finding is that it is capable of supporting the belief that, but for the imposition of the Control Order, he may re-engage in its activities now that it has been proscribed.

Necessity

19. I am satisfied that the decision of the Secretary of State to make a Control Order for purposes connected with protecting members of the public from a risk of terrorism was not flawed and that her decision to maintain the Control Order in force is not flawed. For the reasons set out in the open and closed generic Judgments, it is too soon to tell whether the LIFG will make peace with the Libyan government or complete the merger with AQ or split. As of now, there is at least a substantial risk that it, or a substantial portion of its membership, will not make peace, but continue jihadist activities abroad and/or resume violent activities in Libya. For the reasons mainly set out in the closed Judgment, but partly illustrated by the family website, there are reasonable grounds to suspect that AR does support and will support those who wish to continue terrorism-related activities. Further, there are reasonable grounds to suspect that he will again undertake LIFG activity in a senior capacity before any final decision is made as to its future. Continued reliance by AR upon the false account given by him of his activities prior to his detention on 3rd October 2005 discourages the conclusion that he no longer poses a threat, principally to the public of Pakistan, Afghanistan, the middle-east and, perhaps, Libya.

Modification

20. I deal with AR's appeal against the Secretary of State's refusal to modify individual requirements of the Control Order under their individual heads. I apply the guidance given by the Court of Appeal in paragraph 64 of *Secretary of State for the Home Department v MB* [2007] QB 415 at paragraphs 64 and 65.

Curfew

21. The inclusion of a curfew is not challenged, only its length – twelve hours. Self evidently, this is less than the maximum curfew which might be imposed without depriving AR of liberty – sixteen hours – but longer than is needed simply to ensure that he sleeps at home. It would not prevent or even seriously inhibit meetings between AR and other extremists if he and they were minded to do so. Given his record of reasonable, but not perfect, compliance with the obligations imposed by the Control Order and, before it was imposed, by his SIAC bail conditions, the time may soon arrive and/or circumstances may arise, in which the decision to maintain the curfew at twelve hours may become flawed. I am, just, persuaded that the maintenance of the curfew after 7pm has an inhibiting effect upon contact between

AR and other extremists because of the combination of two factors: the hours of darkness and the possibility that it may be more difficult for them to see him, if they are working, during normal working hours than afterwards. Given the deference which I must show to the Secretary of State on this issue, I am not persuaded that her decision is, for the time being, flawed. But when summertime arrives and/or if AR obtains approved paid employment or undertakes an approved full-time course of study (which would occupy most of his non-curfew hours) the balance would be likely to tip.

Geographical boundary

22. AR has only just been moved to Bury. It is too soon for the Secretary of State to assess whether or not his boundary can be adjusted or for me to rule upon her assessment.

The prohibited contact list

23. The six individuals concerned were the subject of deportation proceedings on conducive grounds because of their perceived LIFG activities. The decision of the Secretary of State to maintain their names on the list of prohibited contacts is not flawed. It diminishes the opportunity for them to resume LIFG activities and for AR to encourage them to do so.

The restriction on visitors

24. This now applies to male visitors and female visitors who are not relatives. Complaint is made in this case, as in others, that the restriction inhibits individuals who pose no threat to national security from visiting a controlled person, because they are afraid or unwilling to give their name and address and a photograph of themselves to the Secretary of State. This is an irrational fear. Further, the condition can be fulfilled by the provision by AR of the details and photograph required, if they are unwilling to do so. The decision to continue the imposition of this condition is not flawed. It is a proportionate means of inhibiting visits by individuals who pose a threat to the national security of the United Kingdom to AR. The fact that it was not imposed as a SIAC bail condition is immaterial.

Computer

25. AR is prohibited from having a computer at his home. He wishes to have an internet disabled computer there. I am satisfied that the Secretary of State's decision not to permit this is not flawed. For the reasons explained in this Judgment, AR has the capacity to create false documents on a computer, whether or not disabled from the internet, which would be of use to those engaged in terrorism-related activity; and may well have done so. The only practicable method of minimising this risk is to prohibit access to computer facilities at his home. The Secretary of State has acknowledged that, if he were to undertake paid employment or a course of study, she would not object to him working or studying at a place which had access to internet facilities simply on that ground.

Mobile Phone

26. The prohibition on AR having a mobile phone is a proportionate means of limiting his ability to communicate covertly with individuals who pose a threat to national security. He or his wife can use the landline at her home in the event of a medical emergency, if either are at home. His wife can use her mobile phone if she is away from home.

Conclusion

27. For the reasons given in the open and closed Judgments, I uphold the Control Order and its obligations and dismiss the appeal against the Secretary of State's refusal to modify it in the respects identified.

28. During the course of Miss Hadland's evidence, I expressed views about the approach adopted by officials in her group to requests made for temporary relaxations of the obligations imposed by the Order. I do not resile from those observations, which can be found on the transcript, but I am not required to make any decision in relation to them, so that it is not appropriate for me to repeat them here.