

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2009

Before :

MR JUSTICE WILKIE

Between :

**THE SECRETARY OF STATE FOR THE
HOME DEPARTMENT**

Applicant

- and -

FARAJ FARAJ HASSAN AL SAADI

Respondent

Tim Eicke and Paul Greatorex (Instructed by Treasury Solicitor) for the Claimant
Tim Otty QC and John Jones (instructed by Arani & Co) for the Defendant
Charles Cory-Wright QC and Shaheen Rahman as Special Advocates for the Defendant

Hearing dates: 23 Nov – 1 Dec 2009

OPEN

Judgment

MR JUSTICE WILKIE :

1. This is the section 3(10) hearing in respect of Faraj Faraj Hassan Al Saadi (AS) pursuant to the Prevention of Terrorism Act 2005 (“PTA”). He has been subject to a non derogating control order made, initially, on 3rd April 2008 and renewed on 31st March 2009.

The Law

The Legislative Scheme

2. Section 1(1) of the PTA defines a control order as:

“an order against an individual that imposes obligations on him for purposes connected with protecting members of the public from a risk of terrorism”

Section 15(1) of the PTA provides that “terrorism” has the same meaning as in the Terrorism Act 2000 (TACT). Section 15(1) of the PTA also defines “the public” as

“the public in the whole or part of the United Kingdom or the public in another country or territory or any section of the public”.

3. The power to make a non derogating control order against an individual is exercisable, pursuant to section 1(2) of the PTA, by the Secretary of State.

4. Section 2(1) of the PTA provides that the Secretary of State:

“may make a control order against an individual if he

a. has reasonable grounds for suspecting that the individual is or has been involved in terrorism related activity and

b. considers that it is necessary for the purposes connected with protecting members of the public from a risk of terrorism to make a control order imposing obligations on that individual.”

A control order has effect for a 12 month period and may be renewed for successive periods of 12 months. The grounds for renewal are set out in section 2(6) of the PTA and are as follows:

“That the Secretary of State

a. considers that it is necessary for the purposes connected with protecting members of the public from a risk of terrorism for an order imposing obligations on the controlled person to continue in force.

b. considers that the obligations to be imposed by the renewed order are necessary for the purposes connected with preventing or restricting involvement by that person in terrorism related activity.”

Section 1(3) of the PTA empowers the Secretary of State to impose under a control order “any obligations that the Secretary of State...considers necessary for purposes connected with preventing or restricting involvement by that individual in terrorism related activity.”

5. Section 3 of the PTA sets out the functions of the court in considering the substance of the control order made. Sub-sections (10) and (11) provide:

“...the function of the court is to determine whether any of the following decisions of the Secretary of State was flawed –

a. his decision that the requirements of section 2(1)(a)(b) were satisfied for the making of the order and

b. his decisions on each of the obligations imposed by the order.

(11) in determining –

...b. the matters mentioned in sub-section (10)

The court must apply the principles applicable on an application for judicial review.”

6. The Court of Appeal has held that a purposive approach to section 3(10) should be applied, requiring the court to consider not merely the initial decision to impose the control order but also whether the continuing decision of the Secretary of State to keep the order in force is flawed (see *Home Secretary v MB (2006) EWCA Civ 1140* at paras 41 to 46).
7. In *MB* the Court of Appeal distinguished between two elements of the Secretary of State’s decision namely:
 - a. whether there are reasonable grounds for suspecting that the controlled person is or has been involved in terrorism related activity and
 - b. whether it is necessary for purposes connected with protecting members of the public from a risk of terrorism to make the order.

The court held that the first question was one of objective fact and that the court could not review that aspect of the decision “...without itself deciding whether the facts relied upon by the Secretary of State amounted to reasonable grounds for suspecting that the subject of the control order is or has been involved in terrorism related activity” (para 60).

However the court also made clear that “the issue that has to be scrutinised by the court is whether there are reasonable grounds for suspicion. That exercise may involve considering a matrix of alleged facts some of which are clear beyond reasonable doubt, some of which can be established on the balance of probability and some of which are based on no more than circumstances giving rise to suspicion. The court has to consider whether this matrix amounts to reasonable grounds for suspicion and this exercise differs from that of deciding whether a fact has been established according to a specified standard of proof. (Para 67).

8. In relation to “necessity” the Court of Appeal recognised that the Secretary of State was better placed than the court to decide the measures necessary to protect the public from the activities of a terrorist suspect and deference should, therefore, be accorded to his views on the second aspect of the decision (see para 64 to 65).
9. Mr Otty QC, for AS, submits that the relevant principles governing the question of reasonable suspicion may be summarised as follows:

- a. Mere suspicion will not suffice. Reasonable suspicion requires something more. It requires that a genuine suspicion be formed and that a reasonable man, having regard to all the circumstances, would regard the grounds as reasonable grounds for suspicion (*M v SSHD 2004 2 AER 863 at 28 and 30, Fox Campbell and Hartley v UK 1990 13 EHRR 157 at 29-36, O'Hara v Chief Constable of RUC 1997 AC 286 at 298A*).
- b. Reasonable suspicion entails a clear conclusion of suspicion which properly remains only after:
- (1) the best available evidence has been considered by the court;
 - (2) all relevant enquiries have been pursued (*MK v SSHD: SIAC Number 29/2004* (Newman J. at para 6) ;
 - (3) all innocent explanations have been properly considered (see *MK* above);
 - (4) account has been taken of the time under which an individual has been under investigation and the extent and quality of evidence that it has been possible to obtain in that period, the greater the period and the more sparse the evidence the less easy it will be to characterise suspicion as reasonable;
 - (5) consideration has been given to what facts can be proved: to the criminal standard; on the balance of probabilities; and what are merely suspicions. (*SSHD v MB 2007 QB 415 at para 67*). Suspicion layered upon suspicion should not suffice.
- c. The ability of the court to make a finding of reasonable suspicion must take into account the inherent probability, or otherwise, of an allegation being well founded. The more grave the allegation the greater the burden on the parties seeking to establish reasonable suspicion.
- d. The court must take into account the gravity of the consequence for an individual because the greater the inroad into his freedom the greater the care with which the justification for it must be examined (*SSHD v A 2005 2AC 68 per Lord Rodger at 178*).

Background and Chronology

10. AS was born on 28 November 1980. In his seventh witness statement he says that he left Libya in about October 1997. He went overland to Jordan, having passed through Egypt for a couple of days. He stayed in Jordan for a couple of months with some Libyans whom he met in a mosque. He understood some of those were subsequently deported to Libya, accused of being members of the Libyan Islamic Fighting Group (LIFG), though he did not know that at the time. He found it difficult to settle in Jordan. He wanted to go to Qatar to join his older brother but there was a problem obtaining a visa. He went to Syria for about a week and then to Turkey at the beginning of 1998, travelling with one of the Libyans already mentioned. He stayed with members of the Libyan community in Istanbul until August 1998. His visa had still not come through for Qatar so he was advised by the Libyans to go to Pakistan to study. He arrived in Karachi in August 1998 and went straight to Islamabad. He then went by bus to Peshawar. At that stage he realised that the people he had been with must have been connected with the LIFG. People in Peshawar talked openly about the Gaddafi regime and their opposition to it and about going back and forth to Afghanistan and attending training camps. He says he was

never interested in doing this, he wanted to study and his brother always told him never to get mixed up in anything like that.

11. He lived in Peshawar with Libyans connected to the LIFG for nearly a year, he studied at the mosque and learnt the whole of the Koran. After about a year, the people with whom he had been living started to put pressure on him. He had to join the LIFG or leave. He did not want to join the LIFG so he left, around the end of 1999.
12. He stayed in Peshawar and lived with other Libyans who were living there who were ordinary refugees and travellers unconnected to LIFG. At that point he travelled to Islamabad and claimed asylum at the United Nations. He was required to check in every 2 weeks which he did, travelling back and forth from Peshawar. This carried on until June 2001 when he left Pakistan. Whilst in Peshawar he met his wife. Her brother-in-law introduced them in 2000. He was part of the Libyan community unconnected with LIFG. They got married in June 2000 in Peshawar and had their first child, a daughter, in June 2001.
13. In about July 2000 the Pakistani authorities started to clamp down on Libyans living in Pakistan. He and his wife moved in with her parents and thought it might be safer with them. His brother in England advised him he should try to leave Pakistan and join him in England. AS was scared and started to save and plan to come to England.
14. In Peshawar he managed to get hold of a Moroccan passport with an Italian visa. He waited for the birth of his first child on 6th June 2001, stayed for a short time after that and then he left. He went to Karachi, got an Iranian visa, because he understood people travelling direct from Pakistan to Europe had more difficulties when they arrived. He went to Quetta and, from there, over the border into Afghanistan to Kandahar. He had been told of a particular guesthouse where some other Arabs were staying and he went there. There may have been people there who had links to Al-Qaeda but he does not know. He stayed there for 2 days before setting off for Iran. He travelled by himself. He went to Herat, then to the border, over into Iran and on to Tehran. He spent a week in Tehran before getting a flight direct to Rome because he only had a visa for Italy on his false passport. Throughout that period he remained in contact with his brother, received financial support from him and from the Libyans with whom he had stayed.
15. He arrived in Italy in June/July 2001. He destroyed his Moroccan passport, hid at the airport and presented himself at immigration, claiming asylum, giving a false name (Imad) and claiming to be Palestinian. He was given notification to leave Italy within 2 weeks. He was afraid of being deported to Libya from Italy because of the links between the two countries. He decided to go to Switzerland on the advice of an individual he met at the mosque in Rome who told him there was a Libyan community there some of whom had obtained refugee status. One of the people he met at the mosque, Lotfi Rihani, said he could drop him at the border but they were arrested together on 6th August 2001 by the Swiss border police. He was handed back to the Italian police but eventually he got over the border into Switzerland.
16. He lived in Switzerland in an official refugee camp until December 2001, made a formal asylum application in his own name but he found it difficult to adjust, did not feel comfortable in the country, and decided to resume his efforts to come to Britain.

17. He returned to Italy to work for a short period to get money to come to Britain. He got a job in construction in Como for a couple of weeks on December 2001, managed to get a fake identity card and left Italy to go to Britain. He took a train from Italy to France and then went to Belgium and Holland where he got on a bus which unfortunately took him back into France to Calais where he was arrested for trying to cross into Britain. He was given a notice to leave France within 2 weeks, this was in December/January 01/02. He returned to Italy because he knew more people there, went back to Como and found work in construction again. He spoke to a Libyan friend from the refugee camp in Switzerland who gave him the contact of a Libyan man in Holland where he could stay before trying to get into Britain. He travelled to Holland, he found it difficult to get documentation to travel to Britain but continued to have contact with people in Italy who knew how to get false documentation. Eventually, a passport in the name of Josef Zetonal was sent to him from Italy. He made his way to Britain and after about 15 days claimed asylum in Britain in his true name.
18. In fact he arrived in the United Kingdom in March 2002 and 21 March 2002 is the last date of any recorded conversation between AS and any of the individuals identified in the Italian extradition request (see below).
19. In April 2002 he applied for asylum in the UK. On 16th May 2002 he was detained following an arrest for unlawful entry. On 7th February 2003 the Italian Government requested his extradition to face trial for, amongst other things, terrorist related offences. In November 2003 the Italian Government requested the United Nations to list AS as a designated terrorist.
20. On 9th May 2005 the Italian First Instance Court gave its judgment in criminal proceedings brought against AS's co-defendants (the 2005 Italian judgment). In that judgment the co-defendants were found guilty of criminal charges but not of any terrorist related offence.
21. In October 2005 the Italian extradition request was withdrawn.
22. On 18th December 2006 there was a first instance decision of the Italian courts in the criminal case brought against AS in his absence (the 2006 judgment). AS was convicted of false documentation charges but was acquitted of terrorism charges.
23. On 17th December 2004 a piece of paper containing an illustration of weapons and slogan written in Arabic was found in AS's cell. The security service alleges that he is the author of this document, he denies it.
24. On 27th April 2007 the Special Immigration Appeals Commission (SIAC) gave judgment on his appeal against the SSHD's intention of deporting him to Libya. In that judgment SIAC concluded that, on the open evidence alone, AS is a clear danger to national security. I consider below the impact of this judgment on the decisions I have to make. SIAC allowed AS's appeal on the grounds that deporting him to Libya would constitute a breach of his human rights under Article 3 of the European Convention of Human Rights.

25. The SSHD appealed against the SIAC decision but, on 16th May 2007, AS was released from detention on bail conditions set by SIAC. The Court of Appeal upheld the decision of SIAC in April 2008.
26. In the meantime, on 7th February 2008, the judgment of the Italian Court of Appeal (the 2008 Italian judgment) was delivered. It upheld the appeal of the prosecution against the first instance Italian judgments and, as a result, AS and his co-defendants were convicted of charges of associating for a terrorist purpose.
27. On 3rd April 2008 SSHD applied for permission to make a non-derogating control order. The application was granted and a control order made. It was served the following day and renewed on 31st March 2009.

The open security case

28. This is contained in the consolidated control order statement. By its introduction it states that AS has been involved in terrorism related activities, it is necessary to continue to impose obligations on him for the statutory purposes and the combination of obligations is necessary to reduce the risk posed by him. It states that no other adequate measures could be taken in order to protect members of the public from that risk. The statement is consolidated from five control order statements.
29. The statement comprises a number of headed sections. The first is **historical terrorism related activity**. It has a number of sub-headings.
30. **Terrorist training.**
 - a. It is assessed that between 1997 and prior to 2001 AS attended a terrorist training camp in Afghanistan.
 - b. The Italian case, presented to the UN for AS's designation, states that he had attended a military training course in Afghanistan.
 - c. In the 2005 Italian judgment there is a record of evidence of Mr Abdalla in which he states that AS had been present in Afghanistan in and around 2001 and left Afghanistan with Abdalla.
 - d. The security service assesses that AS could have engaged in extremist fighting having attended a terrorist training camp.
31. The open evidence in support of these contentions is the fact of the Italian assertion in the UN designation application; and the evidence of Abdalla that he identified, from a photograph, a man whom he called Faraj Faraj Hassan (Hamza) (who is said to be AS though absent at the trial). Abdalla says that that person left from Libya, was living in Afghanistan and was a friend. He says as follows:

“When we left Afghanistan he left with us. Normally when we left Afghanistan and, Khandahar, they would take us out illegally in groups. He was in my group, on top of it he was ill with malaria...as clandestine travellers we only went from Afghanistan to Pakistan together. From what I remember he had a Moroccan passport, he had to wait for a visa from Iran

and then go there and later he'd have met up with a friend. From there he was going to reach a friend in Sweden or Switzerland, I don't know exactly and I can't remember whether his passport was Tunisian or Moroccan. The guides belong to Al Qaeda and it is they who organised the trip to Karachi."

He was later asked "had this person any contact with people belonging to Al Qaeda" and answered "yes he had links".

32. In his open evidence the security services witness Z stated that he thought it highly likely that the Italian assertion in the UN designation application that AS had been to a training camp would have been based on material other than what Abdalla had said, which did not contain any such claim.

Logistical support to extremists and support of AQ

33. This is contained in paragraphs 18 – 23 of the open statement. They state that between 2001 and 2002 AS was in contact with Iran based and Pakistan based AQ linked individuals for whom he provided logistical support for terrorism related activity. They state that such activity increased the capabilities of the AQ linked networks and that this involved attack planning.
34. The security service notes from the Italian judgment 2005 that AS is credited as being linked to individuals in Switzerland to whom he was to supply unspecified items but that priority was with individuals based in Pakistan. They rely on a conversation between AS and a man called Cherif that he had "already sent it to that one...and sent it to the other one Abou Nassim" who is described as the person reporting to the group in Pakistan. The Security Service assesses that "the thing" is likely to be false documents and that AS was in contact with Abou Nassim in Pakistan to provide him with false documents. They assess that AS was in contact with Iran based and Pakistan based facilitators linked to AQ.
35. In an address book, assessed to belong to AS and found during the search of 348B Lucas Court, was a Pakistan number ending "4248" and annotated by this number was the name Nassim. That number appeared in the Italian extradition request and the Italian judgment alludes to a Pakistani based individual linked to the network named "Abou Nassim". From this material, the Security Service assesses that the number "4248" may well have been the number for Abou Nassim referred to by the Italians.
36. In the Italian extradition proceedings it is asserted that AS enquired about night vision video equipment in Italy in mid January 2002. AS subsequently informed a Swiss associate that he and Sharif (assessed to be Cherif) were busy with the video camera for some associates in the UK. The Security Service agrees with the view, expressed by SIAC in its judgement, that "we regard it (filming using night vision equipment) as unlikely that it was for tourist or family purposes and surveillance is much more likely".

Links to and support for AQ

37. The Italian extradition document describes AS as responsible for contacts with Middle East countries such as Iran and Pakistan where numerous terrorists belonging to AQ and other formations took refuge. This is based on contact between a telephone, assessed to be used by AS, and international numbers in areas where terrorists linked to AQ were known to be located. The Italian extradition document highlights conversations where members of the group exhibit sympathy for AQ and its actions.
38. The extradition document details AS's assessed contact with international numbers. The security service assesses that, in its context, these numbers are associated with AQ linked terrorists and that AS, on behalf of the group, was the main contact to AQ linked individuals.
39. The security service also assesses that AS is known to Al Zaraqawi, the former leader of AQ in Iraq, who was killed in June 2006. It notes that Al Zaraqawi, according to Abdalla in the 2005 judgment, was present in Afghanistan in 2001. Thus the security service assesses that, but for the control order, AQ linked individuals may seek to re-establish contact with AS and that the control order remains necessary to prevent such contact.

Involvement in Europe based extremist cell involved in attack planning (paras 29- 54)

40. These paragraphs detail AS's role in a Milan based AQ linked network assessed to have been engaged in various activities, including the provision of false documentation for extremists and, ultimately, in attack planning against western interests. The security services assess that AS was a prominent figure and was the main contact for AQ linked individuals in other countries linked to the group.
41. The Italian authorities started an investigation into AS in December 2001. The Italian case against him, based on surveillance and telephone intercepts, is that AS was one of the leaders of the group, referred to as "Sheikh" by Nassim Saadi a member of the group, a term of respect. SIAC in its judgment stated that AS was "a highly respected member of the group and that he may well have been its leader for a while". In the Italian Court of Appeal judgment in 2008 it stated that "AS was without the slightest doubt the most prominent figure in the group".
42. The security service assesses that one of the reasons for his prominence was his role as the main conduit for contact with extremist figures in places such as Iran and Pakistan. It is said that Nassim Saadi, in March 2002 after his return from Iran, asked AS if he could provide a contact as other contacts had been interrupted thus Nassim was relying on AS to provide him with contacts. Reliance is placed on the 2008 judgment in Italy which highlights his "role as a link between the various members of the trans national organisation and that his role puts him on an equal level with other prominent members of the group at the time of his arrest namely Cherif, Al Fadh al Saadi and Nassim Saadi.
43. Reliance is placed on the finding of the Italian courts in 2008 that "in particular AS (up to 2002) Nassim Saadi, Zarqaoui, and Fadh al Saadi organised and ran a

conspiracy indoctrinating the members with ideology and making all necessary arrangements for achieving the intended objectives”.

44. It is said that Italian investigators noted a “quality escalation” of the group at a time after AS arrived in Italy from Afghanistan. The security service assesses that this further indicates his prominent role.
45. Reliance is placed on the papers submitted by the Italians in relation to extradition proceedings as well as the judgments of the first instance courts in 2005 and 2006 and the Court of Appeal in 2008 in support of series of propositions based on the material referred to in these documents.
46. The Security Service concludes that AS was arrested by the Italian authorities in January 2002, using a false identity, in the company of Cherif and Nassim Saadi both of whom were convicted of document forgery in May 2005.
47. It is said that AS had contact with a man called Trabelsi, said to be a member of the group and that he had contacted Trabelsi from the UK in March 2002. Trabelsi was arrested in Italy in April 2003, extremist propaganda was recovered from searches of his home and the Cremona mosque where he preached.
48. An Italy based extremist called Hamadi Bouyahia was, it is said, a member of the Milan cell who had provided false travel documents and financial assistance to extremists and had allowed AS and Cherif to use his Milan home. In July 2002 Italian police searched his home and seized over 8000 euros in cash, a forged French residency permit and a manual entitled “Basic Elements for the preparation of Jihad for the cause of Allah”.
49. Zarqaoui is said to have facilitated travel for members of the cell and attempted to procure a firearm in June 2002. In September 2002 he had contacted a Swedish based associate named Lotfi and asked after AS to whom he referred as “our brother Hamza”. In 2002 he was given a prison sentence, released in 2003, arrested by the French authorities in October 2005 for immigration and false document offences. He is excluded from the UK on national security grounds.
50. The Italian extradition papers indicated that the Milan based group was working on behalf of leaders in Pakistan and Iran with whom members of the group were in contact. In the Italian court proceedings it is stated that in January 2002 Nassim Saadi travelled to Iran from Milan via Amsterdam. He returned to Italy via Amsterdam, where AS was based, to deliver an unspecified package to AS via an individual assessed to be Yassin Al Hanni an extremist based in the Netherlands. Telephone intercepts indicated that Nassim Saadi returned from Milan with “5 million” of an unspecified currency. The Milan public prosecutor stated that this money was assessed to have been provided to him by the head of the Mujahadeen organisation in Iran. The Security Service assess that it suggests that AS may have been in a position to organise other members of the group to courier items to AQ linked facilitators.
51. The Security Service assesses that the “head of the Mujahadeen” whom Nassim Saadi travelled to meet in Iran was an Iran based facilitator. The Italian documents refer to contact between AS and Nassim immediately on his return from Iran, indicating that

AS could have played a part in organising the trip. The Italian documents also make reference to AS as the main contact with international extremists linked to the group based in Iran and Pakistan. The 2005 judgment refers to a group in Iran to whom AS is linked which had “obvious problems with the local authorities”. The 2005 Italian judgment refers to intelligence which indicates that AS has provided false documentation to individuals and that one of the main activities of that group was the provision of false documentation to individuals linked in the common cause of Islamist extremism. The Security Service assesses that the trip made by Nassim Saadi to Iran was likely to be linked to the provision of false documents and that, therefore, in January 2002 AS was in contact with an Iran based facilitator. Further, the Security Service assesses that, on his return from Iran, Nassim carried a message for AS, who is said to be the main contact for the group to AQ linked extremists.

52. Reliance is placed on the open judgment of SIAC in which at paragraph 99 it says as follows:

“It appears likely that the return of Nassim from Iran with a message for AS was an important event. This probably activated them providing them with money and giving them a task specific or broadly expressed. We regard the only sensible inference that the group thereafter was preparing for violence in the jihadist cause probably somewhere in Europe but it could have been Afghanistan or Iraq ” and para 101:

“AS was an important part of bringing the group to this stage at which it could plan specifically for the acts of violence which by September 2002 were quite probably imminent and for which we conclude he gave them instructions brought to him via Nassim.”

53. The Security Service notes that individuals associated with the group commented in mid February 2002 that “brothers” go to Iran because it is an intermediate stop to go to Pakistan or Afghanistan.
54. The Security Service relies on the fact that, on 30 January 2002, Cherif, in a call from an Italian public call box to an Iranian number was told that he would soon hear some “good news”. Cherif enquired after Nassim Saadi who had recently travelled to Iran and it is assessed that this further supports the links between the group and Iran.
55. Transcripts of a telephone intercept in the Italian extradition papers reveal what is assessed to be an attempt by AS to obtain, urgently, from Al Hani a false passport to enable AS to leave Italy and to travel to the Netherlands.
56. Reliance is placed on the following passage in the open SIAC judgment (para 99):

“ In our view there clearly was a group of men with extremist Islamist views supportive of violence against the West which had been acting together for some time in the ways we have set out including recruiting for Al Qaeda, raising money for terrorist activities and obtaining false documents for that

purpose. This group can properly be regarded as a serious terrorist group.”

57. The Security Service also relies on the assertions in the extradition statement that “the group” was preparing for a “programme that strengthens the faith”. Telephone intercepts evidenced in the Italian legal proceedings indicate that the group had discussed preparing for “a game of football” which the Italian prosecutor assessed to be a reference to a terrorist attack, an assessment supported by the Security Service. A telephone intercept indicates that, in early September 2002, the group had discussed obtaining false travel documents to allow operatives to “travel to the destination where the programme was to be carried out”. Reliance is placed on para 99 of the SIAC in which it is said:

“This “game” is however most unlikely to have been other than a coded metaphor for violent action against Western interests.”

58. The Security Service also relies on reported aspirations of members of the group to travel to Yemen where they believed AQ fighters loyal to Osama Bin Laden were congregating and it is said that these highlight the link between the group of which AS was a leading member prior to his arrest, and AQ.
59. AS’s last known contact with the group was 21st March 2002. In September 2002 the Italian authorities arrested a number of individuals on suspicion of planning a terrorist attack including those with links to AS. In December 2002 AS was subject to a formal extradition request from the Italian authorities but this was withdrawn, in October 2005, on the basis that, under Italian law, they would be unable to detain him on his return due to the amount of time already served on remand.
60. Reliance is placed on paragraph 100 of the SIAC judgment in which it said as follows:

“We do not accept the suggestion that the only material in open against him from the Italians is that he obtained a false passport that is simply to ignore all the surrounding evidence about him. There is no doubt from the evidence of the range of extremists with whom he was in contact he would have known fully of the activities of the group when he was in Milan and the Netherlands and what the nature of the task was: jihadist violence probably somewhere in Europe. It could be important for the leader of the group to keep himself away from the authorities who would interfere with him as appeared to have been AS’s fear in Italy and again in the Netherlands. However precisely who, if anyone was the leader is not important he was an important leading member at least.”

Activities whilst in detention in the UK

61. In December 2004 a drawing was seized from the cell occupied by AS and another person, Asif Sherlam. The latter is serving a 14 year sentence for rape. The drawing depicts an assault rifle and grenade accompanied by islamist extremist slogans written in Arabic including “my country needs these to fight for freedom”.

The Security Service assessment is that it is likely that AS is responsible for this drawing.

62. In August 2005, whilst at Brixton prison, AS received a number of DVDs through the post. They were subsequently confiscated and noted to bear the titles “The Twin Towers” and “Al Qaeda”. SIAC found that, alongside the drawings attributed to AS, these “reinforced the assessment that AS is an extremist and a supporter of violence in the islamist cause.”

63. **UN Designation**

In November 2003 on the recommendation of the Italian authorities the UN added AS to the list of individuals subject to measures under Security Council resolution 1455 based on their involvement in AQ related criminal and terrorist networks. This resolution imposes a travel ban, asset freezing and arms embargo on designated persons. The Italian statement of case sets out AS’s position as the leader of an islamist terrorist cell in Milan linked to AQ and that he attended a military training course in Afghanistan.

Activities since release from detention

64. The Security Service assesses that AS believes he is the subject of monitoring and that he may moderate his behaviour in an attempt to avoid suspicion.
65. It also assesses that he has maintained his extremist sympathies and has potentially breached his control order, for example by leaving his boundary.

On going contact with extremists

66. The Security Service assess that AS had a wide range of extremist contacts and that, following his detention, he continues to have a wide range of extremist contacts such that, but for the control order, he could use them to engage in terrorism related activity. A number of individuals are named as those who are assessed to be islamist extremists with whom he has been in contact, they include:

Mohammed al Ghabra who it is said has been in regular contact with Pakistan based senior AQ individuals and is in regular contact with numerous UK based islamist extremists;

BM against whom a control order was made in April 2009 concerning the commission, preparation and instigation of acts of terrorism overseas and facilitating conduct in the UK and overseas;

Mahmoud Abu Rideh said to be closely involved with senior AQ members and islamist extremists, in the UK and overseas, including in raising and distribution of funds, procurement of false documents, dissemination of extremist propaganda and helping to facilitate the movement of jihad volunteers to training camps in Afghanistan. He was subject to a control order whilst resident in the UK but has now left;

Y is assessed to have been the leader of an Algerian terrorist group DHDS in the UK and linked to other proscribed terrorist groups such as GIA, ESPC. He is

said to have been linked to the ricin attack in the UK and has possibly been to training camps in Afghanistan and is currently on SIAC bail;

Saleh Hadeen Mohammed. It is assessed that he has been engaged with Libyan related extremism;

U is assessed as an extremely senior islamist extremist with links to high ranking international terrorist planners. He is assessed to have knowledge of a series of planned terrorist attacks overseas including Los Angeles airport in 2000 and Strasbourg in 1999/2000. He was detained pending deportation in August 2005. SIAC concluded in May 2007 that he posed a significant risk to national security. He was on SIAC bail which was revoked in March 2009 and is in detention;

G is said to be a significant international terrorist with extensive extremist contacts. He was involved in fund raising facilitating the travel of extremists to undertake jihad before his detention in 2001. He is currently subject to SIAC bail;

Z is an Algerian subject to deportation proceedings on the basis that his presence is not conducive to the public good. He is assessed as having provided logistical support to terrorists based in the UK being a leading member of the GIA in the UK. He is currently on SIAC bail;

Riad Boukhezar. It is assessed that he was a central figure at the Finsbury Park mosque, an associate of Abu Dohar;

NN, an Iraqi Kurd said to be believed to be actively involved in attack planning possibly against the UK. He was arrested in October 2005 but later released without charge. He was served with a Control Order in December 2005 which was quashed in November 2008 on grounds of continuing necessity;

Necessity for control order based on his historical activity and maintenance of extremist views.

67. It is assessed that his remaining in contact with various islamist extremists means that, but for his Control Order, this contact would facilitate engagement in terrorism related activities. Reliance is placed on the conclusion of SIAC in 2007 that it was “quite satisfied that AS will resume these activities when he is able to do so”. It is assessed that this continues to apply. The Security Service assesses that a control order is both necessary and proportionate and recommends a 12 hour curfew, a geographical boundary, restrictions on his ability to receive visitors and attend pre-arranged meetings, that his mosque attendance is subject to restrictions, that his ability to travel overseas in an uncontrolled manner is curtailed and that restrictions are placed on his employment and access to training courses.

Oral open evidence

Witness Z cross-examination

68. He confirmed that the last date for alleged contact with the Milan group was 21st March 2002, and that maintaining extremist sympathies is not the same as engaging in terrorist related activity.

Re prison art

69. The Security Service assessment is that it is likely that AS was responsible for the drawing. He acknowledged that the police report said that it was “not clear” who was the author and that the translation referring to “my country needs these to fight for freedom” was consistent with the author being a Palestinian. He was aware that it is alleged that AS’s cell mate had said to AS that it had been left by a Palestinian who had occupied the cell before them. He also said that at one point in Italy he had adopted the alias of a Palestinian and the Security Service continued to assess that he was most likely to be responsible for the drawing, though he didn’t know if AS’s account had been put to his cell mate nor had any hand writing test been done.

DVDs

70. He agreed that he had not viewed the DVDs. His attention was drawn to an article said by AS to have been written by him in which he said that such activities had no place in Islam.
71. He agreed that AS had been appointed as a representative of the Muslims whilst in detention in Brixton prison and there had been no criticism of his role as such.

Post detention activities

72. By “extremist sympathy” he meant adherence to a belief that violence was necessary to achieve the goals of such believers.
73. He agreed that the persons with whom it is said AS had contact were not prohibited for him to contact them and that none had been convicted of any terrorist crimes. He confirmed that there was nothing in the content of his contact which gave concern, beyond the fact of that contact.
74. As for Al Ghabra they had no reason to dispute AS’s account that his contact was limited to receipt of gifts from a charity. As for Mahmood Abu Rideh he agreed that Mr Rideh had been mentally ill but was now at liberty. He had no basis to dispute what AS said about his contact with him. As for Doha he agreed that he is the same person as Amar Makhulif. He had no basis to dispute what AS said about his contact with that man or his contact with Al Ghafiqi, Mr Drey or Z, Bukhazar or Taleb.
75. He agreed that, under the current control order, BM had been added as a person with whom he was prohibited to make contact.

76. As for breach activity: the breaches of boundaries were, he agreed, in relation to hospital visits in connection with his wife's pregnancy and an assault on him. He had no basis to dispute what AS said about those.
77. As for searches of AS's premises, he acknowledged that Susan Hadland said that there had been fourteen this year. He was not aware of anything of interest arising from those searches.
78. He acknowledged that the Security Service had opposed modifying AS's Control Order to enable him to accompany his daughter to her school which was outside the boundary. He wasn't involved in that aspect of the case but he knew that Mr Justice Sullivan had allowed such modification and that, during the 14 months since, he wasn't aware of any harm to the public interest arising from it.

Historic activity

The Afghan training camp allegation

79. He agreed that the open evidence was limited to the statement by Abdalla in the Italian proceedings and the Italian assertion in their UN designation statement. He agreed that Abdalla had not alleged that AS had been in a training camp in Afghanistan but he believed it to be likely that the Italian assertion in the UN designation application would be based on further material although he was unaware what it might be.
80. He agreed that he was unaware how long Abdalla had been in company with the person he identified as AS, nor the name by which he knew him, nor what links Abdalla might have, nor how many statements he might have made, nor how accurate they might have been, nor whether Abdalla had been asked to identify others, nor what action, if any, had been taken against Abdalla. He agreed that there was no allegation by Abdalla that AS attended training camps in Iraq. He stated that the Security Service assessment was at odds with the account given by AS in his seventh witness statement of how and when he came to be in Afghanistan.

Conduct in Italy

81. He agreed that the evidence in support of this was of three sorts, information about arrests, information of direct surveillance and phone intercepts.
82. He agreed that the first arrest had been at Rome airport by immigration authorities on 26th July 2001. The second was a routine stop near the Swiss border on 6th August 2001. The third arrest was on 14th January 2002 when AS was in company with Saadi and Cherif. This was the same day as his alleged enquiry about video night filming equipment, for which there were two evidential sources relied upon by the Italians, though the Security Service had not seen the statements provided by them.
83. The surveillance evidence amounted to surveillance of him at the video shop on 14th/15th January 2002, on a shopping trip in Bologna on 18th January and having a haircut on 23rd January. He was unaware of what he had purchased or how much cash he had in Bologna. The 23rd of January surveillance had no significance.

Phone intercepts

84. He agreed that there had been many hundreds of calls intercepted by the Italians. He was unable to verify but they seemed to be numbered up to at least 1400. There was no underlying tape or transcript to support what the Italians said in the judgments.
85. He did not dispute AS's schedule of 25 calls between 12th January 2002 and 19th September 2002, being the conversations to which it is alleged either that AS was a party or in which he was referred to. He did not dispute that, of those 25, he was said to be a party to 19 and that he was referred to in the remaining 6. Of the 19, twelve were on an unidentified number and only 5 were allegedly made on an Italian number linked to him, the two others were on Dutch and French numbers linked to him. This is, he accepted, contrary to the contention in the Italian judgment that he always used specific telephones.
86. He agreed that the Security Service relied on the account of content of the phone calls contained in the Italian judgment and that they did not have the underlying material. His attention was drawn to certain discrepancies in the transcription in the judgments and other documents of certain of the calls. For example, in call no.10 on 27 February 2002 the extradition document transcription refers to "gulf" whereas in the judgment the same call is said to contain a reference to a "Golf" motor car. In call no. 18 on 5th March 2002, which is said to have been of extreme importance, there is a reference in the extradition documentation to "300(millions)," a reference apparently to money, whereas in the judgment the reference is to "300 people".
87. His attention was drawn to inconsistent analysis. It was an important part of the Italian case that AS was identifiable throughout as "Hamza" but in call no. 9, on 14th February 2006, the Italian record shows Nassim Saadi calling himself "Hamza" though in the conversation he also referred to "Hamza" where it is clear that it is AS who was being referred to.
88. In this call, Nassim Saadi is asking after Hamza. He agreed that some significance had been placed on the fact that it was said that AS wanted urgently to get in touch with Nassim upon his return from Iran. The first call, however, in which AS is recorded as enquiring about his return was dated 27th February 2002, almost 2 weeks after Nassim's return from Iran, and the first direct contact between AS and Nassim was on 2nd March 2002. Witness Z accepted that the use of the word "urgent" in that context was "difficult".
89. Witness Z was also asked about the Italian assertion that he had returned with "5 million" of an unknown currency for terrorist purposes. He was asked to put that in the context of the conversation in which it was referred to: on 27th February, and in the context of what appeared from the transcription to be an argument with his wife about money. Nonetheless, witness Z still maintained his assessment that this was a reference to money from Iran to assist the group.
90. He also agreed that in the Italian Court of Appeal judgment, reference was made to a telephone call of 30th January between Cherif and three unknown persons on an Iranian telephone. The conversation transcribed was about Nassim Saadi's brothers, that one of them was in jail and that Nassim had gone to find him.

91. Z was asked about voice recognition and was unaware of the basis upon which it was said that it was AS (aka Hamza) on the phone. He agreed that there was one occasion, the 13th of January 2002, when the transcription indicated that AS was mistaken for somebody else, a Tunisian, because of his accent.
92. As for the use of the nomenclature “Sheikh” for AS, in his judgment it was a small part of the analysis. He was also aware that the group referred to him as “the boy” and that the description “Sheikh” was used of others as well.
93. He agreed that on 19th September 2002 two members of the group, in a telephone conversation, were unaware that AS had been detained in the UK for several months.
94. Notwithstanding these discrepancies his assessment remained the same.
95. He confirmed that the Security Service also relied upon reported aspirations of members of the group to travel to the Yemen where they believe AQ fighters loyal to Osama Bin Laden were congregating. It is said that these highlight the link between the group of which AS was a leading member prior to his arrest and al Qaida.

Susan Hadland

96. Ms Hadland adopted the witness statement of Catherine Byrne dated 3rd April 2008 and confirmed the truth and accuracy of her witness statements dated respectively 25th September 2008, 4th December 2008 and 5th June 2009.
97. The first statement was in response to AS’s appeal against the Home Office refusal to modify his geographical boundary obligation to enable him to take his daughter to her school outside that area. The second was in connection with this section 3(10) hearing. She dealt, amongst other things, with the fact that AS continues to be designated under UN order 2002, with the fact that AS’s appeal in respect of his child’s school was successful, and that a new condition was subsequently agreed. She also dealt with consultation occurring prior to the control order, the fact that the police and CPS advice was that there was insufficient evidence to support any criminal charge and consultation with the control order Liaison Group concerning the obligations initially imposed and, thereafter, the control order Review Group, which meets quarterly and considers the continuing necessity and proportionality of the individual obligations.
98. She dealt with certain allegations made by AS in his first witness statement about the way in which the electronic monitoring operated, about the change in address, which had been agreed, about his request to live in an area where there was a greater proportion of Muslims, about evidence of his lack of financial resources and about his request to be permitted to include his brother and sister-in-law as visitors notwithstanding the obligation not to have more than one person at his residence at any given time when he is in attendance. She gave evidence about police visits and searches and about restrictions on his communications through the internet and by telephone. She also covered the obligations in respect of his place of worship and the nature of the area within the geographical boundary. She dealt with the requirement of notifying his departure from the UK and the obligations in respect of education and employment. She also dealt with allegations concerning the impact of the control order on his wife and children.

99. Her third witness statement dealt with the updated position concerning the renewal of the order and modifications to the obligations. She dealt, specifically, with police searches of the residence and with his request to change the geographical boundary and/or to be permitted to live elsewhere. She also dealt with matters of detail concerning education and training.
100. In cross-examination she said it is nothing to do with her who the Security Service decides to use as a witness, nor who they have attend the COLG and CORG meetings, though she confirmed that the Security Service is always represented at those meetings.
101. She was asked a number of questions about the material before the Secretary of State both initially and upon renewal. She was unable to recall whether SSHD was specifically told that the only evidence placing him in Afghanistan in the open material did not place him at a training camp. She said that, whilst there was no statement about the number of sources supporting the allegation that he attended a camp, the information supporting that allegation was set out in full. She didn't recall whether SSHD had before her an analysis of the discrepancies and inconsistencies in the Italian material or an analysis of the calls to which AS was a party which were relied upon by the Italians. She did not recall whether there was any analysis of the basis of the Italian assertion that he attended a training camp contained in the UN designation application.
102. She wasn't aware of SSHD being told about the fact that AS had claimed that he had been told by his cellmate that the "prison art" was the product of a Palestinian, who was a previous occupant of the cell.
103. She was confident that it had been made clear to SSHD that AS's post release contacts were of significance for the fact of that contact and that there was no evidence from the content of contact of any terrorist related activity.
104. She wasn't aware of any check being made of AS's account of having, in early 2002, attempted to enter the UK via Calais, or of his account that, when applying for asylum in Switzerland, he had provided his full identification, and had lived in a refugee camp. She was aware that SSHD had contact with the Italian authorities on the third country issue.
105. She confirmed that SSHD does not rely on statements of detainees in countries with questionable human rights records. She was referred to the SIAC judgment, at paragraph 96, a reference to a "Libyan claim" that he was a member of LIFG but indicated that she would deal with that in closed session.
106. She agreed that the control order of 3rd April 2008 which set out the basis of the decision was in error when it stated "I believe that you *are* involved in terrorism related activities". She said it was clear from the material that the concern was that he *had been* involved in such activities and he could re-engage in them. She agreed that it was actively misleading because it was not the basis on which SSHD had agreed to make the order.

AS's oral evidence

107. AS's evidence is in the form of six witness statements and one written response in the name of his then counsel. He confirmed the truth of each of them and signed and dated those which were, as yet, unsigned.
108. He confirmed that, other than the occasion in 2001, which he described in his seventh witness statement, he had never been to Afghanistan and had never undertaken terrorist training.
109. His first witness statement set out briefly the chronology which resulted in him arriving in Italy and, thereafter, his various movements which ended in his arrival in the UK which has already been summarised. He denies ever being involved in terrorist related activity, whether in Afghanistan or in Italy, and says that, throughout, the conduct relied upon by security services and the Italian authorities is consistent with him being a refugee and, as such, being, in effect, "on the run," relying on false documentation and false identities, and dealing with certain people for the sole purpose of obtaining documentation to enable him in due course to come to the UK. Once in the UK, any contact which he had with the people in Italy was simply to inform them that he had arrived. He denied ever having received any package from Nassim, or having contact with him which had anything to do with terrorism related activities. He said that "Hamza" is an extremely common name amongst Muslims and emphasises that he can have no responsibility for a telephone conversation made between other people, particularly when, at the time, he was not only not in Italy but was in custody in the United Kingdom. He has no recollection about any attempt to buy video equipment but he did not recall ever purchasing either a camera, or a filter to take night shots, and, even if he did, there are many explanations for making such a purchase other than to support terrorist related activity.
110. He agrees that when he arrived in Rome he may well have informed the Italian authorities that he was a Palestinian citizen and that he was stopped trying to get into Switzerland in August 2001. He admitted knowing Mr Cherif and Mr Nassim but he either did not know the others, or he had no recollection of having met them, other than for a very short time to engage in general chat in the mosque.
111. He had no knowledge that Mr Nassim went to Iran or why. He says that he did not like life in Holland because of the open drug taking and prostitution and that this is not evidence of him having an extremist ideological viewpoint.
112. He agrees that he may have had a conversation with a Mr Trabelsi about acquiring a laptop computer but cannot see what that has to do with terrorism or criminal activity and he never in fact got it. Such conversations as he was a party to were nothing to do with terrorism and were to do with his attempt to obtain documentation to enable him to travel to the UK. The conversations do not bear the interpretation placed on them by the Italian authorities and, in any event, there are many interpretations for those conversations including the purpose for which he says the conversations took place namely to arrange for a false passport to enable him to come to the UK and to claim asylum which is what he did.
113. His first witness statement contains a point by point refutation of the Italian case based on the phone interceptions. He explains the conversations in which he was

involved in the way already described and he denies any involvement in activity which may be inferred from conversations to which he was not a party.

114. His second witness statement deals with the impact of the control order and obligations on his family. The third witness statement deals with the modification hearing in relation to the obligation. The lawyers' response following the modification hearing reiterates the fact that "Hamza" is a common name and that there is no basis for assuming that it is a reference to him wherever it appears in the telephone intercepts. He confirms that, at one point, he rang his brother on his brother's London land line and there is no reason to suggest that it was called by anyone else. He accepts telephoning Pakistan because his wife and her family were there.
115. Dealing with being in contact with certain individuals after his release, he says that he had been in prison with them, spent a lot of time in their company and kept in touch to discuss their mutual cases. He had spoken to BM on the telephone and had been introduced to him by BM's brother.
116. In his fifth statement he gives detailed evidence about contact with certain individuals after his release from detention.
 - i) "BM": he met him through his brother who worked for an Islamic TV channel and interviewed him. BM's brother informed him that BM was touched by the issues affecting him and wanted to talk to him to provide emotional support. When AS first spoke to BM he was not under any SIAC conditions or a Control Order. He spoke about five to six times over a period of two years but never met him. In about May 2009 he was informed that BM had been placed on a control order and had not communicated with him since.
 - ii) Rideh: he first met him in Belmarsh around 2003 and they were together for about a year. Rideh was sent to Broadmoor. He has spoken to him regularly, once every two or three weeks. They are both on Control Orders and they discuss their cases. Rideh has now left the UK.
 - iii) Amar Makhlulif: he met him in Belmarsh whilst he was on bail in the SIAC proceedings. They were both moved to Long Lartin, he was in the next door cell and they spent a lot of time together for about 15 months. He never met him outside prison, he was residing in Brighton but has since been returned to Long Lartin. They spoke about once every two or three weeks discussing family and each other's cases.
 - iv) Z, Boukhezar and Taleb: he met all of these in Long Lartin, he spoke to them about once every two or three weeks chatting generally about their cases. Taleb was cleared at the Old Bailey of the Ricin case. He has not met any of them since his release.
117. AS's sixth witness statement is in response to the Italian Court of Appeal 2008 decision. He had never appointed lawyers nor had sight of any prosecution papers. He deals with various issues raised in the 2008 judgment including the allegation of having attended a training camp in Afghanistan. In paragraph 11 he says as follows:

“I categorically deny that I have ever been to Afghanistan or to a training camp there...”.

118. He repeats the gist of his position as set out above in his first statement: that he had nothing to do with terrorist related activities in Italy, that insofar as he was a party to discussions they were about his attempts as a refugee to obtain documents to travel, initially to Switzerland and then to the UK, and insofar as he was not a party to those conversations they had nothing to do with him and he had no knowledge of any subject matter that they were discussing.
119. In AS’s seventh witness statement he set out, in some detail, his movements between 1997 and 2001. This includes living in Peshawar for nearly a year from 1998 to 1999 in company with Libyans connected with LIFG, but never getting involved in that organisation. It includes him having met his wife in Peshawar in 2000, their getting married in June 2000 and having their first child in June 2001, his obtaining a Moroccan passport with an Italian visa because of the clampdown by Pakistani authorities and his decision, at the behest of his brother, to come and join him in England. He describes his visit to Karachi to obtain an Iranian visa and going to Quetta and thence over the border into Afghanistan to Khandahar where he was taken to a guest house with some other Arabs there. He describes his staying there for two days before setting off for Iran, travelling by himself to Herat and then to the border and into Iran and onto Tehran where, after a week, he got a direct flight to Rome as he had an Italian visa.
120. He cannot recall meeting anyone of the name of Abdalla, though it is possible he met him at the guest house in Khandahar, but Abdalla is mistaken in suggesting that AS had lived in Afghanistan or that he had links to Al Qaeda or that he travelled with him from Afghanistan to Pakistan. He refers to his sixth witness statement where he said that he had never been to Afghanistan. He confirmed that that was not correct, he had not referred to it previously because he felt that any mention of any stay in Afghanistan, no matter how innocent, could be misconstrued. He states that he realises that his lack of openness was foolish and he regretted it. He wished the court to have the full picture.
121. He describes destroying his Moroccan passport after they arrived in Italy, how he hid in a toilet in the airport, presented himself to immigration claiming asylum, gave a false name and said he was Palestinian all because he was scared of being sent back to Libya direct from Italy. He was given a notification to leave Italy within two weeks. He decided to go to Switzerland and, on the advice of someone he met in the mosque in Rome, Lotfi Rihani said he could drop him at the border where they were arrested together on 6th August 2001. They were handed over to the Italian police but later managed to get into Switzerland where he lived in an official refugee camp until 2001 making a formal asylum application giving his genuine name and correct family details. However, he found Switzerland uncongenial and decided to resume his efforts to go to Britain. He returned to Italy, got a job in construction in Como, got a fake identity card and left Italy around December 2001 into 2002. He took a train from Italy to France and from there to Belgium and Holland where he went to a bus station, bought a ticket to Britain but the bus went back into France to Calais where he was arrested trying to cross into Britain. He was given a notice to leave France within 2 weeks, he went back to Italy where he worked in construction for a few weeks more to get money and he spoke to a Libyan friend from his Swiss days who

gave him the contact of a Libyan in Holland where he could stay before going to Britain. He travelled to Holland, did not find it easy to get documentation and resumed contact with his friends in Italy who provided him with a passport in the name of Josef Zetonal sent from Italy. He got to Britain and after 15 days claimed asylum giving his true name and family details. All was progressing normally until he was arrested in May 2002.

122. He refers to certain telephone numbers, one, a Libyan one, was a call to his family. He could not explain an Iranian number, but it was possible someone else used the phone card to telephone Iran. The Pakistan number is a relative of his wife's called Nassim Mohammed who lives in Peshawar. He deals with a telephone conversation of 13th January 2002 in which he participated. He explains that the discussion concerned supplies of documentation to enable him to come to Britain. He repeats that the number in his address book which is Pakistani is that of a relative of his wife's.
123. As for Nassim Saadi's trip to Iran he says that he understands that he went to Iran to look for his brother.
124. As for the DVDs he says that he was given a catalogue by the prison authority for an Islamic academy in London in which there were listed a number of DVDs. He had asked his former cell mate if he could order some of those including "the Twin Towers". They were put in the property box and he did not, in fact, watch them until he was released. "The Twin Towers" involves a discussion by a South African religious scholar explaining why the attacks were unjustifiable under Islam. He also says he was the official prison coordinator for Muslim prisoners during his time at Brixton and there was never any suggestion that he behaved inappropriately as such.
125. He deals with a number of new names said to be extremists with whom he has been in contact.
 - i) Mohammed al Ghabra: he met when they were in Belmarsh. Ghabri works for a Muslim prisoners Supporter Group, a registered charity. On two occasions that group has given gifts for their children and Mr Al Ghabri has brought them to him.
 - ii) Saala Hadeen Mohammed: he is unaware of anyone of this name
 - iii) Abu Doha: this man is the same as Amar Makhulif about whom he has already given evidence.
 - iv) Al Ghafiqi: is a disabled Algerian whom he met when they were in Belmarsh. After his release he spoke to a person who works for Amnesty, she informed him that Al Ghafiqi was not feeling well. She gave him Al Ghafiqi's number and he may have called him on one occasion to see how he was out of a sense of solidarity.
 - v) NN: he was detained in Long Lartin with AS. On release NN was on a Control Order. He was again given his contact details by the woman from Amnesty. He spoke to NN briefly on two or three occasions and their wives spoke, but they have had no contact since Mr NN's Control Order was lifted.

Amnesty explained that NN had been told that he should have no further contact with AS or he would risk a new Control Order.

126. In cross-examination he said that he was wrongly convicted in Italy, that he was a victim of post 9/11 paranoia. He declined to talk about Cherif. He agreed that in the past he had used false identities and obtained false documents. He agreed that he was known as Hamza al Libi and Josef Zetonal and Imad and at Rome airport he had claimed to have been a Palestinian but he had not used any other names.
127. He had not given a full witness statement to SIAC. He was afraid he would be deported to Libya. He didn't know why he had told SIAC that he had come to the UK from Malta rather than Netherlands or Italy. He had lied to avoid being sent back to Italy and thence to Libya, or being sent direct to Libya from the UK. He said on a number of occasions that he was scared and confused.
128. He had not revealed, in these proceedings, the fact that he had been in Afghanistan because he was scared for his life and that of his family. He was reminded what he had said about Mr Cherif in his various witness statements: that he knew him when he was in Italy; that when he was stopped by the Italian police in January 2002 he was with Cherif whom he had met at the same mosque in Milan; he had needed some assistance and Cherif was very helpful to him; if he had made contact since he arrived in the UK it was maybe one short call to let him know that he had arrived and to thank him for his help. He said that he was looking for a passport and received assistance from people such as Cherif.
129. He was asked about his phone book. He was unable to help about the number "3950" under the name of "Jamal" which, according to the Italian documentation, is associated with Cherif but he did not remember the conversation recorded in that document. When asked about Cherif's trial he says that he would not talk about that.
130. He was asked about Nassim Saadi. In his initial witness statement he confirmed that he had met him; that Nassim was with him when he was arrested in January 2002; that he had met Nassim in Italy; knew him for about two months; met him in the Milan central mosque; was not aware of any extremist ideas that Nassim had; was aware that he was married to an Italian woman and had a child. He recalled telephoning Nassim once from the UK to let him know that he had arrived and was well. He agreed that he would recognise extremist views if he heard them but had never heard Nassim Saadi speak in a way which he would recognise as extremist, even though from the phone intercepts it may be that on occasion he spoke in that way to others. He agreed that, in his first witness statement, he had said that he did not know whether Nassim had travelled to Iran but, in his seventh, he seemed to recall that trip. He said that the truth was that he did not know about the trip. He was not aware at the time that Nassim had gone to Iran.
131. He was asked what he meant in his first witness statement when he said that "having a wide network of contacts all over Europe was a part of the life of many refugees" but he was unable to elaborate. He was asked about a phone call recorded in the extradition document dated 13th January 2002 to his 6479 number from a French number used by a man called "Abdenacer" during which AS is said to have said that, apart from a person known to be Lotfi Rihanni and another person known to be Cherif, the rest were not worth anything. He was referred to the reference in the

2005 Italian judgment where that French person is said to be “Abdel Nasser”. He was asked about that French number 3530 which is in his phone book under the heading Franci but he could not recall anything about it.

132. He was asked why, as he had a Moroccan passport with an Italian visa, he did not go to Italy direct rather than going via Iran. He was unable to give any explanation. He was asked about a Pakistani number 4248, which is in his phone book under the name Nassim M. He said that was Nassim Mohammed a relative of his wife though, in his first witness statement, he had said that he could not recall that number though he had said that he had contact with his wife and her family in Pakistan.

Open Evidence on Obligations

133. I focus, in particular, on the obligations which have given rise to questioning.

Exit strategy

134. Z confirmed that one of the exit strategies being actively pursued by September 2009 was voluntary return. Obligation 12.2 required prior notification to the Home Office before AS may apply for or have in his possession any passports, identity cards, travel documents or tickets which would enable him to travel outside the UK. Obligation 13 requires him to notify the Home Office of any intended departure from the UK at least 24 hours prior to the intended departure time. Obligation 14 prohibits him from entering, or being present at, any air or sea port or railway station that provides access to an international rail service without prior permission.
135. Witness Z was not of the view that the fact that the Security Service was willing to have him returned to Libya undermined the suggestion that he was a risk to the British public whilst in the UK. He says that the willingness to permit him to leave the country voluntarily in a controlled way reflected the proportionality of the obligations.

Location of residence

136. Witness Z agreed that it was not an unreasonable wish for AS to live amongst a Muslim population. He had asked to be allowed to live in Evington or Highfield, two areas of Leicester with a larger Muslim population than where he now lives. He stood by the justification for those obligations set out in paragraphs 101 to 105 of the statement and, in particular: that the requirement for him to live within his current geographical boundary is necessary and proportionate; that his requested modification to permit him to live elsewhere with a larger Muslim population would render the impact of his control order substantively different; thus informing the decision to refuse any modification communicated by letter of 27th August 2009. He agreed that the statement on 4th September 2009 by the Home Officer that national security assessments are not based on the volume of Muslim populations in a given area was accurate. He agreed that AS’s solicitors had identified six London Boroughs on 7th September 2009 and that on 9th September 2009 and that each of them was refused. He agreed also that he had been refused a modification to live near his brother in Harrow.

Visitor restrictions

137. He acknowledged that the terms of SIAC bail did not contain any such restriction when fixed by SIAC but it was imposed from the start of the control order.

Police search power

138. He acknowledged that that was a standard obligation but subject to a case by case review.

The specific boundary

139. Witness Z acknowledged that under the SIAC bail conditions the area boundary included Leicester city centre. However, under the Control Order Leicester City Council had been excluded and an equivalent area added at the other side of the area.

Pre arranged meetings

140. Witness Z agreed that this obligation did not appear in the original control order imposed in April 08 but was first imposed in April 09, he was not personally involved in that decision.

Prohibition on equipment capable of accessing the internet

141. This is contained in obligation 8.1 of the control order. He was asked whether consideration had been given to allowing him access but on condition that software be installed which would allow monitoring and inspection. He said that he could neither confirm nor deny such discussion.
142. He acknowledged that until August 2007 he was a single man effectively but that his wife and child, now children, came to join him then. He had taken that into account when considering the package of obligations.

Susan Hadland on obligations

Residence

143. She agreed that his wish to live in a Muslim community was a reasonable one but that, having looked at his requests to move, they had reached the view that it remained necessary that he should not reside in such areas as was suggested. It remained their view that it was necessary. The phrase “renders impact substantively different” was used in the context of a decision that it remained necessary for him to reside at his present residence as opposed to any of the areas put forward for consideration. These requests would not have been refused without Security Service consultation. She agreed that the objection to him staying overnight in London during the hearing of this case was based on the fact that two of the named people with whom he had been in contact lived in London. She was asked why those people were not simply added to the list of prohibited contacts and she said that would not address the totality of the concern.
144. She was asked about the request on 17th December 2008 that he be allowed to move to London to be near his brother’s house. The response on 23rd December 2008 was

that the national security necessity, for maintaining obligations to prevent or restrict his engagement in terrorism related activity, was not outweighed by his desire to move as it would render the impact of his control order substantively different from that currently imposed on him. The Security Service had been consulted on this matter.

145. She agreed that, when bail was granted by SIAC on 11th May 2007, the boundary of the area extended to the city centre of Leicester. On the 7th June 2007, with the approval of the chairman of SIAC, it was changed to put it in his current configuration, excluding the city centre. She thought it may have been in connection with the fact that, in the bit added by virtue of the exclusion of the city centre, there was a Halal supermarket.
146. She agreed that, under the terms of SIAC bail, there was no restriction on visitors and that there was no such restriction until the control order in April 2008. She thought that had something to do with concerns whether such a condition might breach Article 5 of the ECHR whereas the position had become clarified subsequently.

Pre-arranged meetings outside his residence

147. She confirmed that SIAC bail had no such restrictions nor were there any during the first year of the control order. Her witness statement, made in December 2008, was in the context that the then obligations in the control order were necessary and proportionate. This modification was based on the concerns of the Security Service but she couldn't recall if it was based on any specific conduct. They would have taken account of his associations and general behaviour, the people he met and what it was they were seeking to disrupt. It might be different if he lived the life of a recluse but if he was sociable and outgoing and met a range of people that fact may feed into such a decision.

Access to the internet

148. Consideration had been given to monitoring technology. They had looked at the technical possibilities and the resource implications. The review undertaken concluded that it was not a practicable proposition because the necessary level of technical reliability could not be achieved. That was not work specific to this case but was on the issue of principle.
149. Ms Hadland confirmed that SSHD was content for him to leave the country including to go to Italy, she did not think that it was relevant that the sentence passed on AS of 5 years and 10 months meant that he had been detained or under a Control Order for 2 years longer than the entirety of that sentence. She did not consider that relevant to the consideration of necessity.

AS's evidence on obligations/visitors

150. This obligation impacted particularly hard because, when his brother and sister-in-law came to visit, he could not be present in the house with both of them and had to stay outside with one or other of them and they would then have to leave before his curfew. Furthermore the niece would soon be 11 and therefore would be caught by the obligation.

151. On pre-arranged meetings it meant that he could not go to see his friends having arranged to ensure that they were in. He always had to take the chance of a non arranged meeting.

Re-location

152. His brother and his family were the only family he had in the UK.

Moving area to one with a larger Muslim population

153. He refers to his witness statements that he is not allowed to live within his own community. In particular, his wife, who does not speak English, feels threatened.
154. The area excludes the hospital and the job centre and it excludes areas where the family might wish to spend time together on normal family activities such as shopping or going to the cinema.

Internet access

155. This bears particularly heavy on his daughter, whose education suffers, as well as impeding his ability to obtain employment in any job where use of the internet is a feature. It also impacts on his ability to make new friendships, particularly where any visitor would have to switch off their equipment in his home. The suggestion that his daughter could go to the library is impracticable because it shuts at 5pm, his wife does not speak English and it would be very difficult for him to accompany his daughter without assisting her, which would breach the order.
156. In cross-examination he agreed that his solicitors had asked that his brother and sister-in-law be added to the list of persons not classified as visitors on 11th August 2008. On 12th August 2008 he was asked to supply the Home Office with the full name and address, date of birth and a photograph of his brother and his wife but he did not respond to that request.

Other open evidence

157. I have also received evidence in the form of a witness statement from AS's wife, who confirms they met in 2000, were married in June that year and lived in Peshawar. She gave birth to her daughter in June 2001. AS travelled to the Iranian Embassy in Karachi to get a visa to go to Iran with the intention of going to the United Kingdom. Whilst living in Pakistan AS never spent a night away from home nor was he ever involved in terrorism.
158. I also received evidence in the form of a witness statement from AS's brother who confirms that he was, at one time, living in Qatar. He was contacted by AS who was then in Jordan. He attempted to secure an invitation for AS to go to Qatar. He was aware that he was living in Peshawar and warned him about getting mixed up with the wrong people and to keep his head down. He was aware that AS was under pressure to join LIFG and told him to leave Pakistan and go to the UK as that was a safe country from which he would not be sent back to Libya. He kept in touch when AS was in Italy attempting to get a passport to get to the UK. He also stated that AS was not involved in terrorism.

159. I have also received evidence in the form of two reports from Renee Cohen a psychotherapist and independent social worker dated 17th March and 6th November 2008 in which she describes the impact of the control orders on AS and on his family.

Open Submissions/discussion

160. AS's main contention is that it is now almost eight years since the last form of terrorism activity alleged, during the bulk of which he has been detained, or under bail restrictions, or a control order. In those circumstances there is no case for the necessity for a control order.
161. He cites the following first instance decisions. *Bullivant 2008 EWHC B2 (Admin)*, in particular paragraph 14, where Mr Justice Collins said:

“Expressions of support for Islamic extremists....the sharing of extremist views or keeping company with extremists will not suffice but will obviously provide support for suspicion of intended involvement in such activities.”

And later in the judgment warned against the dangers of guilt by association.

162. He also refers to *Abu Rideh 2008 EWHC 1993 (Admin)*. The decision being made in that case concerned disclosure but at paragraph 42 Mr Justice Ousley said as follows:

“The bare allegations in the open almost all relate to his previous 2001 activities although the allegation that he has continued them under the control order has now been disclosed. Even if the open material sufficed for the position up to 2001 it is much more difficult to see that it could also suffice for continuing restrictions had there been no further activities. I do not need to reach a final conclusion on that point.”

163. He also cites authority on the question of the extent to which the SIAC finding are determinative. In *AR 2008 EWHC 3164 (Admin)* Mr Justice Mitting at paragraph 5 says as follows:

“...I do not really understand how I can really “give weight” to SIAC's findings about AR's past activities if, as is common ground, I have to reach my own conclusion 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 difference 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."

I adopt that approach in considering this case in the context where SIAC has already made findings about terrorist related activity and the risk of reengagement referred to above.

Reasonable suspicion

Historic activity

Training camp

164. Mr Otty contends that the only evidence in open is that of Mr Abdalla who did not place AS in a terrorist training camp. His evidence in the Italian proceedings begged a number of questions: how long he was with him; what name did he know him by; how much of his evidence has turned out to be accurate; why was he not identified by any other witnesses said to have given evidence about Afghanistan in those proceedings.
165. The only other basis for this aspect of the open case is the speculation of witness Z that the Italian authorities would not, when seeking a UN designation, have asserted that he had attended a training camp if there had not been further material to support such an assertion. He says that this is an impermissible basis to support such a contention.
166. I am satisfied, on the basis of all of the evidence before me, both open and closed, that there is a reasonable suspicion that AS did attend a terrorist training camp in Afghanistan as now alleged in the open case. I am also satisfied that the open case now discloses sufficient about the case against him to AS to have enabled the special advocate, upon instructions, to challenge that aspect of the case against him. I am also satisfied that, in this respect, AS's evidence to me was untrue.

Activities in Italy

167. In the open case, this is virtually entirely based upon the material in the Italian extradition request and in the proceedings before the first instance and Court of Appeal Italian criminal courts which resulted in AS being convicted of terrorist related crimes.
168. Mr Otty contends that much of the original material is unavailable: in particular, transcripts of telephone calls and the tapes, the GSM card said to show details of calls to an Iranian number, witness statements of the police officer and shopkeeper concerning the 14th/15th January 2002 incident and the police note of the 7th May 2002. Furthermore, Mr Otty points out that the evidence is based on police stops/arrests which were, as to two of them, routine immigration matters and, as to one, adds nothing to the evidence of surveillance. The surveillance evidence is said to be insignificant concerning a shopping trip in Bologna, the haircut, and the shop incident of 14th/15th January 2002. In respect of that last incident, and in the absence

of the witness statements, it is said to be very difficult to examine the extent to which the observation of AS as the person actively involved in the purchase of video night equipment is reliable, given that he was with other Arabs at the same time. I can see much force in these points. In my judgment the nub of the Italian case lay in the telephone intercept evidence.

169. As for that, Mr Otty points to the fact that only 19 calls were by or to him and that he is referred to only in a further six. Twelve of the nineteen were made on unidentified numbers, only five were said to be made to a number linked to AS and, in only two, did he refer to himself as “Hamza”. Further, he draws attention to the discrepancies in transcription of the calls within the Italian materials themselves. I have already referred to them. He points out that there is no satisfactory evidence of voice identification and no reference to any technical assistance in that regard. Further, he points to the fact that, contrary to the opinion of the Italian court, AS did not always use a specific telephone and, on at least one occasion, he was misidentified by a caller because he had a Tunisian rather than a Libyan accent.
170. Although these are the types of issue which were raised by court appointed lawyers on behalf of AS at his trial, in absentia, and before the Italian Court of Appeal, in my judgment it is not clear from the terms of the Italian judgment that their full force was deployed or that those courts fully grappled with the difficulties which those points raised.
171. Mr Otty also points to the apparent overstating of the case by the Italian courts that AS needed “urgently” to contact Nassim Saadi upon his return from Iran. As he points out, the record of the intercepts indicates that AS was first enquiring about Nassim Saadi and his return almost two weeks after he had returned and that his first direct contact with Nassim Saadi was some three weeks after his return.
172. Notwithstanding those points, which are well made, in my judgment having regard to all the evidence, both open and closed, I am satisfied that there is a reasonable suspicion that AS was, as alleged, involved in the terrorist related activity of the Milan group and took a prominent role in it, as well as being a contact to Al Qaeda linked individuals.
173. I am satisfied that the disclosures made in the open statement were sufficient to enable AS to instruct the special advocates to deal, insofar as they were able, with the closed material in relation to this issue.
174. It follows that I am satisfied that there are reasonable grounds for suspecting that AS has been involved in terrorism related activity. In reaching this conclusion I have come to my own decision on the evidence before me. I have not regarded myself as bound by or entitled to use the SIAC conclusions on this issue as a building block. I note however that my finding in this respect, after considering all the evidence and arguments, is consistent with that which SIAC reached albeit on somewhat different evidence.

The necessity for a Control Order

175. In my judgment, on the basis of that historical material and paying due deference to the views of the security service and the Secretary of State on this issue it was

necessary for AS to be placed under a control order in April 2008, following the unsuccessful conclusion of the attempts to deport him as a result of the SIAC decision and that decision being upheld upon appeal.

176. In my judgment the instances of behaviour cited after AS's detention ie, the "prison art" and the "twin towers DVD" are of little or any weight. It is by no means clear that AS was responsible for the prison art and, indeed, the text of the slogan accompanying the drawings does suggest that the author may have been a Palestinian rather than a Libyan. The content of the "Twin Towers DVD" does not lend support to extremist activity. However, even disregarding those two instances of behaviour, in my judgment the original decision to place AS on a Control Order cannot be described as flawed.

The current necessity and necessity at the time of renewal

177. This is the heart of this case. It is common ground that the last contact which AS had with the Milan group was in March 2002, before his detention. There is no terrorist related activity alleged from then until today, other than the discounted matters of prison art and the twin towers DVD. Such potential breaches of the terms of the control order as have occurred relate to personal matters arising out of hospital visits either in connection with his wife's pregnancy or on one occasion an assault upon him. The main thrust of the SSHD's case for a continuation of the control order is that it is said that he has maintained his extremist sympathies and has had ongoing contact with a number of named individuals whom, it is assessed, are Islamist extremists. However, it is not alleged that the content of any such contact with any of these individuals by AS has concerned terrorist related activities. AS says that none of these persons were, at the time of his contact with them, persons whom he was prohibited to contact under his control order and that is true. He also says that they each had a great deal in common having, in different ways and to different extents, been either in detention together, or going through the same processes as he has been. Accordingly there has been a natural community of interest without their being mutually involved in any terrorist related activities. The SSHD is not in a position to dispute this.
178. AS in his evidence has said that he never has been involved in terrorist related activities. In my judgment he has not been truthful in that respect. He also says that he wishes to live a normal family life in the UK with his wife and his young family. In the course of his evidence he admitted not having told the truth in his earlier witness statements about his travels between Libya and Italy. He had not given a full account of such matters before SIAC. He was reluctant to answer questions concerning individuals with whom it was said he had been involved in terrorist related activities in Italy.
179. The Secretary of State says that he is not to be believed when he says that he has no intention of engaging in terrorist related activities if he were released from the obligations of the control order because he remains wedded to an extreme Islamist view of the world and, by his contacts with other extremists, is in a position to re-engage with terrorist related activities.
180. It is said on behalf of AS that, until these proceedings, and in particular in the proceedings before SIAC, he was directly at risk of being deported to Libya either

from this country or from Italy, if he were returned there, and that fear of what might happen to him and his family in Libya was the driver in his unwillingness to tell the whole truth or to cooperate by giving information about others. It is said that his reluctance in these proceedings to answer certain questions about others is no more than a hangover of that suspicious frame of mind which it is said is understandable.

181. In addition, reliance is placed by AS upon the fact that it was he who drew himself to the attention of the authorities after he had arrived in the UK by applying for asylum in his own name and that this is indicative of a person who has no more desire to engage in terrorist related activities but wishes to live a normal life in the UK.
182. The SSHD invites me to have regard to guidance given by Mitting J. in *SSHD v AT and AW 2009 EWHC (Admin) 512* at paragraph 29 in which he said as follows:

“When dealing...with a significant and influential member of [a terrorist group] whose activities in the past have furthered its ends who has the capacity to re-engage and whose views are suspect and clouded by lies told by him. The Security Service and the Secretary of State are entitled to be cautious...I accepted in AU...[as follows] “where the only information known about an individual is a set of facts which justifies and results in a successful prosecution from a terrorism related offence and there is no reason to believe that the individual has undertaken any other terrorism related activity or will do so after he has served the sentence imposed for the crime would not thereafter be necessary to impose a control order upon him” The second circumstance does obtain here for the reasons explained there was and is currently reason to believe that AT will undertake terrorism related activity unless inhibited by a control order. It is pointless now to speculate on when and by what means AT may demonstrate he will not do so. If as he contends he has the settled intention not to re-engage there will come a time when he can safely be taken at his word. That time has not yet arrived...I do however acknowledge Lord Carlile’s view that control orders should generally have a life of no more than two years and accept the submissions made by both open and closed advocates on behalf of AT that the periods during which he has been imprisoned and subject to restrictions imposed by home detention curfew SIAC bail order and the control order should be taken into account but I do not accept that the Secretary of State should as a result have decided not to impose a control order or to maintain it in force. The management of the risk posed by AT is a delicate and difficult task. The imposition of a Control Order was and remains a necessary proportionate response to that risk because it diminishes the risk that AT will re-engage in the affairs of [the group] in a way which would assist those who wish to, continue the armed struggle. That is a sufficient justification of the making and continuance of the order.”

183. There are clear parallels between the case of *AT* and the present case. Upon my finding about his past activity, the Secretary of State is entitled to act upon the basis that there was a reasonable suspicion that he had been involved in terrorist related activities of a significant type in the past. That type of activity rested upon his circle of contacts and his ability to utilise them to facilitate the terrorist related activities of others. By his maintenance of contacts with other islamist extremists he has not demonstrated that he has turned his back on that part of his life and, accordingly, his protestations of simply wishing to live a normal life with his family have to be regarded with a degree of caution. On the other hand, from his arrival in this country in 2002 he has been open about who he was and has sought asylum. Throughout his period in detention nothing of significance has arisen, and in the 2½ years since his release from detention, initially on SIAC bail and subsequently under a control order, there is nothing of substance in his conduct which gives rise to any reasonable suspicion of his re-engagement in that type of activity.
184. I am aware, moreover, that any control order and, in particular this one, represents an onerous interference with the life not only of the person subject of it but also the family as described by AS and Ms Cohen. I am also aware of the view expressed by Lord Carlile the independent reviewer in his fourth report of 3rd February that:

“It is only in a few cases that control orders can be justified from more than two years. After that time, at least the immediate utility of even a dedicated terrorist will seriously been disrupted. The terrorist will know that the authorities will retain an interest in his or her activities and contacts and will be likely to scrutinise them in the future. For those organising terrorism a person who has been subject to a control order for up to two years is an unattractive operator who may be assumed to have the eyes and ears of the state upon him/her. Nevertheless the material I have seen justifies the conclusion that there are a few controlees who despite the restrictions placed upon them manage to maintain some contact with terrorist associates and/or groups and a determination to become operational in the future.”

I appreciate that the Secretary of State does not accept that the view in its totality. In particular it would be wrong to assume that, thereby, there was an informal rule of thumb developing such that, save in exceptional cases, no control order could be maintained for over two years. My task is to decide this case, as any other, on the particular facts placed before me. However, the comments about the effect of disruption and the diminution of utility of an individual after a substantial period, during which their activities have been controlled, and the impact of the knowledge that, thereafter, it is highly likely that he will continue to be under observation in some way or another by the Security Service, does mean that, after a period of time during which no terrorist related activities are suspected, it will become increasingly likely that it ceases to be necessary to subject the controlee to the rigours of a control order.

185. In this case, it is my assessment of AS, that, whilst he remains disaffected from the state and mainstream UK society and may well adhere to a view of Islam with which many would feel uncomfortable, this does not of itself justify the degree of intrusion involved in a control order indefinitely. In my judgment, having regard to all the evidence and material I have seen, including matters in closed, it is no longer necessary for AS to be the subject of a control order. One matter in open which, in my judgment, is of some significance is that, in their evidence, Z and Ms Hadland were asked about the Secretary of State's attitude towards AS voluntarily leaving the country go to a third country such as Italy. Under the terms of the control order he can only do so with the permission of the Secretary of State. Their responses were indicative of a relaxed view, even were he to be fully at liberty in such a third country. There was no indication from Ms Hadland that the Secretary of State would require any kind of assurance from the third country that AS would be subject to any particular form of supervision or control. In my judgment that was a telling response as to the seriousness, or lack of it, with which the prospective activity of AS is viewed by the Secretary of State. The witness Z was asked a series of similar questions concerning his possible return to Kuwait or Libya. In his evidence, he too seemed relatively relaxed about the prospect of AS being at liberty in either of those countries. He specifically said that, as the Security Service's focus is the safety of the British public, once AS was out of the jurisdiction, his judgment was that the risk would be less than when he was within the jurisdiction.

Conclusion

186. I accept that management of the risk posed by AS is a delicate and difficult task. AS is a person against whom there is no allegation of any terrorist related activity for a period of 7½ years. During that time, in my judgment, inevitably, such contacts he may have had, at whatever level, will have substantially atrophied. Accordingly, whilst, in my judgment, AS remains a person whose attitudes of disaffection may, from the mainstream point of view, be unattractive, that falls some way short of being sufficient evidence of a risk of his engagement in terrorist related activity so as to necessitate the onerous intrusion into his life represented by a control order. I appreciate that in coming to this judgment I am, to an extent, not accepting the assessment of risk of the Security Service and the Secretary of State, to which I am obliged to show some deference. I am also aware that I am differing from the conclusion to which SIAC came in 2007. That, however, was two and a half years ago. The evidence was different and, during the intervening period, there has been no activity of AS, of which I am aware, upon which the Security Service can rely as evidencing terrorist related activity or a willingness on the part of AS to re engage in such. I am fortified in this view not only by material which I have seen in open session but also some of the material and evidence I have received in closed session.

187. Accordingly in my judgment the control order should be revoked.

Judicial review

188. AS contends that, in taking the original decision to impose a control order and to continue it, the Secretary of State failed to have regard to relevant material. A series of criticisms are made about the lack of enquiry of the Italian authorities as to what precisely lay behind the judgments of the First Instance and the Court of Appeal courts and the extradition request, as well as various other matters appertaining to

events in the UK. In my judgment there is nothing which remotely amounts to the Secretary of State being misled by the information presented to him at any stage. Accordingly I decline to make any order quashing either of the control orders made.

189. It is also asserted by Mr Otty that the fact that there was a mistake in the original control order as to what informed it – ie that he is currently engaged in terrorist related activities whereas the SSHD’s case is that he has been and may again be so if no longer subject to a control order – means that the order should be quashed. In my judgment, whilst it is highly regrettable that there is a such a degree of carelessness at the heart of such an invasive process affecting the liberty of an individual, it does not reflect a decision taken by the SSHD on grounds other than those put forward in the open case. It is clear from the open and the closed material that the SSHD was informed by the historical case and the concerns for the future, not any current allegations of terrorist related activity. Accordingly, whilst it would be open to me to quash the order on that ground I do not, in the exercise of my discretion do so as it is clear that the decision was in fact taken on a proper basis.

Obligations

190. Criticism was made, in the course of argument, about various of the obligations. In light of the fact that my decision is to revoke the control order these arguments have become more or less academic. Had that not been the case, I would have upheld the obligations as to place of residence, area of the boundary, the prohibition of internet access and the limitation on visitors to his residence whilst he is in occupancy but would have upheld the complaint prohibiting pre-arranged meetings outside his residence which was imposed after the control order had been in place for a year and without any real consideration of whether and if so why it had become necessary whereas previously it had not been .