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Case No: PTA/11/2006 & PTA/14/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 February 2009

Before :
Mr Justice COLLINS
- -
Between :

Secretary of State for the Home Department	Claimant
- and -	
GG	Defendant
Secretary of State for the Home Department	Claimant
- and -	
NN	Defendant

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Mr Tim Eicke & Mr Andrew O'Connor (instructed by the Treasury Solicitor) for the **Secretary of State for the Home Department**
Mr Danny Friedman & Ms Michelle Butler (instructed by Gladstones) for **GG**
Ms Stephanie Harrison & Mr Edward Grieves (instructed by Tyndallwoods) for **NN**

Special Advocates: For GG; **Mr Andrew Nicol, Q.C. & Mr Martin Chamberlain**
For NN: **Mr Angus McCullough & Miss Clare Brown**

Hearing dates: 3 – 14 October: 21 & 24 November 2008
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JUDGMENT

Mr Justice COLLINS :

1. GG and NN are both Kurds from Iraq. Each is the subject of a control order, the initial order having been imposed in each case in November 2005. The latest orders were imposed by way of renewal on 28 July 2008. Thus I am considering what are in form appeals against the renewals and, in addition, there are in each case appeals against various obligations contained in the orders brought about either by the making of modifications without the controlled person's consent or by a refusal to modify in accordance with an application made by the controlled person. The appeal rights are conferred by s.10 of the Prevention of Terrorism Act 2005 (the 2005 Act). The original

orders made in 2005 were quashed following decisions which went to the House of Lords that the curfew periods imposed under them amounting to 18 hours coupled with the other obligations were such as to amount to detention within the meaning of Article 5 of the ECHR. Fresh orders were made on 31 July 2006. These required a hearing before the court under s.3(2) and 3(10) of the 2005 Act to decide whether the order and each of the orders and every obligation contained in them were properly made. Unfortunately, it has taken a long time to achieve a hearing. One was commenced on 9 November 2007 before Stanley Burnton, J. At the conclusion of the first day, it was adjourned because NN withdrew the statements he had hitherto provided, indicating that he wished to make a further statement which would differ from those already submitted. It did not prove possible to relist the hearing until 8 October 2008. Insufficient time was available to go beyond the hearing of evidence in open and closed sessions so closing submissions were heard on 21 and 24 November 2008 and consideration of applications for further disclosure in order to comply with the requirements of Article 6 of the ECHR as applied by the House of Lords in *Secretary of State for the Home Department v MB* [2008] 1 A.C. 440 had to be made. In addition, I had to consider the judgment of the Court of Appeal in *Secretary of State for the Home Department v AF & Others* [2008] EWCA Civ 1148b which was not handed down by the court until 17 October 2008. Arrangements were however made with leave of the Court of Appeal that counsel and I should be able to have sight of the judgment when it was disclosed to the parties in advance of it being handed down so submissions could be made in the knowledge of what was contained in it.

2. The reason why the cases of NN and GG were heard together was because they were both arrested on 8 October 2005 at GG's then home in Derby. On the same day, three other Iraqi Kurds were arrested at an address in Croydon. The operation was codenamed KNOP. All five were alleged to have been involved in terrorist activities involving the planning of attacks. Media reports at the time quoted security services who claimed that the 'police had intercepted information hinting that atrocities were being planned for London and other U.K. cities using cars packed with explosives.' The arrests were said to be for 'the commission, preparation and instigation of acts of terrorism.'

3. Searches of both premises and of those arrested and interviewed disclosed nothing which would justify a prosecution and so all five were released without charge on 15 October 2005. The view was that the police had taken action before any plans could be put into operation or anything concrete, such as the acquisition of materials or arrangements for implementing the conspiracy, had been done. On being released, the men were immediately detained under the Immigration Act 1971 with a view to removing them to Iraq. It was soon apparent that such removal could not be achieved and so the original control orders were made and on being released from detention each of the five was subjected to an order.

4. All five orders contained obligations which for all practical purposes were identical. Sullivan J quashed all of them on 28 June 2006, but stayed his order pending an appeal. On 1 August 2006 the Court of Appeal delivered a judgment dismissing the appeal. The Secretary of State was given notice of the judgment and so fresh control orders were issued on 31 July 2006. In GG's case, the order contained a 14 hour curfew at the address in Derby at which he was then living. There were no restrictions on visitors, but he had to wear a tag, allow the police to enter and search the premises at any time and was prohibited from having or using a mobile phone, computer, or other means of connecting to the internet. The obligations in NN's case were similar. In each case, there was a defined area within which they had to remain around their respective homes. The judgment of those responsible for considering what obligations should be contained in the orders, particularly in respect of curfews, so as to avoid breaching Article 5 of the ECHR, was that 14 hours was an appropriate limit.

5. The Secretary of State appealed the decision of the Court of Appeal to the House of Lords. It proved impossible to have a substantive hearing before the control orders expired in July 2007 and so consideration had to be given to whether they should be renewed. It was decided that two of them, known as KK and JJ, need not be renewed but that the other three should. On 18 June 2007, the third, HH, absconded. He is believed now to be abroad. On 29 June 2007 came the discovery of car bombs in London. There is no evidence that GG or NN were aware of or in any way involved in that act of terrorism.

Nonetheless, the question whether the orders in the cases of JJ and KK should be renewed was reconsidered, but the decision that they should not was maintained.

6. Following a hearing in July 2007, the House of Lords speeches were handed down on 31 October 2007. By a majority, the appeal was dismissed. The minority, Lords Hoffmann and Carswell, considered that even a curfew of 18 hours a day coupled with the other restrictions did not mean that there was a deprivation of liberty. Lord Carswell said he was not disposed to enter into discussion of the length of time which would take a case over the line, but 'a great deal depends on the overall factual matrix of any given case.' Only Lord Brown gave consideration to what period of curfew would cross the line. He said this in paragraph 105 of his speech:-

> "I have reached the clear conclusion that 18 hour curfews are simply too long to be consistent with the retention of physical liberty. In my opinion they breach Article 5. I am equally clear, however, that 12 or 14 hour curfews … are consistent with physical liberty. Indeed, I would go further and, rather than leave the Secretary of State guessing as to the precise point at which control orders will be held vulnerable to Article 5 challenges, state that for my part I would regard the acceptable limit to be 16 hours, leaving the suspect with 8 hours (admittedly in various respects controlled) liberty a day. Such a regime … can and should properly be characterised as one which restricts the suspect's liberty of movement rather than actually deprives him of his liberty. That, however, should be regarded as the absolute limit. Permanent home confinement beyond 16 hours a day on a long-term basis necessarily to my mind involves the deprivation of physical liberty …"

It is to be noted that the House upheld the conclusion of the lower courts that once a breach of Article 5 was established the orders must be quashed: it was not possible to save them by modifying the curfew obligation.

7. Following the decision of the House of Lords, GG's curfew was extended to 16 hours and he was not allowed to receive visitors without prior agreement of the Home Office nor, without such prior agreement, could he meet persons outside his address. Since then, he has been moved to Chesterfield and I shall have to consider the details of the obligations in due course. In NN's case, the curfew was also extended to 16 hours and similar restrictions were imposed in relation to visitors and meetings with individuals. The justification for these modifications was in each case that the less time the controlled person was able to be outside his address, the less opportunity he would have to engage in terrorism related activity. Similarly, the inability to contact those who were themselves involved in terrorism related activities would reduce the risk of personal involvement.

8. Following the abortive hearing before Stanley Burnton J on 9 November 2007, the orders were renewed in July 2008. GG is now obliged to live in Chesterfield. His curfew is maintained at 16 hours, but the restriction on visitors or meeting individuals has been removed. He is restricted to an area in Chesterfield. In NN's case, the curfew was reduced to 13 hours a day, but a condition to have approval of the Home Office for visitors and a prohibition on attending meetings outside his residence was imposed.

9. Although the cases were heard together and there is material which is common to both, I have to consider the case of each separately. I shall deal first with NN since I have decided that a control order is not now necessary in his case and so it should be quashed. That means that it is unnecessary to consider the appeals in relation to specific obligations in the order. There are, however, some points of principle which were raised by both GG and NN and I shall deal with these, taking account of the arguments presented on behalf of each of them.

10. My approach to deciding these cases is dictated by the decision of the Court of Appeal in *Home Secretary v MB* [2007] Q.B. 415. Section 10(6) of the 2005 Act requires me to 'apply the principles applicable on an application for judicial review'. In order to comply with the obligation to recognise a controlled person's human rights in dealing with any case coming before it, the court will have to comply with Article 6 of the ECHR. This means first that I must consider whether the decisions under review are flawed as at the

time of my determination (see paragraph 46 of the judgment). Secondly, the standard of review must be compliant with Article 6. Since whether there are reasonable grounds for suspicion is an objective question of fact, I must myself decide whether the facts relied on by the Secretary of State amount to such reasonable grounds. But, given the existence of such reasonable grounds, whether a control order is required and what obligations in it are necessary is a matter of judgment. The test is one of proportionality, bearing in mind that no order can be made and no obligation imposed unless such order or obligation is necessary. Since the Secretary of State is better placed than the court to decide what measures are necessary to protect the public against the activities of a terrorist suspect, a degree of deference must be paid to the decisions of the Secretary of State (see paragraph 64 of the judgment). Nonetheless, I must give intense scrutiny to the necessity for the order and for each of the obligations imposed by it.

NN

11. In February 2008, NN produced a lengthy statement. He gave evidence before me in which he confirmed the truth of that statement. In the introduction to that statement, he said that he formally withdrew his previous statements made on 7 April 2006 and 13 April 2007 respectively. He accepted that in those statements he had not told the whole truth. Equally, when interviewed by the police following his arrest in October 2005 he had not given a full account. He had panicked and had not had proper advice from his then solicitors. His father had been arrested and ill-treated in 1994 and he was, he said, afraid that he might suffer in the same way. While he knew he had done nothing wrong, he did not want to admit to any close relationship with others, albeit he believed that they too had done nothing wrong. He was also concerned that information might be passed to the Iraqi authorities so that his family who were still there might suffer. He was married on 5 April 2007 and a son had since been born. The control order bore the more harshly as a result and so he had decided that he should no longer decline to describe his true relationship with others but should trust the court and give a full statement. This he had done.

12. It is NN's case that he has never been involved in any way in terrorist related activities of any sort. He does not, he says, hold views which could be described as extremist. Some of his acquaintances have been strongly religious but none has held extremist views and he has certainly never discussed such matters with anyone. The security services have, he says, totally misunderstood how members of the Iraqi Kurdish community interact. In particular, there is an ethos which involves mutual assistance and sharing of resources such as accommodation, telephones, documents, bank accounts etc. Many have sought refuge here but may not have persuaded the Home Office to accept their asylum claims and there has been a tendency for false documentation to be used to get employment. Furthermore, involvement whether personal or through family members (usually parents) in Kurdish politics in Iraq may have produced enmities there which have spilt over into the giving of false information against some here. NN's father had been a member of the KDP which had resulted in enmity from the PUK and his eventual arrest in 1994. NN suffered from continual difficulties with the PUK and so decided in 2000 to leave Iraq. He says he reached this country in December 2000. He gave a false name and details. On 7 August 2001 he was granted exceptional leave to remain until 15 June 2005. He has applied for indefinite leave, but that application has not been decided. He has an outstanding judicial review claim seeking to compel a decision. That claim has been deferred pending the outcome of this appeal.

13. In April 2003, he returned to Iraq via Iran to see his family there. He had a cousin, Sawara Mahmud. Sawara was not someone he had had any dealings with before he had left Iraq in 2000. When he was there in 2003, the American forces together with those of the U.K., which was then in charge in Sulamaniya, were fighting an insurgent group known as Ansar Al Islam. His cousin Sawara was a member of this group, but he says he did not see him because his cousin, like the majority of Ansar Al Islam supporters, was in hiding.

14. Family differences had led him not to speak to Sawara in Iraq in any event. He returned to this country in July 2003. In December 2003 to his surprise Sawara contacted him. His family, when informed of the continuing contact, were unhappy because Sawara had been in much trouble and was known to have fought with Ansar Al Islam, which was regarded as a terrorist organisation. However, NN said that the contact was natural since both he and

Sawara were strangers in a foreign land and trying to provide for themselves and their families. Thus contact since they were cousins was natural. He stated that he did feel sometimes that Sawara was hiding information from him, but he never questioned him, being aware that many such as he who had escaped from a difficult past did not want to talk about it. He did not, he said, call Sawara by that name but would call him Shekha or Pouza, both of which are titles given out of respect.

15. There came a time when NN moved to Portsmouth to get work. Sawara was living there using, as NN discovered, the name Ako Golbakh. He thought nothing of that since the use of false names was commonplace. It avoided potential problems back in Iraq. In early 2004 he and Sawara went to Sheffield to seek work. Sawara spoke no English and NN was asked to help him open a bank account and get a driving licence. Sawara had taken some photographs of himself to obtain the licence and NN put some of these in his wallet. He says he has no idea why he did so. It was no big deal because Sawara was his cousin. Sawara had a HSBC Bank card in the name of Ako Golbakh. He had given this to NN to enable NN to sort out some problems and, since he left shortly after, NN had not had the opportunity to return the card to him.

16. In May 2004 GG was stopped and did not resume his jorney at Heathrow. He was with Sawara, who was using the name Ako Golbakh, intending to travel to Iran. GG was stopped but Sawara left the following day. He is now and has for more than a year been detained in Iran. There can be no doubt that the belief of the Secretary of State that Sawara went back to Iraq to involve himself with terrorist activities in the form of attacks on the coalition forces there is well founded. NN confirms that he met GG in Derby when Sawara took him to GG's house and introduced him as his, Sawara's cousin. NN says that GG and Sawara appeared to know each other well. Shortly after that he had an argument with Sawara and saw little if anything of him until he disappeared. NN says he had never seen anything suspicious in Sawara's behaviour nor had he heard him discuss anything relating to terrorist activities. NN continued to meet with GG. He met Jutiar Ali through GG. In July 2005 he visited London with Jutiar to try to obtain an Iraqi passport. This was not to enable him to travel but to provide a means of identification. He had applied for ILR and so had no intention of travelling.

17. At the beginning of October 2005 he made a trip upon which reliance is placed by the Secretary of State to Manchester, Doncaster and Derby, where he ended up with GG. He went to Manchester to deliver a car as a favour for a friend. He went to Doncaster effectively by mistake since he got himself on the wrong road leaving Manchester but decided to visit a friend in Doncaster. He intended to return to Wolverhampton but on route decided to go to Derby to a swimming pool which had special arrangements for Muslim men. GG was there and that was what led to the decision to stay with him overnight. The suggestion that this round trip was taken deliberately as a measure to avoid any control, particularly of telephone conversations, was nonsense.

18. He was in Derby with GG when arrested on 8 October 2005 because he with others had bought some lamb there (there is a particularly good Halal meat shop in Derby) and, due to lack of room where his other compatriots were staying, he had gone back to the house with GG. He had been to the address in Croydon where Jutiar KK and JJ were arrested and in which were found computer extremist videos. He had given the HSBC Bank card to Jutiar and the only reason he could think of why it should have been found in KK's wallet was because Jutiar must have given it to him.

19. In February and March 2007 he says he was visited by MI5 agents. They identified themselves by showing cards. They attempted to persuade him to work for them, indicating that if he did he would receive ILR and the control order would be brought to an end. When asked about Sawara and told how dangerous Sawara was believed to be, he panicked and failed to disclose the extent of his contacts with Sawara in this country. The Secretary of State has adopted the usual practice of not confirming or denying that the approach took place. I do not criticise that practice: there is good reason for it.

20. NN's relationship and contacts with Sawara and his association with the others arrested in Operation KNOP are relied on to support the suspicion of involvement in terrorist related activities. It is important to bear in mind in considering these cases that the power to impose an order depends not on proof but on there being reasonable grounds for

suspecting that the individual concerned is or has been involved in terrorism-related activity. The Secretary of State must also consider it to be necessary to make an order to protect the public from a risk of terrorism. While I appreciate that NN has given an excuse for his previous failures to tell the truth, the fact that he has seen fit to be untruthful will weigh against him to some extent. After his arrest, the police seized mobile phones from him and the others and these showed a considerable number of calls between the five. The arrest interviews produced a number of discrepancies between the various accounts and NN's reluctance to admit contacts which others accepted and which the mobile phone records appeared to confirm led the police and the security services to a reasonable belief that he was concealing the extent of the association because he knew it had not been innocent. Since he was Sawara's cousin and, as he now admits, had had a reasonably close relationship with Sawara until he left the U.K. in 2004, it is not surprising that the view was formed that he was an important link with Sawara who was engaged in terrorist activities in Iraq. I do not accept NN's assertions that Sawara, who had been to his knowledge actively involved in Ansar Al Islam, did not discuss with him his views as to what should be done in Iraq to deal with the presence of the coalition forces.

21. I have no doubt that there existed reasonable suspicion following the KNOP arrests that a control order was justified. The view that NN was a key player was also a reasonable one. However, it is important to assess what the attack planning was aimed at and where and the length of time over which NN was involved. I am satisfied that any attack planning was limited to activities in Iraq. What was planned was support for such terrorist activities in Iraq. However, there is no evidence that NN has been in contact with Sawara or has attempted to pursue any terrorist related activities since the control order was imposed. His explanation for the visit to Manchester, Doncaster and Derby is unsatisfactory and is consistent with a deliberate attempt to frustrate surveillance. However, I am not persuaded that his involvement in any activities extended beyond a relatively short time in the summer and autumn of 2005. I do not accept that his attempt to obtain an Iraqi passport was with a view to travelling. That would have been inconsistent with his application for ILR for which he had sought assistance from an MP.

22. I recognise the difficulties in meeting allegations the details of which are unknown. Nevertheless, the detailed statements of his relationship with the various individuals was sufficient to enable the Special Advocate to make effective challenges to the closed material. But there was material which supported the Secretary of State's case. I was entirely satisfied that Article 6 of the ECHR did not require any further disclosure and that I could properly determine the issues without any such disclosure.

23. We are now three years on. NN has married and has a small child. That in itself would not necessarily mean that he would not continue with terrorist-related activities, but it is a matter to be put in the balance in his favour. He has not done anything which shows an inclination to continue his past activities. The Secretary of State asserts that if not controlled he could and would be likely to do so. I see nothing to support that contention. It is of course a possibility, but it does not establish a continuing need to maintain a control order. In this context, I bear in mind Lord Carlile's view (which I recognise is not accepted by the Secretary of State and which should not prevail in all cases) that after 2 years an individual subject to a control order will have lost his usefulness to those engaged in terrorist activities. In all the circumstances, I have decided to quash NN's order.

GG

24. GG arrived in this country without documentation in 1999 and claimed asylum. He was granted Exceptional Leave to Remain for 4 years in January 2002. His application for further leave to remain has not been decided. In March 2003 he was arrested under the Terrorism Act 2001 and interviewed by police. He had left Iraq, he said, because he had been imprisoned and tortured by the authorities there when they discovered that he had been working for the PUK. He confirmed his ownership of a mobile phone number 07761 331191 which he had had for about a year. He denied any involvement in terrorist activities. He knew of Ansar Al-Islam, but only from the media. He understood that they were a Kurdish Group which was part of the Islamic movement. He, like all Kurdish people, knew of Mullah Krekar and had met him at a meeting in Liverpool in 2001 which Mullah Krekar had addressed. He was released without charge.

25. In May 2004 GG was stopped and questioned by police at Heathrow when he was intending to fly to Iran. He was with a man calling himself Ako Golbakh who was also stopped. Ako Golbakh's real name is Sawara Mahmud, NN's cousin. GG denied knowing that. The reason why he was with Mahmud was because they had met in October 2003 when both happened to be on the same plane from Iran to London. Mahmud could not speak English and so GG gave him assistance. They remained in sporadic communication in this country and arranged to fly to Iran together in May 2004. GG was released without further action being taken.

26. On 8 October 2005 GG was arrested at his home in Derby together with NN. He, NN and three men arrested in Croydon were alleged to have been conspiring to commit terrorist offences, in particular, it would seem, the planting and detonation of explosive devices in this country. The investigation leading to the arrests was given the code name KNOP. While the precise basis of the arrests has not been disclosed, the statements to the media said to have come from 'a senior counterterrorism official' said:-

> "There is intelligence to suggest that they were planning some sort of attack in the U.K."

It was said that the plot was thought to have involved the use of explosives, probably to be loaded into cars and driven into crowded city centres. Officials said that it was unclear whether any of the men had been planning suicide attacks. It was believed that there might be links with Al-Zarqawi, an organiser of suicide attacks in Iraq.

27. No evidence was discovered which could found a prosecution. The assessment by the Security Services has been that the arrests were made before anything concrete in furtherance of a conspiracy to commit terrorist offences had been done. GG, in common with all those arrested, was interviewed. He chose, on advice from his legal advisor, to give largely no comment replies to questions, although he did positively deny any involvement in terrorist activities of any sort.

28. On 15 October 2005 he was released from police detention into immigration detention, it then being the intention of the Secretary of State to remove him to Iraq. It was soon apparent that that would not be possible and so on 23 November 2005 he was made the subject of the first of the control orders. That order contained an 18 hour curfew together with other controls on meetings and visitors. Control orders were also imposed on the other 4 who had been arrested under Operation KNOP. The order was made because it was alleged that GG with the others was 'actively involved in attack planning, possibly against the U.K.'. This control order was quashed by Sullivan J on 26 June 2006 on the ground that the curfew together with the other restrictions amounted to detention and so fell foul of Article 5 of the ECHR. The Court of Appeal and in due course the House of Lords agreed (see *Secretary of State for the Home Department v JJ* [2008] 1 A.C. 385). In the meantime, since a control order has a life of 12 months, fresh orders have been made. Following the quashing by Sullivan J, a new order was made on 31 July 2006. This was renewed on 31 July 2007 and again on 28 July 2008. The precise obligations have varied. The curfew was reduced to 14 hours in the order of 31 July 2006, apparently on the basis that it was thought that the maximum period which the courts would allow without it being regarded as a loss of rather than a restriction on liberty was 15.4 hours. Following the decision of the House of Lords on 31 October 2007, the curfew was increased to 16 hours. This was the maximum which Lord Brown, who was the only one to specify a period which would not in his view constitute loss of liberty, regarded as possible. In addition, restrictions on visitors to GG's home and pre-arranged meetings outside his home which had been relaxed, were reimposed. On 28 April 2008 the control order was modified to require GG to move from his home in Derby to Chesterfield and to remain within a defined boundary there. There is an appeal against this obligation and against a refusal to modify it. In addition, there are appeals against a prohibition against providing any religious advice and against an obligation to allow himself to be searched by the police.

29. GG has made six lengthy statements, four of which have dealt with the allegations made against him in so far as he has been aware of them, and two of which have explained the impact on him of the control orders and the obligations imposed by them. As is usual in these cases, following consideration under CPR 76.29 whether disclosure of matters relied

on should take place, further information has been made available to GG and so he has had, and has availed himself of the opportunity, to deal with it. He has not given evidence in person and so has not exposed himself to cross-examination. This does not mean that any adverse inference should be drawn against him. As Mr Friedman has submitted, that would not be appropriate for a number of reasons, not least of which being that the statute does not authorise such an approach. But it can affect the weight to be attached to any particular explanation given. Mr Friedman submits that it would be wrong to adopt that approach because GG has been faced with generalised statements by the Secretary of State and he has done his best to answer them without knowing the detail of the allegations. I recognise the need to make all due allowances for the problems faced by GG when much of the detailed material relied on to support the allegations made is not disclosed. Nonetheless, the weight to be afforded to statements which are not confirmed by live evidence is inevitably affected, if only because what the court may regard as an improbable explanation has not been tested.

30. I have had to consider whether Article 6 of the ECHR has required me to refuse to rely on undisclosed material on the ground that it would be unfair to do so. This obligation follows from the decision of the House of Lords in *Secretary of State for the Home Department v MB* [2008] 1 A.C. 440. That decision has been explained by the Court of Appeal in *Secretary of State for the Home Department v AF* [2008] EWCA Civ 1148 and the law is as the majority in *AF* indicated. I gather that the House of Lords is due to reconsider the whole subject later this term.

31. In paragraph 64 of *AF*, the majority set out their conclusions as follows:-

> "In all these circumstances our conclusions based on the decision in *MB* and *AF* are these:
>
> i) The question is whether the hearing under section 3(10) infringes the controlee's rights under Article 6. In this context the question is whether, taken as a whole, the hearing is fundamentally unfair in the sense that there is significant injustice to the controlee or, put another way, that he is not accorded a substantial measure of procedural justice or the very essence of his right to a fair hearing is impaired. More broadly, the question is whether the effect of the process is that the controlee is exposed to significant injustice. In what follows 'fair' and 'unfair' are used in this sense.
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> ii) All proper steps should be made to provide the controlee with as much information as possible, both in terms of allegation and evidence, if necessary by appropriate gisting.
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> iii) Where the full allegations and evidence are not provided for reasons of national security at the outset, the controlee must be provided with a special advocate or advocates. In such a case the following principles apply.
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> iv) There is no principle that a hearing will be unfair in the absence of open disclosure to the controlee of an irreducible minimum of allegation or evidence. Alternatively, if there is, the irreducible minimum can, depending on the circumstances, be met by disclosure of as little information as was provided in *AF*, which is very little indeed.
>
> v) Whether a hearing will be unfair depends upon all the circumstances, including for example the nature of the case, what steps have been taken to explain the detail of the allegations to the controlled person so that he can anticipate what the material in support might be, what steps have been taken to summarise the closed material in support without revealing names, dates or places, the nature and content of the material withheld, how effectively the special advocate is able to challenge it on behalf of the controlled person and what difference its disclosure would or might make.

vi) In considering whether open disclosure to the controlee would have made a difference to the answer to the question whether there are reasonable grounds for suspicion that the controlee is or has been involved in terrorist related activity, the court must have fully in mind the problems for the controlee and the special advocates and take account of all the circumstances of the case, including the question what if any information was openly disclosed and how effective the special advocates were able to be. The correct approach to and the weight to be given to any particular factor will depend upon the particular circumstances.

vii) There are no rigid principles. What is fair is essentially a matter for the judge, with whose decision this court should very rarely interfere."

32. It is, I think, worth emphasising, as Baroness Hale records in her speech, that the 2005 Act prohibits the disclosure of material which it would be contrary to the public interest to disclose. Whether or not her assertion that there is a tendency to over claim the need for secrecy in terrorist cases is correct, the reality is and has in my experience always been that judges who consider 76.29 applications are astute to ensure that, if possible, disclosure can take place and that appropriate gisting should be employed wherever it can be. In this case, the experienced special advocates did not suggest that any disclosure beyond that which was in due course given was possible. Disclosure must occur unless the public interest prohibits it and I have no doubt that the burden rests on the Secretary of State to justify any non-disclosure. Thus in this case there can be no further disclosure. The result is that if the view is taken that overall GG has not been able to have a fair hearing so that there has been a fundamental breach of his Article 6 rights without such disclosure, the control order will have to be quashed. It will no doubt be possible in some instances to require the Secretary of State to abandon certain specific allegations and an order may be upheld on what is left – see, for example, Silber J's decision in *Secretary of State for the Home Department v AE.* But it must be recognised that it is possible that a dangerous terrorist cannot be subjected to control if the allegations, which may be convincing, against him are not able to be disclosed to him so that he can deal with them. It may be that the view is taken that the danger to the public of allowing an active terrorist to be at large must be subordinated to the need to provide him with a fair opportunity to meet whatever is alleged against him. I am afraid that I am unimpressed with the assertion that this will encourage reliance on better and more reliable sources of intelligence. Those sources may need protection from disclosure in the public interest.

33. There has in this case been a reasonable amount of disclosure. It is said that he has links with Ansar Al-Islam or Ansar Al-Sunnah as it became, a terrorist group in Northern Iraq, and has transferred money for its use via an individual named Halgurd. He has links with Sawara Mahmud, NN's cousin, who was involved with Ansar Al-Sunnah and is now in custody in Iran. It is said that his assertion that he did not know that Ako Golbakh was Sawara Mahmud is not credible. He has been involved with those arrested in Croydon, as the mobile phone records show, and extremist material downloaded from the internet was found there. He is someone who is held in high regard in his community and, as will be identified later in this judgment, he himself has admitted that, if asked, he would justify the use of force against those invading Muslim lands. He has also met and through one of his alleged co-conspirators may have some link with Mullah Krekar. His lengthy statements have enabled the special advocates to cross examine the witness Z in closed effectively.

34. It was not until Z gave evidence that it was made clear to GG and those representing him that it was said that he had remained in contact with extremists. He had himself offered to leave Derby if that would satisfy the Secretary of State, no doubt recognising that there might be concerns at his being able to mix with the Kurdish community in Derby having regard to the respect with which he was treated by that community. Mr Friedman has said that he is unaware of any of the material relied on to support this allegation. He further says that it is impossible for GG to provide any answer to this allegation without knowing who the alleged extremists are. He has denied any such knowing association; he has naturally met and to an extent associated with other members of the community in Derby, particularly at the mosque, but he says that he has never discussed or encouraged extremism and certainly has never done or said anything which could be regarded as involvement in any terrorist related activity. While I recognise the difficulties, and it could

never be suggested that the system is capable of providing an entirely satisfactory situation from the controlled person's point of view, the special advocate was able to deal effectively with the evidence in closed which went to this issue. This was, I recognise, a most important aspect of the case against GG. If there was no evidence that he had over the last 3 years maintained any association with extremists (by which is clearly meant an association with those he knew to be extremists and association must mean more than a casual chat because they happened to be fellow worshippers), he would be more likely to fall within the same category as NN. In such circumstances, the approach which Lord Carlile adopted would be more persuasive. Nonetheless, his position in the community is a highly relevant consideration. But, notwithstanding its importance, I was satisfied that the special advocates were able to deal with the evidence in closed. Furthermore, GG knows what he has said and done and it is difficult to accept that he would be unaware of the views of those with whom he associated. What was and is going on in North Iraq and the anti-terrorist activities both there and in this country would surely be discussed, particularly as the fact that he was subjected to a control order showed that the authorities believed that GG had involved himself in terrorism related activities. Any extremist might be expected in such circumstances to believe that GG would be a listener to and have sympathy with his views.

35. Terrorism-related activity is given a wide meaning by s.1(9) of the 2005 Act. It includes one or more of the following:-

> "(a) the commission, preparation or instigation of acts of terrorism;
>
> (b) conduct which facilitates the commission, preparation or instigation of such acts, or which is intended to do so;
>
> (c) conduct which gives encouragement to the commission, preparation or instigation of such acts, or which is intended to do so;
>
> (d) conduct which gives support or assistance to individuals who are known or believed to be involved in terrorism-related activity;
>
> And for the purposes of this subsection it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally."

Terrorism-related activity is not limited to acts in this country. 'Terrorism' includes acts in any country, whether directed against the U.K. or any other country (see Terrorism Act 2000 s.1 (4) applied by s.15 (1) of the 2005 Act). Thus, in the context of this case, conduct which is intended to or does facilitate, encourage or assist acts of terrorism in Iraq is covered.

36. Until the passing of the Terrorism Act 2006, conduct which fell within s.1(9)(b) to (d) would not have been criminal. This, Mr Friedman submitted, was a relevant consideration and should at least have affected the stringency of the obligations imposed. He submitted that GG had not broken the criminal law of this country even if his conduct was reasonably suspected to have fallen within s.1(9)(b) to (d). This submission was fortified by the knowledge that Z's evidence was that any attack planning related to activities in North Iraq and not in the U.K., albeit he said that the assessment was that in the long run action here would be pursued. As I have said in dealing with NN, any attack planning which can fall within the scope of reasonable suspicion is limited to acts in North Iraq, which would include acts against coalition and so British forces in North Iraq.

37. Whether or not the conduct alleged against GG would have constituted a criminal offence at the time does not seem to me to be material. The need is for protection against the conduct in question. It is said that GG was the means whereby, through his Hawala activities, money was transferred to be used by a terrorist body, Ansar Al-Islam; with Mullah Halgurd as the recipient, in Iraq. He continued, after he says that activity ceased following his detention in 2003, to involve himself in terrorism-related activities in support of Ansar Al-Islam. There is the further concern that he was encouraging young Muslims to join the battle against the forces occupying Iraq, using his position in the mosque for this

purpose (see Paragraph 49). The danger of such radicalisation of the young and impressionable is all too obvious. That it is done under the guise of religion is no doubt disgraceful, but there are many who seem prepared to carry out acts of terrorism in the name of religion. If I may be forgiven for using Latin, I am reminded of the words of the Roman poet Lucretius, writing over 2200 years ago:-

> "Tantum religio potuit suadere malorum."

A loose translation would read:-

> "Religion has been able to persuade to so much evil."

38. I have no doubt that if he was reasonably suspected of activities which fall within s.1(9)(b),(c) or (d), it was properly considered necessary to impose restrictions which were designed, so far as possible, to make it difficult if not impossible to carry on in that way. It might be easier now to prosecute such conduct, but that does not affect its seriousness.

39. Mr Friedman spent some time in cross-examination of Z in comparing the language used in the reasons given for imposing the control order. Sometimes the word used is 'considers', sometimes 'assesses' and sometimes 'contends'. As Z said, there is no magic in the use of these words – all are intended to convey that a judgment has been formed that the situation is as is alleged. Since the power to impose a control order is based on reasonable suspicion, it is inevitable that something less than proof will suffice. As the Court of Appeal made clear in *MB* at paragraph 67, the exercise to be carried out by the court 'may involve considering a matrix of alleged facts, some of which can be established on balance of probability and some of which are based on no more than circumstances giving rise to suspicion'. It went on:-

> "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."

40. The first stage is to determine what facts are established and then it is necessary to consider what follows from those facts. It will be rare that it is possible to say that whatever the controlled person did showed positively that he was engaging in terrorism related activity. It is thus inevitable that a judgment has to be formed and so an assessment made of what his motives or intentions were. No doubt an adverse judgment will be easier to form if what was done cannot reasonably be given an innocent explanation, but it remains a judgment. The court will take account of any explanations given by the controlled person and the standard to which conduct relied on has been established in reaching its judgment; the same exercise should be carried out by those advising the Secretary of State, albeit they will not normally have much by way of explanation from the person who is to be made subject to an order.

41. Mr Friedman made a more general attack on the format of the open statement. He assumed that the closed statement was likely to be drafted in a similar way. He referred me to the report of a Committee of Privy Councillors chaired by Lord Butler of Brockwell. This report was to review intelligence on weapons of mass destruction and to consider what if any changes were needed in the giving of advice in relation to such weapons. The context was, of course, the decision to invade Iraq. One of the recommendations (Paragraph 604) was that, where there were significant limitations in the intelligence, that should be stated clearly alongside the key judgments. The range of uncertainty and so the weaknesses in any particular piece of intelligence should be identified. The Butler report was dealing with a specific issue. No doubt, when advice is given which can lead to war or very serious action and there is no process of appeal nor is the material upon which the advice is given put before the relevant minister, the need to identify weaknesses is obvious. But here the Act builds in the need for a court to be persuaded that a control order is indeed justified and the material upon which the assessment is made and advice given to the Secretary of State is produced. I see no reason in the circumstances to apply the Butler principles (if that is an appropriate description) and there is nothing wrong in the way the statements are drafted.

42. Mr Friedman has suggested that the arrests in October 2005 resulted from, as he put it, an erroneous perception about the need for emergency action following the 7/7 bombings. The report of the Parliamentary Intelligence and Security Committee following the 7/7 bombings noted that there was a failure by the Security Services to take action in relation to two of the bombers having regard to information available on them in 2004. No doubt there was concern that those who were believed to be involved in planning attacks which may have been targeted against the U.K. should be prevented from carrying out any such actions. The information given to the media to which I have already referred was not supported by what was found nor has it been supported by the material relied on to justify the control orders. Indeed, it is accepted by Z that any immediate attack planning related to activities in Iraq. Whether or not the media reports are based on official briefings I do not know. If they were, those briefings could not have been more than speculation. It is no part of my task to criticise those briefings or to consider what actually was put to the media. I have to consider this case on what can be established as the basis for reasonable suspicion of involvement in terrorism-related activities.

43. Both GG and NN have been informed of the possibility of voluntary return to Iraq and each was initially detained when it was apparent that there was no possibility of any prosecution in October 2005 with a view to removal to Iraq. It is said that this was inconsistent with the assertion that they were involved in attack planning against U.K. troops in North Iraq. As the Home Office witness pointed out, there is no power to prevent a non-national leaving the country. The control order contains obligations which prohibit GG from obtaining any travel documents or visiting any port area. The purpose behind this is to ensure that he does not leave the country save with the knowledge of the Secretary of State. Thus steps can be taken to inform the relevant authorities in Iraq or wherever he is going of his movements and control over him can by that means be maintained. In *Secretary of State for the Home Department v AE* [2008] EWHC 588 (Admin) Silber J was faced with this same point. He found it to have no validity – see paragraph 66 of his judgment – relying on the same matters to which I have referred. I entirely agree with him.

44. Mr Friedman makes the point that GG was clearly aware, as a result of his detention in 2003 and his questioning by the police at the airport in 2004, that he was being watched by the Security Services. No doubt he was, but that does not mean that he would have ceased any terrorism related activities if he believed he would not be able to be prosecuted. He had been apprehended twice, but no prosecution had resulted. He had been approached by the police in 2004 and after the 7/7 bombings to see if he had any information which would assist, in 2004 in relation to the kidnap of Ken Bigley, in 2005 to see whether he could identify any who might be engaged in similar activities. This would be likely to reassure rather than worry him, and is consistent with the position he held in the Kurdish community in Derby.

45. It is submitted that GG told no lies in his interview with the police when he was arrested or detained. In the sense that he said nothing which has since been shown to have been untrue, that may be so. But it does not follow that the account he gave insofar as he denied any involvement in terrorism-related activity was true. His accounts have been largely consistent, and that obviously must to an extent weigh in his favour. He admitted his association with the other KNOP suspects. But he could hardly have done otherwise since their mobile phones were in the hands of the police and would show association. His admission of his travels to Iran and Iraq were unsurprising: he must have appreciated the possibility that they might be able to be checked. It is of some significance that Jutiar, one of the KNOP suspects, has since absconded and has in all probability left the country.

46. I recognise that there are conflicts in Iraq between Kurdish groups, particularly the two main ones, the PUK and the KDP. Those conflicts have to an extent spilled over into the communities here and may result in false reports against individuals with a view to damaging them. In this context, he particularly notes the possible damage resulting from information which may have come from one Kousar, whom Z accepted to be a somewhat erratic personality. Kousar was believed by GG and others to be an MI5 agent: he had boasted that he was involved with Al Qaeda. In addition, so far as association is concerned, the Kurdish ethos which requires assistance and hospitality to be given to fellow Kurds, particularly in foreign parts must be borne in mind.

47. It must be obvious that there is material in closed which supports the case made by the Secretary of State. But in my view there is powerful support for the assessment made which can be identified in open. GG says he first met Sawara Mahmud, calling himself Ako Golbakh, when returning on a plane from Iran. He never realised, he says, that he was NN's cousin nor that he was involved with Ansar Al-Islam (or Al-Sunnah). An analysis of the phone calls made between the KNOP suspects shows a significant number of calls to and from NN and GG was arrested in October 2005 together with NN, who was staying with him. While these contacts came in 2005, they show an apparently relatively close relationship with NN: certainly, that inference can be drawn. While he denies that the Halgurd who was his contact in Iraq for the transfer of Hawala money is the Mullah Halgurd who was a leading light in Ansar Al-Islam, it is significant that someone named Halgurd (however common a name that is said to be) and Sawara Mahmud, with whom GG was associated, were both significant players in Ansar Al-Islam. GG says that NN never referred to his cousin by name, calling him only 'Sheika' or 'Pooza', which are titles given out of respect. I do not find it credible that, given the common interest in Kurdish affairs in Iraq, the two would not have discussed the situation there and there is no reason why Swara should not have indicated his involvement with Ansar Al-Islam. There is no reason to believe that he would have been ashamed of it or fearful that GG might say or do something to compromise him. I do not doubt that the person in custody in Iran is Mahmud.

48. In his third statement, under the heading 'Religion', GG deals with the discussions about the justification for violent action against 'non-Muslim armies which have attacked Muslim lands'. He goes on:-

> "I have never shied away from looking at what it says in the Koran and other authorities about invading armies. I believe that a lot of non-religious people would agree that Muslims have a right to fight against Coalition forces in Iraq."

49. He accepts that he is asked for advice on what the Koran must be interpreted as saying on various topics including the use of violence. He would advise, as he believes to be the case, that Muslims should fight against those who invade Muslim lands. He recognises that he may well, having explained that, have led individuals to believe that they would be complying with their religious obligations if they fought against coalition forces in Iraq but not, he emphasises, if they sought to use violence against civilians or in this country. Thus, being someone who carries weight in expounding religious duties, he may well have encouraged younger and more impressionable individuals to assist those who were fighting coalition forces in Iraq. Such fighting is defined as terrorism. There is, as it seems to me, a real risk that he has given and may continue to give this dangerous sort of advice, which clearly falls within s.1(9).

50. Lord Carlile in reporting on the use of control orders has indicated that it is his view that no person should remain subject to an order for more than 2 years, save in rare cases. He believes that such a person's usefulness for terrorist purposes will have been seriously disrupted. The government has not accepted that there should be what it describes as an arbitrary end date for individual orders. If there is evidence that an individual remains a danger, an order should continue for however long is necessary. That I entirely accept, and, to be fair, Lord Carlile recognised that there could be cases in which a duration of more than 2 years was appropriate. Much will depend on whether there is material which persuades the Secretary of State and the court that the individual remains a danger because he has been, notwithstanding the order, continuing so far as he could his terrorist-related activities or because he is likely to do so once an order is lifted. That in my view is the position with GG.

51. Mr Friedman submits that the conditions imposed on GG since November 2007 have amounted to deprivation of liberty so that the control orders covering that period were and are unlawful. On 31 October 2007, the 14 hour curfew was increased to 16 hours. This increase is attacked on the basis that there was no indication that the 14 hours previously imposed had been ineffective. It is a reasonable response to a perceived danger that an individual will engage in terrorist-related activity that a curfew for as long as is permissible without constituting a breach of Article 5 should be imposed. 14 hours was, before the House of Lords decided *JJ*, thought to be the maximum which could safely be imposed in

the sense that there would be no danger that an argument based on a breach of Article 5 could succeed. Following the House of Lords and in particular the speech of Lord Brown, the increase to 16 hours took place. This was imposed in the context of GG remaining in Derby and so was coupled with severe restrictions on those who could visit him without Home Office leave and on those whom he could arrange to meet outside his home. He was able to go to the mosque to pray daily.

52. The curfew period cannot be considered in isolation. Whether there is deprivation of liberty and so a breach of Article 5 will depend on the effect of the restrictions. Thus a 16 hour curfew coupled with restrictions on visits for one removed from his home area and so living where he knows no one and so is effectively subjected to isolation may well mean that 16 hours can be regarded as excessive. Having said that, it is clear from the speeches in *JJ* that what must be the principle focus is the extent to which the controlled person is actually confined – see per Lord Bingham in Paragraph 11. In Derby, notwithstanding the meeting restrictions, GG was on home territory and could visit the mosque daily. He was able to and did mix with friends and others in the Kurdish community. Chesterfield is not home territory. He has now married and, although his wife and step-children cannot live with him for various reasons, including the children's school requirements and the present lack of sufficient size of his accommodation, there are no restrictions on their ability to visit him. Equally, the visitor restrictions have been removed. It is said, no doubt correctly, that GG has been on the most onerous control orders for the longest period and, until June 2006, he was subjected to unlawful deprivation of liberty.

53. While I think that the restrictions, particularly those in place in Derby, put the case very much on the borderline, I am not persuaded that there has been or is a breach of Article 5. In reaching this decision, I have taken into account the cases cited to me. The extent of any social isolation coupled with the extent of the curfew is important, albeit it may be said that it is difficult to see that the difference between 14 hours, which is not, whatever the other obligations, deprivation of liberty and 16 hours, which may be, should be determinative. However, decisions of my brethren seem to establish the possibility that 16 hours coupled with other measures may mean there has been deprivation. I think that the key lies, as I have said, in the extent of social isolation which may be determinative in favour of deprivation where there has been a removal from the home area coupled with a restriction on visitors. The two have not occurred here.

54. It follows that I dismiss the appeals against the renewal of the control orders and uphold the imposition of the order made in July 2006. I must now consider the appeals against the modifications made without consent, that is to say, the move to Chesterfield and the imposition of a requirement to submit to personal searches, and against the refusal to modify the prohibition on giving religious advice.

55. I indicated in the course of the hearings that I took the view that the prohibition on the giving of religious advice was too wide and vague. It must always be remembered a that breach of a condition is a criminal offence carrying a maximum penalty of 5 years imprisonment. Thus it is most important that obligations are spelt out clearly so that the controlled person knows what he must or must not do. Equally, no obligation can properly be imposed unless it is necessary. What the Secretary of State wants to avoid is GG encouraging others to take part in terrorist related activities or in any way advocating or preaching the desirability of such activities. The parties have discussed an appropriate prohibition. They have agreed the following:-

> "You are prohibited from saying, writing or publishing anything that could reasonably be understood as a direct or indirect encouragement or glorification of or inducement or assent to the commission, preparation or instigation of an act of violence."

I have slightly amended the agreed formula in the interests of grammatical accuracy.

56. Mr Friedman submits, as did Miss Harrison on behalf of NN, that there is no power to impose an obligation to submit to a personal search. Section 1(4) of the 2005 Act lists a number of obligations which may be included in a control order. The subsection commences with these words:-

> "These obligations may include, in particular …"

They are therefore clearly not intended to represent a limitation on what may properly be included in an order. However, there is no reference to searches of the person. S.1(4)(k) permits a requirement to allow searches of his residence or other premises to which he can grant access 'for the purpose of ascertaining whether obligations imposed by an order have been, are being or are about to be contravened'. S.1 (4)(l) permits a requirement to allow anything found to be removed for testing or to be retained so long as the order is in force. S.1(4)(m) permits a requirement that he allow himself to be photographed.

57. In *R (Gillan) v Commissioner of Police of the Metropolis* [2006] 2 A.C. 307, the House of Lords considered the lawfulness of the use of powers of stop and search contained in the Terrorism Act 2000. The power is conferred (2000 Act, s.45) for the purpose of searching for articles of a kind which could be used in connection with terrorism and can be used whether or not the constable has grounds for suspecting the presence of articles of that kind. The House upheld the use of the power in the circumstances of that case, but Lord Bingham at the outset of his speech said this:-

> "It is an old and cherished tradition of our country that everyone should be free to go about their business in the streets of the land, confident that they will not be stopped and searched by the police unless reasonably suspected of having committed a criminal offence. So jealously has this tradition been guarded that it has almost become a constitutional principle. But it is not an absolute rule. There are, and have for some years been, statutory exceptions to it."

The principle referred to by Lord Bingham will extend to a search of anyone at home, or in any place in addition to on the streets. There must be a clear statutory provision which permits a search of the person. It may well be that the same principle applies to a search of a person's home, but there is in s.1(4)(k) a clear statutory provision permitting it.

58. A search of the person is a trespass and, unless authorised, an unlawful act. It is interesting that Parliament considered it necessary to provide specifically for a requirement to submit to being photographed, something far less intrusive than a personal search. The 2000 Act contains provisions which permit a search for items which may constitute evidence that an individual is a terrorist, but Parliament has not included a suspicion that or to ascertain whether there may be a breach of control obligations.

59. I have no doubt that Mr Friedman and Miss Harrison are right. In order to justify a search of the person, there must be a clear and unambiguous authorisation in a statute. There is none in s.1 of the 2005 Act and the fact that specific powers are given to search premises and to photograph individuals is inconsistent with the existence of a power to search the person. The opening words of s.1(4) are insufficient to provide such a power. That obligation must be removed from the order.

60. That leaves the move to Chesterfield. When imposed, GG was single and living alone, albeit he was in the process of seeking a wife (that, he said, was why he had wanted to visit Iran) and had found someone who was likely to marry him. He was married in an Islamic ceremony in the Spring of 2008. He now has three young stepchildren and, as the CORG minutes covering the period March to June 2008 record, he 'seems genuinely very happy about his marriage. He seems to enjoy spending time with his stepchildren.' His wife and children have a home in Derby but not in the part of the city centre where GG was previously allowed to enter in order to attend the mosque ('the Normanton Road area'). The eldest child, who is 7, attends an Islamic school there and it is their parents' wish that all the children (the others being now below school age) should attend an Islamic school. While his wife and children can visit him in Chesterfield, there are problems of finance and the house is too small to enable them to live with him there, albeit the Home Office has offered to find larger accommodation. But that would not be satisfactory since the elder daughter could not attend school there.

61. GG has further objections to Chesterfield. He has no friends there and, although there is a mosque, the community does not include Kurds and is somewhat alien to him. There is no decent Halal shop. It seems that Chesterfield was chosen largely because the Secretary of

State wanted GG to remain subject to the Derbyshire Police. That is in my judgment no good reason to reject a move elsewhere if another suitable place can be found.

62. The marriage means that the Article 8 rights of his wife and children now have to be taken into account. Naturally, when proportionality is considered, the national security considerations relevant to GG may prevail, but it will be necessary to ensure, if that is possible (and I see no reason to doubt that it is) that the schooling preference is honoured. This may mean, if there is a good reason not to permit return to Derby, that another city in which Islamic schools exist must be chosen. That control is to be exercised by a different police force cannot be a good reason to deny such a move.

63. GG has said in his most recent impact statement:-

> "I am desperate to be back in Derby. I am willing to abide by any conditions so long as I am there with my family. There is no other agenda. I am very isolated here and very lonely. I do not want to live here. "

He has even expressed the view that he would agree not to attend any or any particular mosque in Derby if he were allowed to be with his wife and children there.

64. There can be no doubt that his marriage does create a different situation. Naturally, it will not necessarily prevent him from indulging in terrorism-related activities, but it does mean that he has his family and their welfare to consider. While I recognise the need to place great weight on the views of CORG, I am persuaded that the time has come to consider whether he should be allowed to live with his wife, subject to the imposition of visitor restrictions and restrictions on visiting mosques. As things stand, he can discuss what he wishes with anyone visiting him. More stringent conditions in Derby will avoid that. Accordingly, I am not prepared to uphold the requirement to live in Chesterfield. I recognise that there must be time given to make alternative arrangements and so I will require submissions from counsel as to any appropriate directions.