113 Chancery Lane
London WC2A 1PL
Tel 020 7320 5858
Fax 020 7320 9551
www.lawsociety.org.uk

Parliamentary Brief

The Law Society

Terrorism Bill

House of Commons – Report Stage

09 November 2005

Further briefing on clauses 23 & 24

It is understood that one of the main reasons that the police assert that more than 14 days pre-charge detention is necessary is because it can take a significantly longer period to gather evidence from decryption, foreign sources etc, and a major difficulty with charging a person with an offence before this information is gleaned is that they may not be questioned about this information post-charge.[1]

There must first, of course, have been some information upon which the arresting police officer based their reasonable suspicion of the commission of an offence, such as possession of items used for terrorist purposes, belonging to a proscribed organisation or the proposed new offence of acts preparatory. If it were the case that after 14 days detention there was *not sufficient evidence to charge* with an albeit, relatively minor offence, then the suspect *should* be released.

If there is still concern about a suspect's dangerousness, or a belief that, with time, evidence of terrorist activity will be found, the ability for the police to impose restrictive pre-charge bail conditions in terror cases could be considered, including the surrender of any passport (which

[1] See, for example, annex to letter of Andy Hayman to the Home Secretary, page 3 –'Operation 2004 – … If the decision to charge could have been delayed while the investigation developed and the precise role of the individuals became clearer, then the outcome in terms of admissions, intelligence, and evidence against key individuals may have been different. … The silence of the suspects … shed no light on the intention or capabilities of the terrorist network.', and at page 4 'Operation 2004 – … There were many key pieces of evidence which police were unable to put to the suspects in interview because they were not discovered until after the detention period had elapsed.' See also evidence of the Home Secretary to the Home Affairs Committee on 11th October 2005 at questions 55 and 63.

would presumably have been found in the thorough search that would accompany the arrest), and non-association restrictions. In addition, in these circumstances presumably the Home Secretary would have the necessary belief to impose a restrictive Control Order on the suspect under the 2005 Prevention of Terrorism Act.

It is a principle of natural justice that a person in held in detention for even a short period of time be informed of the reason for their arrest and detention. This is the very purpose of formally charging a detainee with an offence. It is unacceptable for a person to be deprived of their liberty without knowing the basis of that deprivation. Without such knowledge they are unable to properly instruct a lawyer so that the lawyer can start to gather evidence to assist in their defence. Crucial evidence that may prove a suspect's innocence may be lost (for example, an alibi witness may disappear). Moreover, if the police have arrested the wrong person, not only is it in their interests that this is established as soon as possible, but the public interest in the apprehension of the correct people is vital.

The usual restriction on questioning a suspect after charge is to protect the suspect from prolix, repetitive and therefore oppressive questioning. However, Code C under the Police and Criminal Evidence Act 1984 allows the police to put further questions to a suspect after they have been charged. Paragraph 16.5 A of PACE Code C states:

> A detainee may not be interviewed about an offence after they have been charged with, or informed they may be prosecuted for it, unless the interview is necessary:
> - to prevent or minimise harm or loss to some other person, or the public;
> - to clear up an ambiguity in a previous answer or statement;
> - in the interests of justice for the detainee to have put to them, and have an opportunity to comment on, information concerning the offence which has come to light since they were charged or informed they might be prosecuted.

So, if in the course of a terror investigation evidence were discovered on a computer hard drive, for example, between the time of charge and trial, and it was considered that further questioning the suspect was necessary to prevent harm to the public, or to enable a previous answer to be clarified, or was new evidence that the interests of justice require to be put to the suspect, this would be allowed. All these reasons could be of relevance in a terrorism case.

If however, the police consider these reasons are not sufficient, consideration should be given to amending Code C to specifically allow for post-charge questioning in terrorist cases where specific evidence has been discovered after the pre-charge detention period had expired. Suspects should be able to challenge repeated requests for further questioning before a judge where there was a risk that this might be oppressive.

The Law Society fully supports measures which are likely to prove effective in bringing those who would cause harm to innocent people to justice before they are able perpetrate acts of terrorism. However, it is vital that these measures are indeed effective and do not disproportionately and adversely affect the very freedoms that all those living in a liberal democracy should enjoy.

For further information please contact:

Shona Ferrier, Parliamentary Advisor

Tel no: 020 7320 9546
Mobile: 07816 929658
Email: shona.ferrier@lawsociety.org.uk

