

OPERATION GIRD
REPORT FOLLOWING REVIEW

David Anderson Q.C.

Independent Reviewer of Terrorism Legislation

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This document is also available from the Independent Reviewer website at www.independent.gov.uk/terrorism-legislation-reviewer

ISBN: 9780108510588

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID P002431412 05/11 11668 19585

Printed on paper containing 75% recycled fibre content minimum.

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1 INTRODUCTION

Summary and conclusions

1. On Friday 17 September 2010, the Metropolitan Police arrested six men under the Terrorism Act 2000 [TA 2000] on suspicion of involvement in a plot to harm Pope Benedict XVI during his visit to the United Kingdom between 16 and 19 September 2010. The investigation was named Operation GIRD. After questioning at Paddington Green Police Station, each of the suspects was released on the evening of Saturday 18 September or shortly after midnight on 19 September. They had been detained for between 33 and 42 hours.
2. The six arrested men, aged between 26 and 44 and resident in London, were each employed by Veolia Environmental Services as street cleaners in the Borough of Westminster. Their names are not in the public domain, since none of them was charged. Their ages, together with the identifying letters by which they were known in police documents, were as follows:

ID	Age
Subject A	36
Subject B	40
Subject C	26
Subject D	44
Subject E	27
Subject F	29

All were Muslims of North African origin. Subject E was a Sudanese citizen, the others being nationals of Algeria. Subject A, Subject B and Subject C were also citizens of the UK, Spain and France respectively. Subject D and Subject F were married to an EU resident and an EU national respectively.

3. My predecessor as independent reviewer of terrorism legislation, Lord Carlile of Berriew Q.C., decided in late October 2010 to conduct a “snapshot review” of the arrest, detention and release of the six men. He started investigations, which I completed after succeeding him as independent reviewer on 21 February 2011.
4. I conclude, in summary, as follows:

- a. **There is no reason to believe, with the benefit of hindsight, that any of the arrested men was involved in a plot to kill the Pope, or indeed that any such plot existed.**
- b. **The powers of arrest, search, seizure and detention under the TA 2000 were however, in all the circumstances of Operation GIRD, lawfully and appropriately used.**
- c. **There will be future temptations to use the TA 2000 powers in relation to individuals as to whom the necessary reasonable suspicions do not exist, particularly in the context of international high-profile events such as the London Olympics. Constant vigilance is required to ensure that the legal boundaries of those powers are respected, as they were in this case.**
- d. **The right to have a named person informed of one's detention is an important one. Police forces should review their procedures so as to ensure that detainees are held incommunicado only in the circumstances contemplated by the law. They should also ensure that a detainee is not held incommunicado simply by reason of the fact that he has committed a phone number not to his own memory, but to the memory of a mobile device that has been removed for examination.**

Purpose of this report

5. I am a Q.C. in private practice, entrusted by Parliament in my part-time capacity as independent reviewer of terrorism legislation¹ with the task of reviewing and reporting annually upon the operation of a number of statutes including TA 2000.
6. As independent reviewer I may also from time to time produce non-statutory reports. The closest precedent for the current report – though it concerned an operation on an altogether larger scale – is the review of Operation Pathway, conducted by Lord Carlile, which culminated in his report of October 2009. Like the other reports of the independent reviewer, this was laid before Parliament and is available through my website.
7. Counter-terrorism legislation is the subject of lively, informed and continuous debate in this country. The distinctive nature of the reviewer's contribution to that debate is based on his unrestricted access to sensitive security documents, and on his opportunities to meet, question and learn both from those who enforce our terrorism laws and from those who are otherwise affected by them.
8. "Snapshot reviews" such as this one have a particular purpose, distinct from that of annual reports: to give the interested public a flavour of how counter-terrorism laws are used in a specific case, and to allow the exercise of those powers to be scrutinised in more detail than would otherwise be feasible. To that end, I consider

¹ www.independent.gov.uk/terrorism-legislation-reviewer

in this report (i) whether TA 2000 was used correctly in this case and (ii) whether any recommendations should be made for the future.

9. I do not seek in this report to determine whether individual police officers complied with the applicable standards of professional behaviour, or to pre-judge the result of any complaint that might in the future be brought to the Independent Police Complaints Commission under the procedures operated by that body. The utility or otherwise of this report for any subsequent complaint or legal proceedings will be a matter for those involved.

Methodology

10. Lord Carlile sought to make contact with each of the detained men and their legal advisers by writing to the four solicitors' firms that had represented them. Of those four firms, one did not respond, one stated that it had no observations to make and a third made some brief observations and asked its clients to contact Lord Carlile if they had anything to add. No such contact was made. The fourth firm, Sonn McMillan Walker, having made contact with their client Subject E, prepared in December 2010 two detailed and helpful memoranda in which they set out his and their concerns about the arrest and detention process. They responded to my queries about those documents by email and telephone. Subsequently, in March 2011, they established contact with their former client Subject C. I was able to meet both Subject E and Subject C at the offices of Sonn McMillan Walker, to discuss their concerns in the presence of their solicitors.
11. When he announced this review, Lord Carlile stated that he would welcome any evidence particular to the incident. He received in November 2010 an email from a friend of Subject E, who did not have first-hand knowledge of the incident in question but who spoke for his good character and high ethical standards, and expressed surprise and incomprehension at his arrest and detention.
12. SO15 (Counter Terrorism Command) at the Metropolitan Police provided Lord Carlile with a detailed written report of the incident, drawing on other records (which I have inspected where relevant) and dated 27 September 2010. On 2 March 2011 I travelled to New Scotland Yard to meet with senior police officers involved. At that meeting I sought clarification and expansion of certain matters in the written report; requested copies of further documentation and interview tapes; and put to officers the concerns that had already been expressed by Sonn McMillan Walker. I also discussed the incident with Assistant Commissioner John Yates of the Metropolitan Police, with the Counter Terrorism Division of the Crown Prosecution Service (CPS) and with the Security Service. I completed my reading of the relevant documents, including the custody record for each suspect, perused contemporaneous press reports and listened, though only selectively, to the tapes of urgent interviews and full police interviews with each of the six suspects. After meeting with Subject C and Subject E at the offices of Sonn McMillan Walker on 29 March, I put a number of further matters to police, and considered written and oral responses from them before completing my report.

13. I received full co-operation from all those with whom I spoke. I am grateful to them all for their frankness and willingness to engage with me. I would ideally have met the other four arrested men. Their solicitors made all reasonable efforts to contact at least two of them. I am conscious however that those men were under no obligation to talk to me and that it is possible that some of them were not informed of the review, or had their own reasons for not wishing to participate in it.

2. THE LAW

14. The subjects of Operation GIRD were arrested and detained under exceptional powers, available only in terrorist cases. Those powers are briefly summarised below.²

Power of arrest

15. Section 41 TA 2000 empowers a police officer to arrest without warrant a person whom he reasonably suspects to be a terrorist. This is a notably wide power of arrest, in particular because the arresting officer need have no specific offence in mind (it being enough, under s41(1)(b), to have a reasonable suspicion that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism).

16. Certain consequences follow from this:

- a. At least at the outset of the period of detention, and possibly for some period thereafter, it may not be possible to formulate the charges with the specificity of an indictment.³
- b. Arrests under s41 may be a useful means of disrupting activity or gathering intelligence (though reasonable suspicion of being a terrorist is always required and, if not present, may result in an action for false imprisonment).⁴

17. As to the first of those points, this case does not display the full breadth of s41, because as the police made it clear from the stage of the initial safety interviews, they already had a specific offence in mind at the time of arrest: an attack on the Pope or those around him during the period of his visit to London.

18. As to the second point, there can be no doubt that the arrests and subsequent detentions in Operation GIRD were seen as having a potential disruptive function during a relatively short window of risk. They may also have been seen as a useful opportunity for intelligence gathering. These things are not objectionable in

² For a fuller account of the TA 2000 powers see Clive Walker, *Terrorism and the Law* (OUP 2011), ch.4.

³ *Sher v Chief Constable of Manchester* [2010] EWHC 1859, paragraph 21(b).

⁴ Clive Walker, *Terrorism and the Law* (OUP 2011), 4.17-4.21.

themselves, but render it all the more important to be sure that the requirement of reasonable suspicion was satisfied.⁵

Power of detention

19. In the non-terrorist context, the police can normally detain a person without charging him for only 24 hours, or 36 hours if authorised by a superintendent or above. Thereafter only a court may extend the permitted period of detention, and to an absolute maximum of 96 hours. The police may also release on bail a person who has not been charged.
20. Under s41 TA 2000, a person may be detained for 48 hours without the intervention of a court. That is however subject to the common law principle that "*where the police have reached the conclusion that prima facie proof of the arrested person's guilt is unlikely to be discovered by further inquiries of him or of other potential witnesses, it is their duty to release him from custody unconditionally*".⁶ Continued detention of that person within the 48 hour period can thus be justified only for as long as there is a genuine prospect that sufficient evidence will emerge to charge the person with the commission of a criminal offence.
21. Part II of Schedule 8 to TA 2000 governs the review of detention under s41. A review officer (of at least inspector rank in the first 24 hours and superintendent rank after that) must review a person's detention as soon as reasonably practicable after arrest, and at intervals of not more than 12 hours thereafter. Continued detention may be authorised only on specified grounds, including where it is necessary to obtain or preserve relevant evidence, or where it is necessary pending a decision whether the detained person should be charged with an offence.
22. Courts may authorise detention beyond 48 hours, in stages, for up to 14 days (though with the possibility of judicial extension to 28 days where sanctioned by emergency legislation).⁷ In contrast to the position under the Police and Criminal Evidence Act 1984 (PACE), there is no power to release on police bail.⁸
23. Part III of Schedule 8 to TA 2000 governs the extension of detention beyond 48 hours, by means of warrants of further detention which may be granted by a District Judge (Magistrates Courts) on application by a senior police officer or the CPS. Such applications are on notice, with the detainee represented before the court. Extensions may only be granted for limited purposes: to obtain relevant evidence, to preserve relevant evidence or pending the result of the examination of relevant evidence. In addition, the District Judge must be satisfied that the investigation is being conducted both diligently and expeditiously. Questions may arise (as they did in Operation Pathway) as to whether the court, or the detainee, has been given

⁵ See *Commissioner of Police of the Metropolis v Raissi* [2008] EWCA Civ 1237.

⁶ *Holgate-Mohammed v Duke* [1984] 1 AC 437, 443 G-H.

⁷ Cm 8004, January 2011.

⁸ PACE Code H, paragraph 1.6.

sufficient information to justify an extended period of detention.⁹ They do not arise in relation to Operation GIRD, in which no application for an extension of detention was made.

24. All powers of detention must be exercised consistently with Article 5 of the European Convention of Human Rights, given effect in the UK by the Human Rights Act 1998. Among the requirements of Article 5 are an obligation to give a detained person sufficient information for him to understand why he has been arrested, and a right to have the lawfulness of his detention decided speedily by a court.¹⁰

Power of search and seizure

25. Under Schedule 5 to TA 2000, a Justice of the Peace (Magistrate) may issue the police with a warrant giving them the power to search any premises or any person found there, and to seize and retain any relevant material found there. The Magistrates' court must be satisfied that the warrant is sought for the purposes of a terrorist investigation, that there are reasonable grounds for believing that there is material on the premises which is likely to be of substantial value for a terrorist investigation, and that the issue of a warrant is likely to be necessary in the circumstances of the case.

Treatment of detainees

26. The treatment of detainees under TA 2000 is governed by Part I of Schedule 8 to the Act. This governs such matters as the designation of detention places, identification and the taking of samples, recording of interviews, the right to have a named person informed of the detention (otherwise known as the right not to be held incommunicado), the right to consult a solicitor and the circumstances in which a senior officer may authorise a delay in the exercise of those rights.
27. PACE Code H is the code of practice applicable to detention, treatment and questioning by police officers under s41 TA 2000 and Schedule 8. It contains detailed provisions relating to custody records, initial action, detainees' property, the right not to be held incommunicado, the right to legal advice, conditions of detention, care and treatment, cautions, interviews, reviews and extensions of detention and charging. Annexes deal with specific matters, including delays in notifying arrest or allowing access to legal advice and fitness to be interviewed.

3. THE FACTS

The Pope's visit

⁹ *Ward v Police Service of Northern Ireland* [2007] 1 WLR 3013, per Lord Bingham at paragraph 22; *Sher v Chief Constable of Greater Manchester* [2010] EWHC 1859 (Admin); *In the matter of an application for judicial review by Colin Duffy and others (No. 2)*, 24 February 2011 (High Court of Northern Ireland, currently on appeal to Supreme Court); Human Rights Joint Committee 17th Report 2009-2010, paras 69-80.

¹⁰ Articles 5.2 and 5.4: see *Fox, Campbell and Hartley v United Kingdom* [1991] 13 EHRR 157; *Bank Mellat v HM Treasury* [2010] 3 WLR 1090.

28. The Pope's visit to the UK began in Scotland, on Thursday 16 September. That evening he flew to London. His itinerary for Friday 17 September took him to St Mary's University College, Twickenham, then into central London where he visited Lambeth Palace, Westminster Hall and finally Westminster Abbey for evening prayers. On Saturday 18 September he remained in London, celebrating mass in Westminster Cathedral before visits to Vauxhall and Hyde Park. In the morning of Sunday 19 September he flew by helicopter from his lodgings at Wimbledon to Birmingham, from where he returned to Rome that evening.

Initial intelligence

29. At approximately 1630 on Thursday 16 September, the Metropolitan Police received information from a person who claimed to have overheard Subjects A, B, C, D and E talking about a possible attack on the Pope's vehicle on the following day. The police had no grounds for suspecting that the information was not given in good faith.

30. Initial checks were run on the five men. SO15 (Counter Terrorism Command) was informed at 2316, and the evidence of the source was summarised in an email sent just after midnight on Friday 17 September. In summary, the source reported that:

- a. The five men were looking at a picture in the Metro newspaper of the Pope's motor vehicle.
- b. They discussed a recent incident where the Koran was burnt and stated that a Christian should be killed for every page that was damaged.
- c. The view was expressed that whilst the Pope's vehicle was protected, it could be stopped and that even if he survived, those around him would die.
- d. Comments were made to the effect that it would be wonderful if the Pope was killed and that there were virgins waiting for them.
- e. The men could all be working on the day of the Pope's visit to London.
- f. The depot had recently taken delivery of new uniforms, ten of which had been stolen.

As will be seen in due course, none of the men when interviewed accepted that any such conversation had taken place.

31. Two additional pieces of intelligence were communicated in the same email:

- a. A close associate of one of the men was believed to have been arrested under TA 2000 some 3-4 months previously, and taken to Paddington Green. He was thought to have been released without charge and to be back at work.

- b. Another of the men was said to have returned from Paris on Monday or Tuesday of that week. He was said to have shaven his hair off and to have become radicalised.

Actions leading to the first five arrests

32. At approximately 0120 on Friday 17 September, the SO15 Intelligence Senior Duty Officer informed a Senior Detective Superintendent to inform him of a possible threat to the Papal visit. Initial researches on the named suspects suggested that one of them may have been arrested and released in connection with the Madrid bombings. The fact of the arrest and release of a person of that name in connection with the Madrid bombings was confirmed by a different source at 0204. Only that afternoon did further researches establish that whilst the name was the same, the identity of the two men was different.
33. At 0125 a Detective Chief Inspector was designated Senior Investigating Officer (SIO). Protection Command (SO1), which provides protection from terrorist threat for VIPs and visiting public figures, was also informed. It was ascertained that the suspects would all be attending their workplace at the Veolia Depot at 0600 hours that morning.
34. At 0220 a police meeting was held. Having reviewed the intelligence and the imminence of the possible threat, it was concluded that covert disruptive tactics risked being ineffective and that there was an urgent need to disrupt any possible threat by executive action using powers of arrest and search under TA 2000 s41 and Schedule 5.
35. At 0255 police reviewed the intelligence and assessed its credibility.
36. At 0317 Commander Steven Kavanagh (a rank equivalent to Assistant Chief Constable in other police forces) was briefed. He reviewed and approved the plans for arrest and search under TA 2000.
37. At 0340 the options were reviewed at a Gold Group meeting chaired by Assistant Commissioner for Special Operations (ACSO) John Yates.¹¹ As ACSO, Mr Yates is responsible for SO15 as well as SO1, and reports directly to the Commissioner. The options which were considered are as follows:
 - a. To do nothing
 - b. To place the five men under surveillance
 - c. To search the five men without arresting them
 - d. To arrest and search the five men
 - e. To cancel or curtail the Pope's visit to London.

¹¹ Gold Groups, introduced to the Metropolitan Police in the wake of the Stephen Lawrence Inquiry, are strategic fora intended to inform the management of incidents where the effectiveness of the police response is likely to have a significant effect on the confidence of a victim, his family and/or the community (critical incidents).

The Gold Group meeting confirmed the conclusion previously reached by those who had considered the matter, including Commander Kavanagh, that the appropriate course was to arrest and search the subjects under TA 2000.

38. I am told that at 0430, police spoke to the source who claimed to have overheard the conversation, with a view to testing his credibility.
39. At 0515, armed arrest teams were deployed to Chiltern Street. At 0622, all five men were arrested at the Veolia depot under s41 TA 2000, on suspicion of being concerned in the commission, preparation or instigation of acts of terrorism. Firearms remained holstered. No significant statements relevant to the investigation were made upon arrest. All five were conveyed to Paddington Green, the high security police station where suspected terrorists in London are held for questioning.

The period between arrest and detention at Paddington Green

40. Three of the five suspects were taken promptly to Paddington Green and commenced the booking-in process immediately. Thus, according to their custody records:
 - a. Subject A was arrested at 0620, arrived at Paddington Green at 0650 and was in the custody suite by 0720.
 - b. Subject B was arrested at 0622, arrived at Paddington Green at 0700 and was in the custody suite by 0710.
 - c. Subject C was arrested at 0640, arrived at Paddington Green at 0705 and was in the custody suite by 0715.
41. Subject D was arrested at 0625 and arrived at Paddington Green at 0700. He was however not taken to the custody suite until 0930. This two-and-a-half hour delay is explained as follows in his custody record: "*He has been in the rear station car park for some time due to booking in other detainees.*"
42. Subject E was arrested at 0640 but arrived at Paddington Green only at 0810. It is common ground between Subject E and the police that this delay is to be explained by Subject E being driven to and then asked to verify his place of residence, there being some uncertainty as to the street on which it was located. This seems to me unobjectionable, since the police understandably wished to obtain a warrant for the search of the property at the earliest opportunity.
43. There was then a further delay of almost two hours before Subject E was booked in. He reached the custody suite only at 1005 – 35 minutes after Subject D, who had himself been taken to the custody suite more than two hours after the first three men.
44. It is necessary that detainees should be kept in isolation from each other at Paddington Green, so as to avoid the risk of collusion. There are practical difficulties in booking in multiple detainees at the same time. However, it is desirable for

obvious reasons to avoid long waits in police station car parks, where CCTV coverage is unlikely to be very effective within vehicles. It appears to have been possible to book in Subjects A, B and C within a few minutes of each other at 0710-0720. It is not easy to understand, therefore, why it was not possible to book in Subjects D and E until 0930 and 1005 respectively. It is to be hoped that the situation will improve with the opening of the new London detention facility in Southwark.

Actions leading to the sixth arrest

45. At approximately 1100, a Senior Management Team meeting took place at New Scotland Yard. An update of events was provided, and a new SIO was appointed to take over. The new SIO reviewed staffing levels, core roles, the investigation strategy including forensic opportunities, interview processes, scene searches, witnesses and intelligence development. The primary objective of the operation was to protect public safety, by the investigation of the matter to establish if a credible threat existed to the safety of the Pope and others.
46. At approximately 1130, a Veolia employee informed the police that another member of staff, Subject F, had come into work and become very agitated when hearing of the arrests. He described Subject F as being a friend of the suspects and stated that he had unsuccessfully applied on two occasions to work on 17 September on a route that would coincide with the route taken by the Pope. (The evidence of two Veolia employees was to conflict on this point, as detailed below.) On hearing of the arrests, Subject F had left the premises – at more or less the time that the Pope’s entourage was making its way into Central London from Twickenham. The SIO made the decision to find and arrest Subject F. It was also decided, to reduce the risk to the Pope and the public, to cause the withdrawal of all street cleaning personnel along the Pope’s route.
47. At 1345 an unarmed arrest of Subject F was effected at his home address, again under s41 TA 2000. He was taken promptly to Paddington Green police station where he arrived at 1420 and was in the custody suite by 1441.

Safety interviews

The purpose of a safety interview

48. The purpose of a safety interview (or urgent interview) is to elicit information from a suspect which may help the police to avert significant risks, including to human life.¹² Safety interviews are particularly (though not exclusively) associated with terrorist cases: for example, they were deployed after the failed London bombings of 21 July 2005, in an attempt to find out whether other bombers were still at large.
49. Safety interviews may be conducted before a suspect has been given some of his usual pre-interview and interview rights (including the right to have a solicitor

¹² Pace Code H, paragraphs 6.7 and 11.2.

present), on the ground that there is an urgent “safety” need for an interview to be conducted right away. The Metropolitan Police emphasised to me that the power to hold a safety interview is used infrequently and reserved for cases of exceptional risk to life or property.

50. The principal objective of a safety interview is not to produce evidence usable in a court. They will however sometimes produce answers that could assist the prosecution case. Whether the results of such interviews are subsequently admissible as evidence in a criminal trial will depend on the trial judge’s assessment of whether their admission would be fair. That will in turn depend, among other things, on whether the suspects were given the opportunity to have a solicitor present, and whether they were warned that their answers might be used in evidence or (on the contrary) given to understand by the police that they would not be.¹³

The safety interviews given in this case

51. The first five men to be arrested were given short initial safety interviews immediately after their arrest, in the Veolia canteen or in the police cars which took them from the Veolia depot to Paddington Green. No legal representatives were present, and the interviews were not tape recorded. They were, however, described as safety interviews in the relevant Evidence & Actions books, where their gist was written down. Each man was told that the police believed he intended to hurt the Pope, and asked whether he knew of any person who wished to harm the Pope, or any weapons or explosives that could harm people.
52. Each man answered the questions put to him but denied all knowledge either of any plot to hurt the Pope or of any harmful materials. Subject E is recorded as having volunteered the information that his 2002 application for asylum had been turned down, and that he had assumed a false identity in order to obtain work. This has resulted in further action under the immigration laws, not relevant to this review.
53. Four of the five men were given a further safety interview at Paddington Green between 1030 and 1230 on the day of the arrests. Written authorisations for those interviews were given by a Detective Chief Superintendent. They were considered to be time-critical, since the Pope was expected in central London within a few hours of the interviews being conducted. The normal opportunity to allow legal advice to be taken was not extended to the suspects, on the basis that the delay necessary to allow for a consultation might lead to physical harm to people or serious loss or damage to property.¹⁴ The fifth man, Subject B, was interviewed during the same period: but because he had no wish for a legal representative, this was classed not as a safety interview but as a normal interview.
54. Subject F was given a safety interview at his home address, immediately after his arrest. Like the initial safety interviews given to the other five suspects, that interview

¹³ *R v Ibrahim* [2009] 1 WLR 578, paragraph 36.
¹⁴ PACE Code H, paragraph 6.7(b)(i).

was not tape recorded. He was given no further safety interview after his arrival at Paddington Green.

55. The safety interviews at Paddington Green were video and audio recorded. An interpreter was present during some of the interviews. Subject F's safety interview was conducted at his home, again without the presence of a legal representative, and was not audio or video taped.
56. The safety interviews lasted for between 10 and 45 minutes. Each safety interview was preceded by an old-style caution, in the following terms: "You do not have to say anything, but anything you say may be used in evidence." As the Court of Appeal recently recalled in a similar context, this is the correct form of caution to use in cases where a suspect is not allowed the opportunity to consult a solicitor before being questioned.¹⁵
57. The subjects were told that they were suspected of involvement in a plot to assassinate the Pope, and that the police believed there could be an imminent threat to his life or to the lives of members of the public. They were asked whether they knew of any bombs or devices that may have been planted on the Pope's route, or any explosives or other materials that might be used in such a plot, or anybody else that might have been involved. They were pressed repeatedly to give any information that might save lives.
58. Each of the subjects answered the questions put to him, denying all knowledge of any plot against the Pope, of explosives, of terrorism or of associates with such knowledge or tendencies. Indeed the majority of them denied any knowledge of a conversation involving the Pope, save along the lines that it was good they could earn more money because of his visit.
59. The only specific admission of participation in a conversation about the Pope on the previous day came from Subject A, who admitted that the Pope had been mentioned in a coffee shop by three Veolia employees, of whom he was one, during a break at work between 0830 and 0900. His account suggested that this was not the conversation that was alleged by the original source. Subject A described it as general conversation and said that they talked only about it being likely to be busy, and that perhaps the Pope would visit a church. He did not know whether the Pope was in danger or not.

Searches

60. Searches were performed at the Veolia depot on Chiltern St (starting at approximately 0630 on Friday 17 September) and at another Veolia depot in London NW8, where Subject A had a locker, in both cases with the consent of Veolia. In addition, twelve search warrants were applied for, processed and granted by staff under Schedule 5 TA 2000 at Horseferry Road Magistrates Court during normal court operating hours. Eight residences and two vehicles were searched pursuant to these

¹⁵ *R v Ibrahim* [2009] 1 WLR 578, paras 77, 114-116.

warrants. The police told me that at least 30 personnel were occupied by these extremely thorough searches, which were for the most part conducted simultaneously by separate search teams. The searches concluded at approximately 0200 on Saturday 18 September.

61. In excess of 600 exhibits were seized including computers, passports, mobile phones and documents. 13 computers were taken and subjected to expedited analysis. 24 USB storage devices, nine music players, one games machine, one floppy disc, one compact disc, one camera, one personal digital assistant and one router were examined by SO15 Hi-Tech Unit, all to a very tight time frame.
62. "Press lines" put out by the Metropolitan Police on Friday 17 September stated that initial searches had not uncovered any hazardous items. A number of the suspects were however subsequently questioned about items that were found during the searches. These included, in particular, at the address of Subject A, 10 new backpacks, 10 high-visibility used Veolia jackets and 14 sim cards. Nothing suspicious was found on any of the electronic equipment that was examined. The full results of these examinations however did not become available until the afternoon of Saturday 18 September.

Witness statements

63. During the course of Friday 17 September, four witness statements were obtained from Veolia employees. Those witness statements, which I have read, may be summarised as follows.
64. The first employee described the character and work habits of the suspects, all of whom worked for him as part of the depot's "day team" (hours of 0600 to 1430). There were 32 members of the day team, whom he described as about 10 Polish, 2 Lithuanian, 2 Italian, 4 Portuguese, 10 Algerian and 4 English. He concluded in relation to the suspects: *"To me the six appear normal. I try to talk to everyone. Sometimes they speak in their own language but also they talk to one another and others in English. To me they are not suspicious."*
65. The first employee added that at least four of the suspects had been present at a meeting on 7 September to talk about staff performance and the visit of the Pope. The purpose of the meeting was to ensure everyone worked hard on Friday 17 September and to ask for more people to work overtime on Saturday and Sunday, at enhanced rates. Two of the suspects, Subject D and Subject F, had subsequently made enquiries about working then: Subject F had asked whether the Pope was coming but had not asked what route he would be assigned to.
66. A second employee said he had known Subjects A, C, D and F for as long as they had worked for the company, which was over two years. The other two suspects, Subject B and Subject E, he described as agency workers who had been assigned to his depot for about six months and three months respectively. He described the suspects' respective working areas and the times they arrived at work on Friday 17 September.

67. A third employee described how Subject F had attended the depot that morning and become agitated on discovering that his colleagues had been arrested. He was said to have left the premises after stating: *"I'm not working now. Does everyone think we're fucking terrorists? They're treating us like animals with our hands on our heads."*
68. The third employee also recalled that Subject F had taken leave between 21 August and 12 September, and that on his return on Monday 13 September he had *"made a request to work over the forthcoming weekend on the Pope's visit route"*. The request was denied because the available positions had already been filled. Had Subject F been allowed to work where he requested, then according to the third employee he would have been part of the street cleaning team specifically employed to cover the route and areas where the Pope and his entourage would be. The third employee did not speculate as to Subject F's motivation for making his request. His evidence that Subject F had specifically requested to work on the Pope's visit route contradicts the evidence of the first employee, who said that Subject F had not asked where he would be working.
69. A fourth employee checked the company records and found that Subject C had taken his holiday at the same time as Subject F, between 30 August and 12 September. He confirmed that Subjects D and F (on Monday 13 September and again on Thursday 16 September) had asked to work on the weekend of the Pope's visit, but that Subject F was refused because that detail had already been sorted out.

Detention of suspects

Conditions of detention

70. I inspected the detention facility at Paddington Green in December 2010, some three months after the subjects of this report were detained, when three suspects in an unrelated counter-terrorism investigation were being kept there. The conditions of detention had not materially changed in that time. Each suspect is kept on his own (to prevent collusion) in a bare cell which is furnished with a few books and, high on one wall, with a television on which selected material can be watched. Prayer mats and copies of the Koran are made available, as is a variety of food. There is a very small exercise yard, which is however roofed over and without direct natural light, since the building is overlooked by tower blocks from which it is feared that might otherwise be possible for observers to photograph the suspects. CCTV cameras in each cell allow the movements of every prisoner to be monitored from a central control room: the immediate area of the in-cell toilet is pixillated on the display, as the sole concession to prisoners' privacy. Facilities designated for detention under TA 2000 Schedule 8 are not uniform across the country: thus, at the equivalent facility in Govan which I have also had the opportunity to observe, the cells contain neither televisions nor CCTV cameras.

Custody records

71. I have also inspected the detailed custody records that were kept for each of the suspects throughout the period of their detention. Concerns about network security mean that they were handwritten, as is still usual for terrorist detentions. However, they were kept with the care that I would expect and Sonn Macmillan Walker confirmed that in accordance with PACE Code H paragraph 2.5 they were made freely available to solicitors on demand (as is indeed recorded in some of the custody records themselves). Every detail of the detention is recorded in the custody record: the suspect's clothing on arrival, the booking-in process (photographs, finger and palm prints, DNA, strip search, explosive trace analysis on clothing, provision of replacement paper clothing and bedclothes), conversations regarding need for interpreter, choice of solicitor and informing a friend or family member of the detention, visits to the medical officer and the interview room, the precise food offered, accepted and eaten, exercise offered and taken, prayers, observations of the prisoner while asleep and so on.

Other documents

72. Other forms completed for each suspect, which I have also seen, include risk assessments, property sheets, menus marked with food choices, forensic medical examination forms and detainee handing over sheets used to transmit information to the incoming shift. Written authorities to interview suspects were also prepared and signed, as (in the case of the interviews conducted on Saturday 18 November, though not those conducted on the previous day) were pre-interview briefing documents which informed each suspects' solicitors in broad terms of the areas on which questions would be asked: association with the other suspects, employment and work rotas, personal circumstances, finances, religious and political beliefs, social life, communications, travel and items found on his person or during the various searches.

Right not to be held incommunicado

73. Persons detained under suspicion of being terrorists have the right, like other detainees, to have a named person such as a friend or relative informed of their detention.¹⁶ That right may be delayed only if an officer of superintendent rank or above has reasonable grounds for believing the exercise of that right *will* have one of a number of consequences, including interference with evidence and the alerting of other people suspected of having committed a serious offence but who have not yet been arrested for it.¹⁷ A person in respect of whom that right is delayed is described as being held incommunicado.

74. The first five men to be arrested were held incommunicado at Paddington Green until approximately 1800 on the day of their arrest. This was authorised orally and then in writing by a Senior Detective Superintendent, on the basis that if the suspect were allowed to communicate :

¹⁶ PACE Code H, paragraph 5.1.

¹⁷ Schedule 8, paragraph 8; PACE Code H, Annex B.

- a. it *may* lead to the alerting of persons as yet unidentified who may be involved in the alleged assassination plot, which may lead them to evading justice; and
- b. *there will be a real risk* that persons who may be associated with the suspect or involved in the offence will dispose of / destroy evidence that may be of important relevance to the offence.

The stated reasons for the authorisation appear, on their face, to fall short of the statutory requirement of reasonable belief that the exercise of the right *will* have consequences such as those stated. The first of those reasons may also fall short in that no suspected persons, nor even any reason why other persons are suspected to have been involved, are identified. I return to this in the context of my recommendations, below.

75. Even after the detainees were no longer held incommunicado in law, some at least of them remained incommunicado in fact. Subject C and Subject E told me that they had not memorised the number of the person they would have wished to contact, since they were in the habit of dialling it automatically from their mobile phone; and that their phones had been taken from them for examination. The police told me that this is increasingly common nowadays, not only in terrorism cases.

Main interviews

76. Each suspect was interviewed in the evening of Saturday 18 September, during the period between 1700 and 2330. The duration of those interviews, not including breaks, ranged from some 40 minutes (Subject C, who answered "no comment" to all questions) to almost three hours (Subject B, who answered questions and required full interpretation). Solicitors and in some cases interpreters were present throughout. The solicitors had previously been given a briefing document which outlined the proposed areas for questioning and summarised the urgent interviews. Each main interview was preceded by the usual (new-style) caution: "You do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."
77. Other than Subject C the men all answered questions, which concentrated on colleagues and associates, working patterns and mobile phones. Each of them once again denied all knowledge of any terrorist activities or plot to harm the Pope. Questions were asked about the items found in Subject A's flat. He is recorded as stating that the jackets were old uniforms that were no longer used, and that the rucksacks, which had been thrown out as rubbish, he intended to take to Algeria for friends. Remarks in a number of the interviews suggest that it was common for these (and no doubt other) street cleaners to take and make use of items that had been discarded by others.

Reviews and release

12-hourly reviews

78. I have referred above to the legal requirement for review officers to authorise the continued detention of suspects at 12-hour intervals.¹⁸ Noted on the custody record are the signed authorisations of continued detention by a review officer, which are required every 12 hours under the provisions of the TA 2000. Further detention was said to be necessary in each case to obtain relevant evidence by questioning or otherwise, to allow continued searching of premises connected to the subject and to allow the examination or analysis of exhibits obtained as the result of such searches.

Warrants for further detention

79. Subjects A-F were all released within 48 hours of their arrest, without any application having been made for warrants for further detention.

80. I am told however that the necessary preparations were made in case such warrants became necessary. Two officers were given the task of collating the data that would be necessary for such an application, and the court was warned that persons had been taken into detention and that it was possible that an application would be made. The 48-hour period expired in relation to most of the men on Sunday morning, and I am told that the police could have been in a position to have applied for a warrant in the middle of Saturday night had that been necessary.

81. The reality of the matter was, however, that by late afternoon on Saturday at the latest, it had become apparent that there were no grounds to apply for warrants for further detention. By that stage, it was known that the computers had yielded nothing and that the assessment of the other material (some of which was asked about in interview) was likely to be completed within the remaining custody time. It was just conceivable that something said in interview on the Saturday evening could have prompted an application for further time (or, had it amounted to a confession, a charge). It must have been apparent however even before the full interviews that, barring surprises, the investigation was going nowhere.

Release

82. On Saturday evening, on conclusion of their various interviews, the decision was taken to release each of the suspects. They were released from Paddington Green between 2325 on Saturday night and 0029 on Sunday morning. The Pope was still in London when the men were released, lodged in Wimbledon awaiting his morning flight to Birmingham.

Media coverage

83. The Metropolitan Police produced a series of "press lines" on Friday, Saturday and Sunday 17, 18 and 19 September. The Friday press line referred to the ages of the first five men arrested, and the fact that the arrests were made after the police received information and after initial inquiries by detectives. Much shorter press lines

¹⁸ TA 2000, Schedule 8, Part II.

prepared on Saturday and Sunday recorded simply that all searches had been completed but that the six men remained in custody (Saturday), and that they had all been released without charge (Sunday).

84. It is easy to understand why these arrests were publicised in the manner that they were. To say nothing would simply have invited speculation, bearing in mind that there were witnesses to the arrests at the Veolia canteen and that news of the arrests would thus inevitably have reached the media.
85. Further detail was widely quoted in the media during the course of Friday and Saturday. Thus, the BBC was reporting on Friday that "*the information acted on by the police was received by Scotland Yard and did not involve intelligence gathered by MI5, the domestic security service*".¹⁹ On Saturday it reported that the men were arrested after they were allegedly overheard discussing an attack.²⁰
86. There is no evidence that the police sought to exaggerate the significance of what had happened. Indeed, on the contrary, expectations were dampened from an early stage. The Friday press line from the Metropolitan Police stated "*Initial searches have not uncovered any hazardous items*". By Friday afternoon, the BBC was reporting that "*the arrests were carried out as a precaution*". Saturday's Daily Mail was similarly low-key, emphasising that the arrests had been authorised after "*only a short time to assess the credibility of the information*", that the response "*reflected the nervousness*" surrounding the Pope's visit, and that that by Friday afternoon, "*speculation was mounting that the suspects could be released without charge after the Pope leaves England tomorrow*".
87. Such journalistic reticence was not universal. On Saturday, the Daily Mirror reported "*The Pope is not the only VIP to be targeted by assassins dressed as street cleaners*",²¹ while the Daily Express led its front page with the banner headline: "MUSLIM PLOT TO KILL POPE", stating "*It is feared plotters with links to Al Qaeda planned 'a double blow to the infidel' by assassinating the head of the Roman Catholic church and slaughtering hundreds of pilgrims and well-wishers.*" The Express reported "*The alleged plot is believed to be the second planned assassination on the Pope recently*" and cited a Vatican source as saying "*Publicly the incident is being played down but privately arrests verge towards the serious side and came as a result of intelligence work*". The eventual release of the six men was reported in a single sentence on p.9 of the Monday edition.
88. It is not part of my task to pass judgment on press coverage of Operation GIRD. It does not seem to me at all likely, however, that the police or Security Service were behind the highly-coloured treatment of the story to be found in papers such as the Daily Express. For as long as the investigation was not producing results, they had no motive for exaggerating its likely outcome. Judging from the press lines and from

¹⁹ <http://www.bbc.co.uk/news/uk-11346001>

²⁰ <http://www.bbc.co.uk/news/uk-11360568>

²¹ <http://www.mirror.co.uk/news/top-stories/2010/09/18/pope-not-first-vip-to-be-targeted-by-assassins-dressed-as-street-cleaners-115875-22569903/>

reports appearing in other media, their concern appears to have been, rather, to play down the significance of the arrests.

4. WAS TA 2000 APPROPRIATELY USED?

89. My conversations with Subjects C and E have left me in no doubt that to be subjected to an armed arrest at their place of work was a shocking and disorienting experience. Whilst none of the men complained of any mistreatment during periods of detention that ranged from 33 to 42 hours, this too must have been a bewildering and unpleasant experience for them. On their release, police investigations into an alleged plot against the Pope ceased. It seems fair to assume that no such plot existed.

90. I have nonetheless concluded that the powers of arrest, search, seizure and detention under the TA 2000 were appropriately used in Operation GIRD, for the following reasons.

Arrests

91. The alleged conversation between Subjects A-E, as it was reported to SO15 on the night of Thursday 16 September, was troubling in the extreme. The alleged participants were reported to have spoken with enthusiasm about the possibility of attempting to murder the Pope. The report of the alleged conversation also suggested a motive for such acts (a recent report of a burning of the Koran) and an opportunity (the fact that the men could all be working in Westminster on the day of the Pope's visit to that borough).

92. That said, there were at least three reasons for SO15 to react sceptically to the report:

- a. The reported plot did not conform to any established pattern of intelligence.
- b. It was barely credible that persons who were within a couple of days of executing an attack on the life of the Pope would have spoken openly of their intentions within the possible hearing of others.
- c. The alleged conversation, unpleasant though it was reported to be, was at a far more general level than might have been expected from persons whose plans for an attack were already well advanced.

93. Hindsight confirms that such scepticism would have been well-founded. That is not the test, however. My task is to decide whether the police were justified in using the arrest power under s41 TA 2000 at the times when they did so.

94. It is plain that an attack of the nature that was allegedly being discussed would have constituted an act of terrorism within the meaning of s1 TA 2000: it would have involved serious violence against one or more persons, been designed to intimidate

the public or a section of the public and been perpetrated for the purpose of advancing a religious or ideological cause.

95. A person may lawfully be arrested under s41 when he is reasonably suspected of being concerned in the commission, preparation or instigation of acts of terrorism. Reasonable suspicion requires both a genuine and subjective suspicion in the mind of the arrestor that the arrestee is so concerned, and objectively reasonable grounds for forming such a suspicion.²²
96. The suspicions of the police were plainly genuine. It remains to ask whether they were reasonable. In that connection it is relevant, though not conclusive, to note that a number of senior officers (including Commander Kavanagh and Assistant Commissioner Yates) considered the alternatives at various times during the night, and reached the unanimous conclusion that the five men should be arrested.
97. Notwithstanding the grounds for scepticism to which I have referred, I consider that the suspicions of these officers were reasonable. By the time of the first arrests at 0622 on Friday 16 September:
- a. The police had a fairly detailed report, from a witness whose good faith they had no reason to suspect, of an alleged conversation that was consistent at least with a desire to see the Pope or his followers killed during his visit to London, between people who were said to have a motive and an opportunity to do so.
 - b. One of the subjects was reported to have returned from Paris earlier that week after becoming radicalised.
 - c. One of the subjects was reported to have been arrested and released in connection with the Madrid train bombings.
 - d. A close associate of one of the subjects was believed to have been arrested under TA 2000 some months previously, and released without charge.
 - e. Ten uniforms were believed to have been stolen from the subjects' workplace.
- None of these matters was in any way conclusive. Some of them were subsequently demonstrated to be incorrect. Taken together, however, they did at the relevant time amount to reasonable grounds for suspicion.
98. In view of the importance given to the initial report, it would have been preferable for the source to be spoken to at an earlier stage of the night than 0430, by which time the decision to arrest had effectively been taken. It is unlikely however that the outcome would have been any different.
99. Bearing in mind the fact that the Pope was already in London and would be travelling through Westminster later that day, merely to place Subjects A-E under surveillance,

²² *O'Hara v Chief Constable of the RUC* [1997] AC 286.

or to search them without arrest, would have been inadequate responses to the perceived risk. There was not the time available to take such an approach. Equally, to cancel, curtail or seek to re-route the Pope's visit without arresting the suspects would have caused vast disruption without providing any guarantee of safety. It was not known whether the five men were in possession of weapons or explosives. The decisions to conduct an armed arrest of Subjects A-E (though without removing firearms from their holsters) and then to withdraw all street cleaning personnel along the Pope's route constituted a reasonable police reaction in all the circumstances.

100. I consider that the suspicions which led to the unarmed arrest of Subject F at 1345 on Friday 16 September were also reasonable. By that time, the safety interviews conducted on the first five suspects had not produced any further grounds for suspicion, but there were still reasonable grounds for suspecting Subjects A-E. In addition, an employee at the Veolia depot had informed the police that Subject F, a friend of the arrested men, had become agitated and left the building when he heard of the arrests, and that he had unsuccessfully applied earlier in the week to work on the day of the Pope's visit to Westminster on the route that the Pope would be taking. In all the circumstances – and without using the powerful but illegitimate weapon of hindsight – it was reasonable to suspect that Subject F had been involved with the others in the preparation of an attack.

101. In his report on Operation Pathway, Lord Carlisle Q.C. stated that it was wise to involve the CPS in an advisory capacity before an arrest under TA 2000. He also remarked, however, that occasionally there would be a situation in which events move so fast that it will be impossible to obtain advice before arrest.²³ Plainly, Operation GIRD was one of those cases. The CPS was informed of events on Friday in the early afternoon. They were satisfied with this and it seems appropriate in the circumstances.

102. I consider that the police acted responsibly and within the law in arresting the six men when they did.

Search and seizure

103. In view of what I consider to have been the reasonable suspicions of the police in relation to the men in question, it must follow that the police were justified in applying to the magistrates for warrants to enter the premises of the six men, to remove their property and to search their computers, mobile phones and so on. They were entitled to consider such material to be relevant within the meaning of Schedule 5 to TA 2000, in that there were reasonable grounds for believing that it was likely to be of substantial value, whether by itself or together with other material, in a terrorist investigation. The searches needed to be done in order to reach a decision as to whether the men could be charged.

104. Considerable resources were devoted to the searches, which continued until 2 a.m. on the Saturday. Bearing in mind the volume of electronic equipment that had to be

²³ Operation Pathway Report, paragraph 51.

searched, it is not surprising that it took until the afternoon of Saturday 17 September for the full results of the searches to be available.

105. I consider that the powers of search and seizure were appropriately used.

Detention

106. There has been no suggestion that any of the men was mistreated in any way during the period of his detention. The detailed procedural requirements of Schedule 8 and of Code H were properly applied and documented, as were the requirements for safety interviews. It remains only to ask whether the men should have been released earlier than they were.

107. As remarked above, a person may be held under TA 2000 for up to 48 hours without the intervention of the court – but only for so long as there is a genuine prospect that sufficient evidence will emerge for him to be charged with the commission of a criminal offence. Continued detention of that person within the 48 hour period is subject to 12-hourly reviews, and may be maintained only when it is necessary pending a decision whether to charge or on certain other specified grounds.

108. The investigations that followed the arrests, thorough as they were, proved fruitless. Thus:

- a. The five suspects that were prepared to answer police questions on Friday and on Saturday gave no evidence that supported the existence of a plot.
- b. No traces of firearms, explosives or other suspicious substances were found on the men's clothing, at their homes or at their places of work.
- c. Nothing of interest was found on any of the computers or telephones of any of the men.
- d. Non-suspicious explanations were provided for the missing uniforms and for the supply of rucksacks found at the home of one of the men.

109. Contemporaneous website and press reports were suggesting as early as Friday afternoon and certainly by Saturday morning that the men could well be released without charge.

110. Most of the men were not interviewed for a period of well over 24 hours, between the conclusion of their safety interviews at about 1230 on the Friday and the commencement of full interviews at 1700 on the Saturday. Searches and the analysis of search results were however actively proceeding during that period. Having little to put to the men other than the fact of the alleged plot (which had already been denied in the safety interviews), the police decided to await the results of the searches, both of premises and of computers and phones, before conducting the full interviews. Those results became available, in their entirety, only on the Saturday afternoon.

111. While the delay before full interview was unusually long, the strategy seems to me to have been a reasonable one in the circumstances. It was always possible – if increasingly unlikely as the day went on – that the searches would turn up something which could confirm the initial suspicions and provide a basis for charge. Once this proved not to be the case, on the Saturday afternoon, the men were interviewed with reasonable expedition. The police were in my judgement entitled to conduct those interviews before concluding that there was no reasonable prospect of bringing charges against any of the men. At that point, they were not kept in overnight but promptly released, well within the 48-hour period and at a time when the Pope remained in London.

112. In all the circumstances I consider that the power to detain the men was properly and appropriately used, and that the period of detention was not excessive.

RECOMMENDATIONS

Future use of s41

113. I have concluded that the powers of arrest, search and detention in the TA 2000 were appropriately used in Operation GIRD. It is important however that complacency should not creep in.

114. The 2010 Papal visit was just one in a series of high-profile international events in the UK. Rumours and reports of terrorist activity around particular events are likely to recur and indeed increase as we approach the Olympic Games, a target for terrorism in the past. Section 41 of the TA 2000 does not require any specific terrorist offence to be suspected. It offers the opportunity to take people off the streets for up to 48 hours (longer, by permission of a court) and to ask them questions which may assist in gathering intelligence. Its use will provide a tempting riposte to such rumours and reports, particularly when the feared attack is imminent.

115. Such exceptional powers however require exceptional vigilance in their exercise. The only lawful basis for a s41 arrest is a reasonable suspicion that the person arrested has committed a specified terrorist offence or has been concerned in the commission, preparation or instigation of acts of terrorism. Whatever the incidental benefits may be, it is not lawful to use the power purely out of caution, or purely for the purposes of gathering intelligence. Multiple precautionary arrests, made on no basis other than association with persons suspected of terrorism, will not be tolerated by the courts. The need for reasonable suspicion in relation to each individual under arrest must be kept firmly in mind both at the time of arrest and at the time of the regular reviews conducted by senior officers.

116. I detect no sign that these principles were ignored by the Metropolitan Police during Operation GIRD. Indeed, the senior officers with whom I spoke had them well in mind. Nonetheless, their importance can scarcely be exaggerated.

117. I recommend that the s41 requirement for reasonable suspicion in relation to each person arrested be kept firmly in mind by all forces during future operations, as it was in this case, particularly in view of the security pressures that are likely to attend the forthcoming London Olympics.

Right not to be held incommunicado

118. The arrested person's right to have a named person informed of his detention is of cardinal importance, serving as it does (along with the right to legal advice) to differentiate the practices of a civilised society from the unexplained "disappearances" characteristic of a police state. Parliament recognised this by providing in Schedule 8 that the right may be delayed only if an officer of superintendent rank or above has reasonable grounds for believing that the granting of the right *will* have one of a number of specified consequences, including the alerting of other suspects or interference with evidence of a serious offence.

119. The Metropolitan Police acted correctly and in accordance with PACE Code H by recording in writing the reasons for keeping the detainees incommunicado. Nor do I find that the decision to keep them incommunicado in the present case was, as a matter of substance, necessarily unfounded. As indicated at paragraph 74 above, however, the written statements of reasons in this case suggest insufficient attention to the precise requirements of the law.²⁴ I have in mind, in particular:

- a. the requirement of reasonable grounds for belief that informing a named person of the arrest *will* (rather than may) have one or more of the specified consequences; and
- b. if reliance is placed (as it was) on the need to avoid alerting other possible conspirators, the requirement that such persons actually be suspected of having committed a serious offence.

120. I recommend that police forces review their procedures so as to ensure that any decision to delay the right to be held incommunicado corresponds in all respects with the requirements of Schedule 8 and PACE Code H.

121. The legal right not to be held incommunicado is of no value if it cannot be given effect in practice. Yet even after the delay was lifted on the Friday evening, some at least of the detainees were unable to exercise the right because (having stored the numbers in their phones and thus having little reason to memorise them) they could not recall the telephone number of the person they wished to be contacted. Their phones having been removed for investigation, numbers could not be retrieved from them with the result that named persons could not be contacted even after the detainees were in theory no longer held incommunicado.

²⁴ PACE Code H, Annex B, A(1).

122. The fact that a detainee has chosen to commit an important phone number to the memory of a mobile device rather than to his own memory does not seem to me to be sufficient reason to deprive him of the right to have a named person informed of his detention. It ought to be possible to resolve this problem, perhaps most obviously by making an appropriate enquiry, and extracting if necessary the relevant number from the detainee's mobile device, at the time it is taken away for examination.

123. I recommend that police forces review their procedures so as to ensure that the right to have a named person informed of a detainee's detention can be exercised even where the detainee's only memory of the relevant number is on a mobile device which is liable to be removed for examination.

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LONDON WC2R 3LD**

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May 2011



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ISBN 978-0-10-851058-8

