

Parliamentary Brief



The Law Society

Westminster Hall debate – 7 December 2006

Reports from the Home Affairs Committee on Terrorism Detention Powers and from the Joint Committee on Human Rights on Counter-Terrorism Policy and Human Rights: Prosecution and Pre-Charge Detention

The Law Society welcomes the contribution of the reports from the Home Affairs Committee and the Joint Committee on Human Rights to the debate concerning terrorism detention powers and human rights. The issue has been one of considerable concern to the solicitors' profession for some time: we believe it is vital that effective measures are put into place to combat terrorism and fully recognise that the primary responsibility of any Government is to protect its citizens; but we remain of the view that protection against terrorism can be achieved without serious or disproportionate intrusion on human rights standards.

The Society notes the statement made by the Home Affairs Committee in its report that "the primary origin of the difficulties experienced by the Government" during the passage of the Terrorism Act 2006 lay "in the lack of care with which the case for a maximum 90 day detention period was promoted"¹. The case was never adequately made for an extension of pre-charge detention beyond 14 days and we would be wholly opposed to any subsequent plans to further extend the limit beyond the 28 days eventually agreed upon by Parliament.

A recent article in the *New Law Journal*² reviewed the practice of the police in the so-called "aircraft liquid bomb plot" - the first case to engage the 28 day detention powers – and highlights our misgivings about the extension of the pre-charge detention period. One of the key points was that more than half of the people detained for the maximum period were released without charge. The Society shares the writers' concerns that there is a real danger that the longest periods of pre-charge detention will be used for those people against whom there is the least evidence. In addition, the writers, who acted for one of the defendants, state that police questioning of the suspects "slowed to a snail's pace" and that "disclosure of any value was rare".

¹ Paragraph 31

² NLJ, 20 October 2006, "Pre-charge detention in terrorism cases"

It seems apparent that, to a significant extent, the call for an extension of detention powers has been based upon the question of practicalities and resources³. In the Law Society's view, the need to deal with issues sequentially will be eased greatly if resources were increased, as evidence gathering would be much more concentrated at the start of the detention period. We acknowledge the problems of delay which can be caused by the need to work with other jurisdictions to decrypt computers and to gather mobile phone telephone records. However, greater resources would mean that other elements of the investigation would be speeded up, thereby minimising the impact of those aspects of the investigation which might take longer.

We acknowledge, however, the view expressed in the Home Affairs Committee's report that extra resources alone may not be sufficient⁴, and point out that - in addition - 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 in circumstances which are applicable in terrorism cases⁵. If this is currently insufficient, consideration should be given to amending Code C to specifically allow for post-charge questioning in terrorist cases where evidence has been discovered after the pre-charge detention period has expired. Clearly, there is a need for safeguards and suspects should be able to challenge repeated requests for further questioning before a judge where there is a risk that this might be oppressive, but we suggest this possible solution be further explored.

An arresting police officer must have had some information on which to base a reasonable suspicion of the commission of an offence - such as possession of items used for terrorist purposes, belonging to a proscribed organisation or the new offence of acts preparatory. If it were the case that after 28 days detention there was not sufficient evidence to charge with even a relatively minor terror-related offence, then the suspect *should* be released. Charging a suspect with a less serious offence is completely appropriate if there is evidence that such an offence may have been committed. This should not be denigrated as a "ruse"⁶.

If there is still concern about a suspect's dangerousness, or a belief that, with time, evidence of terrorist activity will be found, the police could perhaps be given power to impose restrictive pre-charge bail conditions in terror cases, including the surrender of any passport, and non-association restrictions, provided that suspects had the opportunity to challenge such restrictions in court. In addition, in these circumstances the Home Secretary may have the necessary belief to impose a control order on the suspect under the Prevention of Terrorism Act 2005.

Finally, we would draw Members' attention to Article 5(3) of the European Convention on Human Rights which provides that those arrested or detained must be brought before a judge within a reasonable time and tried or bailed. We consider it highly unlikely that an extension of the detention period prior to charge beyond 28 days would be compatible with that Article.

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³ Letter from Charles Clarke to David Davis MP and Mark Oaten MP, 15 September 2005. Letter from Assistant Commissioner of Metropolitan Police to Home Secretary, 6 October 2005.

⁴ Paragraph 100

⁵ 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 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.

⁶ Hazel Blears, Hansard, 26 October 2005, Column 412