



JUDICIARY OF
ENGLAND AND WALES

R v Anjem Choudary and Mohammed Rahman

Central Criminal Court

6th September 2016

Sentencing remarks of Mr Justice Holroyde

Anjem Choudary and Mohammed Rahman, you have each been convicted by a jury of an offence contrary to section 12 of the Terrorism Act 2000 of inviting support for the proscribed organisation known as ISIS, ISIL, DAESH and IS -Islamic State. For convenience, I shall refer to it as ISIS. The evidence at your trial showed very clearly that each of you holds views which are strongly supportive of ISIS. You are free to hold and to express your personal views. But the right to freedom of expression is not absolute, and Parliament has made it an offence to invite support for a proscribed organisation. The reason why it has done so is obvious. A proscribed organisation is one which has been banned by the Home Secretary because she believes it to be concerned in terrorism. An organisation which is concerned in terrorism is one which uses or threatens serious violence or serious damage to property with a view to influencing the government for the purpose of advancing a religious or ideological cause. A terrorist organisation which has the support of many will be stronger and more determined than an organisation which has the support of few, even if not every supporter expresses his support in a tangible or practical way. So it is a crime, punishable by imprisonment for up to 10 years, to invite support for a terrorist organisation.

The jury were sure that you knowingly crossed the line between the legitimate expression of your own views and the criminal act of inviting support for an organisation which was at the time engaged in appalling acts of terrorism. It is

submitted on your behalf that your offending did not involve direct encouragement of any particular violent action, and the evidence did not show any specific link between anything you said and acts of violence by one or more of those who listened to you. There was no evidence that anyone was actually inspired by your words to do any particular act. I accept that is so, and it is an important factor in limiting the sentences which you will receive. But the absence of any direct link of that kind does not mean that your offences are not serious.

Before I explain why I take the view that your offences were serious offences of their kind, I must clarify an important point which might otherwise be misunderstood by the public. During your trial reporting restrictions were imposed in order to avoid a substantial risk of prejudice to the administration of justice both in your trial and in another trial which was proceeding at the same time. Those restrictions were loyally obeyed by the responsible media, but when they came to an end, there was a great deal of reporting of your case, and comment upon it. Some of the comment involved allegations of other criminal conduct by each of you. I do not know whether those allegations are correct or incorrect. I have heard no evidence about them. My duty is to sentence you for the offences of which the jury convicted you. I must impose sentences upon each of you which are proportionate to the seriousness of that offending of which you have been convicted, and which appropriately punish you and deter others. But I cannot – and will not -sentence you for conduct which you have not admitted and of which you have not been convicted, and indeed which formed no part of the evidence in your trial.

The prosecution case against you involved specific allegations. Each of you was said to have committed the offence by joining in, and becoming signatories to, an oath of allegiance document which was written in the Indonesian language and posted on the internet in early July 2014. Each of you was also said to have committed the offence by what you said in specific lectures given in August and September 2014, all of which were broadcast via the internet. In your case, Anjem Choudary, the two relevant lectures were entitled "how Muslims assess the legitimacy of the caliphate" and "duties of the khalifa and conditions for his removal". In your case, Mohammed Rahman, the two relevant lectures were entitled "Hijrah" and "offer and acceptance for khalifa". In addition, the prosecution adduced evidence of other lectures, broadcasts and social media communications by you both, which provided the context in which you made the specific lectures and which plainly showed your underlying attitudes.

The timing of the specific communications was very significant. In late June 2014, ISIS was proscribed. Days later, on 2nd July 2014, ISIS declared the establishment of a khilafah, that is to say an Islamic caliphate, and announced that the leader of ISIS, Abu Bakr al-Baghdadi, was its khalifa or caliph. It was at that stage that ISIS, based in parts of Iraq and Syria, began to call itself IS – Islamic State. The declaration of the establishment of the khilafah was of great importance to Muslims, and it was a time when many must have been anxious for guidance as to whether the caliphate was legitimate. The evidence of an expert witness called on your behalf was that in the event, the vast majority of Muslims globally took the view that it was not legitimate. You however were in the tiny minority, and you quickly set about communicating your message to as many persons as you could.

Within days, the oath of allegiance document, affirming the legitimacy of the caliphate, was posted on the internet by your associate in Indonesia, Mohammed Fachry. You could not sensibly deny that the document was an invitation of support for ISIS, and so your defence at trial was that you had nothing to do with its creation. But you were both signatories to that document, using your kunyas or Islamic nicknames, and I have no doubt that you both lied to the jury in your evidence about the circumstances in which your names appeared on it. I have no doubt that the document was created as a result of communications between you and Fachry during or after a meeting which you held with others in London on the evening of the 2nd July. I do not believe your evidence that in the space of less than two hours you and the others who were present at that meeting had a thoughtful, objective and open-minded debate in which you considered all the arguments on both sides before eventually concluding that the caliphate declared by ISIS was legitimate and that al-Baghdadi was its legitimate leader. At the conclusion of the meeting you, Anjem Choudary, sent a message to your wife consisting of the single word "done". It is apparent from her response that she knew exactly what you meant. She could not have done so if you had genuinely gone to that meeting in a state of indecision as to the legitimacy of the caliphate.

You then went on, Anjem Choudary, to give the two specific lectures to which I have referred in late August 2014. In the first, you said amongst other things that ISIS had established a legitimate caliphate, and you spoke of an obligation of every Muslim to obey the caliph who ruled in accordance with shariah, and to fight those who differed from him. Like ISIS, you divided the world into two: Dar al Islam, the land of Islam where shariah is implemented, and the rest of the world, including countries which most people would regard as Muslim countries. You said that every Muslim would

want to live under shariah, and you emphasised the need for the caliphate to expand so as to achieve eventual world domination. In the second of the two lectures, a few days later, you said amongst other things that Abu Bakr al Baghdadi was the legitimate caliph and that apostates would face capital punishment. You again spoke of spreading your version of Islam all over the world, and referred happily to the prospect of the flag of Islam flying over 10 Downing Street and the White House. You said that many Muslims were asking why IS were killing people, but instead of answering that question, still less criticising the killing, you simply said it was propaganda against Islam and that the British and the Americans were the ones with blood on their hands. You were asked by a member of your audience whether the beheading of an American journalist was a right thing to do: you replied that it was not for you to say, and expressed the opinion that those who did it were acting in accordance with their view of Islamic jurisprudence. You told your audience that they should not believe the propaganda and must seek verification from trustworthy Muslims.

In late August, you Mohammed Rahman gave the first of your relevant lectures. A short time before you did so, you had been engaged in correspondence with a man whom you knew was then fighting for ISIS in Syria. He had been critical of your public statements about the circumstances in which there was a duty to make hijrah, or pilgrimage, to the khilafah. His view was that every Muslim should make hijrah and that there could be no excuses for not doing so, and he expressed disappointment that you Mohammed Rahman appeared to have watered down the requirement. Your response was to say that you had been misunderstood, and you would make a public speech to clarify. You were aware, as you admitted in your evidence, that at that time ISIS urgently needed more fighters, because it was shortage of manpower which was delaying their expansion of the Islamic state. You accepted that it was obviously in the interests of ISIS for all Muslims to believe that it was their duty to go to Syria at that time. I accept the submission of the prosecution that in the lecture which you gave a short time later you emphasised the duty of hijrah, saying that all Muslim men and women should make hijrah to Dar al Islam if they were capable of doing so, subject only to limited exceptions.

In the other lecture, Mohammed Rahman, you said amongst other things that Abu Bakr al Baghdadi was a legitimate caliph to whom true Muslims should give their allegiance, and that he had the responsibility of expanding the caliphate globally and making jihad to conquer the world.

However scholarly the terms of those lectures, and however much each of you sought to tell the jury that you were referring to the concept of an Islamic state rather than to ISIS, you were in my view clearly inviting support for that terrorist organisation. In each of the four lectures, your message was that the caliphate established by ISIS was legitimate and that all true Muslims must live under shariah and obey the legitimate caliph. At no point did either of you say anything to condemn the violent means by which ISIS claimed to have established a caliphate. In fact, none of the many speeches which the jury heard contains any criticism by either of you of any of the violent actions of ISIS or its supporters. On the contrary, each of you was invariably able to find a way of justifying their most appalling acts. Throughout all of your speeches and broadcasts you expressed your contempt for the values of the democracy in which we live, and encouraged your audience to believe that no one who failed to support the caliphate established by ISIS could be a true Muslim.

You are both mature men and intelligent men, who knew throughout exactly what you were doing. You are both fluent and persuasive speakers. You, Mohammed Rahman, are something of a hothead, though less so than when you were younger. You, Anjem Choudary, are more calculating. In your differing ways, I regard each of you as dangerous. You show no remorse at all for anything you have said or done, and I have no doubt you will continue to communicate your message whenever you can.

There are, broadly, four reasons why I regard your offences as serious examples of their kind.

First, the evidence at your trial made it entirely clear that you are both regarded as important and influential men in certain sections of the Muslim community, both here and abroad. Each of you has made yourself a high profile figure, taking every opportunity to address audiences by various means including by the widespread use of social media and the internet. The messages passing between you and your followers shows plainly that they looked to you for advice and guidance. In your case, Anjem Choudary, the importance of your role was neatly encapsulated in a text message from one of your acolytes, who invited you to give "the Islamic verdict" on the caliphate, saying "Sheikh, your words would be gold on Twitter". Each of you was able to influence, and highly likely to influence, those who listened to you.

Secondly, the audience to which your communications were addressed was very large. Although there was no specific evidence as to how many people watched your lectures, the whole point of broadcasting them in the way you did was to reach as many persons as you could. You wanted to address a large audience because you know that you were held in high regard by your followers, and that they could

therefore be expected to be influenced by what you said. Why else did you choose to deliver public lectures instead of keeping your thoughts to yourselves, or merely speaking directly to an individual who sought your advice? From the point of view of ISIS, the more supporters they have, the stronger they are and the easier it will be for them to recruit yet more supporters. The size of the audiences which you expected to reach is therefore a significant factor in assessing the seriousness of your offences. I do not accept the submission that you would only be likely to influence those who already supported ISIS. Those who already held views in favour of ISIS would no doubt have been encouraged and strengthened in those views by what you said, and that in itself makes your offending serious; but you were also aiming at a wider audience.

Thirdly, it is necessary for me to consider not only any harm which you actually caused but also the harm which your offences were intended to cause or might foreseeably have caused. In this regard, it is relevant to consider the sort of persons who were likely to view your broadcasts and listen to your words. Some, no doubt, would approach them with an open mind and form a considered opinion as to the merits of what you said. It was however in my view very likely that a significant proportion of those who would listen to your words would be impressionable persons who were looking to you for guidance as to how they should act, and who would be ready to do what you said was necessary or appropriate. Furthermore, when you were delivering your lectures you could have no control over the way in which those who were influenced by you would choose to show their support for ISIS. You may not have specifically invited acts of violence, and there was no evidence that any specific person was encouraged by what you said to commit any specific act; but it was in my view very likely that some of your followers would be influenced by your words to lend active support and use violence in support of ISIS. I am sure you both knew that was so and were perfectly content to accept that likely consequence of your words. You said nothing to limit the ways in which you were inviting support for ISIS to be shown. You said nothing to condemn any aspect of what ISIS was doing at the time. In that way you indirectly encouraged violent terrorist activity. I do not accept the submission that your references to the covenant of security would have served to discourage anyone who was planning an act of terrorism in this country.

Fourthly, your offences were repeated and were determined. It is submitted on your behalf that the overall timescale of the specific acts upon which the prosecution relied up was not a lengthy one, and that there was no specific planning or sophistication about your continuing to use social media and other forms of communication in the

way you had so often done in the past. I accept those points, but there is a limit to how far they can assist you. Although the significant events to which I have referred all occurred within a period of less than three months, it was as I have said a most important period. Although you did not use new or different techniques, you continued to behave in a way which you knew could be expected to reach a wide and in some instances impressionable audience.

Each of you has at least one minor conviction for unrelated offences which are not relevant to your sentences. But each of you has also been convicted of a relevant offence. In 2006 a demonstration was held outside the Danish Embassy, protesting at against the publication of cartoons depicting the Prophet Muhammad. In connection with that demonstration you, Anjem Choudary, were convicted of an offence of failing to give written advance notice of a public procession, for which you were fined. You, Mohammed Rahman, were convicted of much more serious offences of soliciting to murder and using racially threatening abusive or insulting words or behaviour. You ultimately received a total sentence of four years' imprisonment. It may be noted that the conduct which led to those convictions included your carrying placards called upon others to annihilate or behead those who insult Islam, and making a speech in which you said that those who insulted Muslims did not deserve to live and that you wanted to see "another 9/11" all over Europe.

In your case Anjem Choudary, I reject the submission that I should treat you as a man of effectively good character, but I accept that your relevant previous conviction is a comparatively minor aggravating feature of the present offence. In your case Mohammed Rahman your relevant convictions are a serious aggravating feature. In that respect, you are in a more serious position than your co-accused. I take into account, however, that you Anjem Choudary are the significantly older and more experienced man, and it was clear from the evidence at trial that your co-defendant looked to you for guidance and advice. I have no doubt that as between the two of you, it was you who took the lead, and who wielded the greater influence. In those circumstances, it seems to me that I should sentence each of you it in the same way as the other.

I have no doubt that each of your offences is so serious that nothing other than imprisonment would suffice to punish you. Although I have expressed my view as to the likelihood of your continuing to spread your message, and as to your dangerousness, the offence under section 12 is not one to which the provisions of Chapter 5 of the Criminal Justice Act 2003 apply, and the court therefore has no power to impose an extended sentence. The sentences must therefore be determinate

sentences of imprisonment, and real issue in each of your cases is how long those sentences must be. You will receive credit for the short period of time which you have spent on remand in custody, and you will receive the appropriate credit under s240A of the Criminal Justice Act 2003 for the longer period of time when each of you has been granted bail subject to a qualifying curfew. In your case, Anjem Choudary, I am told that will be credit of 140 days. In your case, Mohammed Rahman, I am told it will be 143 days. Each of you will in addition be subject for the appropriate period to the notification requirements under Part 4 of the Counter-Terrorism Act 2008, which will require you to notify certain personal information to the police, and each of you must pay the appropriate statutory surcharge.

I am grateful to your counsel for their submissions in mitigation. I will not refer to every point, but I take them all into account.

I take into account that each of you has spent a substantial period remanded on bail, subject to restrictive conditions, at before and during your trial. I bear in mind however that that period was longer than it would otherwise have been for two reasons: first, because application was made (perfectly properly) on your behalfs for the initial trial date to be vacated; and secondly, because the new trial date was then postponed a number of times at as you sought unsuccessfully to appeal against a ruling which I had made at an early stage of the proceedings.

It has been submitted to me that I should have regard to the conditions in which you may have to serve any sentence. I do not think I can properly do so. First, it will be a matter for the prison service where and how they detain you. If there be any legitimate grounds for challenging any decision the prison service may make in that regard you will have remedies available to you. If there be no legitimate grounds, then I do not think it would be right to reduce your sentence because of the possibility that your own behaviour may cause the prison service to deal with you in a particular way. In any event, this submission is based in part on speculation in the media at as to what might be done to minimise the risk that persons such as you two defendants will radicalise other prisoners whilst serving in your sentences. I cannot decide your sentences on the basis of such speculation.

Submissions have been made about your personal mitigation. In my view, it carries little weight. No doubt you have played your parts in caring for various members of your respective families, and no doubt your absence will be difficult for your families. But I am afraid you have only yourselves to blame for that.

There are comparatively few cases in which defendants have been sentenced for an offence under section 12 of the Terrorism Act, and there is as yet no definitive

sentencing guideline in relation to such offences. Counsel have very helpfully brought to my attention a number of decisions, each of which I have considered. Inevitably, the sentence in each of those cases is fact-specific. It is submitted by defence counsel that the cases – both in the courts in this country, and in the European Court of Human Rights -show that a more serious view should be taken of cases in which there is a direct incitement to violence, and that this is not such a case. I have already indicated that I accept that there is no evidence of a direct link between your words and any specific terrorist act. I also accept that in general terms, the closer the circumstances of the offence come to having a direct link with identifiable acts of violence, the more serious the offence is likely to be. I must sentence you on the basis that any link between your words and the actions of others is an indirect one, and that your offences are therefore not the most serious examples of their kind. But given the timing of your communications, your high standing, the size of the audience to which you were addressing your lectures, and the likelihood that those audiences would include impressionable persons who would be influenced by what you said, the indirect link is nonetheless a serious one.

In the recent case of Kahar and others, the Court of Appeal considered a number of cases, principally involving offences under section 5 of the Terrorism Act but also involving, in the case of Kahar, offences under section 12. The total sentence imposed upon Kahar after his trial was found to be unduly lenient and was increased.

The court regarded the section 12 offences as serious examples of their kind, meriting sentences of four years imprisonment when taken in conjunction with associated offences of disseminating terrorist material. It is submitted on your behalf that that was a more serious example of a section 12 offence than the present case, in particular because the conduct of Kahar was a persistent attempt to persuade others to join IS and fight for them or join in their terrorism. I accept that that there was no such direct attempt here. It does not seem to me however that the conduct of either of you was any less persistent than that of Kahar; and, importantly, the charges against Kahar were based upon his email exchanges with a small number of individuals, whereas each of you was inviting support from very much larger audiences. It seems to me that overall, each of your cases is more serious than that of Kahar. I accept the submission that your cases are somewhat less serious than appears to have been the case of Mohammed Moshin Ameen, recently sentenced at this court, though I do not have the advantage of a transcript of the sentencing remarks in that case.

The conclusions I have come to are as follows. In each of your cases the least sentence I can pass is one of 5 years 6 months' imprisonment. That is the sentence on each of

you. You will serve up to half of that term of imprisonment, and you will be subject to the conditions of your licence for the remainder. If you fail to comply with the conditions of your licence, you will be liable to be recalled and may then spend the remainder of your sentence in custody. You will receive credit pursuant to s240A of the 2003 Act of 140 days and 143 days respectively: if it later transpires that the information I have been given is incorrect, then those periods can be corrected administratively. You will each be subject to the notification requirements for a period of 15 years, and will be required to pay the appropriate statutory surcharge.