

JOINT STATEMENT BY HER MAJESTY'S ATTORNEY GENERAL AND THE LORD ADVOCATE

HANDLING OF TERRORIST CASES WHERE THE JURISDICTION TO PROSECUTE IS SHARED BY PROSECUTING AUTHORITIES WITHIN THE UK

STATEMENT OF SHARED PURPOSE

- 1.1 Terrorism is a global phenomenon. Terrorists have the means and the determination to plan and carry out multiple attacks. They have done so in the past.
- 1.2 The aim of prosecutors and investigators throughout the UK is to ensure that such plans and events are detected, investigated and prosecuted swiftly and effectively to ensure that the safety and security of UK citizens is protected and that offenders can be brought to justice in the courts.
- 1.3 Police and prosecution co-operation across the UK is long established practice, for example where investigations or prosecutions are underway into linked conduct in more than one jurisdiction or one jurisdiction has access to information or evidence relevant to an investigation or prosecution in another jurisdiction.
- 1.4 The United Kingdom Parliament has recognised that in terrorism cases with cross border elements there may be substantial benefits to the public interest in enabling co-conspirators to be tried together in one court. The United Kingdom Parliament has therefore extended UK-wide jurisdiction to terrorist offences in the Counter-Terrorism Act 2008. In addition, other offences connected to terrorism or circumstances may permit shared jurisdiction.
- 1.5 UK-wide jurisdiction means that terrorist offences can be brought to trial in the courts of any of the UK countries no matter where the conduct took place. This is known as concurrent jurisdiction.
- 1.6 Concurrent jurisdiction enables a course of criminal conduct committed across more than one UK jurisdiction, and which may involve several offences committed in different locations, to be tried in one court in one jurisdiction if that meets the justice of the case. It does not remove the power of police and prosecutors to take their own independent decisions about the investigation or prosecution of offences over which they have jurisdiction, but those decisions may need to be taken collaboratively by prosecutors and police for each relevant jurisdiction working together, to serve a higher public interest in the effective investigation and prosecution of terrorist crimes.
- 1.7 Where there is evidence of terrorist activity taking place across the UK, separate investigations and trials in different jurisdictions may not always be the most effective or efficient outcome. For example the same, or substantially the same, evidence, witnesses and issues may feature in each of the cases; inconsistent verdicts might be reached. In addition, a court sentencing a whole course of conduct is in a better position to pass a sentence reflecting the full gravity of the harm caused than a court dealing with only one aspect.

- 1.8 The purpose of this statement is to explain in broad terms how decisions arising from concurrent jurisdiction are approached.

FUNDAMENTAL PRINCIPLES

- 2.1 All decisions on matters arising from concurrent jurisdiction - including those affecting the venue for any subsequent prosecution – must be taken on a fair and objective basis.
- 2.2 Each case must be considered impartially on its own facts and on the evidence, applying relevant law; and decisions will be taken in the overall public interest.
- 2.3 Prosecutors give advice and conduct prosecutions impartially and independently, in line with their legal, professional and ethical duties and duties to the court.

MATTERS THAT MAY ARISE FOR DECISION ACCORDING TO THE FACTS OF THE CASE

- 3.1 Investigations in these cases can be complex, and the full facts may not be known at the time decisions have to be taken. The timing of decisions that affect where any prosecution may be brought can vary widely. An investigation may be started only after an offence has been committed and where it may not be known whether other incidents are planned. Decisions may have to be taken very quickly to avoid delays damaging the effectiveness of the investigation. In other cases the activities of individual suspects may be under observation or investigation before it is clear what, if any, criminal conduct is being planned or where it might take place; and long before there is any question of bringing a prosecution. There is any number of possible scenarios that investigators and prosecutors may face.
- 3.2 It is against that background that decisions may have to be taken as to where and how an investigation or investigations may be most effectively pursued with a view to prosecution; and whether and how aspects of the case should be pursued in more than one location. Conduct that has taken place in several locations will always require the co-operation of investigators in all relevant jurisdictions to assemble the evidence. In such cases it is important to identify who should be in the lead.
- 3.3 The starting point is to look at the available evidence as to what has occurred, or what is believed to have been planned, to identify where the centre of the alleged conduct is located and where any deaths or serious injuries have occurred. The location of significant evidence and the legitimate interests of witnesses and victims will also be important factors.
- 3.4 Normally the lead investigators could be expected to be those responsible for the location in which the conduct is thought to be mainly centred, especially where deaths or serious injuries have occurred. If deaths or serious injuries have occurred in a different UK country from where the plans or other conduct were centred, however, serious consideration would be given to the force for that jurisdiction taking the lead with a view to prosecution there. If conduct has been widespread and/or deaths have taken place in multiple locations, a number of factors may be relevant including the availability of capacity,

resources and expertise. If suspects are already under arrest this will be a relevant, but not determinative, factor.

- 3.5 It is not inevitable that prosecutions will take place in only one jurisdiction. There may be cases in which investigations and prosecutions in more than one jurisdiction may be called for.
- 3.6 Decisions arising from concurrent jurisdiction may need to be reviewed in the light of changing circumstances, but it is not thought likely that circumstances will often change to such an extent, and so late, that a compelling case could be made for proceedings already underway in one jurisdiction to be discontinued and commenced instead in another jurisdiction. Such a decision might exceptionally be agreed jointly to be necessary and right by prosecutors for the relevant jurisdictions, in the overall public interest.
- 3.7 Where one police force is in the lead, this does not mean that the investigators and prosecutors in the other relevant jurisdictions have no further role. Liaison is likely to continue until the conclusion of any trial.

CO-ORDINATION AND CASE HANDLING STRATEGY

- 4.1 In terrorist cases with concurrent UK jurisdiction where an investigation is underway in more than one UK country and the conduct appears to investigators and prosecutors to be sufficiently linked to make joint working advantageous, the best approach is to agree a co-ordinated case handling strategy.
- 4.2 Experience has shown that the cornerstone of developing an effective joint strategy for investigation and prosecution is early engagement between prosecutors and with investigators.
- 4.3 Effective lines of communication need to be established early and kept open throughout the life of the case.
- 4.4 Decisions arising from concurrent jurisdiction may need to be taken early, possibly very quickly, to determine how the investigation should move forward and who should be in the lead. These decisions may be reviewed as an investigation proceeds and more information becomes available about the conduct in question. Police and prosecutors need to be able to respond flexibly to the circumstances presented by individual cases, including developments that they consider may affect decisions already made.
- 4.5 There may be joint investigating and prosecuting teams if the case demands it. In other cases lines of inquiry may need to be followed in more than one jurisdiction.
- 4.6 Due regard will be given to the interests of witnesses and victims who are located in another jurisdiction in line with best practice.
- 4.7 Co-ordination is likely to be necessary to ensure that evidence is preserved and that legal obligations in any subsequent prosecution can be fulfilled, which may require action by police or prosecutors in more than one jurisdiction.

- 4.8 Prosecutors are likely to need to work together and to provide advice to each other on a continuing basis at case conferences, at court and prosecutor to prosecutor where that could assist in the conduct or presentation of the case or to explain legal differences between the jurisdictions. They will expect to keep each other informed of developments and important decisions, consulting each other wherever appropriate.
- 4.9 Announcements to individuals should be co-ordinated.
- 4.10 Public announcements and the handling of media interest in the case should also be co-ordinated.
- 4.11 There is already good co-operation and liaison between prosecutors in the UK both in specific cases and in relation to the exchange of expertise, experience and other matters on which liaison is desirable. The Attorney General and the Lord Advocate have full confidence in the professional excellence of those prosecuting terrorist crimes in the UK. There also exists a positive and well-rehearsed co-ordination process between the Senior National Co-ordinator (Counter Terrorism) and senior police and prosecution colleagues in Scotland and Northern Ireland.

THE ROLES OF THE LORD ADVOCATE AND HER MAJESTY'S ATTORNEY GENERAL

- 5.1 The Attorney General and Lord Advocate are committed to the fundamental principle that decisions arising from concurrent jurisdiction must be taken impartially, objectively and fairly on the facts of each individual case by independent prosecutors for the relevant jurisdictions in consultation with the police and each other, under the Law Officers' oversight and superintendence.
- 5.2 Decisions taken in respect of Scotland will be taken by the Lord Advocate or Solicitor General for Scotland in accordance with the Lord Advocate's constitutional role. Decisions taken in respect of England and Wales will be taken by the Director of Public Prosecutions in consultation with the Attorney General, or by the Attorney General if the Attorney General considers that considerations of national security or the law require the Attorney General to take the decision personally in consultation with the Director. Decisions in respect of Northern Ireland will similarly be taken by the Director of Public Prosecutions for Northern Ireland in consultation with the Attorney General. Following devolution in Northern Ireland, as terrorism and national security will remain as excepted matters they will be the responsibility of the Advocate General for Northern Ireland, and decisions thereafter will be taken by the Director of Public Prosecutions for Northern Ireland in consultation with the Advocate General for Northern Ireland. There may well be discussions or communications between the Attorney General/Advocate General for Northern Ireland and the Lord Advocate where they consider it desirable as part of the decision-making process.
- 5.3 The Lord Advocate and the Attorney General share a strong personal commitment to working together, and with the Directors of Public Prosecutions for England and Wales and Northern Ireland, to resolve as speedily as circumstances require any decisions arising from concurrent UK

jurisdiction. In doing so they act in the overall public interest, independently of Government and to safeguard national security.

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