



Neutral Citation Number: [2016] EWHC 2688 (QB)

Case No: HQ14D04379

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/10/2016

Before :

THE HON. MR JUSTICE HADDON-CAVE

Between :

Shakeel Begg

Claimant

- and -

British Broadcasting Corporation

Defendant

William Bennett (instructed by Rahman Lowe) for the **Claimant**
Andrew Caldecott QC and Jane Phillips (instructed by the BBC Litigation Department) for
the **Defendant**

Hearing dates: 27th June to 1st July 2016

Approved Judgment

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Mr Justice Haddon-Cave :

INTRODUCTION

1. The Claimant, Shakeel Begg, the Chief Imam at Lewisham Islamic Centre, claims damages against the Defendant (“the BBC”) for libel in respect of a broadcast of the “*Sunday Politics*” current affairs television programme on BBC1 on the morning of 3rd November 2013.
2. The *Sunday Politics* programme was hosted by the well-known journalist and broadcaster, Andrew Neil. It lasted an hour and was watched by over 838,000 people. It was subsequently viewed on iPlayer and YouTube. The programme opened with a roving reporter posing the question “*Are mosques doing enough to counter extremism?*”. The broadcast then switched to the studio where Mr Neil interviewed an invited studio guest from the Muslim Council of Britain, particularly on the subject of the treatment of women under Islam.

Words complained of

3. The Claimant complains of the following words spoken by Mr Neil mid-way during that interview:

“The East London Mosque, which you personally and the MCB closely associated with, it’s also the venue for a number of extremist speakers and speakers who espouse extremist positions. This year Shakeel Begg, he spoke there and hailed jihad as “the greatest of deeds”. In 2009 the mosque hosted a video presentation by somebody described by US security as an Al-Qaeda supporter. You had another speaker there who in the past had described Christians and Jews as “filth”. You’ve had a jihadist supporter of the Taliban there. Why do you do nothing to stop extremism, extremists like that, at this mosque with which you’re associated with.”

4. The Claimant said that he came to learn of what had been said about him on the “*Sunday Politics*” programme from third parties and felt upset at having been portrayed in this way.
5. He subsequently brought a complaint under the BBC complaints procedure. On 1st April 2014, the BBC’s Editorial Complaints Unit wrote to the Claimant indicating that it was minded to uphold the Claimant’s complaint. However, on 30th July 2014, the BBC’s Editorial Complaints Unit wrote again saying that it was taking the unusual step of withdrawing its ruling following research on the Web which revealed a previous speech and open letter attributed to the Claimant. It is common ground that the ruling of the BBC’s Editorial Complaints Unit, and its withdrawal, are irrelevant on the issue of liability but may be material to damages if that issue arises. The Court will decide the issues in question entirely afresh.

BBC’s plea of justification

6. The BBC admits the words complained of (“WCO”) were broadcast, admits they are *prima facie* defamatory, but pleads justification, *i.e.* that they are substantially true. The BBC relies, in particular, on previous speeches and utterances by the Claimant between 2006 and 2011 in which it submits the Claimant espoused extremist Islamic views. The burden of proof rests on the party claiming justification, *i.e.* the BBC.
7. The BBC accepts that there were two errors of detail in the WCO. First, as to location: the BBC accepts the Claimant did not preach *jihād* as “*the greatest of deeds*” at the East London Mosque, but asserts he did so elsewhere. Second, as to timing: the BBC accepts the Claimant did not so preach in 2013, but asserts he did so in previous years. The BBC contends, however, that neither of these errors is of significance, and that the substance of its charges against the Claimant remain true.

The Claimant’s response

8. The Claimant denies being an extremist speaker and denies that any of his previous speeches and utterances, on their true interpretation, demonstrate him espousing extremist views. The Claimant also puts forward a positive case that he has always been against extremism and relies on his inter-faith and community work in support of this.

THE ISSUES

9. The issues for the Court’s determination are, therefore, three-fold:
 - (1) What do the words complained of mean?
 - (2) Are they substantially true in those meanings?
 - (3) If not, what remedies ought to be granted?

EVIDENCE AND MATERIALS

10. Both sides filed extensive evidence at the trial. The BBC filed transcripts of the previous speeches and utterances of the Claimant relied upon. The Claimant filed a lengthy witness statement and voluminous supporting materials. The Claimant gave oral evidence and was cross-examined. Both sides lodged expert reports and materials on Islam and called expert witnesses, Professor Robert Gleave for the Claimant and Dr Matthew Wilkinson for the BBC, both of whom were cross-examined. A full transcript of the oral evidence was supplied to me. I was also supplied with various DVDs featuring the “*Sunday Politics*” programme and several of the Claimant’s previous speeches.

11. In view of the numerous references to the *Qur'an* by the witnesses in their written evidence, I have read and studied the entire *Qur'an* (using the translation referred to by the Claimant namely, "*The Qur'an, A new translation by M.A.S. Abdel Haleem*" published by Oxford University Press, 2004). I have also read the copy of Sayyid Qutb's book "*Milestones*" supplied to me by Counsel for the BBC during the hearing (published by Islamic Book Services (P) Ltd of New Delhi, 2002) .
12. The Claimant was represented by Mr William Bennett and the BBC were represented by Mr Andrew Caldecott QC and Ms Jane Phillips. I am grateful to all Counsel and their legal teams for their able assistance.

THE CLAIMANT

13. The Claimant, Shakeel Begg, is 47 years old. He was born in Nairobi, Kenya. He arrived in the UK aged 8. He grew up in the London Borough of Lewisham and went to school and college in South London. He travelled to Saudi Arabia and attended the Islamic University of Medinah ("IUM") for five years, where he studied classical Islamic disciplines, including Islamic sciences, theology, *Shari'a* law, Arabic language and *Qur'an* recitation. IUM is an important centre for the training of *Sunni* Muslim clerics and is closely associated with broadly *Salafi*¹ approach to Muslim religious beliefs.
14. He returned to the UK in 1996. He was appointed Chief Imam at Lewisham Islamic Centre ("LIC") in 1998. LIC was established in the late 1970 and is a registered charity with its own primary school and after-school academy for young Muslims. It serves a large Muslim population in Lewisham and beyond and plays a central role in the life of the local Muslim community.
15. The Claimant obtained an MA in Islamic Studies from Markfield Institute of Higher Education in Leicester in 2005-2006 and diplomas in Islamic Finance, Chaplaincy and Jurisprudence in 2008-2009. In 2009, he was appointed an Imam at the Redbridge Islamic Centre in East London, but returned to continue his role as Chief Imam at LIC on 1st September 2011. He is currently Chief Imam and *Khateeb* (a person who delivers the weekly sermons) at the LIC. He is an employee and trustee of the LIC.
16. In his detailed witness statement, the Claimant highlighted his community and inter-faith work (see further below). He also repeatedly stressed in his witness statement, as he did during his oral evidence, his commitment to non-violence and that Islam is a religion of peace:

"53. ... As a Muslim, I am committed to combatting extremism in all its forms because it is destroying our social harmony, creating suspicion and poisoning the minds of our youth. The actions of groups such as the so called "Islamic State, ISIL or

¹*Salafism* is the movement within Islam which argues that Muslim practice should return to that of the 7th Century (see further below).

ISIS”, are responsible for destroying the reputation of Islam, a religion that promotes peace, tolerance, justice, fairness and equality. I am totally opposed to ISIS and have actively campaigned and spoken out against the evils of ISIS.”

“59. ... The teachings of Prophet Muhammad (pbuh) have been misconstrued and I consider it my duty to deconstruct any warped interpretations of Islam that may encourage someone to commit unlawful violence against the teachings of Islam.”

17. The Claimant pointed to the fact that he has publicly spoken out against ‘ISIS’, in particular on 20th September 2014 when he made an appeal for the British hostage, Alan Henning, to be released.
18. The Claimant also pointed to the fact that, on 22nd May 2013, the LIC issued a press statement condemning the murder of Lee Rigby (both Michael Adebolajo and Michael Adebowale were attendees at Friday prayers at LIC). He said that if he had somehow come to know that the Lee Rigby killers were about to commit murder, he would have reported them to the police. He referred to the fact that he said the following in his Friday sermon (*khutba*) on 24th May 2013:

“...[T]he tragic events which took place in Woolwich, the brutal killing and murder of Lee Rigby goes against the very foundations of our Religion and the characterisation of a Muslim. As Muslims, we find this act to be something totally abhorrent and unacceptable and we extend our and the condolences of the Lewisham Muslim community to the family and friends of Lee Rigby for their loss.”

19. The Claimant explained how stunned and surprised he was to learn from friends and attendees at the LIC that he had been labelled “*an extremist preacher who promotes violent jihad*” by the BBC Sunday Politics show. He said it was very damaging to him personally as an Imam. The Claimant said he assumed that the BBC had misquoted from a speech he had given at the East London Mosque on 22nd August 2013 where he had said as follows:

“...[T]he highest form of jihad was to speak the truth in front of tyrant ruler in the footsteps of Jesus (peace be upon him) and his stance against the Romans; following in the footsteps Moses (peace be upon him) in the stance against the Pharaoh; following in the footsteps of Abraham (peace be upon him) in his stance against Nimrod...”

Role of Chief Imam

20. As Chief Imam, the Claimant has overall responsibility for managing the religious, community and educational affairs of the LIC. He leads prayers, particularly the Friday congregational prayers (*jumua'*) which are attended by over 2,000 members of the local Muslim community in and around Lewisham. He also leads funeral prayers, conducts Islamic marriages (*nikah*), gives lectures and sermons and manages the LIC's counselling and outreach work. In his own words, he together with the other

Imam based at the LIC provide spiritual guidance, support and assistance to the diverse congregation.

21. The Claimant accepted three points in cross-examination by Mr Caldecott QC: first, that, as Chief Imam, he had a core role in setting the tone and syllabus of religious instruction at LIC; second, young men who were also involved with teaching religious instruction would take their lead from him; and, third, Muslims who attend a particular mosque like LIC would look to their Chief Imam for guidance as to how to live a good Islamic life.
22. The Chief Imam of a large mosque has ultimate responsibility for the content, vision and the tone of the religious practice and instruction based at the mosque, in conjunction with other Imams at the mosque and the mosque management committee and/or board of trustees. The influence and teaching of the Chief Imam would normally be promulgated and amplified through a significant online presence. This was the case with LIC who have a live website which was regularly updated (www.lewishamislamiccentre.com).
23. There can be no doubt that the Chief Imam of a major mosque such as LIC has an extremely important role. He is somebody that the congregation and attendees at the mosque will respect and look to for guidance on spiritual matters and how to live their lives as good Muslims. Inevitably, therefore, he can be a powerful influence on many people who come into his orbit, particularly the young.

CLAIMANT'S POSITIVE CASE

24. The burden is firmly on the defendant to prove justification in defamation, *i.e.* the BBC in this case. The Claimant, nevertheless, puts forward a positive case, both in order to challenge the BBC's case that his 2006 – 2011 speeches were 'extremist' and also to give 'a full picture of himself'.
25. The Claimant pleads a positive case that he is "*a proponent of tolerance, peace, non-violence, understanding between the faiths, cooperation with the police... and the participation of Muslims in civil society*". In his witness statement, he repeatedly emphasises his opposition to extremism and terrorism and is at pains to stress, in particular, (i) the importance of Islam's relationships with other faiths (paragraph 18), (ii) the importance of Muslim collaboration with the UK Government to combat violent extremism (paragraph 53); and (iii) the essential 'unity' of mankind (paragraph 57).

Claimant's inter-faith and community work

26. The Claimant points to an impressive portfolio of inter-faith work and work in the local community, particularly with young people, in which he has been, and is currently, involved. The following summary helps give a full picture of the wide range of his activities and work in the local community.
27. First, the Claimant organises and conducts interfaith workshops at LIC. These have included for *e.g.* (i) holding an 'Appreciation Dinner' on 26th September 2013 for local leaders who had supported the banning of a BNP march, (ii) holding a

‘Listening Exercise’ on 12th January 2014 on current issues, (iii) holding a ‘Food and Faith’ Fair on 18th April 2014 to which faith communities were invited, (iv) holding an ‘Accountability Assembly’ in 12th May 2014 which the Claimant chaired for the two mayoral candidates who spoke to a mixed audience of some 400 people, and (v) inviting an openly gay vicar, the Rev. Richard Coles, to speak to the LIC in March 2015.

28. Second, he works closely with the LIC Young Muslim Academy in meeting the social and educational needs of young people. He helped set up LIC’s Football Club, which includes non-Muslim players and fans. He participates in, and promotes, the annual Lewisham inter-faith cricket match. In 2014, the LIC organised a team to play a team comprised of two local churches and members of Lewisham’s Jewish community.
29. Third, he works closely with the police. Since 2007, he has been a member of the Independent Advisory Group to Lewisham Police which advises the police on local issues, especially those relating to the Muslim community. He represents the LIC in the Safer Neighbourhood Team and the Hate Crime Working Group which includes a cross-section of people from Lewisham, including a member of the LGBT community. On 21st October 2014 the Claimant participated in the LIC’s hosting of a visit by the Safer Neighbourhood Team from the Metropolitan Police Service, led by a police inspector. Since 2007, the Claimant has worked in gang mediation and mediated between the opposing ‘Shower Gang’ and ‘Anti-Shower Gang’. He was a member of the Lewisham Community Police Consultative Group (LCPCG) from 2005 until December 2009. The LCPCG AGM Report for 2005/2006 included the following statement by the Claimant:

“Lewisham is home to a sizeable and growing vibrant Muslim community. Our Islamic Centre is attended by people from diverse backgrounds which, to me at least, is reflective of Lewisham itself. Unfortunately, in the current climate it is all too easy for the average person to subconsciously think that a Muslim is a synonym for a terrorist. It is our aim with the help of bodies and organisations such as LCPCG, the Metropolitan Police Service in Lewisham and Lewisham Council to endeavour to educate people in the London Borough of Lewisham against this misconception.

As Imam of Lewisham Islamic Centre, I hold myself accountable to educating and cultivating my congregation and doing my utmost to ensure that my congregation lives up to the standards set by our religion so that we can live together in a cohesive pluralistic society. As our Creator reminds us in the Qur’an by saying: “We have made you into different nations and tribes not for you to despise one another but for you to know one another” (chapter 49:13).

30. Fourth, the Claimant is a member of the Standing Advisory Council on Religious Education (“SACRE”) in the London Borough of Lewisham. It advises the council in connection with matters concerning religious education. On 22nd October 2014, he attended a meeting called in order to discuss the radicalisation of young people in Lewisham. The minutes of the SACRE meeting record his and the chair’s feeling

that “*SACRE and the Mosque should work together to support members of the Muslim community, parents and schools so that issues of radicalisation can be tackled openly and in a timely fashion.*” The Claimant also offered to give personal support to anyone who needed help in this regard.

31. Fifth, the Claimant participates in community campaigns, including, for *e.g.*, in 2013 the ‘Save Lewisham Hospital’ campaign. He also supports LIC’s mission to provide food to London’s homeless once a month, and works as a volunteer Muslim Chaplain at the University Hospital Lewisham (and previously at Goldsmiths).
32. Sixth, the Claimant has helped to organise and participate in regular visits to the LIC by local schools and is regularly invited to speak at schools in Lewisham and Kent.

Testimonials

33. The Claimant also adduced an impressive number of testimonials from local faith and other leaders attesting to his inter-faith work and commitment to work in the local community. Each said that they had never heard the Claimant espousing any form of support for extremism or violence.
34. These testimonials were from the following figures. First, Chief Inspector Graham Price of the Lewisham Police spoke of the Claimant’s work with the local police. He described the Claimant’s objection to the Government’s PREVENT programme as ‘principled’ (see further below). He said he believed the Claimant to be a valuable contact for Lewisham police who is actively involved in the local community and a well-known local figure within partnership circles. Second, Reverend David Rome of the Catford and Bromley Synagogue spoke of the Claimant’s significant inter-faith work. Third, Father Charles Pickstone, vicar of St Laurence Church, Catford, said that to the best of his knowledge the Claimant adhered to and taught to others a moral code that seems entirely ‘unimpeachable’. Fourth, Reverend Malcolm Hancock, who headed up the Chaplaincy Department at the Lewisham and Greenwich NHS Trust, said that the Claimant had played a key role in fostering good multi-faith and multi-cultural relationships and said that he could not imagine the Claimant inciting anyone to act in a way that would be considered irresponsible or a threat to the wider community. Fifth, Dinah Griffith, former chair of the Lewisham SACRE, spoke of the Claimant’s valuable work with different schools. Sixth, Gerald Rose, a retired schoolteacher, also spoke of the Claimant’s valuable work with different schools, including Jewish schools. Seventh, Peter Brierely, the lead organiser for South London Citizens, said that the Claimant was ‘passionate’ about ensuring that the Mosque and young Muslims were integrated into British life. He said that he had never heard the Claimant espouse extremism. On the contrary, he had heard the Claimant speak against radicalisation, isolationism and extremism. Eighth, Simon Marks, a teacher and community and charity worker in Lewisham, said that the Claimant and the LIC shared his belief and passion in creating an inclusive community for young people in Lewisham.
35. The BBC objected to much of this material, (i) on the grounds of relevance, (ii) because it was materially different from the Claimant’s utterances and speeches issued at different times, and (iii) because none of the witness statements referred to the Claimant’s speeches relied on in this case. The BBC accepted, however, that in

the light of its plea of justification, the Claimant could properly point to his inter-faith and community work and adduce character evidence in support of his positive case.

36. In my view, it is appropriate to take all the Claimant's above material into account when assessing the overall strength of the BBC's plea of justification (see further below). And I do so.

Other speeches

37. The Claimant relied upon other speeches given by him which Mr Bennett submitted 'balanced' the speeches relied upon by the BBC. The Claimant relied in particular on an *Eid Khutbah* speech by the Claimant on 28th August 2013 in which he made, *inter alia*, the following ecumenical statement and reference to George Orwell exhorting the virtues of 'speaking the truth':

"There was a time when our messenger, Moses, peace be upon him, was hated. There was a time when the messenger Jesus, peace be upon him, was hated. There was a time when our messenger Muhammad, peace and blessings be upon him, was hated. But today these prophets, these great men are loved by billions of people on earth."

"An English writer by the name of George Orwell, he said in a time of universal deceit to speak the truth is a revolutionary act. In a time of universal deceit to speak universal truth is a universal act for the Muslims, to stand up for justice, for the Muslims to stand up for their rights, for the Muslims to be proud is a revolutionary act and is part of steadfastness and that's why the messenger of Allah, peace and blessings be upon him, said the greatest form of jihad is to speak the truth in front of a tyrant ruler".

38. The Claimant also pointed to the speech which he gave at the East London Mosque on 22nd August 2013 in which he said "*the highest form of jihad was to speak the truth in front of tyrant ruler in the footsteps of Jesus...*" (see above).

THE LAW

Introduction

39. I turn to set out the relevant law in this area. There are two distinct exercises in relation to ‘meaning’ which arise in the present case. First, deciding the meaning to be attributed to the words complained of (“WCO”) in the BBC broadcast of the *Sunday Politics* show. Second, deciding the meanings to be attributed to the various speeches or utterances given by the Claimant which are relied upon by the BBC to support its defence of justification. Both exercises involve the determining of ‘meaning’. Both exercises involve a careful examination of the words spoken and the context. However, the objectives of the two exercises are different and the applicable legal principles are different. I set them out below (see (1) and (2) below). I also explain the legal test for justification in defamation (see (3) below).

(1) General legal principles – meaning of words complained of

40. The general principles applicable to claims for defamation in relation to words complained of spoken on television are well established. I rehearsed them in detail in *Mir Shakil-ur-Rahman v. Ary Network Limited* [2015] EWHC 2917 (QB) [11]-[29]. For convenience, I set out that summary of the law again below.

41. The natural and ordinary meaning of words for the purposes of a defamation claim is the single meaning that would be conveyed by those words to the ordinary reasonable reader (see *Slim v. Telegraph* [1968] 2 QB 157 at 171-2).

42. The court’s task in the artifice of arriving at a putative actual single meaning may involve an approximate centre-point in the range of possible meanings, or a dominant meaning for each broadcast (*per* Longmore LJ in *Cruddas v Calvert* [2013] EWCA 748 at [32]).

43. Conventionally, the question of whether words are defamatory is approached in two stages, by first identifying the single meaning which the words would convey to an ordinary reasonable reader (or listener) and then determining whether that meaning is defamatory (*per* Warby J in *Rufus v. Elliot, supra* at [17] and see PD53 4.1).

44. I direct myself in accordance with the guidance of Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130, [14] (citing authorities such as *Skuse v Granada Television Limited* [1996] EMLR 278):

“(1) The governing principle is reasonableness.

(2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.

- (3) Over-elaborate analysis is best avoided.
- (4) The intention of the publisher is irrelevant.
- (5) The article must be read as a whole, and any “bane and antidote” taken together.
- (6) The hypothetical reader is taken to be representative of those who would read the publication in question.
- (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, “can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation ...”
- (8) It follows that “it is not enough to say that by some person or another the words *might* be understood in a defamatory sense.”

45. There has been some useful elucidation of these principles.

46. Principle (2) is descriptive of the hypothetical reasonable reader, rather than as a prescription of how such a reader should attribute meanings to words complained of as defamatory (*per* Tugendhat J in *McAlpine v. Bercow* [2013] EWHC 1342 (QB) paras 63 to 66, approved by Sharp LJ in *Rufus v. Elliot* [2015] EWCA Civ 121 at [11]). As Tugendhat J explained in *McAlpine v. Bercow*:

“If there are two possible meanings, one less derogatory than the other, whether it is the more or the less derogatory meaning that the court should adopt is to be determined by reference to what the hypothetical reasonable reader would understand in all the circumstances. It would be unreasonable for a reader to be avid for scandal, and always to adopt a bad meaning where a non-defamatory meaning was available. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.”

47. As regards principle (3), the following statements help ‘unpack’ the content of this briefly-stated but key principle:

- (1) Judges should have regard to the impression the words have made on themselves in considering what impact it would have made on the hypothetical reasonable reader (*per* Eady J in *Gillick v Brook Advisory Centres* cited by the CA at [2001] EWCA Civ 1263 at [7]). The exercise is one of impression (*per* Warby J in *Simpson v. MGN Limited* [2015] EWHC 77 (QB)).
- (2) The meaning of words is often a matter of subtlety, going well-beyond what they literally say (*per* Warby J in *Rufus v. Elliot* [2015] EWHC 807 (QB) at [21]).

- (3) The defamatory sting of words often lies not so much in what the words themselves say, but also “what the ordinary man will infer from them” (*per* Lord Reid in *Lewis v. Daily Telegraph* [1964] AC 234, 358).
- (4) In putting itself in the shoes of the notional ordinary reader, the court must allow for “a certain amount of loose-thinking” (*per* Lord Reid in *Morgan v. Odhams Press Ltd* [1971] 1 WLR 1239, 1245). Or, as Lord Devlin put it in *Lewis* (*ibid* at p.257), the court must allow for the fact that a laymen reads in an implication much more freely than a lawyer.
- (5) It is also important to bear in mind that such a person would normally read (or hear) the relevant words once and would therefore get a broad impression of what is said; and that the layman would not engage in the sort of minute analysis (textual or legal) that a lawyer would (*per* Sharp LJ in *Rufus v. Elliott* at [19]). This is *a fortiori* where the words complained of are part of a radio or television broadcast where the ability to re-read the words is unlikely to be available or readily used (see further below).
- (6) The court should avoid a minute linguistic analysis of every phrase or engaging in a protracted exercise in logical positivism (*per* Lord Diplock in *Slim v Daily Telegraph Ltd* [1968] 2 QB 157 at 171-2).
- (7) It is difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's (*per* Lord Diplock in *Lewis v Daily Telegraph Ltd* [1964] AC 234 at 277).
48. Principle (6) requires the court to form a view on how the representative hypothetical reader of the particular publication concerned would be likely to understand the words, bearing in mind where in the publication the words appear; the reader’s familiarity with the nature of the publication in question; and any expectations created by that familiarity (*per* Warby J in *Simpson v. MGN Limited* [2015]EWHC 77 (QB) citing Eady J: see *John v Guardian Newspapers Ltd* [2008]EWHC 3066 (QB), [22]-[23], [32]). The exercise needs to be undertaken with care. The court can take judicial notice of facts which are common knowledge, but facts which are not need, in principle, to be admitted or proved, not assumed. The court should be wary of reliance on impressionistic assessments of the characteristics of a newspaper’s readership (*per* Warby J in *Simpson v. MGN Limited* [2015]EWHC 77 (QB)).
49. The correct approach was succinctly summarised by Lord Phillips MR in *Gillick v Brook Advisory Centres* [2001] EWCA Civ 1263 (adopting part of the judgment of Eady J below):-
- “[T]he court should give the article the natural and ordinary meaning which it would have conveyed to the ordinary reasonable reader reading the article once. Hypothetical reasonable readers should not be treated as either naive or unduly suspicious. They should be treated as being capable of reading between the lines and engaging in some loose thinking, but not as being avid for scandal. The court should avoid an over-elaborate analysis of the article, because an ordinary reader would not analyse the article as

a lawyer or accountant would analyse documents or accounts. Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader. The court should certainly not take a too literal approach to its task.”

50. What an ordinary person, not avid for scandal, would read into the words complained of must be a matter of impression. Such a person would not infer guilt merely because an investigation was on foot (*per* Lord Reid in *Lewis v. Daily Telegraph Ltd* [1964] AC 234 at p. 260).

Guidance in relation to TV broadcasts

51. In the specific context of words spoken in the context of a television programme, it is important to pay particular regard to the guidance given by Sir Thomas Bingham MR in *Skuse v Granada Television Limited* [1996] EMLR 278 at 285-7 (which concerned Granada’s television programme “*World in Action*”):

“(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once in 1985.

(2) The hypothetical reasonable reader [or viewer] is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available (*per* Neill LJ, *Hartt v Newspaper Publishing PLC*, unreported, 26 October 1989 (Court of Appeal (Civil Division) Transcript No. 1015): our addition in square brackets).

(3) While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue. We were reminded of Diplock LJ’s cautionary words in *Slim v Daily Telegraph Ltd* [1968] 2 *QB* 157 at 171 [to avoid a minute linguistic analysis of every phrase and a protracted exercise in logical positivism].

In the present case we must remind ourselves that this was a factual programme, likely to appeal primarily to a seriously minded section of television viewers, but it was a programme which, even if watched continuously, would have been seen only once by viewers many of whom may have switched on for entertainment. Its audience would not have given it the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article. In deciding what impression the material complained of would have been likely to have on the

hypothetical reasonable viewer we are entitled (if not bound) to have regard to the impression it made on us.”

52. The overall, subjective impression gleaned from a television programme may be relevant to interpretation. As Eady J said in *Bond v BBC* [2009]EWHC 539 (QB) at [9]:

“9. It is important to acknowledge that assessing the meaning(s) of an hour long television programme is to a large extent a matter of impression. Yet it is also necessary to remember that the test is objective, so that one must always have in mind how the reasonable viewer would interpret it. Nonetheless, it is recognised in the authorities that the judge can take into account his or her own subjective reaction as part of the process. Beyond that, one must not be over-analytical, in the sense of subjecting the text to a leisurely or legalistic breakdown: ordinary viewers will not have had that opportunity. The overall flavour of a programme may contribute to an interpretation which would not necessarily be found when subjecting the text to piecemeal analysis. There is a risk that such an exercise will focus on the trees and miss the wood.”

Innuendo meaning

53. The same principles apply where the meaning complained of is an innuendo meaning. An innuendo meaning, in the sense the term is used in this case, is one that depends on the reader knowing some fact that is extraneous to the statement complained of, and not common knowledge. The pleading of an innuendo meaning must “identify the extraneous facts”: 53PD 2.3(2). It must also explain how those facts became known to the reader. Often this second task is accomplished by relying on inference from third party media coverage, as in this case.
54. What may not be done, in reliance on an innuendo referring to third party media publication, is to incorporate in the claim some defamatory meaning which is conveyed only by the third party publication (*per* Warby J in *Rufus v. Elliot, supra* at [22]).

Fact or opinion

55. The approach the Court should take when determining whether the words complained of are fact or opinion was summarised in *Yeo v. Times Newspapers Ltd* [2015] 1 WLR 971 as follows (at [88] and [89]):
- (1) The statement must be recognisable as comment, as distinct from an imputation of fact (see *Gatley on Libel and Slander*, 12th edition, para 12.7).
 - (2) Comment is “something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.” (*Branson v. Bower* [2001] EMLR 15 [26])

- (3) The ultimate determinant is how the words would strike the ordinary reasonable reader (*Grech v. Odhams Press* [1958] 2 QB 275, 313). The subject-matter and context of the words may be an important indicator of whether they are fact or comment (*British Chiropractic Association v. Singh* [2011] 1 WLR 133 [26], [31]).
- (4) Some statements which are by their nature and appearance comment are nevertheless treated as statements of fact where, for instance, a comment implies that a claimant has done something (*i.e.* engaged in dishonourable conduct) but does not indicate what that something is (*Myerson v. Smith's Weekly Publishing Co. Ltd* (1923) 24 SR (NSW) 20, 26 *per* Ferguson J).
56. The common law has always been fiercely protective of comment and opinion. Strasbourg jurisprudence has reinforced the importance of freedom of political debate in a democratic society. Statements about the motives and intentions of a third party are to be categorised as value judgements rather than factual assertions lending themselves to proof (*Axel Springer AG v. Germany (No.2)* (*Application No.48311/10*) (unreported) given 10 July 2014, at para. 63) reminded us forcefully. The Court in *Yeo* stated the general approach as follows (at [97]):

“...[T]he court should take as its starting point the general features of the article and the impact these are likely to have on how the words used strike the mind of the ordinary reader. It should bear in mind [1] the positioning within the paper of the article under examination (for instance whether it is in the news section or in an “op ed” piece or magazine); [2] the general nature of the subject matter dealt with in that article (news, political, social, financial or other); [3] who has written the material, if this is apparent (is it for example the paper’s political correspondent or an established commentator?); and [4] the form of expression the reader would be likely to expect from an article on this subject matter, positioned as it is, and by this or these author(s). It is against that background that the court should consider the particular statements in the article and assess, as far as possible at the same time, what if any defamatory meaning it conveys and the extent to which this is factual or comment. In performing this last task the court should be alert to the importance of giving free rein to comment and wary of interpreting a statement as factual in nature, especially where here it is made in the context of political issues. In drawing the distinction the court should consider what the words in their context indicate to the reader about the kind of statement the author intends to make.”

Chase Levels

57. Allegations can be published with varying degrees of certainty. These degrees of certainty have been classically analysed at three distinct levels : (i) level 1: the claimant is ‘guilty’ of the conduct alleged; (ii) level 2: there is ‘reason to suspect’ the claimant is guilty of the conduct alleged; and (iii) level 3: there are ‘grounds for

investigating whether' the claimant is guilty of the conduct alleged (see *Chase v. News Group Newspapers* [2002] EWCA Civ 1722). These levels calibrate the degree of proof required by the defendant in a defence of truth (*c.f. e.g. Musa King v. Telegraph Group Ltd* [2003] EWCA 1312 (QB) and [2004] EWCA Civ 613).

Lucas-Box Meanings

58. In determining the meaning of the material complained of the court is “not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words” (*Lucas-Box v News Group Newspapers Ltd* [1986] 1 WLR 147 at 152H).

(2) Legal principles – approach to meaning of previous speeches and utterances

59. I turn to consider the legal principles applicable to the second exercise, namely to establishing the meaning of previous speeches and utterances relied upon in support of a defence of justification. I am grateful to Mr Caldecott QC and Ms Jane Phillips for their helpful note on this topic, with which Mr Bennett did not demur.
60. The objective of the first exercise is to determine the artificial ‘single’ meaning which the law requires to be attributed to the WCO. The first exercise is artificial in the sense that in real life there is rarely a ‘single’ meaning and different people may reasonably interpret words in different ways. The rationale for this search for the ‘single’ meaning is elucidated in the well-known passage from Diplock LJ’s judgment in *Slim v Daily Telegraph* [1968] 2 QB 157 at 171-2. (See above)
61. The objective of the second exercise is not so linear, or otherwise constrained by the ‘single’ meaning rule. The Court has far more flexibility. The reason is that the Court is concerned with a quite different exercise, namely simply deciding whether the defendant has proved the ‘sting’ (*i.e.* of the ‘single’ meaning established in the first exercise) to be ‘substantially true’. In so doing, the Court does not have to find a ‘single’ meaning or even a range of reasonable meanings in relation to every disputed passage. The Court simply has to decide whether a section of the audience would reasonably take the words spoken to convey a particular message. Thus, if the Court were to conclude that at least a section of the audience would reasonably take the Claimant’s words to carry a particular message, that would be sufficient to support a finding that his words conveyed that message, even if it could not be said with certainty that the words were understood or conveyed the same message to everyone present.
62. I summarise below the extent to which the *Jeynes* criteria set out above have any utility in the second exercise:
- (1) Principle (1) of *Jeynes*, *i.e.* reasonableness, is clearly key in the second exercise.
 - (2) Principle (2) is relevant but not the caution in the last two lines.
 - (3) Principle (3) is applicable: over-elaborate analysis is to be avoided. It is important to judge the degree of attentiveness which any particular speech is likely to attract and approaching its gist with that degree of attention to detail in mind. A Muslim audience is always likely to be attentive to what a Chief Imam says on matters of

guidance; but there is likely to be a qualitative difference between (a) an annual dinner, (b) a session like the Deviant Groups whose purpose was “*primarily educational*” and where those attending can be assumed to have come because they had a particular interest in the subject, (c) a religious lecture and (d) those taking the trouble to listen to or watch the Claimant’s speeches on the web or YouTube. An audience is also likely to be particularly attentive to answers given to questions from fellow members of the audience.

- (4) Principle (4) is applicable: the issue is what meaning his words in their proper context conveyed, not what the Claimant intended to say. The test of meaning is objective. The clearer the message, the less likely it becomes that the Claimant did not intend it.
- (5) Principle (5) (‘the speech must be read as whole’) is applicable to the second exercise but in a more nuanced or flexible way. The principle has particular utility in the first exercise in order to ensure that ‘bane and antidote’ are taken together. But because the Court is not searching for a ‘single’ meaning, the principle is less efficacious in the second exercise. The Court is under no rigid obligation to approach the speech as a whole. However, if the Claimant makes an assertion in one passage and clearly qualifies it in another, the qualification would clearly be relevant and has to be taken into account, judging the relative strength of the primary message compared with qualification.
- (6) Principle (6) is relevant. Audiences vary. An ordinary viewer of a BBC television programme will be different from those attending an educational or religious lecture.
- (7) Principle (7) is relevant (see the principle of reasonableness (1) above).
- (8) Principle (8) is primarily applicable to the first exercise. However, in the second exercise, the Court could when considering the range of reasonable meanings of a particular passage, decide that any particular passage bears a clear meaning which all or almost all present would draw. But ultimately it must be borne in mind that the second exercise is concerned with determining whether the sting is ‘substantially true’.

(3) Legal test for defence of justification

63. The BBC broadcast in question predated the coming into force of the Defamation Act 2013; accordingly, this case is governed by the Common Law and the Defamation Act 1952.
64. The legal test for a defence of justification is whether the defendant can prove that the allegation made in the words complained of is “*substantially true*” (see *Rothschild v Associated Newspapers* [2013] EMLR 18 at [24]-[26]). Section s.2(1) of the 2013 Act is to the same effect.
65. It is the substance of the allegation which matters. As Eady J. emphasised in *Turcu v. News Group Newspapers* [2005] EWHC 799 at [109]:

“The Court should not be too literal in its approach or insist on proof of every detail where it is not essential to the sting of the article.....

“...It becomes important in such a case to isolate the essential core of the libel and not to be distracted by inaccuracies around the edge – however extensive.”

66. A similar point is to be found in section 5(1) of the 1952 Act:

“In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges.”

FIRST ISSUE: MEANING OF WORDS COMPLAINED OF

Dispute as to meaning of WCO

67. The dispute as to meaning of the words complained of (“WCO”) is of fairly narrow compass.

68. The Claimant alleged that, in either their natural and ordinary and/or innuendo meaning, the WCO mean that:

(1) “The Claimant is a member of a rogue’s gallery of extremists who actively encourage the hatred of, violence towards and murder of non-Muslims.”

(2) “The Claimant promotes and encourages religious violence by telling Muslims that violence in support of Islam would constitute a man’s greatest deed.”

69. In its pleaded and written case, the BBC denied the Claimant’s meanings and said that the WCO meant exactly what they say, namely that the Claimant has preached the extremist position that *jihad*, in the sense of violence in the name of Islam, is “*the greatest of deeds*”. The BBC accepted that this was obviously a defamatory meaning. The BBC put forward the following *Lucas-Box* meanings (and pleaded justification to this and to the Claimant’s pleaded meanings):

(1) “The Claimant is an extremist Islamic speaker who espouses extremist Islamic positions; and/or

(2) the Claimant has recently and publicly voiced his support for jihad (in the sense of violent action in the name of Islam) to Muslim audiences; and/or

(3) the Claimant’s public statements are liable to promote and/or encourage violent action in the name of Islam.”

70. In the course of argument, Mr Caldecott QC simplified the BBC's position on meaning. He explained that the BBC denied the Claimant's first meaning but accepted the second meaning put forward by the Claimant (see above) with the following minor change (indicated by underlining):

“The Claimant had recently promoted and encouraged religious violence by telling Muslims that violence in support of Islam would constitute a man's greatest deed.”

Analysis

71. The WCO spoken in November 2013 contain two particular elements particularly directed towards the Claimant. The first is the labelling of the Claimant as an “*extremist*”, i.e. one of “...a number of *extremist speakers and speakers who espouse extremist positions*...” who speak or have spoken at the East London Mosque. The second is the sentence: “...*This year Shakeel Begg, he spoke there and hailed jihad as “the greatest of deeds”...*”.
72. As regards the Claimant's first pleaded meaning, the Claimant is one of four people labelled an “*extremist*” and included in the category of the “*extremist speakers*” or “*speakers who espouse extremist positions*”. They are each included in the *genus* of “*extremist*” but the particular reasons for being so labelled are different: (i) the Claimant for hailing *jihad* as “*the greatest of deeds*”; (ii) the Al-Qaeda supporter; (iii) the speaker who described Christians and Jews as “*filth*”; and (iv) the *jihadist* supporter of the Taliban. However, the WCO do not purport to ascribe the particular views, or actions, of the four people mentioned to one another, or attribute any of the views or actions of the other three to the Claimant. Thus, whilst the other (unnamed) “*extremists*” are referred to, there is no suggestion that the Claimant has espoused their particular views. Nor does the programme explore at all the possible consequences of preaching *jihad* in the above sense or the Claimant's intentions. For these reasons, I do not accept the Claimant's submission that the WCO would be understood as referring to a “*rogues' gallery*” of extremists, still less one which necessarily encouraged “*murder*” of non-Muslims, not least because the word “*murder*” nowhere appears. It is, however, appropriate for the first meaning to be in the present tense in order to reflect the present tense in the WCO (“*speakers who espouse extremist positions*”).
73. As to the Claimant's second pleaded meaning, it is obvious, as Mr Caldecott QC accepted, that the reason why Mr Neil was criticising the Claimant for praising *jihad* as “...*the greatest of deeds*” was because the term “*jihad*” has in common usage an element of promoting or encouraging violence in the name of Islam. The sentence in question (“...*This year Shakeel Begg, he spoke there and hailed jihad as “the greatest of deeds”...*”) would clearly be understood as referring to a single recent, but past occasion, i.e. in 2013, on which the Claimant had spoken at the East London Mosque in the terms stated. Accordingly, in my view, the BBC's minor modifications to the Claimant's second meaning, with use of the past tense and the insertion of the adverb “*recently*”, are correct.

Conclusion

74. In conclusion, therefore, I find the WCO bear the following meanings:

- (1) The Claimant is an extremist Islamic speaker who espouses extremist Islamic positions.
- (2) The Claimant had recently promoted and encouraged religious violence by telling Muslims that violence in support of Islam would constitute a man's greatest deed.

SECOND ISSUE: DEFENCE OF JUSTIFICATION

INTRODUCTION

75. The BBC relies upon the following speeches and other matters in support of its plea of justification:
- (1) A speech given by the Claimant at Kingston University in late October 2006 (KINGSTON UNIVERSITY SPEECH (2006));
 - (2) "Advice" by the Claimant to Tawfique Chowdhury posted on the Web on 19th and 20th February 2009 (ADVICE TO TAWFIQUE CHOWDHURY (2009));
 - (3) A speech given by the Claimant to a "Deviant Groups" seminar at LIC on 29th May 2009 (DEVIANT GROUPS SPEECH (2009));
 - (4) A speech given by the Claimant at a rally for Aafia Siddiqui outside the US Embassy in London on 28th March 2010 (AAFIA SIDDIQUI SPEECH (2010));
 - (5) A speech given by the Claimant at an annual dinner for CAGE on 21st August 2010 (CAGE PRISONERS SPEECH (2010));
 - (6) A speech given by the Claimant at a dinner hosted by HHugs on 9th March 2011 (HHUGS SPEECH (2011));
 - (7) A speech given by the Claimant at a rally outside HMP Belmarsh on 7th August 2011 (BELMARSH PRISON SPEECH (2011));
 - (8) Invitations to extremist speakers to speak at the Lewisham Islamic Centre (INVITATIONS TO SPEAKERS); and
 - (9) Press statements issued by the Lewisham Islamic Centre (PRESS STATEMENTS).

Preliminary observations

76. The Claimant's speeches and utterances touch on a wide range of Islamic theological and ideological topics and themes. They were delivered predominantly in English but interlaced with numerous Arabic words and citations from the *Qur'an* and *Sunna*, as well as Islamic theologians, scholars and ideologues. Each of the speeches has been subject to detailed, rigorous and sophisticated theological, ideological and syntactical analysis by both sides and by their expert witnesses.

77. In order to deconstruct and analyse these speeches, and arrive at a proper understanding of their true meaning in each case and, in particular, whether they espouse “*extreme Islamic positions*”, it is necessary, to have a basic understanding of Islam, its history, its terminology and its fundamental concepts and tropes.

THE EXPERTS

78. I heard evidence from the Claimant’s expert, Robert Gleave, Professor of Arabic Studies at Exeter University, and the BBC’s expert, Dr Matthew Wilkinson, Research Fellow at the Centre of Islamic Studies at the School of Oriental & African Studies (SOAS). They were both instructed to prepare reports by reference to the Claimant’s speeches: (a) explaining the various different meanings of the word “*jihad*” in the contexts used by the Claimant; (b) translating and explaining the various Arabic words and *hadith* (sayings and actions of the Prophet Muhammad) used in the passages quoted by the Claimant; and (c) explaining the roles and significance of some of the historical figures cited by the Claimant in his speeches.
79. There was, however, asymmetry in their reports in four respects. First, they did not consider all the same speeches: the only speeches in respect of which they both gave expert evidence were KINGSTON UNIVERSITY SPEECH (2006), DEVIANT GROUPS SPEECH (2009), CAGE PRISONERS SPEECH (2010) and HHUGS SPEECH (2011) (see further below).
80. Second, the scope of their instructions differed. Dr Wilkinson’s instructions were much broader. He was instructed additionally to assess the ‘cumulative effect’ of the Claimant’s speeches and publications with regard to *jihad* and whether the Claimant espoused ‘moderate’ or ‘extreme’ positions from an Islamic perspective. He was also instructed to explain the role of a Chief Imam of a Mosque. Professor Gleave did not receive such instructions.
81. Third, their perspectives differed. Professor Gleave’s perspective comes from his position as an academic with a research interest in Islamic legal studies. Dr Wilkinson’s comes from the position of a practising Muslim academic with a traditional Islamic education who has a research interest in Islam and Muslims in Education and Law.
82. Fourth, as a result, their methodologies differed. Professor Gleave begins from the perspective that what is, and what is not, “*Islam*” or “*Islamic*” is a matter of personal theological commitment, and cannot be definitively determined by academic research or theological Islamic scholarship. Dr Wilkinson begins from the perspective that what does, and does not, constitute mainstream and authentic Islamic belief and practice, including some contested areas, can be determined by an objective set of intellectual and spiritual interpretative criteria, and can, therefore, be broadly determined by academic research and theological Islamic scholarship.
83. The experts, Professor Gleave and Dr Wilkinson, have provided me with a deeper understanding of the structure, terminology and fundamental concepts, *mores* and *tropes* of Islam and the perspectives particular to a Muslim audience when considering Muslim theology and ideology. Their expert evidence is of assistance, in

particular, as to the meaning of Arabic words, the interpretation to be given to various *hadiths*, what particular historical Islamic figures would be seen to stand for by a Muslim audience, and the range of meanings which the word *jihad* may bear in particular contexts.

84. I have also had regard to the various views which the experts have expressed on aspects of the Claimant's various speeches. I have, however, assessed the ordinary English, syntax and import of the speeches for myself. Insofar as what the Claimant said, and its meaning, are clear as a matter of plain English, that is a matter for the Court rather than expert evidence. In my judgment, ultimately, the main thrust of the Claimant's messages in each case has been quite clear and would have been quite clear to a Muslim audience.
85. I have been conscious throughout this case of the need to avoid over-textual analysis and to assess what overall impression that a reasonable section of the audience would have formed hearing the Claimant's speeches live or viewing it once on line (*c.f.* Eady J in *Bond v. BBC*, cited *supra*).
86. I have also had regard to the fact that, unlike the Court, the audiences would not have had the luxury of detailed expert evidence and forensic examination in relation to all the historical and theological references made by the Claimant during his speeches. I have assumed, however, that significant sections of the predominantly Muslim audiences would have had some knowledge of, and grounding in, basic Islamic teachings and concepts and would have attended out of interest and been engaged in what was being said by the Claimant.

ISLAM

The sources of Islam: the Qur'an and the Sunna

87. There are two primary sources from which all Islamic belief and practice is derived: the *al-Qur'an* (the Revelation, or literally 'recitation', from God) and the *Sunna* (the normative behaviour and practice of the Prophet Muhammad). The legal injunctions derived from the combination of the *Qur'an* and the *Sunna* are called the *Shar'ia* (legal path) of Islam.
88. As M.A.S. Abdel Haleem points out in his translation of the *Qur'an*², an important stylistic feature of the *Qur'an* is that it alludes to events shorn of their historical background. Those who heard the *Qur'an* at the time of its revelation were, of course, fully aware of the contemporaneous circumstances, in particular, the physical persecution (*fitna*) of Muhammad and his followers by the polytheist and pagan tribes in Arabia and the necessity for the Muslims physically to defend themselves. Later generations had to rely on the Commentaries (*asbah al-nuzul*) to explain the historical context. It is obviously important that modern generations do likewise and that the *Qur'an* is read with a full understanding of the relevant historical context.

*Life of the Prophet Muhammad (570-633 CE)*³

² OUP 2004, at xxii-xxiii

³ See the useful introduction to M.A.S. Abdel Haleem's translation of the *Qur'an* (OUP 2004).

89. The Prophet Muhammad was born in Mecca about the year 570 CE. Polytheism was the predominant religion in Arabia at the time, although pockets of Christianity and Judaism were to be found in places such as Yemen, Yathrib and amongst the Arab tribes of the North under Byzantium rule. There was no central government. Desert conditions were harsh. There was competition for scarce resources and frequent fighting between tribes.
90. The first revelation of the *Qur'an* to Muhammad is recorded as 610 CE at the Cave of *Hira* outside Mecca. Muhammad's teachings and his message of 'one God', together with his growing political power, was resented by many of the polytheist and pagan tribes who visited Mecca on pilgrimage. By 615 CE, persecution led Muhammad to send 100 of his followers to seek refuge with the Christian King of Abyssinia (Ethiopia), King Negus. In 622 CE Muhammad and his followers eventually fled from Mecca to Yathrib, 200 miles to the north. This became known as the first *Hijra* (migration or journey).
91. Muhammad's fame and teachings and Islam quickly spread. Yathrib became known as Madina or Medina (the City of the Prophet or City). However, during the Median period of Muhammad's life (622-633 CE), Muhammad and his followers and their non-Muslim allies (*ummah*) continued to be threatened with annihilation by Meccan polytheists and pagan Qurishi opponents. A number of battles took place between Muhammad and the Meccans near Medina, including the Battles of Badr (624 CE), Uhud (625 CE) and Trench (627 CE). It was in this context that in 623 CE the first *Qur'anic* revelation was recorded reassuring everyone, including Muslims, that if they were attacked they were entitled to defend themselves:
- "Those who have been attacked are permitted to take up arms because they have been wronged – God has the power to help them – those who have been driven unjustly from their homes only for saying 'Our Lord is God'. If God did not repel some people by means of others, many monasteries, churches, synagogues, and mosques, where God's name is much invoked, would have been destroyed."* (Qur'an 22.39-40)
92. Muhammad and his followers survived the threat of annihilation. His teachings and influence continued to spread, until even the Meccans themselves eventually accepted Islam. Muhammad made his last pilgrimage to Mecca in 632 CE, by which time the whole of the Arabian peninsula had accepted Islam and united under one state and leader.
93. Muhammad died in 633 CE. His role as leader of the Islamic state was assumed by Abu Bakr (632-634 CE), followed by 'Umar (634-644 CE), then Uthman (644-656 CE) and then Ali ibn Abi Talib (656-661 CE). These four leaders became known as the Rightly Guided Caliphs. The schism between *Sunni* and *Shi'a* Islam exists because *Sunni* Muslims believe Abu Bakr was the first Caliph and true inheritor of Muhammad's legacy, whereas *Shi'a* Muslims believe his son-in-law, Ali ibn Abi Talib, was the first Caliph and true inheritor of Muhammad's legacy.

Islam is a religion of peace

94. It is common ground that Islam is a religion of peace. The *Qur'an* is a book of peace.

95. The words *Islam*, *Muslim* and *Salaam* all share the same Arabic triconsonantal root, *s-l-m*, which denotes “peace”. *Islam* means ‘submission to the will of God/Allah’, *i.e.* at peace with God. *Muslim* means a person who has submitted to God/Allah, *i.e.* at peace with God. *Salaam* is the Arabic word for peace.
96. The fundamental philosophy and world-view of Islam is ‘unity-in-diversity’. God is one God who created Heaven and Earth and the entire universe, including every human being. God, as the Source and Creator of life on Earth, is the unifying feature that underlies the whole of existence and binds humankind. Adam and Eve are cited by the *Qur’an* as the father and mother of the whole of humanity. Noah, Moses, Abraham, Jesus and Muhammad are referred to and cited as Prophets chosen by God. A large part of the *Qur’an* is directed at humankind in general, without any distinction being made between believer or non-believer. We are all brothers and sisters and creatures of God by dint of being from the tribe of Adam (*Banu*). Within this essential unity, the *Qur’an* recognises natural diversity and plurality:

“O mankind! Lo! We have created you male and female, and have made you nations and tribes that you may know one another. The noblest of you, in the sight of Allah, is the best in conduct. Allah is Knower, Aware.” (Qur’an, 49:13)

97. Islam includes unconditional respect for humanity regardless of faith, since all human beings are God's creatures:

“[L]et him who believes in Allah and the Last Day be generous to his neighbour, and let him who believes in Allah and the Last Day be generous to his guest” (narrated by the Companion, Abu Hurairah).

Extremism in religion is forbidden in Islam

98. *Islam* forbids anything extreme. This includes extremism in religion. The *Qur’an* commands:

“Oh People of the Book, do not go to excess in your religion.” (Qur’an, 4: 171 and 5: 77).

99. Prophet Muhammad said:

*“Distance yourselves from being extreme in religion” and, “Beware of going to extremes in religion, for those before you were only destroyed through excessiveness”.*⁴

100. The great 14th Century Damascene scholar, ibn Taymiyya, said that extremism in religion means deviating from a ‘Middle Path’ between two extremities.

The meaning of “Jihad”

⁴ Narrated by Ahmad, Ibn Khuzaimah, An-Nasa`ii, Ibn Majah and Al-Hakim.

101. The word *iihad* or *jihād* (جهاد) is an Arabic participle which means literally “struggling”, “exerting oneself” or “striving”. It is the nominal participle from the triconsonantal Arabic root *j-h-d*. In modern parlance, the word *jihad* has, unfortunately, become synonymous with ‘holy war’; but *jihad* has more complex, varied and subtle meanings in classical Islam which must be viewed and understood in their proper historical context.
102. Scholars distinguish between the linguistic (*lughawi*) and religious meaning of *jihad*. The religious use of the term *jihad* in Islam is shorthand for *jihad fiy sabilillah* which means “striving in the cause (literally, path) of God” (in *Qur’anic* and contemporary usage).
103. There was broad agreement between the experts as regards the origin, tradition and meaning of *jihad* in Islam. *Jihad* is an ancient, multi-faceted tradition of ‘striving or struggling’ in the cause of God, to obey God and His Law and to establish and preserve Islam. It was common ground that the prevalent message of the *Qur’an* is one of peace and tolerance, but it allows reasonable self-defence (like the Common Law).
104. The word *jihad* appears in 41 verses in the *Qur’an* (in 11 Meccan verses and 30 Median verses). None refer explicitly to an armed struggle. There are 21 references in the context of ‘striving’ generally because of religious beliefs and 12 references in the context of ‘armed combat’ in defence of Islam (*qital*). It is significant that all the verses of the *Qur’an* which refer to the conduct of armed combat (*qital*) came after the Prophet Muhammad and his Companions fled from persecution from Mecca to Medina (*hijra*) in 622 CE as explained above.

Categorisation of Jihad in Islam

105. Classical categorisation of *jihad* in Islam by jurists such as the Maliki⁵ jurist, Ibn Rushd (Averroes), involved four main categories: (i) *jihad* of the heart (*jihad bil qalb/nafs*) concerned with combating the evil insinuations of the ego and the devil; (ii) *jihad* by the tongue (*jihad bil lisan*) is concerned with speaking the truth and spreading the word of Islam; (iii) *jihad* by the hand (*jihad bil yad*) concerned with doing what is right and combating injustice; (iv) *jihad* by the sword (*jihad bis saif*) which refers to armed combat (*qital*) in the way of God, or holy war (*qital fi sabilillah*), the final resort if other types of *jihad* fail and the integrity of the Islamic religion and safety of the Muslim community is threatened.
106. The first category, *jihad* of the heart (*jihad bil qalb/nafs*), is classically referred to as the ‘Greater Struggle’ (*al-jihad al-akbar*) as it concerns the daily business of training the ego to obey God’s injunctions. The fourth category, *jihad* by the sword (*jihad bis saif*) is commonly referred to as the ‘Lesser Struggle’ (*jihad al-asghar*).

Qital

107. The *Qur’anic* word for armed defensive combat is in fact “*qital*” not *jihad*. It was only during the later formalisation of the doctrines of Islam and the doctrinal formulations of *jihad* as ‘striving in the path of God’ that *qital* was included officially

⁵ A *Sunni* religious school (*fiqh*) founded by the 8th Century jurist, Malik ibn Anas

as one of the many forms of *jihad fiy sabilillah* (striving in the path of God). Regrettably, the wider concept of *jihad* has now become confused with the narrow concept of *qital* (a concept which is highly regulated by Islamic law - see further below). In modern times, *qital* has come to monopolise the popular meaning of the word *jihad* both in the Muslim-majority world and in Western minds. This means, unfortunately, that whenever most people use the word *jihad*, they are almost always referring (incorrectly) to *qital*, *i.e.* armed combat.

108. The *Qur'an* and the *Sunna* lay down strict codes for the ethics of both declaring and conducting *qital* (*la ta 'tadu*):

(1) The established Islamic doctrinal conditions laid down by the *Qur'an* and the *Sunna* for the declaration of armed combat (*qital*) include, *e.g.*, (i) exhaustion of all peaceful avenues, (ii) self-defence against a known armed aggressor (which could never include civilian populations), and (iii) declaration of war by the recognised 'leader' of a Muslim political entity.

(2) The stipulations in the *Qur'an* and the *Sunna* for the ethics of conducting *qital* include, *e.g.*, (i) proportionate force, (ii) only combatants may be fought, not civilians, (iii) crops and civic infrastructure may not be damaged, (iv) looting, plunder and property violation is prohibited, (v) the use of human shields is forbidden, and (vi) prisoners of war must be humanely treated (see in particular *Qur'an*, 2:190-194).

109. The general and historical context of *Qur'an* 2:190-194 was a concern raised by Muhammad's followers as to whether they were permitted to retaliate and defend themselves when attacked by their persecutors within the sacred precincts in Mecca when on pilgrimage.⁶ The *Qur'an* provides:

"Fight in God's cause against them that fight you but do not overstep the limits. God does not love those that overstep the limits." (*Qur'an*, 2:190-191)

110. Propagation of the false notion that *jihad* in effect means naked *qital*, shorn of its proper historical context and limitations, has been used by extremists to radicalise elements in contemporary society. This distorted notion of *jihad* continues to be used, illegitimately, as a powerful tool of violent Islamist radicalisation, especially in respect of young Muslim men, for whom fighting a 'war' 'in the cause of God' has a natural historical and emotional appeal.

111. Islamist extremists have routinely diluted, or entirely ignored, these conditions and regulations for (*qital*) in order to seek to justify terrorist attacks against defenceless civilians (notably "9/11" and "7/7").

Is qital only defensive?

112. The experts disagreed on the nature of armed *jihad* (*qital*) in Islam. Professor Gleave stated that the majority of *Sunni* and *Shia'* jurists were of the view that the *Qur'an* licences both legitimate offensive and defensive *jihads*. Dr Wilkinson stated that the

⁶ See *Qur'an* 2:196 and M.A.S. Abdel Haleem, p.21, footnote (d).

Qur'anic warrant for armed *jihad* is always as armed *defence* of Islam and Muslim life from prior aggression and that this is the overwhelmingly majority scholarly view in both *Sunni* and *Shia'* Islam. They agreed that what constitutes 'defence' and 'offence' in the context of armed *jihad* is sometimes contested in Muslim circles.

113. It is not necessary finally to determine this theological issue for the purposes of this judgment, but in so far as it is relevant to do so, it is clear in my view, that the *Qur'an* permits only defensive *jihad* (*al-jihad a-difa'i*).

Salafism

114. *Salafism* is the movement within Islam which argues that Muslim practice should return to that of the 7th Century, the time of Islam's earliest 'pious ancestors' (*salaf salih*). *Salafism* in Islam, therefore, generally refers to Islam as practised by the earliest Muslim communities. *Salafi* Islam, is sub-divided into myriad sub-groups. There is a wide spectrum of *Salafist* views. In practice, *Salafism* often tends to scriptural literalism shorn of the necessary contextual reasoning (*asbab an-nuzul*). As Dr Wilkinson explains, *Salafists* are inclined to ignore the contextual understandings of Islam as developed by the four Canonical Schools of Islamic Law and sometimes 'cherry-pick' verses of the *Qur'an* and sayings of the Prophet Muhammad to form religious-legal judgments without the necessary contextual reasoning (*asbab an-nuzul*). Most extreme and violent Islamist extremists would claim to be *Salafi* Muslims, but they take this process of scriptural literalism and contextual ignorance to an extreme extent, *i.e.* scriptural determinism
115. Professor Gleave accepts that the majority of *Salafis* do not call for military offensive *jihad*, but simply call for devout Muslims to spread the message of Islam through a process called *da'wah* (call), that is, presenting to non-Muslims and calling on them to recognise the truth of Islam. *Jihadi Salafism* is an 'offshoot' of mainstream *Salafism* which 'supplements' the religious obligation of *da'wah* (call) with military action, which they refer to simply as "*jihad*".

What is extreme Islam?

116. I turn to consider what is properly to be considered "*extreme*" in the context of Islam and Islamic doctrinal positions. It is necessary to do so in order to determine that the BBC's plea of justification for the WCO is made out, *viz.* "*The Claimant is an extremist Islamic speaker who espouses extremist Islamic positions*". The various speeches and posts relied upon by the BBC were given by the Claimant on Islamic issues in his capacity as an Imam and directed to predominantly Muslim audiences. The analysis of what is "*extreme*" and what are "*extremist Islamic positions*" is, therefore, necessarily to be judged initially through the prism of Islam.
117. What is 'extreme' is, by definition, something which is not 'moderate'. Thus, "*extremist*" Islamic positions can be seen in contra-distinction to 'moderate' or 'mainstream' Islamic positions. Dr Wilkinson usefully defines moderate Islam as essentially those ideas, doctrines and worldviews consensually agreed by *Sunni* and *Shia'* Islamic Law Muslim scholars, mainstream *Salafi* scholars and Muslims, generally to constitute the essential doctrines, teachings and spirit of Islam, according to *Qur'an* and *Sunna*, applied in such a way as to be suitable for the context of contemporary Britain. I agree with this as a general working definition.

Extremist Islamic positions

118. In my view, the following constitute “*extremist*” Islamic positions (or *indicia* thereof).
119. First, a ‘Manichean’⁷ view of the world. A total, eternal ‘Manichean’ worldview is a central tenet of violent Islamic extremism. It divides the world strictly into ‘Us’ versus ‘Them’: those who are blessed or saved (*i.e.* the “*right kind*” of Muslim) on the one hand and those who are to be damned for eternity (*i.e.* the “*wrong kind*” of Muslim and everyone else) on the other. For violent Islamic extremists, the “*wrong kind*” of Muslim includes moderate *Sunni* Muslims, all *Shia* Muslims, and many others who are “*mete for the sword*” and can be killed, and anyone who associates or “*collaborates*” with them. Violent Islamic extremists divide the world strictly into the Abode of Islam (*Dar al-Islam*), the Abode of Unbelief (*Dar al-Kufr*) and the Abode of War (*Dar al-Harb*). The ultimate agenda of violent Islamic extremists is the overthrow of all democratic states, including Muslim democratic states, and the creation of a global *Caliphate* or Islamic State and the imposition of a primitive, literalist interpretation of *Sharia* Law by force (as exemplified by *e.g.* ‘ISIS’). The clearest exposition of this ‘Manichean’ philosophy is to be found in Sayyid Qutb’s “*Milestones*” who called for a war against *jahiliyyah* (unbelief) (see further below).
120. Second, the reduction of *jihad* (striving in God’s cause) to *qital* (armed combat) (‘the Lesser Jihad’). An interpretation of *jihad* that simply equiperates *jihad* with *qital* and ignores the numerous peaceable meanings of *jihad* (and ‘the Greater Jihad’) would *a priori* be extreme. Such an interpretation would give *jihad* an exclusively violent meaning which it does not have.
121. Third, the ignoring or flouting of the conditions for the declaration of armed *jihad* (*qital*), *i.e.* the established Islamic doctrinal conditions for the declaration of armed combat (*qital*) set out above. Thus, terrorist insurgency, ‘leaderless’ *jihadist* attacks by groups or individuals against civilians, or the waging of aggressive war against another country or people, cannot properly constitute lawful *qital* under Islamic doctrine. Accordingly, encouragement of such actions would, therefore, be classified as “*extremist*” Islamic positions.
122. Fourth, the ignoring or flouting of the strict regulations governing the conduct of armed *jihad*, *i.e.* the stipulations in the *Qur’an* and the *Sunna* for the ethics of conducting *qital* set out above. Thus, the use of excessive violence, attacks on civilians, indiscriminate ‘suicide’ violence and the torture or the murder of prisoners would constitute violation of these regulations of *jihad*, and, therefore, be classified as “*extremist*” Islamic positions.
123. Fifth, advocating armed fighting in defence of Islam (*qital*) as a universal *individual* religious obligation (*fard al ‘ayn*). *Qital* has been adjudicated from early to classical

⁷ ‘Manicheanism’ was a Persian Gnostic tradition that became popular in the 3rd Century CE. It viewed the universe as the product of the eternal cosmic struggle between Light and Darkness and Good and Evil. It was named after its founder, Manes. Manicheanism was regarded by early Christians as heretical as it appeared to attribute creative powers to Darkness and Evil rather than exclusively to God. (*c.f.* Dr Wilkinson, para. 5.1.5)

to modern times by the vast majority of Islamic scholars as being a *collective* religious obligation (*fard al-kifaya*) unless one is directly under attack. Thus, encouraging young Muslim men or women to believe that it was their individual religious duty to go off and ‘fight in the name of Allah’ would be an “*extremist*” Islamic position.

124. Sixth, any interpretation of *Shari’a* (*i.e.* religious law laid down by the *Qur’an* and the *Sunna*) that required breaking the ‘law of the land’. Under *Shari’a*, Muslims are required to obey the law of the land, unless that law of the land explicitly required them to break the *Shari’a*.
125. Seventh, the classification of all non-Muslims as unbelievers (*kuffar*). Extremist Islamists cite irreconcilable differences between belief (*iman*) and unbelief (*kufr*) and classify as all non-Muslims as unbelievers (*kuffar*). In mainstream Islam, however, ‘People of the Book’, *i.e.* Christians and Jews, are not classed as *kuffar*.
126. Eighth, the extreme *Salafist* Islamism doctrine that the precepts of the Muslim faith negate and supersede all other natural ties, such as those of family, kinship and nation. This is redolent of the extreme *Salafist* Islamist outlook which cites absolute, irreconcilable differences between belief (*iman*) and unbelief (*kufr*) (see Sayyid Qutb below).
127. Ninth, the citing with approval the *fatwa* (legal opinions) of Islamic scholars who espouse extremist view (*e.g.* the *Salafi-Wahabi* scholar, Sheikh Abdul Aziz bin Baz), or referring with approbation to notorious violent, extremist, Islamic ideologues (*e.g.* Sayyid Qutb and Abdullah Azzam).
128. Tenth, any teaching which, expressly or implicitly, encourages Muslims to engage in, or support, terrorism or violence in the name of Allah.

Islam forbids terrorism

129. Islam forbids terrorism. Islamic notions of terrorism (*hiraba*) bear similarities to the UK statutory definition as regards unauthorised threats to the wellbeing and property of individual citizens and to the State. The *Qur’an* and the *Sunna*, *i.e.* the primary sources of Islamic Law, provide that the crime of sowing sedition and perpetrating terror, to “*cause corruption in the land*” in peaceful territories is one of the most severe crimes in Islam (*Qur’an*, 5:33). “*Corruption*” is defined as armed rebellion against a legitimate ruler, “*those who take up weapons to spread fear*”, highway robbery, kidnapping and other acts that would today be classed as terrorist activity. Muslims suffered terrorism in the first century of Islam at the hands of the Khwarij sect.⁸
130. Terrorism in Islam (*hiraba* or *irhab*) was defined by the 11th Century Chief Judge of Muslim Lisbon, Ibn ‘Abd al-Barr, as follows:

⁸ *Khwarij* means, literally, ‘*those who left the mainstream body of Islam*’. The Khwarij were a violent sect who opposed the political leadership of the Caliph ‘Ali through violent insurrection in the first century of Islam. They claimed that no human leadership had the political right to lead Islam which belonged to God alone. (*c.f.* Dr Wilkinson, para. 10.2).

“Anyone who disturbs the free passage in the streets and renders them unsafe to travel, striving to spread corruption in the land by killing people or violating what God has made it unlawful to violate, is guilty of terrorism [hiraba], be he a Muslim or a non-Muslim, free or slave, and whether he actually realises his goal of taking money and killing or not.”

131. Thus, the “9/11” and “7/7” bombers would have been guilty of terrorism (*hiraba*) under Islamic law.

Statutory definition of terrorism

132. The current statutory definition of “terrorism” is to be found in section 1 of the Terrorism Act 2000 as amended:

“1) In this Act “terrorism” means the use or threat of action where —

- (a) the action falls within subsection (2);*
- (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public and*
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.*

2) Action falls within this subsection if it —

- (a) involves serious violence against a person;*
- (b) involves serious damage to property;*
- (c) endangers a person’s life, other than that of the person committing the action;*
- (d) creates a serious risk to the health or safety of the public or a section of the public or*
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system.*

3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied.

4) In this section—

- (a) “action” includes action outside the United Kingdom;*
- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated;*
- (c) a reference to the public includes a reference to the public of a country other than the United Kingdom and*
- (d) “the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.*

(5) In this Act, a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.”

Historical chronology

133. It is important to view the Claimant's speeches relied upon against the proper historical background. Using the material supplied by the BBC, I have prepared an expanded chronology of the main historical events since the beginning of the 20th Century to the present day, which is annexed to this judgment at "ANNEX A".

ANALYSIS OF BBC' S DEFENCE OF JUSTIFICATION

(1) KINGSTON UNIVERSITY SPEECH (2006)

134. The BBC rely upon a speech given by the Claimant in late October 2006 at a meeting organised by the Kingston University Islamic Society. The topic of the meeting was *ahklaq* (the Muslim personality). The meeting was chaired by a Mr Tanveer (referred to in the transcript as 'Brother Tanveer'). There were both men and women in the audience.
135. The meeting came to light because of an article published in "*The Sunday Times*" on 12th November 2006 (see further below). The Claimant spoke for about an hour. The text set out below is taken directly from the transcription of a tape which came into the possession of a journalist from "*The Sunday Times*" journalist, Mr Abul Taher. The tape no longer exists, but the accuracy of his transcription made in 2006 is no longer in dispute and Mr Taher was not required to give evidence.
136. I bear in mind the two limitations of the evidence in relation to this speech. First, the transcript comprises a relatively short extract from a much longer speech. Second, the absence of the tape means that it is not possible to assess inflection and tone of the words spoken by the Claimant. However, in my view, the import of the Claimant's essential message is clear.

Text of the speech

137. I set out below the text of the extract from the Claimant's speech that was retained and transcribed by "*The Sunday Times*". In this part of the speech, the Claimant is discussing the characteristic of "*strength in Islam*". He touched upon two specific topics, the wearing of the *hijab* and *jihad*. I highlight in bold those passages which are particularly significant.⁹ The Claimant began as follows:

*"So the Muslim should **be strong** as pertaining to his *deen* (belief) even though there might be **a war upon Islam** where they want the Muslims **not maybe a physical war but an ideological war** where they want the Muslims to stop talking speaking about the *deen* of Islam and stop having the *Aqeeda* or creed of Islam. We say no if you compromise on this you are that weak Muslim. Islam is not your religion because the religion of Islam requires strong men, strong women strong*

⁹ I use the same **bold** to highlight significant passages in the Claimant's subsequent speeches (below).

*individuals because these issues where there are telling us where there are issues which are not correct **the issue of jihad** or the Muslims women wearing Islamic dress, if you look at these issues you'll find great wisdom in it."*

138. On the issue of the *hijab*, the Claimant said this:

"As men you brothers when You see a women dressed in Hijab, wearing jilbab covering herself and you see another individual not covering herself maybe dressed immorally maybe dressed in a mini skirt, which one do you respect? As a man maybe the sisters cannot understand but as men, even non Muslims men by Allah, by Allah a non-Muslim man came to me he said when I see a Muslim woman wearing hijab I lower my gaze, this is what he said. So the issue of hijab we say is pride. Not pride in the sense of being arrogant but we say it with happiness that this Allah (SAW) has given to the Muslim woman to honour the Muslim woman."

139. The Claimant then turned to the issue of *jihad* and said as follows:

*"Out of respect for the Muslims woman and yes the same with Jihad. Jihad if a country is attacked like America or Britain and America decides to defend itself and Britain decides to defend itself would you say that this is good or bad. You would say that this is having courage defening [sic] yourself defending your land defending honour. So when it comes to Muslims today when the **Palestinian Muslims** want to defend themselves when the **Chechen muslims** want to defend themselves when the **Kashmir Muslims** want to defend themselves with the **Iraqi muslims** want to defend themselves why do we say that this is terrorism? **No this is not terrorism. This is courage this is good the person is defending himself and his family and his womenfolk and his land and his deen this is something which is good. So a characteristic of the muslims should be strength.***

*Be strong in your deen, Be strong in your deen be steadfast in your deen, **Be firm in your deen because at the end of the day everyone of us has to die.** As Allah (SAW) tells us you may die you will perish every soul will taste death then you will meet allah and if you have turned away from the deen of islam and **you have become weak** and you become weak minded and you weren't steadfast you will have to account to Allah for this. But if you are **steadfast** and you are firm and even if you face trials and tribulations, how long is it for, how long is life for?"*

140. In the last section of his talk, the Claimant turned to the characteristics of brotherhood in the *deen* (belief) of Islam:

“We have lost our practicality of Islam. A person will scream about Jihad. A person will scream and shout yes we need to fight. But where is the practicality about doing something for islam? You want to make jihad? Very good. Don’t shout and scream and fight with your Muslim brother who is doing something else for the deen. Take some money and go to Palestine and fight, fight the terrorists, fight the Zionists in Palestine if you want to do this. But Muslims have the lost the practicalities of the deen of Islam.”

141. During the question and answer section which followed, the Claimant was recorded as saying women could not play musical instruments except a small drum, and men could not play instruments and only listen to religious music or take photos if absolutely necessary.

“The Sunday Times” article

142. On 12th November 2006, “The Sunday Times” published an article “Islamists infiltrate four universities” co-authored by Mr Taher which referred to the Claimant as a “radical cleric” who had recently urged students at Kingston University to “wage Jihad” in Palestine. In a press statement responding to the article, the university said that it had no record of the talk and Brother Tanveer, a past president of the university Islamic Society, had left the university. The Federation of Student Islamic Societies (“FSIC”) issued a press statement on 14th November 2006, to which the Claimant contributed, stating that the Claimant had been taken out of context and misquoted and that he was actually delivering a talk on the “illegitimate” nature of terrorist activities.

BBC’s submissions

143. The BBC submitted that the Claimant’s message in his KINGSTON UNIVERSITY SPEECH (2006) was clear and unequivocal, namely a call to his audience that: (i) in the context of *jihad* (as with the wearing of the *hijab*), there must be “no ...compromise” and Muslims must be strong and not be influenced by calls from non-Muslims criticising talk of *jihad*; (ii) it is good for Muslims to defend themselves in such places as Palestine, Chechnya, Kashmir and Iraq by fighting; and even though their actions would or may be condemned in Britain as terrorism, they represent legitimate *jihad* and are courageous; (iii) *jihad* should be waged where it is practical to do so and this has been overlooked; (iv) the audience should, in particular, “make *jihad*” in the meaning set out in the final passage by taking money and going to Palestine to fight anyone who fights against the Muslims (described by the Claimant as “terrorists”) and any supporters of an Israeli state, namely Zionists. In stark contrast to the Claimant’s express distinction between “terrorists” and “Zionists”, he made no distinction between “Zionist” security forces and “Zionist” civilians.

Claimant’s case

144. The Claimant said in his witness statement that he cannot remember exactly what he said at Kingston but he regarded the way in which his talk had been portrayed as ‘extremely unfair’ because the passages relied upon related to no more than 5-10

minutes of his talk and his ‘firm recollection’ was that his talk was directed at stopping people participating in terrorism but selective quotes gave a different impression. The Claimant admitted, however, speaking the words quoted but said in cross-examination that he was employing rhetorical devices and only referring to physical *jihad* in the sense of the Muslims being entitled to defend themselves against attack. The Claimant also stressed in his witness statement:

“As an Imam, I have spent my entire career promoting peace, tolerance, unity and respect for human rights. I did not call the audience to “make jihad” in Israel as alleged by the Defendant.”

Experts

145. There was a measure of agreement between the experts regarding the KINGSTON UNIVERSITY SPEECH (2006), namely that: (i) The Claimant is making a case for Muslims not to compromise their religion (*deen*) and to be strong and proper Muslims. (ii) The Claimant’s case for Muslims not to compromise their religion focuses on the wearing of the Islamic headscarf (*hijab*) and recognising armed *jihad* in defence of the territories listed - Palestine, Chechnya, Iraq and Kashmir. (iii) These two aspects of Muslim life, the wearing of the headscarf and the recognition of the conflicts in defence of the above-mentioned territories as armed *jihad*s are given an equivalent religious weight in that the Claimant asserts Muslims should not compromise on them equally. (iv) The endorsement of armed *jihad* articulated by the Claimant in this passage involves the commitment, at least, to recognise conflicts going on in the world involving Muslims in Palestine, Chechnya, Iraq and Kashmir as armed *jihad* in defence of Islam. (v) There is, however, no mention by the Claimant in the portion of the speech provided of how the armed *jihad* in defence of those places constitutes a legitimate armed *jihad* or how they do not or who is or should (or not) be fighting them.
146. The experts disagreed on the import of the key sentence: *“Take some money and go to Palestine and fight, fight the terrorists, fight the Zionists if you want to do this”*. Professor Gleave suggested that it was most likely to be ‘sarcastic implied criticism’ of the course of action given the context of the statement, since the speaker immediately says before this that people who *“scream about jihad”* should not criticise those who do not go, who stay here and *“do something else for the deen”* here. Dr Wilkinson thought that in the light of the Claimant’s use of the imperative tense *“take”* and *“fight”* without qualification and in the light of the rest of the speech in which the Claimant gives wearing the Islamic headscarf (*hijab*) and armed *jihad* a religious equivalence, the Claimant is most likely to be encouraging or at least condoning travel to Palestine to *“fight the Zionists, fight the terrorists”*.
147. They agreed the Claimant was neither condemning that course of action nor making it an obligatory religious duty since he uses the phrase, *“if you want to do this.”* They agreed that in order to provide a completely conclusive analysis of this speech, they would require access to the audio recording and, preferably, more of the speech. This is because some of the contextual meaning of the speech appears to be conveyed by the tone of the Claimant’s voice and his turn of phrase.

Analysis

148. It is important to have close regard to the precise words used in the passages of the speech set out above. There are, in my view, a number of particularly striking aspects of the language used by the Claimant in the speech. First, the singular emphasis on being “*strong*” as a Muslim as a necessary core virtue (the word “*strong*” is referred to six times). Second, the exact religious equivalency given to wearing the *hijab* and armed *jihād* (“...if you look at these issues you’ll find great wisdom in it”). Third, the blanket licence and approval given to the actions of Palestinian, Chechen, Kashmir and Iraqi Muslims defending themselves, their womenfolk, their land and their *deen* (belief) notwithstanding the violent and indiscriminate methods used and any impact on innocent civilians (“...this is not terrorism”). Fourth, the emphasis on death (“every soul will taste death”) as a route to eternal salvation (“you will meet Allah”). Fifth, the threat that those who do not demonstrate to the core virtue of strength (*i.e.* the “*weak*” or “*weak minded*” and those who “*weren’t steadfast*”) would be at religious risk (“you will have to account to Allah for this”). Sixth, the exhortation to fight rather than just scream or shout about *jihād* (“You want to make *jihād*? Very good.”). Seventh, the equiperation of Zionists with terrorists (“fight the terrorists, fight the Zionists”), including even civilians.
149. For these reasons, the final sentence would, in my judgement, have been understood by most members of the audience as a call to arms, *i.e.* to go and join the armed Islamic *jihād* in Palestine (“Take some money and go to Palestine and fight, fight the terrorists, fight the Zionists in Palestine if you want to do this”). This is what the Claimant really means when he refers to being “*strong*” and the “*practicalities of the deen of Islam*”.¹⁰ In essence, the Claimant is urging the audience to ‘walk the walk’ rather than merely ‘talk the talk’.

Was the Claimant merely being sarcastic?

150. I reject Professor Gleave’s suggestion that the Claimant was merely being ‘sarcastic’ (this was a suggestion which came from him not the Claimant).
151. In my view, proper syntactical analysis clearly militates against his suggestion. The tone of the passage is obviously serious in nature throughout. The Claimant is describing armed *jihād* in robustly positive terms as “*good*” and involving “*courage*”. He is telling his audience that it is wrong for people to call the sort of *jihād* which has taken place in Chechnya, Kashmir and Iraq as “*terrorism*”. It should be noted that the Claimant accepted in cross-examination that he was clearly wrong to have included Kashmir, since this was on any view a ‘leaderless’ insurgency, *i.e.* not sanctioned and declared by a recognised leader of a Muslim state.
152. It could not properly be suggested that Muslims were engaging in “*terrorism*” when defending themselves. Accordingly, it is clear that the Claimant is clearly talking about a wider concept of *jihād*, *i.e.* aggressive notions of armed *jihād* (*qital*). His inclusion of a reference to defence of “*his land and his deen*” (and his later references to “*Zionists*” as being “*terrorists*”) support this. He explains that a characteristic of Muslims should be “*strength*” and exhorts Muslims to “*be strong in your deen*”. He then starkly contrasts this with references to death (“*everyone of us has to die*”) and chastises the “*weak minded*” who are not “*steadfast*”. His peroration (“*You want to*

¹⁰ Note the reference to the “*practicalities*” of Islam is redolent of the language of Sayeed Qutb in “*Milestones*” (further below)

make jihad? Very good. Don't shout and scream and fight with your Muslim brother who is doing something else for the deen. ... etc.") is thus clearly meant in the same serious tone.

153. The Claimant is clearly exhorting or encouraging or mocking those who simply “*scream and shout*” about *jihad* and fighting but actually do nothing practical (*i.e.* armchair *jihadists*), to get up and “*do something else for the deen*” and go and fight. His reference to “*take some money*” and “*Zionists in Palestine*” reinforces the seriousness of his message. In my view, one does not need to hear a tape of the speech to glean this clear clarion call for ‘actions not words’ by the Claimant.

Other explanations by the Claimant

154. Mr Bennett suggested that the Claimant was merely employing rhetorical devices in this speech. I disagree. In my view, the plain meaning of the words used by the Claimant is clear and there is no reason to suppose that the Claimant did not mean what he said. If, as the Claimant now claims, his intention in the speech was to stop young people engaging in *jihad* abroad, in my view, the Claimant would not have said what he did say (in particular “*...go to Palestine and fight, fight the terrorists, fight the Zionists...*”), *i.e.* the exact opposite of what he is now saying he meant.
155. Mr Bennett sought to place weight on the FSIC statement as a contemporaneous denial of the meaning now attributed to the speech by the BBC. However, the fact that “*The Sunday Times*” had attributed the same meaning to the speech at the time as the BBC do now might be thought to be a more significant point.
156. Professor Gleave sought to suggest that the Claimant’s references to the conflicts in Palestine, Chechnya, Kashmir and Iraq were the Claimant merely arguing that Muslims should resist ‘societal pressure’ to label these conflicts as (illegitimate) *jihad* when the Muslims in these countries were merely defending themselves. However, Professor Gleave’s explanation takes no account of the blanket approval of what is being done in these conflicts, purportedly in the name of Islam, including violent and indiscriminate attacks on innocent civilians. Inferentially, the Claimant is saying “*...this is not terrorism*”.
157. I am not persuaded by the Claimant’s suggestion that he was taken ‘out of context’. No relevant ‘context’ was provided by the Claimant at the time of the FSIC press statement in 2006 nor has been since. Further, it is not easy to think of any ‘context’ which could materially ameliorate the Claimant’s core message to the audience about *jihad* in this speech.

Conclusion

158. In conclusion, in my judgement, in his KINGSTON UNIVERSITY SPEECH (2006), the Claimant was espousing extremist Islamic positions and promoting or encouraging religious violence, in particular by exhorting his audience to travel to engage in armed *jihad* (*qital*) in Palestine. He said:

“You want to make jihad? Very good. Don't shout and scream and fight with your Muslim brother who is doing something else for the deen. Take some money

and go to Palestine and fight, fight the terrorists, fight the Zionists in Palestine if you want to do this.”

(2) ADVICE TO TAWFIQUE CHOWDHURY (2009)

159. The BBC rely upon a document headed “*Advice to Sheikh Tawfique from Imam Shakeel Begg*” authored by the Claimant, which was posted on the www.pureislam.com website on 19th February 2009 and the www.islamicawakening.com website on 20th February 2009.
160. The Claimant’s “*Advice*” was in a response to a speech by a Muslim scholar, Sheikh Tawfique Chowdhury, delivered in December 2008 to counter-terrorism officers in Cardiff. Sheikh Chowdhury was the Director General of the AlKauthar Institute and Mercy Mission.

Text of the Claimant’s “Advice”

161. The Claimant’s “*Advice to Sheikh Tawfique*” posted on the Web read as follows:

“Bismillah al-Rahman Al-Rahim

It is with much sadness that I read Tawfique Chowdhury’s speech to the anti-terrorism officers in Wales, which he brazenly posted on an Islamic blog. I was deeply shocked and appalled by his enthusiasm for collaboration with a body that has failed tis [sic] own war against Islam and the Muslims at home and abroad. It is deplorable for a graduate from the prestigious Islamic University of the Prophet’s city – the first Islamic State – where the subject of ‘Aqida is emphasised the most, to declare himself an ally of the West against Islam, not even by choice, but naturally. It is ridiculously outrageous for a Muslim speaker to lure the anti-terrorism officers into using him and other religious leaders against the Muslim community. This is not to say that we should not work to prevent unlawful violence. In fact, many have been at the forefront of this work, without signing a deal with the devil, or joining any sort of alliance, be it natural or otherwise, with the brutal, cunning and oppressive anti-terrorism workforce.

In light of this, I urge Tawfique Chowdhury to publicly and unequivocally retract his irresponsible and reckless speech, in order to save himself and his institute from disrepute. The failure in doing so will only reaffirm the public sentiment in the UK that he has clearly taken side with the enemies of Islam the Muslims. I would also like to take this opportunity to remind the scholars, preachers and Imams that their silence is consent. Tawfique Chowdhury is not the first to fall into disrepute and controversy, and he certainly would not be the last, unless and until they fulfil, and not betray their covenant

with Allah, like those of whom Allah makes mention in His Book: “(And remember) when Allah took a covenant from those who were given the Scripture to make it known and clear to mankind, and not to hide it, but they threw it away behind their backs, and purchased with it some miserable gain! And indeed worst is that which they bought.

Imam Shakeel Begg of Lewisham and Kent Islaamic Centre.”

BBC’s submissions

162. The BBC submitted that the Claimant gave a false and deliberately misleading characterisation of Mr Chowdhury’s speech in five respects, viz. Mr Chowdhury did not: (i) declare himself “*an ally of the West*” either expressly or by implication; (ii) “*lure*” the anti-terrorism officers into “*using him and other religious leaders against the Muslim community*”; (iii) “*sign[] a deal with the devil*” in the form of the “*brutal, cunning and oppressive anti-terrorism workforce*”; (iv) make “*an irresponsible and reckless*” speech which brought “*him and his institute into disrepute*”; or (v) “*take sides with the enemies of Islam the Muslims*” or “*betray*” his “*covenant with Allah*”.

Claimant’s case

163. The Claimant has been a long-term self-confessed critic of the UK government’s anti-terrorism policies. In particular, he was very critical of the government’s “*PREVENT*” strategy which he says targets Muslim communities (see further below). The Claimant admitted that he was “*angry*” with Mr Chowdhury for what he saw as his support for the government’s anti-terrorism policies but said he “*regrets*” the type of language which he used. He said his trenchant criticism of Tawfique Chowdhury was simply based on his belief that Mr Chowdhury was supporting PREVENT.

Sheikh Tawfique Chowdhury’s 2008 speech to counter-terrorism officers

164. In order accurately to judge and calibrate the nature and validity of the Claimant’s response, it is first necessary to set out and examine Sheikh Tariq Chowdhury’s speech in detail. The title of the speech was “*Muslim scholars – West’s natural allies in fighting scourge of terrorists*”.
165. As Sheikh Chowdhury explained in his preamble (posted on the website www.muslimmatters.org), the speech was delivered in early December 2008, shortly after the 28th November 2008 attacks in Mumbai, at a dinner organised by the Muslim Council of Wales attended by some of the nation’s top counter-terrorism officers and prevention of terrorism experts. Sheikh Chowdhury also stated in the preamble:

“And before some self-righteous individual points my actions as being done in fear, know this: I did not deliver this lecture with nifah and hypocrisy in my heart rather, rather with absolute izzah and honour and passion and conviction and arguing for our right to preach our pristine and pure religion.”

166. In my view, Sheikh Chowdhury's speech was manifestly measured and moderate. His essential message and thesis is that Islam is the solution not the problem, that Islamic extremism is a perverted ideology, that Muslim scholars are the natural allies of the West and too many mainstream moderate scholars have been denigrated and negatively portrayed in the media as aberrant *Wahabi*¹¹ when their knowledge and teaching of (true) Islam should be harnessed in fighting extremism and terrorism. In essence, Sheikh Chowdhury posits: Who better to fight the intellectual war than credible, mainstream, moderate Muslim scholars who speak the language, understand the jurisprudence and share the common values of the Islamic and Western civilizations? This might have been thought to have been a praiseworthy message which the Claimant should have welcomed. It was not (see further below).
167. I set out below some of the key passages in Sheikh Chowdhury's speeches. He began as follows:

"In the mistaken equation of terrorism with mainstream Islam and denigrating it with labels of radical or fundamental, the war on terror has sidelined and marginalized one of its greatest allies – Independent Islamic Scholarship. Worse still, the war on terror has failed to recognize that those that we have come to call fundamentalist Muslim scholars are precisely those who have been long fighting the war on terror – long before September 11 and long before the Gulf War. For example, the former Grand Mufti of Saudi Arabia was of the opinion that hijacking airplanes was "an extremely great crime" ...[and] condemned the 'Jamaaa'atul-Jihadd', a terrorist group, [as] "...evil....harmful to Muslims...the brothers of Satan". The present Grand Mufti...said about the September 11 incidents: "It is nothing but oppression and tyranny". There are also numerous such quotes from the Grand Muftis of various countries. These are not sophisticated PR campaigns – rather, they are verdicts spoken in the language that the people would understand, in those media channels that the right group would tune into and understand.

I ask you the question: Why alienate the message of such people? Why not use these Muslim scholars that are credible in the eyes of the Muslim masses to achieve the common goal of prevention."

168. Sheikh Chowdhury then explained that the Muslims' fight against terrorism was not new. He cited the intellectual battle fought by Muslims 1,400 years ago in the

¹¹ Wahabi scholars, i.e. those scholars who identify with the teachings of Muhammad ibn Abdul Wahab (1703-1792), an 18th Century religious reformer who opposed the religious innovations of Ottoman Sunni Islam and propounded a purified Islam of the earliest generations of Islam (Salaf). Followers of Muhammad ibn Abdul Wahab are also known as Salafi. After Muhammad ibn Abdul Wahab formed an alliance with Muhammad ibn Saud of the Saudi family, the theological-political partnership between Salafi Islam and Saudi tribal power and authority became the basis of the modern Saudi State. (c.f. Dr Wilkinson, para 10.2).

conflict between the terrorist *Khawarij* sect and the companions of the Prophet Mohammed. Sheikh Chowdhury continued:

“This [intellectual battle] continued throughout the ages – where independent Muslim scholars presented the best defence against distorted terrorist ideologies. Today, this is also seen as the manner in which Saudi Arabia has tackled their terrorism problems by putting independent credible Muslim scholars at the forefront in the intellectual battle for disproving terrorism. By equating these Muslim scholars representing orthodox Islam with religious extremism, the war on terror will lose its greatest ally in this long drawn saga.”

169. Sheikh Chowdhury then turned to consider the case for broader, social causes of extremism and terrorism:

“If we make a search for the causes of extremism and terrorism, some suggestions come to light, such as social injustice or terrorist ideation or political disenfranchisement. But not all people who suffer from these disillusionments become terrorists. The stronger argument is that these conditions are merely the fertile plain, but the common pathway or the motivating context for raising terrorists is through ideological persuasion. It is this ideological distortion that is the cause of extremism and violence perpetrated in the name of Islam, and it is best tackled by those who are most qualified to deal with it.”

170. Sheikh Chowdhury then turned to elucidate his central thesis:

“The best strategy for prevention is to dismantle terrorist ideologies using the same Qur’an and the same narrations of the prophet that are misunderstood by them. This is a task that can only be accomplished by established independent credible Muslim scholars. The war on terror therefore is as much a war on ignorance and misguidance, as much as it is a war against the terrorists themselves. Modern anti terrorism strategies need to do more to tackle the greatest draw card for extremism – that of the terrorist ideology. This is an intellectual academic war before it is a battle with bullets and bombs. Who better to fight the war than Muslim scholars who:

- *Speak the language and refer to the same evidence and jurisprudential sources*
- *Those who understand the intellectual distortions that led to extremist ideology*

- *Those who can dismantle the misunderstanding and the deviated logic*
- *Who are themselves pinnacles of goodness and mercy to all men and women – whether Muslim or not*
- *Those who uphold the common shared values that both the Islamic and Western civilizations agree to*
- *Those who appreciate that we call all live together with understanding and tolerance”.*

171. Sheikh Chowdhury then answered the question “*Who are these independent Muslim scholars?*”:

“They are scholars from the broad spectrum of Muslims possessing authentic religious credentials that support the prevention of terror and extremism. They are not adherents to one specific brand of Islam, belonging to this or that group – rather any scholar and every scholar that supports the prevention of terror and working towards defusing any such tension. For America, 7 years of fighting terror around the world and conflating orthodox Islam with fundamentalism and terrorism – with little progress – truly demonstrates that alienation of key allies in the ideological battle ground is a costly mistake. It is imperative that we avoid this mistake as we look for a fresh strategy to tackling terrorism and its challenges into the future. There should be an active attempt to identify scholars from a broad spectrum of Muslim groups that support the cause.”

172. Sheikh Chowdhury went on to quote an address given by the US Ambassador, Chas W. Freedman Jr to the Pacific Council on International Diplomacy on 4th October 2007 to the same effect:

“We must stop inadvertently undermining the efforts of mainstream Muslims to oppose our common enemies and to expose our common enemies and to expose these enemies as the deranged and immoral fanatics they are. Our ignorant and blundering equation of terrorism with Islam has overshadowed and impeded their efforts to regain control of their own moral space. To help them to do so, we must restore respectful relationships with Muslim scholars and the governments they advise. Only then can we work with them to discredit Al Qaeda’s aberrant doctrines.”

173. In his conclusion, Sheikh Chowdhury proposed a four-fold, more proactive and collaborative strategy for dealing with extremist ideology:

- (1) firstly, using credible Muslim scholars “*to educate the masses...to build theological resilience within the Muslim youth*”;

- (2) secondly, countering “*media hostilities against mainstream Muslim organizations*” by a “*concerted marketing campaign to help push out the key messages of independent Muslim scholars to the vulnerable sections of society*”;
- (3) thirdly, engaging “*the average Muslim towards becoming proactive participants in their community*” through “*grass roots community development organisations*”; and
- (4) fourthly, using “*every avenue and every opportunity to reduce any possibility of violent extremism in Cardiff*”.

174. Sheikh Chowdhury concluded his speech with the following peroration:

“Ladies and Gentlemen, Islam is a religion of peace and enough of its history – world history over the past 1,000 years is proof of this fact. Terrorism and extremism is not a result of attachment to Islam, rather it is entirely due to a long detachment from it! The earlier that we realize this point, the better we can all prepare to cooperate and collaborate in making this world a safer place for us and our children.”

175. Sheikh Chowdhury no doubt hoped, and expected, that his speech would be widely welcomed in the Muslim theological and intellectual community, and certainly by moderate Muslim Imams. The fact that it was not at all welcomed by the Claimant is telling.

Analysis of Claimant’s response

176. I turn to analyse the Claimant’s “*Advice*” in response to Sheikh Chowdhury’s speech. The following points appear to me to be pertinent.
177. First, given the moderate and measured thrust to Sheikh Chowdhury’s basic message (namely that credible moderate Muslim scholars must be harnessed, not marginalised, in the fight against extremism and terrorism), it is surprising that the Claimant did not warmly endorse Sheikh Chowdhury’s speech.
178. Second, it is surprising that the Claimant did not seek to align himself with the body of credible moderate Muslim scholars highlighted by Sheikh Chowdhury if he identified himself as belonging to that cohort.
179. Third, it is striking that Sheikh Chowdhury’s speech provoked such an extreme and intemperate reaction by the Claimant - the language used by the Claimant is full of hyperbole and is suggestive of violent objection (“*brazenly posted...*”, “*deplorable...*”, “*deeply shocked and appalled...*”, “*ridiculously outrageous...*”).
180. Fourth, it is striking that the Claimant launched a personal diatribe against Sheikh Chowdhury and accused him of allowing himself to be used as a willing tool by the

West against Islam (“to declare himself an ally of the West against Islam...”, “to lure the anti-terrorism officers into using him and other religious leaders against the Muslim community...”, “signing a deal with the devil...”, “any sort of alliance...”).

181. Fifth, it is striking that the Claimant characterised the counter-terrorist forces as the epitome of evil (“the devil...”, “the brutal, cunning and oppressive anti-terrorism workforce...”, “the enemies of Islam the Muslims...”). As Mr Caldecott QC succinctly put it, the practical dangers of an exhortation to treat the counter-terrorism authorities as “the devil” is disturbingly obvious: the Claimant’s comments would act as a strong discouragement to anyone thinking of collaborating or co-operating with the British security services.
182. Sixth, it is striking that the Claimant accuses Sheikh Chowdhury of one of the most serious of religious crimes, namely betraying his covenant with Allah and falling into disrepute and warns other scholars, preachers and Imams that silence is consent (“I urge Tawfique Chowdhury to publicly and unequivocally retract his irresponsible and reckless speech, in order to save himself...”, “Tawfique Chowdhury is not the first to fall into disrepute and controversy...and betray their covenant with Allah...”).
183. Seventh, the Claimant’s “Advice” is antithetical to the prevention of the use of violence purportedly perpetrated in the name of Islam in British society. The Claimant’s response is all the more surprising and troubling, coming as it does shortly after the Mumbai incident in November 2008, and whilst the memories of the London “7/7” bombings in July 2005 still remained raw and very much in the public consciousness.
184. Eighth, the Claimant was driven in cross-examination by Mr Caldecott QC to say that he accepted most of Sheikh Chowdhury’s message.

Claimant’s answers

185. The Claimant points to two sentences in the middle of his “Advice” to counter the BBC’s suggestion that the thrust of the piece is extreme (“This is not to say that we should not work to prevent unlawful violence. In fact, many have been at the forefront of this work.”). In my view, however, this does little to balance the extreme tone that he adopts in the rest of this posting.
186. The Claimant sought to explain his “Advice” on the basis that that he was “angry” with Sheikh Chowdhury’s support for the counter-terrorism policies adopted by the UK police force, in particular the UK Government’s PREVENT strategy, and that he sometimes expressed himself “too passionately”. The UK Government’s PREVENT strategy requires schools, universities and other organisations to keep an eye out for signs of radical behaviour and to report them. The policy was given statutory effect in the Counter-Terrorism and Security of Terrorism Act 2015.¹² The policy has not been without controversy and has been criticised for ‘marginalising’ Muslims. The Claimant was co-signatory to an open letter on the subject in 2015. I am, however,

¹² Section 26 of the Counter-Terrorism and Security Act 2015 places a positive duty on “specified authorities” listed in Schedule 6 to the Act, in the exercise of their functions, to have “due regard to the need to prevent people from being drawn into terrorism” and to have regard to guidance issued under section 29 of the Act when carrying out the duty.

unpersuaded that the Claimant's explanation that his objection to PREVENT explains his reaction to Sheikh Chowdhury's speech. This is, in my view, simply *ex post facto* rationalisation. First, nowhere in his speech does Sheikh Chowdhury refer to the UK Government's PREVENT policy (he merely uses the word 'prevent' several times in the speech in the context of 'prevention of terror'). Second, the UK Government's PREVENT policy was not formally published until 2011.¹³ Third, the language of the Claimant's "Advice" is openly hostile to the UK counter-terrorism authorities *per se*. Fourth, nowhere in his "Advice" does the Claimant himself even refer to PREVENT.

187. It is noteworthy that in paragraph 53 of his statement prepared for the hearing, the Claimant states: "*I believe that the government should not alienate Muslim leaders but rather, engage with credible Muslim Imams, scholars, academic and the wider Muslim community... in tackling extremism*". This is, as Dr Wilkinson points out, precisely the position which the Claimant was at such exaggerated pains to denounce in his diatribe against Sheikh Chowdhury. Mr Bennett was driven to accept that the Claimant had treated Sheikh Chowdhury 'unfairly' in his ADVICE TO TAWFIQUE CHOWDHURY (2009).

Conclusion

188. In conclusion, in my judgement, in his ADVICE TO TAWFIQUE CHOWDHURY (2009), the Claimant espoused extremist Islamic positions. He accuses a manifestly moderate scholar, Sheikh Tawfique Chowdhury, of "*signing a deal with the devil*" and betraying "*his covenant with Allah*" for giving a perfectly sensible (and, many would say, praiseworthy) speech to the counter-terrorism police about how to use moderate Islamic scholars to prevent terrorism. The Claimant, however, characterises the UK counter-terrorism authorities as "*the devil*", "*brutal, cunning and oppressive*" and "*the enemies of Islam*" and displays a deep antagonism to them and an implacable objection to any Muslim co-operating with them. His "Advice" is redolent of the Manichean 'Us' versus 'Them' worldview in which the West and its counter-terrorism agencies are regarded *a priori* as the enemies of Islam and any Muslims who assist them are to be regarded as collaborators and 'bad Muslims' who have broken their covenant with *Allah*. His speech would act as strong active discouragement to any Muslim thinking of co-operating with or reporting concerns to the UK counter-terrorism authorities. The language of the Claimant's attack on Sheikh Chowdhury is also intemperate in the extreme.
189. It is noteworthy that this was not the only occasion that the Claimant reacted in an extreme manner to a moderate and sensible message about identifying Islamic extremism and preventing terrorism (see his reaction to the letter from the Rt Hon. Eric Pickles MP below).

Internet

190. The Claimant's "Advice" remains widely accessible on the internet and has not been publicly qualified or disavowed by him.

¹³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised-Prevent_Duty_Guidance_England_Wales_V2-Interactive.pdf

(3) DEVIANT GROUPS SPEECH (2009)

191. The BBC rely upon a speech given by the Claimant on 31st May 2009 at LIC as part of LIC's four-part "*Deviant Groups*" series of seminars which focussed on 'deviant' groups within the Muslim community. The primary topics covered were *hakimiyyah* (dominion/authority) and *jihad*. The experts agreed that the context of the talk would have been a semi-formal, mosque-based teaching event in the form of a teacher-led discussion or question-and-answer session with relatively Islamically-informed participants, probably of a *Salafi*-Islamic persuasion.

Preliminary observations

192. I make the following preliminary observations on the speech. First, it is clear the speech was not simply delivered off-the-cuff, but was carefully prepared. As the Claimant accepted in cross-examination, he discussed the speech in advance with a teacher at the Young Muslim Academy at LIC, Brother Ilyas Townsend, who was involved with the *da'wah* projects (call or spreading the word of Islam, proselytising and persuading others to join Islam) and who was to join him on the podium. They discussed and decided the topic for the meeting, *neo-Salafism*, the question-and-answer format and the themes to be raised and discussed, which included the meaning of *jihad*.

193. Second, the speech or lecture was delivered at a mosque, in a context which Professor Gleave accepted was 'primarily educational', before an engaged Muslim audience, who can be assumed to have been present because they were interested in learning more about Islam and "*Deviant Groups*" from the Chief Imam of LIC. The audience included young, impressionable men who were about to go off to play football together for the LIC Football Club in the Catford Power League. When dealing with such sensitive issues as *jihad* before such an audience, in my view, it was incumbent upon any Imam to take the very greatest care with the language used.

194. Third, the speech was clearly intended for wider dissemination. It was uploaded onto LIC's website by Brother Ilyas Townsend, one of whose roles was to keep the mosque website (www.lewishamislamiccentre.com) updated. The Claimant claims not to have been aware of the speech going up onto the website at the time but accepts being aware of Brother Ilyas Townsend's role. I have no doubt that the Claimant expected and intended this speech to go up on the website and to remain there for a wider audience for a significant period, as with many of his formal speeches and lectures. The LIC website was one of his prime teaching tools as Chief Imam.

Text of key sections of the speech

195. The teachings of the *Salafi-Wahabi* scholar, Sheikh Abdul Aziz bin Baz, feature heavily in the Claimant's speech. Sheikh bin Baz was the Grand Mufti of Saudi Arabia in the 1990s and a highly significant religious figure in the development and prominence of *Salafi-Wahabi* Islam in the 20th century (see further below).

196. I set out below the text of eleven key sections of the Claimant's DEVIANT GROUPS SPEECH (2009). In the first section, the Claimant quotes Sheikh bin Baz's characterisation of non-Islamic states and governments and his call for Muslims to be "*hostile*" to them:

*“And every State which does not rule in accordance with Allah's Revelation is an [evil or rebellious against God]¹⁴ and unjust State which disbelieves in the Quranic Verses”. Sheikh Abdulaziz bin Baz may Allah have mercy on his soul he says in his book Criticism of Arab Nationalism and the State or government, it does not judge by what Allah the Exalted has revealed, is a state or a government which is rebellious or evil ... unjust – what's that? Oppressive, Disbeliever in the provisions of clear Quranic Verses ... clear texts of Qur'an and Sunnah; and then he carries on to say, **we should be hostile to it. It is a duty (wajib) to hate it.**¹⁵ Now, this is the statement of Sheikh Abdulaziz bin Baz may Allah the Exalted have mercy on his soul.”*

197. Second, the Claimant reinforces the first passage by citing a further statement from Sheikh bin Baz which likens non-Muslims to “idolaters”:

“A person who follows a law other than Allah's law, or who follows legislation other than Allah's legislation, is the same as a person who worships an idol.”

198. Third, the Claimant then distinguishes between the linguistic and religious meaning of *jihad*. He states that the linguistic (*lughawi*) meaning of *jihad* is “struggle against the evil within oneself...” and that the religious meaning of *jihad* is “**fighting physically against the enemies of Islam...**”.¹⁶ When later questioned by a member of the audience, the Claimant re-iterated that the religious meaning of *jihad* was “**fighting in the path of Allah the enemies of Islam...**” (see further below).
199. Fourth, the Claimant then quotes Sheikh bin Baz to that effect that religious Jihad (*i.e.* “fighting in the path of Allah the enemies of Islam”) is “...one of the best methods of getting closer to Allah...”:

*“But again sadly, you know, you find that this [i.e. fighting physically against the enemies of Islam] is not mentioned because sometimes **we have the defeatist mentality and we don't want to support, you know, those who are really struggling and striving and fighting in the path of Allah the Glorified and the Exalted.** And again, Sheikh Abdulaziz bin Baz may Allah have mercy on his soul, you will be surprised or you shouldn't be surprised but, you know, he had a book, or has a book again in the Fatwas (Legal Opinions) you'll find it **The Merits of Jihad and Mujahideen (Fighters for Islam)** ... He says after a very beautiful introduction and then he says,*

¹⁴ The experts agree that the correct translation of *fasiq* is “evil of rebellious against God” rather than “obscene”.

¹⁵ The words “It is a duty (*wajib*) to hate it” are the Claimant's own words, added as a gloss to those of Sheikh bin Baz.

¹⁶ The Claimant uses the word ‘*Shari'y*’ which means literally ‘in *Shari'a* Law’ but which he translates as ‘religious’.

*“To proceed, **Jihad in the path of Allah is one of the best methods of getting closer to Allah.** As for jihad in the path of Allah it is from **the best** of those things that bring us closer to Allah **and one of the greatest acts of obedience** and from the greatest acts of obedience to Allah the Exalted. Indeed it is **the best means** for those who want to get closer to Allah, and compete to have Allah's satisfaction, after the religious duties.”*

200. Fifth, in an important passage, the Claimant then goes on to explain why Sheikh bin Baz teaches *jihad* is the “*best of things*” that brings Muslims closer to Allah:

*“Rather, [Sheikh bin Baz] says, **it is the best of those things that can bring us closer to Allah** the Glorified and Exalted and it's the best of those things for people to compete with in doing from after the religious duties after the obligatory things. And this is only because **it leads to victory of the Believers** And this is because it is, it comprises of what supporting and helping the believers and promotion of the religion (of Islam) **and making the religion of Allah the Exalted supreme, and suppression of the Disbelievers and Hypocrites and destroying the disbelievers and the hypocrites, and facilitating the propagation of Islam all over the world** and to make it easy for the word of Islam, or the Propagation of Islam to be spread over the world and taking the slaves (of Allah) out of darkness and to take slaves from ... the slaves of Allah the Exalted from out of darkness into light into light and spreading the good features of Islam and also to spread the beautiful things of Islam.”*

201. Sixth, the Claimant then turns to explain the need to support those engaged in “*legitimate*” *jihad* which he says includes Palestine, Chechnya and Afghanistan:

*“So, here Sheikh Abdulaziz..., is mentioning **how great jihad is**, how comes, you know, with some of our brothers this is not mentioned, how comes with some of our brothers it is overlooked. How come with some of our brothers it is neglected and those sometimes who are doing those deeds. We're not doing it ourselves, so, you know, we are weak, **but at least we can support and make supplication for those who are doing and struggling in the path of Allah the Exalted where there is legitimate jihad such as Palestine, such as Chechnya, such as Afghanistan and so on and so on and so on.**”*

202. Seventh, the Claimant then, in an exchange with the audience, he states in unequivocal terms that that “*fighting*” is prescribed by the Qur'an: “*Prescribed... Obligatory... Written for you*”. He draws a parallel with “*fasting*” but fails to point out that, like fasting, *jihad* is subject to strict rules.

*“Shakeel Begg]: Allah the Glorified and Exalted says in the Quran **“Fighting is prescribed upon you.”** This word is prescribed; where else is it used?”*

[Audience]: "Fasting is prescribed."

"[Shakeel Begg]: O ye who believe! Fasting is prescribed to you" fasting has been prescribed, what does prescribed mean here in terms of fasting?

[Audience]: "Prescribed."

[Shakeel Begg]: "**Prescribed ... Obligatory... Written for you.** Allah the Exalted uses the same verb and the same formation of prescribed for Fighting. Now somebody might say, you know, if they have an argument with jihad and say, "Look well, you know, jihad means struggle, how we translate **Fighting**?" How can you translate **Fighting**? How can you run away from this, that's it, **Fighting** is prescribed upon you; **fighting** has been prescribed for you."

203. Eighth, the Claimant then, using the authority of the *fatwas* (legal writings) of Sheikh bin Baz represents the contemporary conflicts or struggles in Bosnia, Chechnya and Palestine, as Islamic issues and as justified Islamic *Jihads*. As regards the *jihads* in Bosnia and Chechnya he says this:

"... I want to read from Sheikh Abdulaziz bin Baz *Fatwas* (legal opinions) and something during the jihad of Bosnia. Now during the jihad of Bosnia, you had national *Fatwas* (Legal Opinions), the national papers in Saudi Arabia from Sheikh Abdulaziz bin Baz and Sheikh Muhammad Saalih Al-Uthaymeen. **The jihad in Chechnya** had top students of Sheikh Al-Uthaymeen supporting the jihad, **fighting the jihad** and you had in the early stages of the jihad they were the ones who had set up Islamic Sharia courts in Chechnya.

They would come to them, the Mujahideen (Fighters for Islam), the Chechnyan people would come to them for, you know, Islamic judgments and so on. These were students of Sheikh Muhammad Saalih Al-Uthaymeen. **The scholars have always, always, past and present the true scholars, the likes of Sheikh bin Baz, and Al-Uthaymeen, Alalbani and others have always supported legitimate struggles and they make legitimate jihad in the lands of the Muslims.**"

204. Ninth, the Claimant then explains how *takfiri* (a person who accuses other people of being Disbelievers) are going to help *jihadi* (a supporter of *jihad*) in the conflict in Bosnia:

"But during the struggle in Bosnia something very common you would hear; it was that, you know, these people, they don't pray. ... No they didn't, they don't fast, you know. We should really reconsider whether we should help them, are they really Muslims? Now the people who are classified as what they call *Takfiri* (a person who accuses other people of being

*Disbelievers) ... Jihadi (a supporter of jihad), you know, "You're a Takfiri, a Takfiri Muslim, you're a Jihadi, you indulge too much in jihad," and so on. These are the ones who are now going to help people who say they are Muslims because of communism, you know, the rule of communism they forgot about the obligations in religion, you know, so Prayer wasn't being observed, alcohol was widely drunk, you know, inter, you know, relationship between the genders were taking place but the **people who were being called Takfiris are now left their families and have gone to support them in the struggles of jihad in Bosnia.** Look at the double standards here. Who is the real Takfiri and who isn't the real Takfiri?"*

205. Tenth, the Claimant then turns to outline the writings of Sheikh bin Baz in relation to the *jihad* in Palestinian. The Claimant explains that "*if people are against the jihad now in Palestine*" they should understand that Sheikh bin Baz wrote a whole *fatwa* (legal opinion) when Hamas was formed in 1993. The Claimant cites Sheikh bin Baz saying that the Palestinian cause is "*first and foremost an Islamic Cause*" and "*from beginning to end an Islamic issue*", i.e. not an Arab cause or issue as portrayed by the enemies of Islam. He then quotes the following passages from Sheikh bin Baz:

"By solidarity among Muslims to save it and to have that unity amongst the Muslims to save Palestine... and by fighting the Jews in an Islamic Jihad until the Territory goes back to its proper people... and to make jihad against the Jews [Jews], in an Islamic Jihad, Islamic jihad until the Territory goes back to its proper people... until the earth, i.e. the land of Palestine returns to its people i.e. the Muslims of Palestine."

206. Eleventh, during questions from the audience, the Claimant confirms that the religious meaning of *jihad* is "*physically fighting in the path of Allah*" and goes on to emphasise that those who make physical *jihad* (i.e. fight) have a higher status and rewards than those who do not fight and merely remain sitting and have an inner struggle:

"[Audience]: "Quick question, can you just say again the religious meaning of jihad?"

*[Shakeel Begg]: **Fighting in the path of Allah the enemies of Islam.***

[Audience]: Right. Yes.

*[Shakeel Begg]: "Question was what's the religious definition of jihad? So, we said the linguistic definition that, you know, it's a struggle, okay, from Arabic Verb: Jahada (which means "to strive"), from that linguistic definition. **But it has a religious definition, a religious definition, which refers to physically fighting in the path of Allah, the Glorified. Where do we get these in terms of the rewards of the Mujahid (Fighter). If it was just a struggle and we die sitting in London***

in UK, and we die, you know, can we say that when our blood spills that the first drop of that blood, all the sins are forgiven? That we get, you know, intercede for 70 members of our family, those encouragers towards jihad, that there will be no punishment of the grave, that they will be in the house of green birds in Paradise that, you know, all our sins will be forgiven? No. So it's not the struggle, the inner struggle that we go through every day that it's referring to, it's referring to physically fighting and then the specific rewards attached to it. So Allah the Exalted prefers Mujahideen (Fighters) to Sitters Mentions that Allah has preferred those who make jihad over those who are sitting. Those who are sitting have a struggle, struggle in terms of prayer, in terms of Islamic Propagation and other things, but those who fight have the higher status than those who do not fight. So it's referring to specific struggle, which is referring to Fighting... The one who doesn't make battle i.e. take part in battles and doesn't have the intention to do so, he dies upon a branch of hypocrisy". So at least a Muslim should have that intention of struggling and fighting and sacrificing himself for the sake of Allah the Glorified and Exalted."

BBC's submissions

207. Mr Caldecott QC placed the DEVIANT GROUP SPEECH (2009) at the forefront of the BBC's case. He submitted that the speech was clearly inflammatory and dangerous, making clear the Claimant's support for *jihad* in the sense of violent action against non-Muslims in the name of Islam to the Muslim audience, thereby promoting and/or encouraging violence against non-Muslims in the name of Islam and in particular in Afghanistan and against Jews or non-Muslims in Palestine. He submitted this speech alone contained sufficient justification for the WCO.

Claimant's case

208. The Claimant denies supporting or encouraging violent action against non-Muslims in the name of Islam in the speech, and says he was merely referring to *jihad* in a purely defensive sense, *i.e.* that Muslims have a right to defend themselves when attacked in such countries because they are Muslim. In his witness statement, however, he admits, using the word "Zionist" and "Jew" in a way he understood might lead people to believe that he was anti-Semitic. He denies being anti-Semitic but says that he came to realise before 2013, particularly as a result of his inter-faith work, that he had to "be very careful about the terms I use when criticising Israel so it is clear that I am not being anti-Semitic".

Analysis

Particular comments on sections

209. I begin by setting out my comments on particular passages in some of the sections of texts quoted above.

First section

210. As regards the first section above, the word *wajib* means a religious duty or obligation and is a term which ordinary Muslim worshippers would be familiar with and understand. The Claimant cites Sheikh bin Baz's *fatwa* (legal opinion) that one should be "hostile" to states or governments which do not rule in accordance with the *Qur'an* and the *Sunna*. The Claimant then, arguably, goes even further than Sheikh bin Baz by elevating this in his own words to a religious duty (*wajib*) "to hate" all states or governments which do not rule in accordance with the *Qur'an* and the *Sunna*, i.e. to hate all Western and non-Islamic states or governments and errant Muslim states or governments.

Second section

211. The experts agree that, in the second section, it is clear that the Claimant himself endorses the position and takes the view that to follow man-made laws constitutes an act of religious idolatry (*shirk*) and an act of disbelief (*kufir*).

Third section

212. The third section is particularly important because the Claimant cites, without qualification, Sheikh bin Baz's teaching that *jihad* in the sense of *qital* (fighting in the path of Allah) was the "*one of the greatest acts of obedience*". This echoes to a significant extent the WCO.

Fourth section

213. The Claimant's reference in the fourth section to a "*defeatist mentality*" is significant ("*...we have the defeatist mentality and don't want to support....those who are really struggling and striving and fighting in the path of Allah* ").

Fifth section

214. The sentence in the fifth section ("*We're not doing it ourselves, so, you know, we are weak, but at least we can support and make supplication for those who are doing and struggling in the path of Allah the Exalted where there is legitimate jihad such as Palestine, such as Chechnya...*") is particularly significant because the Claimant is here clearly scornful of those who are not doing *jihad* themselves, whom he describes as "*weak*", but says "*at least*" we can support those who are fighting (and who, by definition, are not "*weak*" and will therefore be closest to Allah).

Sixth section

215. In the sixth section, the Claimant is stating quite clearly that *jihad* (in the sense of the armed struggle or fighting) is a religious duty ("*it is prescribed for you...*"). That is to say, it is a religious duty prescribed for *all* Muslims as an individual religious duty. This is heterodox to mainstream Islam (see above).

Eighth section

216. It is difficult to read the last sentence of the eighth section, as sensibly confined to mere ‘defensive’ *jihad* since it refers generally to “*legitimate struggles...*”. (“...*the likes of Sheikh bin Baz...have always supported legitimate struggles and they make legitimate jihad in the lands of the Muslims*”). Contrary to the assertions in his witness statement, nowhere in this or other passages in the speech does the Claimant ever mention about defensive *jihad*, or make it clear the religious duty to “*fight[] in the path of Allah*” has to be triggered first by an attack on Muslims.

Tenth section

217. The Claimant quotes Sheikh bin Baz without equivocation that solidarity amongst Muslims means making “*jihad against the Jews*” and “*fighting the Jews in an Islamic Jihad until the Territory [Palestine] goes back to its proper people*”. In my view, what the Claimant is clearly doing in this passage is encouraging offensive *jihad* against Jews to recover Palestine and return it to the Muslims. The Claimant accepted in cross-examination that he was referring to historic Palestine, *i.e.* in old Arabic, the land of the Philistines which runs from the Mediterranean to the River Jordan. There is no suggestion that this exhortation is based on self-defence. Mr Bennett accepted that the Claimant could be criticised for not having chosen a ‘better’ quotation from Sheikh bin Baz.

Eleventh section

218. The striking section at the end of the eleventh section is clear in its message: every Muslim should “*at least*” have the intention of struggling and fighting and sacrificing himself or else he dies on the branch of “*hypocrisy*” (*shu’ba min al nifaq*). This is, on the face of it, clear encouragement to the audience to get up from their seats in London and go off and engage in armed *jihad* (*qital*) (see the discussion further below).

‘Zionists’

219. The Claimant was cross-examined about the tenth passage in which the Claimant cited Sheikh bin Baz referring to “*...fighting the Jews an Islamic Jihad*”. The Claimant gave what Mr Caldecott QC rightly described as a ‘chilling’ answer:

Q: “Do I understand you to be saying that this section of your speech is entirely acceptable provided you replace the word Jews with the word Zionists?”

A: “No because that doesn't mean every Zionist should be killed, but what I am trying to say is that there isn't a problem in terms of Judaism and Jews specifically but there is a problem with let's say Zionism in the sense that it has led to the oppression of the Palestinian people, that is the concept that I am trying to mention here.”

Sheikh bin Baz (1910-1999)

220. As stated above, a central feature of the Claimant's DEVIANT'S GROUP SPEECH (2009) is Sheikh bin Baz (who is referred to, or cited, by the Claimant no less than 56 times in the speech).
221. Sheikh Abdul Aziz bin Baz (1910-1999) was the Grand Mufti of Saudi Arabia from 1993 until his death in 1999. He was a highly significant religious figure in the development and prominence of *Salafi-Wahabi* Islam in the 20th century and the religious mainstay of Saudi policy during the tumultuous years of the emergence of Saudi Arabia as a powerful oil-state and the protector of the Protected Domains (*haramayn*) of Mecca and Medina of Islam.
222. Sheikh bin Baz was responsible for many controversial religious decisions and legal rulings (*fatwa*) which have had far-reaching repercussions across the *Sunni*-Islamic world to this day. He was a signatory to the *fatwa* that declared support for the Mujahideen fighters in Afghanistan in resisting Soviet occupation as an individual religious obligation (*fard al-'ayn*) which attracted thousands of young Arab fighters to the war in Afghanistan (1979-1989).¹⁷ One of these early recruits was the young Osama bin Laden (1957-2011) who was mentored by the violent Islamist ideologue and original author of the *fatwa*, Abdullah Azzam (1941-1989) (see further below).

Claimant's core propositions in the speech

223. The Claimant uses the teachings or *fatwa* of Sheikh bin Baz without even mentioning the context in which they were issued, namely the Afghan *jihad* (1979-1989). This leads the audience to believe that there is authoritative *Salafi* support for the Claimant's two core propositions in the speech: first, that *jihad* means exclusively armed *jihad* (*i.e. qital*); second, that "*fighting against the enemies of Islam*" is "*prescribed*" and "*obligatory*" for Muslims.

Claimant's explanations

224. The Claimant sought to explain his regular references to Sheikh bin Baz on the basis that he was simply seeking to tell his audience of a link between him and the deviant *neo-Salafis*. He suggested in his witness statement that the 'deviant' *neo-Salafis*, who held a "*very rigid*" understanding and interpretation of Islam, were predominantly associated with Saudi Arabia and he said it was simply for this reason that he mentioned the former Grand Mufti of Saudi Arabia, Sheikh bin Baz, "*whose scholarly credentials they [i.e. the neo-Salafis] accepted and whose views they claimed to follow*".
225. I do not accept this explanation. In my judgement, it is quite clear that the Claimant's numerous references in his DEVIANTS GROUP SPEECH (2009) praising Sheikh bin Baz and his work were aimed at encouraging his audience to study and follow Sheikh bin Baz's teachings.

Claimant praises and endorses Sheikh bin Baz

¹⁷ *In Defence of Muslim Lands* drawn up by the Palestinian ideologue 'Abdullah' Azzam (See further below).

226. The speech is replete with laudatory language about Sheikh bin Baz and is, in effect, a paean of praise for him and his work: viz. e.g. “...the greatest Imam of our recent times” (56:11), “...great Imam, great scholar” (59:03), “...noble scholar[] we take knowledge and advice from (63:11-13), “...here we find again Sheikh Abdulaziz bin Baz giving us the approach and the way of dealing with others that we might differ with” (64:20-21) “...one very, very famous, famous book, and a famous Fatwa (Legal Opinion)...by again the legendary Sheikh, the Imam Sheikh Abdulaziz bin Baz” (69:19), “...this makes us understand the stature of Sheikh Abdulaziz bin Baz” (69:24), “...So, very important in terms of...understanding concepts clearly and understanding them based upon Qur’an and based upon the Sunnah”; “...after a very beautiful introduction” (75:19), “...the true scholars, the likes of Sheikh bin Baz (77:20), “...look at all the other, you know, the great points and work of this noble individual” (91:10-12). These references, individually and cumulatively, point to the Claimant’s unconditional approval of Sheikh bin Baz and his teachings. The last reference is particularly significant because it comes near the end of the question-and-answer session and is in the form of a final exhortation to the audience to study “all... the great points and work” of Sheikh bin Baz and, ergo, follow his approach.
227. The Claimant spoke of meeting Sheikh bin Baz when he was studying in Saudi Arabia. Further, the Claimant recites stories from those who knew Sheikh bin Baz which suggest a degree of adulation:
- “Princes would come into his office, into his house,” and he said the Sheikh would be very stern, you know: “This has happened, fear Allah, fear Allah and so on.” (89:6-8)*
- “Sheikh bin Baz may Allah have mercy on his soul, with his own money, he gave me money and he sent me. You know, these things we don’t really hear. You know, in terms of personal character of Sheikh bin Baz may Allah have mercy on his soul, people used to say before--and before I met him or saw him--they say, “When you meet him you’re reminded of the early Muslim the Companions and the Early Muslims.”*
228. In my judgement, the audience would have been left in no doubt that the Claimant revered Sheikh bin Baz and was citing his utterances with unqualified approval. Anyone listening to the Claimant’s speech live or on the Web now would be left in no doubt as to, first, the Claimant’s deep admiration and approval for Sheikh bin Baz and his body of teachings and secondly, that the Claimant was encouraging his audience to follow and adopt the path (*fatwa*) laid down by Sheikh bin Baz.
229. It is striking, as Mr Caldecott QC put to the Claimant in cross-examination, that the Claimant did not disclose in his witness statement that Sheikh bin Baz was, in fact, named in LIC’s constitution as the first of three preferred “*Current renowned Scholars*” at LIC.

Claimant defines religious meaning of jihad exclusively as qital (“fighting”)

230. The experts agree that the Claimant unambiguously gives the religious meaning of *jihad* as “*fighting physically against the enemies of Islam*”. He repeats this single meaning three times. They agree it was wrong and misleading of the Claimant to

define *jihad* in this narrow way. As explained above, the religious term *jihad* or *jihad fiy sabilillah* (*jihad* in the path of Allah) has a wide meaning of “*striving in the cause of God*” in a variety of ways, and only one sub-element means fighting physically (*qital*). However, in this and other speeches, the Claimant generally uses the term *jihad* exclusively to mean fighting physically and he does so effectively excluding all other potential religious meanings of *jihad*. In the Claimant’s lexicon, therefore, religious *jihad* means exclusively “*fighting the enemies of Islam*”.

231. The Claimant is, in effect, downgrading the Greater *jihad* (*i.e.* the inner, theological struggle) to a linguistic meaning and elevating the Lesser *jihad* (the armed struggle or fighting) to a religious duty (“*it is prescribed for you...*”). By this means, therefore, the Claimant is thus confining *jihad* to a single meaning, namely armed struggle or fighting (*qital*).
232. It should be noted that what the Claimant said in his DEVIANT GROUPS SPEECH (2010) is in complete contrast to what the Claimant now says about the meaning of *jihad* in his recent witness statement, *viz.*:

“144. The term ‘*jihad*’ means to ‘*exert*’, ‘*strive*’, ‘*struggle*’ and “*making an effort*”. *Jihad* does not mean ‘*war*’ as often believed – the word for that is ‘*harb*’. *Jihad* does not mean ‘*fighting*’ as some wrongly assume as the word for this is *qital*.”

Aggressive jihad

233. It is clear that the Claimant is not talking about defensive *jihad* but offensive or aggressive *jihad*. The Claimant omits to mention any basic qualifications on *qital*, *e.g.* the inviolable *Qur'anic* principle that a Muslim may only fight “*if they do fight you...*” (*Qur'an*, 2:192).
234. As explained above, at the time of the revelations, Muhammad and his followers faced annihilation from Meccan and Qureishi polytheist and pagan tribes and their allies in violation of previous treaties. In these circumstances, namely, the struggle to defend one's life, religion and interests, defensive combat (*qital*) became necessary and obligatory in that sense. The Claimant also again inappropriately uses the word *jihad* in this speech whereas the correct *Qur'anic* word used in these verses is *qital*, which carries with it strict conditions as to the circumstances in which it is declared and the manner in which it is conducted (as explained above).

Professor Gleave’s evidence

235. I found Professor Gleave’s evidence on the DEVIANT GROUPS (2009) speech was variable at best.
236. Professor Gleave sought in his report to suggest that the Claimant’s references to Sheikh bin Baz’s opinions were ‘*merely*’ by way of ‘*argumentation*’ in a manner common in Muslim study circle contexts, *i.e.* citing the opinion of other scholars. It is noteworthy that at no stage, however, did Professor Gleave grapple with, or even mention, the Claimant’s numerous endorsements and praise of Sheikh bin Baz and his teachings. Professor Gleave then shifted from his original position (of seeking to

distance the Claimant from Sheikh bin Baz's opinions) to the following position in the Joint Experts Report (paragraph 8.6):

“On the issue of Dominion/Authority (hakimiyyah)... we agree that it is highly likely that the Claimant himself endorses a position articulated on p. 70, ll 5-16 that: “...Every State which does not rule in accordance with Allah’s Revelation is an obscene (fasiq) and unjust State which disbelieves in the Qur’anic verses...” and that “we should be hostile to it. It is an obligation (wajib) a duty to hate it.”

This is because the Claimant adduces the highest Salafi scholarly support of quotations from two Grand Muftis of Saudi Arabia to substantiate this point of view and does not offer any alternative points of view. These citations come in the context of the Claimant demonstrating that it is permitted to talk about hakimiyyah, contra those who believe it is not permitted.”

237. Professor Gleave then sought in evidence to row back from this realistic admission by suggesting that the Claimant's reference to “*duty to hate*” could be explained by the fact that the context of the speech was whether it was, or was not, permitted to discuss *hakimiyyah* (dominion/authority) and was directed only to errant Islamic states. He referred to two schools of thought amongst *Salafi* Muslims. The first is the *Madkhalis*¹⁸ who believe that engaging in any political action is forbidden, because only God can rule. The second comprises other ‘activist’ *Salafi* Muslim groups who believe that activism in shaping government and regulating society is in line with *Shar’ia*. I do not see, however, how this explains or ameliorates the Claimant's reference to *wajib* and his plain words “*duty to hate*”; nor how this limits the object of Claimant's ire simply to errant Islamic states (*i.e.* who do not apply *Shari’a* fully or correctly) rather all non-conforming states, including Western states. The words which the Claimant uses are quite general (“*Every State which does not rule in accordance with Allah’s (fasiq) is [evil or rebellious against God’s Law] and unjust. ...*”)
238. Professor Gleave's subsequent, somewhat unedifying, attempt during cross-examination then to dissemble on the Claimant's endorsement of Sheikh bin Baz's views was rightly described by Mr Caldecott QC as ‘dancing on the head of a pin’. Professor Gleave also equivocated to some extent on the technical meaning of religious duty (*wajib*) in *Shar’ia*, but accepted the following proposition put to him by Mr Caldecott QC during cross-examination: an audience is likely to take from a Chief Imam who describes something as a religious duty as a religious duty.
239. Professor Gleave sought to suggest that the Claimant was not calling on others to go and fight, but merely asking them to support and make prayers (*du’a*) for those where fighting in legitimate *jihad* to whom benefits would accrue. He also suggested that, the Claimant's support for *jihad* in the physical sense did not extend beyond the use of the proportionate self-defence in circumstances where Muslims were being attacked in their own countries. I do not accept these arguments. What the Claimant

¹⁸ Named after their founder, Rabi Al Madkhali (1931-). Madkhalism is a strand of *Salafi*-Islamic thought.

referred to as “*legitimate*” *jihad* is not what moderate, mainstream Muslims would condone (*i.e.* in Sheikh bin Baz’s words “...*destroying the disbelievers and hypocrites...*” and “...*fighting the Jews in an Islamic Jihad...*” etc.). Further, by no stretch of the language or imagination could this be considered ‘defensive’ *jihad*.

240. Professor Gleave accepted in his report that the Claimant is clearly influenced by the *Salafi* approach but said the Claimant is also critical of various *Salafi* trends, including the exclusivist notion of those who are and not considered to be Muslims (*takfiris*) and those who consider engagement with secular authorities to be an act of unbelief (*kufr*), and has himself drawn criticism from some *Salafi* circles. Be that as it may, these theological differences which the Claimant is said to have with various *Salafi* strands do not in any way ameliorate or explain the extremist *Salafi* views on *jihad* which the Claimant is espousing in the DEVIANT GROUPS SPEECH (2010) set out above.
241. I do not accept Professor Gleave’s suggestion that the Claimant was somehow confusing or eliding the linguistic (*lughawi*), legal (*shar’i*) and religious meaning of *jihad*, or that his position on the meaning of *jihad* is merely a ‘technical’ one, *i.e.* that the Claimant is merely explaining that the benefits of being close to Allah are only available to martyrs (*shahid*) who die fighting in a legitimate *jihad*.
242. I reject Professor Gleave’s refrain that the Claimant was merely engaged in an act of pedagogic ‘exposition’ in the DEVIANT GROUPS SPEECH (2010) rather than ‘expression’ of his own personal views. In my view, the Claimant is clearly expressing his own personal views in the speech (and his views are, moreover, redolent of *Jihadi Salafism*).

Claimant’s further submissions

243. Mr Bennett submitted that it is important to bear in mind that the Claimant was delivering the DEVIANT GROUPS SPEECH (2010) on ‘home ground’, *i.e.* to an LIC audience who would have been familiar with the Claimant and his views and general behaviour and that (in Mr Bennett’s words) he was ‘a man of peace’. The home audience would, no doubt, have been paying careful attention to what their Chief Imam was saying and have been receptive to his message. Those who were regular attendees would, no doubt, have been particularly familiar with his work, views and also sermons. However, Mr Bennett’s bald assertion that the Claimant was known to Muslim audience to be ‘a man of peace’ is no more than assertion and not particularly helpful. The Claimant’s upstanding reputation in the community would have made his messages seem all the more credible and attractive. The core issue remains what did he mean by the things that he said to his in-house Muslim audience.
244. Mr Bennett also submitted that it was important to remember that the speech was being heard live by the audience and to be careful not to subject the speech to an over-textual analysis. As stated above, I have borne this well in mind, in relation to this and other live speeches by the Claimant, that meaning is to a large extent a matter of impression (*c.f.* Eady J in *Bond v. BBC*, *supra*).

General observations

245. I have read the whole of the Claimant's 42-page DEVIANT GROUPS SPEECH (2009) in one go as Mr Bennett suggested. In my view, the main messages in the Claimant's speech are clear. The Claimant's broad message is that armed *jihad*, i.e. "fighting the enemies of Islam", is a general religious duty for all Muslims aimed at achieving "the promotion of the religion of Islam and the making the religion of Allah, the supreme, and the suppression of the Disbelievers and the Hypocrites and destroying the disbelievers and hypocrites...". The Claimant's particular message, using and endorsing the words of Sheikh Abdul bin Baz, is that the Palestinian conflict is as an "Islamic affair" and Muslims should show "solidarity" by "...fighting the Jews an Islamic Jihad until the Territory (Israel-Palestine) goes back to its proper people...".
246. In my view, the DEVIANT GROUPS (2009) is expressly and implicitly all about encouraging the audience to engage in aggressive, physical *jihad* in Palestine on behalf of Islam. It is a far cry from the notion of mere 'proportionate self-defence', which is nowhere mentioned. There are no words in the speech limiting or ameliorating the effect of the above passages. Indeed, the Claimant is scornful of those who are "weak" (see the sixth section).
247. The Claimants' conflating of the meaning of *jihad* or *jihad fiy sabilillah* (striving in the path of God) with armed combat (*qital*) and his failure to articulate the *Qur'anic* conditions and regulations for *qital*, signals a vision of Islam which would be regarded as violent, extreme, partial and misleading to a young British Muslim audience. Given the sensitivities of the subject, a responsible speaker and teacher of Islam when discussing *qital* must be explicit about the conditions for declaring and prosecuting it. At no stage does the Claimant mention any of the limiting conditions in relation to *qital*. At no stage does the Claimant suggest that any of the means used by Muslim groups in Afghanistan, Chechnya, or Palestine, which included suicide bombings, mass killing of civilians etc, were illegitimate. Instead, the Claimant fully endorses these campaigns as "legitimate Jihads".
248. The Claimant defines the religious meaning of *jihad* not as 'inner struggle' but as "physically fighting and... the specific rewards attached to it", i.e. *qital*. The Claimant asserts that there is a general religious duty on all Muslims of "fighting in the path of Allah the enemies of Islam". The Claimant states that "those who fight have a higher status than those who do not fight". The Claimant suggests that it is not enough to "die sitting in London in UK":
- "The one who doesn't make battle i.e. take part in battles and doesn't have the intention to do so, he dies upon a branch of hypocrisy. So at least a Muslim should have that intention of struggling and fighting and sacrificing himself for the sake of Allah the Glorified and Exalted."*
249. The Claimant expressly praises and endorses the extremist teachings of Sheikh Abdul bin Baz, in particular that:

"[J]ihad [i.e. fighting] in the path of Allah ... is the best of those things that can bring us closest to Allah... because it leads to the victory of the Believers ... and making the religion of Allah the Exalted supreme ... and the suppression of the Disbelievers and the Hypocrites and destroying the

disbelievers and hypocrites, and facilitating the propagation of Islam all over the world...”

“By solidarity among Muslims to save it and to have that unity amongst the Muslims to save Palestine... and by fighting the Jews in an Islamic Jihad until the Territory goes back to its proper people... and to make jihad against the Jews [Jews], in an Islamic Jihad, Islamic jihad until the Territory goes back to its proper people... until the earth, i.e. the land of Palestine returns to its people i.e. the Muslims of Palestine.”

Conclusion

250. In conclusion, in my judgement, in his DEVIANT GROUPS SPEECH (2009), the Claimant espoused extremist Islamic positions and promoted or encouraged religious violence. The principal features of the speech can be summarised as follows:
- (1) First, the Claimant clearly endorses, adopts and embellishes the extremist views of Sheikh bin Baz, which include a religious duty (*wajib*) “to be hostile to” or “to hate” non-Islamic states and “...destroying the disbelievers and hypocrites...” and “fighting the Jews in an Islamic Jihad...”.
 - (2) Second, the Claimant in particular cites with approval the *fatwa* (legal opinion) of Sheikh bin Baz that “*Jihad in the path of Allah is one of the best methods of getting closer to Allah... and one of the greatest acts of obedience.*”
 - (3) Third, the Claimant reduces the religious meaning of *jihad* to a single meaning of *qital*, and tells the audience that “*fighting is prescribed upon you*”, i.e. fighting is a personal religious duty, and he does not confine this to defensive fighting.
 - (4) Fourth, the Claimant tells the audience that “*those who fight have a higher status [with Allah] than those who do not fight*”, i.e. Allah “*prefers Mihahideen (Fighters) to Sitters*”.
251. The DEVIANT GROUPS (2009) is all about encouraging aggressive, physical *jihad* on behalf of Islam. In essence, the Claimant encourages his audience to rise from their seats and take up arms to wage aggressive *Jihad* against the enemies of Islam, including the Jews in Palestine, and thereby get closer to Allah.
252. As Dr Wilkinson succinctly put it, the Claimant tantalises his audience with the celestial rewards for participating in what he regards as armed *jihad* using the violently extreme *trope* of martyrdom
253. In my judgement, the above passages from the Claimant’s DEVIANT GROUPS SPEECH (2009) are sufficient in themselves to make good the BBC’s case on justification for the WCO.

Internet

254. The Claimant’s DEVIANT GROUPS SPEECH (2009) was recorded for publication on the internet. It was made widely available and it remains available to view on various sites. It has never been disavowed or qualified by the Claimant.

(4) AAFIA SIDDIQUI SPEECH (2010)

255. The BBC rely upon a speech given by the Claimant at a rally outside the American Embassy on 28th March 2010 organised by the “Justice for Aafia Coalition” (JFAC). Aafia Siddiqui was a Pakistani national who was convicted in the US in 2010 of the attempted murder of a US Army Captain and sentenced to 86 years imprisonment. Neither side invited this Court to engage with the underlying merits of the Siddiqui case, nor would it have been appropriate to do so.

The text of the Claimant’s speech

256. I set out below the salient points and text of the Claimant’s AAFIA SIDDIQUI SPEECH (2010).
257. After blessing the rally, the Claimant said he wanted to make four brief points. The first was to thank the organisers of the “Justice for Aafia Coalition” in making everyone aware of their obligation to Aafia Siddiqui as a fellow Muslim. The Claimant quoted the *Qur’an*, “*The Believers are but a single Brotherhood*”, and said: “*Verily, those who have Iman, those who have faith are brothers and sisters because of that faith*”. He said the organisers had made the sense of “*oneness*” with their sister, Aafia Siddiqui.
258. The Claimant’s second point was to emphasise something said by an earlier speaker, Sheikh Suleiman: “*And never think that Allah is unaware of what the wrongdoers do*”. The Claimant said that Allah was aware of “*the oppression that our sister Aafia Siddiqui is suffering today from the American administration and the American Government*” and that if they carried on the American Government would “*on the day of judgment*” have to stand before Allah and account. At this point, the crowd shouted out “*Allah Akbar!*” (God is great).
259. The Claimant’s third point was to cite the example of Malcolm X whom he termed “*a martyr*” and then purports to quote him:

“He was a martyr, why? He stood up against oppression.

*Because the messenger of Allah, peace be upon him, said: **The best of Jihad, the greatest form of Jihad, is a word of truth, speaking the truth, before an oppressor ruler in front of a tyrant oppressive ruler.***

Malcolm X, AKA Malik Shahbaz, spoke the truth in front of oppression, in front of tyranny in his time in America. ...

That he would charge the American Government of being the greatest oppressor on earth. The greatest tyrant on earth. The greatest bootlegger on earth. The greatest kidnapper on earth. The greatest criminal on earth and the greatest rapist on earth. But, he would have added one more. He would have added one more. He would have added the greatest terrorist on earth.

*The tyranny and the terror of the American Government that we're standing right outside their embassy. **The tyranny and the oppression and the terror that they put on people, and especially the Muslim people, is unheard of before.** So he would have added 'the greatest terrorist on earth', but he also would have added...added what? **That anyone who sides with the oppressor is an oppressor.** Anyone who aids and abets the oppressor is an oppressor. So not only the American Government is that terrorist and that oppressor and that kidnapper and rapist. And those words are Malcolm, 'kidnap', 'rape', 'terror', 'criminal'. All of those things have been put on Aafia Siddiqui. Raped, terrorised, oppressed and so on.*

Malcolm would have added the Pakistani Government who sell their people for a few dollars to the American Government. The Afghani Government oppress and sell their people to the American Government for a few dollars. And Allah [the Exalted] reminds us in the book of Allah [the Exalted], concerning this principle - this principle of siding with the oppressor - this principle of siding with the, with the unjust, with the tyrant. Allah [the Exalted] tells us [And whosoever is an ally to them among you – then indeed, he is one of them]. Those who side with them, against the Muslims, side with the oppression and with Kufr and injustice against the Muslims, then they are with them.

The Pakistani Government is with the American Government. Same rule applies. The Afghani Government and any individual who had a hand in this, then he is with the oppressors.”

260. The Claimant's fourth point was to emphasise the power of prayer:

*“And my last and final point, brothers and sisters, a prayer, supplication that we need to make to Allah, the Glorified and Exalted. As some of the scholars mentioned: A believer's weapon, the weapon of the believer, and as Imam Al-Shafi'i mentioned, **do not underestimate the power of prayer, the power of supplicating and invoking Allah, the Glorified and Exalted.**”*

BBC's submissions

261. The BBC submitted that Claimant's message at the JFAC London Solidarity Rally was inflammatory and gratuitously provocative. Whatever the rights and wrongs of the Aafia Siddiqui case, it provided no basis for describing the American government generally as terrorists, rapists, and criminals, or reiterating his extreme view (similar to his ADVICE TO TAWFIQUE CHOWDHURY (2009)) that “*anyone who sides with the oppressor*” is an oppressor.

Claimant's submissions

262. The Claimant submitted that in this speech he was entitled to put forward his opinion that the conduct of the United States government was that of “a terrorist”. The Claimant relied on the first passage cited above to demonstrate that the only time that he used the term “*the greatest form of Jihad*” was legitimately in connection with speaking the truth (“*The best of Jihad, the greatest form of Jihad, is a word of truth, speaking the truth...*”). The Claimant submits that he was merely quoting from the *Qur’an* in order to praise Malcolm X who “*spoke the truth in front of oppression*”.
263. Mr Bennett emphasised the last passage in the speech in which the Claimant emphasised the importance of prayer (“*A believer’s weapon... do not underestimate the power of prayer*”). Mr Bennett submitted that there was no ‘blanket’ condemnation of the West and the Claimant was only taking issue with three particular governments, the American, Afghani and Pakistani governments.

Analysis

264. In his AAFIA SIDDIQUI SPEECH (2010), the Claimant used the device or conceit of an imaginary outburst by Malcolm X in order to give power and authenticity to three hyperbolic messages. First, the American Government is “*...the greatest oppressor... tyrant... bootlegger...kidnapper... criminal... rapist..[and] terrorist on earth*”. Second, anyone who sided with, or aided and abetted, the US Government was “*an oppressor*” themselves. Third, the Pakistani and Afghanistan Governments were siding with the “*the unjust... the tyrant*” against the Muslims and “*selling their people for a few dollars to the American Government*” and were therefore just like the Americans.
265. In my view, the Claimant’s various explanations for the speech do not provide an adequate explanation or excuse for the main thrust of this speech, nor ameliorate the extreme Manichean worldview or extreme anti-US tenor of this speech (“*the greatest terrorist on earth*”). Malcolm X did not say all the things that are ascribed to him by the Claimant.

Conclusion

266. In conclusion, in my judgement, in his AAFIA SIDDIQUI SPEECH (2010), the Claimant espoused extremist Islamic positions. The Claimant accuses the American Government of “*tyranny*”, “*oppression*” and “*terror*” against the Muslim people. The speech is redolent of the Manichean 'Us' versus 'Them' worldview (*i.e.* ‘good’ *Muslims* versus ‘bad’ *kafir*). The Claimant brands those who collaborate with the Americans as religiously violating Allah’s principles and being infidels (*kuffar*) themselves. The Claimant (through the supposed mouth of Malcolm X) accuses the American Government of being:

“The greatest oppressor on earth. The greatest tyrant on earth. The greatest bootlegger on earth. The greatest kidnapper on earth. The greatest criminal on earth and the greatest rapist on earth... [and] the greatest terrorist on earth.”

Internet

267. The Claimant's speech was filmed for subsequent publication on the internet on the official JAFC website and it remains available to view at e.g. www.youtube.com/watch?v=pXySLrv4XGY.

(5) CAGE PRISONERS SPEECH (2010)

268. The BBC rely upon a speech given by the Claimant on 21st August 2010 at the third annual dinner of CAGE (formerly known as 'Cage Prisoners'). CAGE supports people whom it regards as victims of the 'War on Terror'. CAGE describes its basic mission as 'striving for due process and rule of law in the war on terror' (<http://www.cageuk.org/>). The event was a fund-raising dinner which focussed on (alleged) 'extra-judicial killings'. Speakers included Mr Mozzam Begg, a former inmate of Guantanamo Bay and a CAGE director.

The text of the speech

269. I set out the text of the salient parts of the speech below. The Claimant began by saying it was inspiring to be in the present company:

*“Brothers and sisters in Islam, firstly it’s inspiring to be amongst leaders in the community and activists in the community, especially our brothers and sisters from Cage Prisoners, but also inspiring to be amongst some of **our brothers who made Hijra in the path of Allah the Exalted, who made jihad in the path of Allah the Exalted and who suffered in the path of Allah the Glorified and Exalted, our brothers from Guantanamo Bay.** May Allah the Exalted have mercy upon them. May Allah the Exalted accept all their good deeds and all their fasting in especially in the month of Ramadan and may Allah the Exalted grant them jannah. But likewise, it is also humbling for myself to be in the company of these great brothers and great sisters and great activists.”*

270. The Claimant then turned to expound his central theme of “legacy”;

*“What I really want to mention something that brother Moazzam mentioned. He used the term legacy and I think that’s what I really want to focus on very briefly. That there’s a legacy that Cage Prisoners is following. And that **legacy that Cage Prisoners is following is a legacy of eman and ’amal** . So when we say eman [belief] we know it comprises of ’amal’ [righteous deeds].*

We say, belief is in one’s heart, declared by one’s tongue and performed by one’s organs. It’s a belief in the heart and

something internal. It's also something upon the tongue and verbal but is also something which is seen in bodily actions. It's a legacy that Cage Prisoners has taken on board. It's a legacy that Allah, the Exalted, tells us in the Qu'ran: "And give good tidings to those who believe and do righteous deeds that they will have gardens (in Paradise)". And give glad tidings to those who have iman and do good deeds and for them there is jannah. And Allah, the Exalted, telling us: "But they who believe and do righteous deeds - those are the companions of Paradise". Those who have iman and do good deeds, for them there is jannah.

This is a legacy that we inherited from whom? From the prophets and the messengers of Allah, the Majestic and Sublime. From Noah, peace be upon him. From Ibrahim, peace be upon him. From Moses, peace be upon him. From Jesus, peace be upon him. From Muhammad, may Allah grant peace and honour upon him and his family. An issue of iman which manifests in deeds, in actions. A legacy that the prophet of Allah, peace be upon him, taught Abu Bakr al-Siddiq. A legacy that the messenger of Allah, peace be upon him, taught Omar, Othman, Ali and the rest of the companions, may God be pleased with them. Like when you see in the great battles. The battle of Yarmouk, we see good deeds from the leadership of Abu Obeida bin al-Jarrah and Khalid bin al-Waleed, and we see good deeds and that legacy from Saad bin abi Waqqas against the Persians in al-Qadisiyya, and so on."

271. The Claimant then refers to a number of key theological and ideological figures:

"The likes of the four Imams, Imam Abu Hanifa, Imam Malik, Imam Shafaie, Imam Malik, Imam Ahmed bin Hanbal and also passed down from them to other great leaders, the likes of Nouruddin Zengi, the likes of Salahuddin Al-Ayyoubi, the likes of Inb Taymiyyah, the likes of Muhammad bin Abdul Wahab may God have mercy on them. The likes of Hassan al-Banna, the likes of Sayedd Quth, the likes of Maulana Maududi, and the latest on, the likes of Abdullah Azzam may God have mercy on him. A legacy of good deeds"

272. The Claimant concludes by saying that the purpose of the gathering is to uphold and support that legacy with fund-raising:

"And Cage Prisoners today is following that legacy. And our gathering today is for what reason? To uphold that legacy. While we can't fulfil that legacy we have an organisation who is fulfilling that legacy. It becomes an obligation on us to support them financially, to support them with our sadaqah to support them with our charity, to support them with our duaa so they can fulfil an obligation that many of the 'ulamaa mentioned. That if only you have enough wealth in the bayt al

mal in the bayt al mal in the Muslim treasury to free just the Muslim prisoners, then make that wealth of the bayt al mal be used for that purpose. And a hadith pertaining to feed the hungry and feed the prisoner. So Cage Prisoners is an organisation doing that and in the month of Ramadhan when actions are multiplied and actions are rewarded more, we should take that option of giving charity and giving sadaqah so that they can carry out this great obligation of helping our Muslim, our Muslim brothers and sisters who are in great need. May Allah Reward you. Peace and blessings of Allah be upon you.”

Submissions

273. The BBC highlight aspects of the Claimant’s speech where he stated that it was *“inspiring to be amongst some of our brothers who made Hijra in the path of Allah..., who made jihad in the path of Allah...and who suffered in the path of Allah..., our brothers from Guantanamo Bay...”* as well as praising *“the likes of Sayedd Qutb”* and *“the likes of Abdullah Azzam”*, both of whom the Defendant contends were infamous for espousing extremist views and as founding fathers of modern-day jihadism.
274. The Claimant submits that in his speech at the CAGE dinner, that *“he did not use the word jihad in the physical sense”* but was referring to Moazzam Begg’s *“act of jihad”* in making *hijra* and his further *“jihad in the sense of spiritual struggle”*. The Claimant submits that he referred to Sayedd Qutb simply *“because he had been executed on the order of General Nasser for wanting Egypt ruled according to Islamic law”*. As to Abdullah Azzam, the Claimant submits that he *“did not refer to Mr Azzam because of how other people interpreted what he did prior to his death, which occurred before the phenomenon of Islamic terrorism arose”*. The Claimant relies on his references to Noah, Moses and Jesus in his speech.

Analysis

First issue: ‘To make Hijra and Jihad in the path of Allah’

275. The first issue is as regards the significance in the Claimant’s use and juxtaposition of the terms *hijra* and *jihad* in the opening passage of the speech above (*“brothers who made hijra in the path of Allah, who made Jihad in the path of Allah...”*). Mr Caldecott QC submitted on behalf of the BBC the use of terms *hijra* and *jihad* together in this context was, and was intended to be, a reference to Muslims who travel to *jihad* warzones or lands such as Iraq, Afghanistan, Yemen or Somalia, in order to fight in an armed struggle in the name of Islam. Mr Bennett submitted on behalf of the Claimant that the reference was merely to Moazzam Begg, who had travelled to Peshawar in Pakistan with his family in 1998 and later to Afghanistan for charitable purposes to build a school and teach and was, therefore, engaged in *hijra* (in the sense of a journey in order to benefit Muslims) for charitable purposes. The Claimant considered this to be an act of *jihad*. The ensuing three years during which Moazzam Begg was incarcerated in Guantanamo Bay without trial constituted further *jihad* in the sense of spiritual struggle; he had endured this in order to carry out *hijra*. It was common ground that Mozzam Begg was in the audience.

'Hijra' and 'Jihad'

276. The starting point is to consider the meaning of *hijra* and *jihad* in this context. The word '*hijra*' means literally 'migration'. The phrase 'to make *hijra*' derives from the original migration (*hijra*) in 622 CE of the Prophet Muhammad and 100 followers from persecution in Mecca to safety in Medina (see above). This Prophetic *hijra* marks the starting point of the Muslim calendar. Thus, in mainstream Islamic theology, to make *hijra* generally means to migrate in the path of God (*fiy sabilillah*) away from a place of difficulty for Muslims towards a place where it is possible to practise Islam and live in safety as a Muslim.

Experts

277. The experts disagreed about the meaning of *hijra* and *jihad* as used by the Claimant in the context of the CAGE PRISONERS SPEECH (2010).
278. Professor Gleave considered the terms most likely to be references to migrating (*hijra*), or travelling in order to fulfil the objectives of the *shari'ah* (divine law) and struggle (*jihad*) in the path of God to achieve those objectives. His basis for this was contextual, namely that the Claimant referred to "*our brothers who made Hijra in the path of God... made jihad in the path of Allah... who suffered in the path of Allah, our brothers from Guantanamo Bay*" in the context of a dinner for an organisation (CAGE) which had campaigned against what they viewed as unjust detentions, including at Guantanamo Bay, of people who had travelled to Afghanistan to engage in charitable work like Mozzam Begg. Thus, Professor Gleave argued, the reference to the *hijra* and *jihad* by the Claimant in this speech are more likely to be in their general Islamic sense of migration (*hijra*) to fulfil the objectives of the *shari'ah* in this case charitable works, and struggle (*jihad*) in the path of God to achieve those objectives. He suggested that, on the balance of probabilities, the *hijra* referred to was 'completely unconnected' with violent military *jihad*.
279. Dr Wilkinson considered the terms referred to migration (*hijra*) to engage in armed combat (*qital*) in theatres of conflict involving Muslims. Dr Wilkinson's reasoning was twofold. First, that the Claimant, in his DEVIANT GROUPS SPEECH (2009) and elsewhere, makes it clear that "*fighting*" (*qital*) is the primary, if not sole, religious meaning of the term *jihad*, and his use of the term here in the CAGE PRISONERS SPEECH (2010) contextualises the Claimant's use of the term *hijra*, i.e. and, accordingly, migration in order to carry out armed combat (*qital*) is the most likely intended meaning.

Answer to first issue

280. I am satisfied that the word *jihad* bears the same meaning here as it does generally in the Claimant's lexicon (see my analysis of the Claimant's DEVIANT GROUP SPEECH (2009) above). When the Claimant refers to religious *jihad*, the Claimant means exclusively armed *jihad* (*qital*), i.e. "*fighting physically the enemies of Islam*", save where the context clearly indicates some different religious meaning. There is no contrary indication here. Indeed, the context here, in particular use of the phrase "*Jihad in the path of Allah*", the reference to Guantanamo Bay and the "*legacy*" alluded to by the Claimant, re-enforces the meaning of armed *jihad* (*qital*).

281. In my view, the use and juxtaposition of the concepts of *hijra* and *jihad* in the passage under consideration ("*brothers who made Hijira in the path of Allah, who made jihad in the path of Allah and who suffered in the path of Allah*") is significant. The Claimant is here clearly referring to fellow Muslims (brothers) who have migrated (made *hijra*) to other lands in order physically to fight the enemies of Islam (*qital*) but who have suffered trials and tribulations in the course thereof. The Claimant goes on expressly to praise the virtues and "*good deeds*" of these *jihadis* who have travelled to conflict zones and engaged in armed struggle in the name of Islam.

Violent extremist jihadi literature

282. The phrase or motif, "*to make Hijra in order to fight jihad*", is a recurring mantra or recruiting device for violent Islamist extremism which Dr Wilkinson explains crops up repeatedly in violent Islamist extremist online publications and magazines (such as in Al-Qaeda's magazine, "*Inspire*", and so-called Islamic State's magazine, "*Dabiq*"). Many violent Islamist extremists also believe that *hijra* is a necessary precursor to armed *jihad* and that this was the Prophetic model (the *Sunna*). The use by the Claimant of the same extremist mantra in his CAGE speech is, in my view, significant.

Second issue: nature of the 'legacy'

283. The second issue is the nature of the "*legacy*" alluded to by the Claimant.

BBC submissions

284. Mr Caldecott QC submitted for the BBC that, in addition to CAGE Prisoners in positive terms, the Claimant chose to praise and highlight the leadership and "*legacy of good deeds*" of figures such as Sayedd Qutb and Abdullah Azzam, both infamous for espousing extremist views and as founding fathers of modern-day *jihadism*. Sayedd Qutb was an author and leading member of the Muslim Brotherhood in the 1950's prior to his execution by the Egyptian government in 1966. He is widely considered to be a key originator of Islamist ideology and his book "*Milestones*" is often described as the "*constitution*" of *Jihadi* groups such as Al-Gama's al-Islamiyaa (GI), Egyptian Islamic *Jihad* and Al-Qaeda globally. Abdullah Azzam is widely described as the "*Father of Global Jihad*" because, prior to his death in 1989, he established and operated a framework for foreign *jihadists* in Afghanistan to wage *jihad* and opened training facilities for *jihadists* globally to train in Afghanistan. Infamously, Azzam was a teacher and mentor of Osama Bin-Laden and together they established Al-Qaeda.
285. The BBC submitted that the Claimant's choice of language and leaders to praise was specifically designed to present convicted terrorists and those suspected of terrorist action in the name of Islam as praiseworthy and to encourage CAGE and any others present to adopt that position. As such, the Claimant was clearly espousing an extremist Islamic position, namely supporting (armed) *jihad* and was liable to promote and/or encourage violence in the name of Islam.

Claimant's submissions

286. Mr Bennett on behalf of the Claimant denied these allusions. He submitted Sayedd Qutb was executed in 1966, long before the phenomenon of Islamic terrorism. He submitted Sayedd Qutb was only referred to by the Claimant because he had been executed on the order of General Nasser for wanting Egypt ruled according to Islamic law. Abdullah Azzam participated in the armed struggle against the occupation of Afghanistan by Soviet Russia. This struggle was supported by a number of western governments, including the United States. He was assassinated in 1989. The earliest date for the foundation of Al Qaeda is August 1998. It was founded in order to oppose the Soviet occupation of Afghanistan. The Claimant did not refer to Abdullah Azzam because of how other people interpreted what he did prior to his death, which occurred before the phenomenon of Islamic terrorism arose.
287. Mr Bennett submitted that “*legacy*” being referred to by the Claimant is a much broader historical legacy and included the other figures mentioned, such as Noah, Moses and Jesus. The reasons for the Claimant’s support for CAGE was made clear in his speech: “*Who do we see speaking and bringing to attention the issues of rendition, the issues of kidnapping, the issues of torture, the issue of arrests? Very few organisations like Cage Prisoners...*”.

Analysis

288. The Claimant purports to expound his theory of an inherited “*legacy*” by seeking to draw an unbroken ‘prophetic’ line or lineage from the earliest prophets and messengers of Allah to modern day ideologues. The historical linkage he sets out is broadly in the following seven steps: (i) beginning with Noah, Moses, Abraham, Jesus and the Prophet Muhammad; (ii) then through the first Caliph Abu Bakr (573-634 CE) and the Companions (*Sahabah*) of the Prophet Muhammed; (iii) then through the canonical *Sunni* Imams Abu Hanifa (702-772 CE), Muhammad Idris ash-Shafi’ (767-820 CE), Malik (711-795 CE) and Ahmad ibn Hanbal (780-855 CE); (iv) then through the Ayyubid dynastic leaders, Nuruddin Zangi (1118-1174 CE) and Salahuddin Al-Ayyubi (1137-1193 CE) who fought against the 12th Century Crusader invaders such as Richard I during the golden Komnenos period of the Byzantine Empire; (v) then through the 14th Century classical Damascene jurist, ibn Taymiyya (1263-1328); (vi) then through the 18th Century religious reformer Muhammad ibn Abdul Wahab (1703–1792) (see above); and then, (vii) turning to the 20th Century, the Claimant lists four names who are amongst the most notorious political Islamists and violent extremists of recent times: Hassan al-Banna, Sayyid Qutb, Maulana Maududi and Abdullah Azzam. The Claimant refers to (iv), (v), (vi) and (vii) as “*other great leaders*” and uses the repeated phrase or mantra “*the likes of... Sayyid Qutb... [et al]*”.
289. Further, in the course of describing CAGE Prisoners and then their “*good deeds*” in positive terms, the Claimant echoes this phrase then he goes on to praise the “*legacy of good deeds*” of *e.g.* Sayedd Qutb and Abdullah Azzam, both infamous for espousing extremist views and as founding fathers of modern-day *jihadism* (see further below).
290. I reject Mr Bennett’s somewhat brave submission that, because Noah, Moses and Jesus were included in the Claimant’s list, *i.e.* figures who were unlikely to have approved of the taking back of all the lands that used to belong to the Muslims including Israel, the Claimant could not, therefore, be taken to have endorsed the

extremist views of Abdullah Azzam and Sayyid Qutb. In my judgement, it is clear that the Claimant was using the references of Noah, Moses, Jesus and Muhammad, in effect, to sanitise, scent and imbue with virtue and respectability, the extreme, violent Islamist ideologues that he later mentions, namely, “*the likes of...*” Muhammad bin Abdul Wahab, Hassan al-Banna, Sayedd Qutb and Abdullah Azzam.

Dr Wilkinson’s evidence

291. Dr Wilkinson’s expressed the opinion that the “*legacy*” of ‘authentic’ Islam cited by the Claimant includes figures who are exclusively known in Muslim circles for their participation in armed *jihad* and warlike activity, namely Nurudeen Zengi, and Salahudeen Ayyubi (exclusively known for fighting the Crusaders in the 12th Century), Abdullah Azzam (almost exclusively known for fighting in the Afghan conflict and advocating armed *jihad*) and Sayyid Qutb (most often associated with violent Islamist ideologies).
292. Dr Wilkinson further elucidated his views during cross-examination by Mr Bennett. In response to one question, Dr Wilkinson gave an answer of remarkable lucidity lasting some 20 minutes in which he deconstructed the Claimant’s CAGE PRISONERS SPEECH (2010) and gave a historical *tour d’horizon* of the figures referred to by the Claimant, explaining his conclusions on the Claimant’s speech. His *exegesis* in the witness box may be briefly summarised as follows: (i) Given the serious crimes of what the prisoners of Guantanamo Bay have been accused, it was strange for the Claimant to open the speech with the incantation “...*it is inspiring to be amongst some of our brothers who made Hijrah in the path of Allah...*”. (ii) It was unusual then to refer to “*legacy of eman and ‘amal*”, *i.e.* a legacy of belief (*eman*) and right behaviour (*‘amal* is short for *amal salih*). (iii) It was unusual then to link these concepts with “*great battles*” since *eman* (belief) and *‘amal* (right behaviour) are not normally associated with battles, but more traditionally refer to passive acts such as saying one’s prayers, doing acts of charity, speaking kindly to one’s parents *etc.* (iv) It was strange then to refer to the four canonical Sunni imams (who represent the absolute canonical heart of Islam) but then to leap directly to figures such as Nuruddin Zangi, Salahuddin Al Ayyubi, Ibn Taymiyyah, Muhammad bin Abdul Wahab, Hassan al-Banna, Sayedd Qutb, Abdullah Azzam *et al* (who are well known for fighting, violence and a divisive world view but not for legacy of *eman* or *‘amal*). (v) For these reasons, Dr Wilkinson explained, he came to the conclusion that the Claimant had “*in a strong and explicit way foregrounded armed combat and violence as part of the true legacy of Islam*”.

Historical analysis

293. I agree with Dr Wilkinson’s above analysis of the Claimant’s CAGE PRISONERS SPEECH (2010). In order to make it good, however, it is necessary to examine the historical timeline and core teachings of each of these figures in order to understand whether the ‘extremist’ label attached to them is justified, and whether, for instance, the Claimant’s assertion that Sayyid Qutb was executed ‘long before the phenomenon of Islamic terrorism’ is valid. Much of what follows represents my distillation of Dr Wilkinson’s helpful historical analysis (in Chapter 13 of his report) which has not been challenged, together with my reading of “*Milestones*” by Sayyid Qutb and the *Qur’an*.

Hassan al-Banna (1906-1949)

294. Hassan al-Banna (1906-1949) was the founder of the Muslim Brotherhood. He established the organisation in 1928 on avowedly armed *jihadist* principles. It engaged in violence against Jews and British forces in Egypt in the 1930s and 1940s ostensibly in reaction to the Jewish presence in Palestine. The Muslim Brotherhood was responsible for the assassination of Egyptian Prime Minister Mahmoud Fahmi an-Nukrashi Pasha in 1948 and the attempted assassination of the Egyptian President of Gamal Abdel Nasser in 1954. In his philosophical work *'The Art of Death'* (*fann al-mawf*) or *'Death is Art'* (*al-mawf fann*), a phrase which came to be a famous part of his legacy, Hassan al-Banna extolled death and martyrdom as an important end of *jihad* and reminded members of the Brotherhood of the Prophetic observation:

"He who dies and has not fought [ghaza, meaning literally 'raided'] and was not resolved to fight, has died a jahiliya [i.e. pagan, nor non-Muslim] death."

Abul Ala Maududi (1903–1979)

295. Abul 'Ala Maududi (1903–1979) was founder of the Jamaat e-Islami political party whose manifesto is the establishment of an Islamic State in order to bring about the Kingdom of God on Earth. Maulana¹⁹ Maududi advocated that the supreme purpose of armed *jihad* was the eradication of all so-called 'non-Muslim' forms of governance. He was highly influential on the development of Extreme *Salafist* Islamism and a whole generation of Arab political Islamists, including the Egyptian Islamist ideologue, Sayyid Qutb (see below). Abul Ala Maududi wrote:

"Islam wishes to press into service all forces which can bring about a revolution and a composite term for the use of all these forces is 'Jihad'. ...[T]he objective of the Islamic 'jihād' is to eliminate the rule of an un-Islamic system and establish in its stead an Islamic system of State rule." (Maududi 1980:6).

Sayyid Qutb (1906-1966)

296. Sayyid Qutb (1906-1966) was a seminal figure behind the continued development of the ideology of the Muslim Brotherhood in Egypt. He drew on Abul Ala Maududi's work and expanded the concept of pre-Islamic ignorance (*jahiliyya*) to characterise the entire modern world as *jahil* and unfit for coexistence with Islam and Muslims.²⁰

"Milestones"

297. Sayyid Qutb's 160-page radical Islamist manifesto *"Milestones"* (*Ma'alim fiy tariq*) became the blueprint for subsequent extreme Islamist worldviews and has influenced generations of Islamic extremists, including Osama bin Laden (1957-2011) and

¹⁹ *Maulana* is an honorific title meaning *'Our Master'*.

²⁰ The term *jahiliyya* is normally used to describe 'pre-Islamic ignorance', *i.e.* when Arabs living in the Arabian peninsular were 'ignorant' of the message of Islam. But Sayyid Qutb broadened this definition so that any society which was not run in line with his conception of political Islam was, in this sense, 'ignorant' (*jahili*).

Ayman Az-Zawahiri (1951-present) of Al-Qaeda, and continues to influence to this day groups such as 'ISIS'. In "Milestones" Sayyid Qutb uses a mixture of ideological sophistry and historical myopia to propound an ultra-violent form of Islamist extremism.

298. Sayyid Qutb's 'thesis' can be briefly summarised as follows: (i) The whole world is steeped in *jahiliyyah* (ignorance of the Divine guidance or unbelief). (ii) The world must be rid of *jahiliyyah* because it is one man's lordship over another. (iii) Only the Muslims understand the real meaning of the message *la ilaha illa Allah* (there is no deity except God). (iv) Islam's function is to change people's beliefs, actions, outlook and way of thinking. (v) Merely speaking about the beauties of the Islamic belief system is defeatist – Islam must become a 'practical' movement using *jihad*. (vi) 'Defence' in Islamic *jihad* must be given a broad meaning, *i.e.* the defence of man against all those things that limit his freedom. (vii) Islam is a movement to physically wipe out *jahiliyyah*, tyranny and servitude, introduce true freedom of man and assert God's sovereignty divine authority. In "Milestones", he describes the aim of *jihad* in the following (disingenuous) terms:

"The Jihad of Islam is to secure complete freedom for every man throughout the world by releasing him from servitude to other human beings so that he may serve his God. ... This is in itself a sufficient reason for Jihad. These were the only reasons in the hearts of Muslim warriors." (p.70).

299. Sayyid Qutb defines *jihad* itself in the following and totalitarian terms:

"Jihad in Islam is simply a name for striving to make his system of life dominant in the world. ... Thus, whenever an Islamic community exists... [i.e. when the number of Believers reaches three]²¹ it has a God-given right to step forward and take control of the political authority so that it may establish the Divine system..." (p. 76)

300. Sayyid Qutb's virulent anti-Westernism and extreme anti-Americanism fuelled the divided Manichean worldview of 'Us' versus 'Them'. He advocates in essence a call to arms and an armed *jihad* to destroy *jahili* society and eradicate *jahiliyya*:

"But any place where the Islamic Shari'ah is not enforced and where Islam is not dominant becomes the home of hostility [Dar-ul-Harb] for both the Muslim and the Dhimmi [protected non-Muslim citizens of an Islamic government]. A Muslim will remain prepared to fight against it, whether it be his birthplace or a place where his relatives reside or where his property or any other material interests are located." (Qutb, 1964:131)

301. Professor Gleave suggests that Sayyid Qutb's identification with violent *Jihadi Salafism* is 'simplistic'. I disagree. As Dr Wilkinson explains, Sayyid Qutb's belief in the eternal enmity between Muslims and non-Muslims and the cosmic struggle and duty of Muslims to overcome un-belief (*kufir*) by fighting has become a bedrock of

²¹ See "Milestones", p.102.

violent Islamist extremist ideology (and whose ‘legacy’ has been claimed by the likes of Osama bin Laden and Ayman al-Zawahiri, as Professor Gleave himself accepts). Sayyid Qutb wrote:

“Thus, this struggle is not a temporary phase but an eternal state - an eternal state, as truth and falsehood cannot co-exist on this earth.” (Qutb, 1964:7)

302. I reject Mr Bennett’s submission that Sayyid Qutb died before the phenomenon of Islamic terrorism. It is clear that virulent Islamist terrorism began in the 1930s and 1940s with political agitation and assassination, *i.e.* decades before Sayyid Qutb’s execution in 1966 by Egyptian President Nasser.
303. In my view, Sayyid Qutb is a Dystopian Protagonist with a violent, apocalyptic view of the world. One obvious flaw in his thesis is that embracing his form of *nihilist jihad* is merely to be swapping one form of human servitude for another, *i.e.* the diktats of the *jihadists*.²²

Abdullah Azzam (1941-1989)

304. Abdullah Azzam (1941-1989) was a Palestinian academic who fought in the 1967 Six-Day War but became disenchanted with the failure to oust the State of Israel from Palestinian territories and to establish Muslim power in the Arab World. He was highly influenced by Sayyid Qutb. He in turn met and influenced Osama bin Laden. He was expelled from universities in Jordan and Jeddah for his extremist views. He established the Peshwar recruitment office (*maktab al-khadamat*) for Arab recruits joining the Soviet-Afghan War (1979-1989) and, as mentioned above, he drafted the *fatwa* (religious-legal judgment), *Defence of Muslim Lands: the first obligation after faith* (1979), which declared the Afghan Jihad an *individual* religious obligation on all adult Muslims in all times and places (*fard al-'ayn*) as opposed to a mere collective duty. He espoused the notion that enemies of Islam should be fought aggressively in their own countries. This notion became a central feature of the *jihadist* thinking of *Al-Qaeda* (as demonstrated by the attacks on the Twin Towers in New York on 11th September 2001). He was also responsible for the propagation of the ideology of martyrdom (*ishtishhad*) and recounted often fantastical tales surrounding those who fought and died in fighting armed *jihad*, for example of corpses not rotting and heavenly hosts attending dying fighters. His tales have now become stock *jihadist* recruiting tools and were used as such in the Bosnian War (1991-1995), the First Chechen War (1994-1996), the Second Chechen War (1999-2009) and most recently in the Syrian Civil War (2011-present).
305. Abdullah Azzam’s twin ideas of armed *jihad* as an individual religious obligation and of “*martyrdom*” have been the doctrinal core of violent Islamist extremism ever since. Together, they have become powerful recruitment techniques and propaganda that Abdullah Azzam pioneered, and pivotal in shaping the ideology of Osama bin

²² As the philosopher, Kwame Anthony Appiah explains in his first Reith lecture 2016: “The paradox of fundamentalism is that it relies on precisely what it repudiates, [scriptural] interpretative latitude”.

Laden and the Al-Qaeda network. Abdullah Azzam wore a trademark Afghan hat and Palestinian *kefaya* and became an iconic figure of violent Islamist extremism and has been called “*the Godfather of Global Jihad*”. His oft-repeated slogans (“*Jihad and the rifle alone. NO negotiations. NO conferences and NO dialogue*”, and, “*We are the terrorists for God*”) are the common calling-card of violent Islamist extremism and crop up *ad infinitum* on *jihadi* social media sites and blogs. Professor Gleave refers to Abdullah Azzam as the “*celebrated... Godfather of contemporary jihadism*”.

Claimant’s answer

306. The Claimant sought to suggest in cross-examination by Mr Caldecott QC that he had mentioned Sayyid Qutb and Abdullah Azzam and the other Imams not because he agreed with their views on violence but merely in order to illustrate people standing up against oppression. I found this answer disingenuous. By linking these four notorious, manifestly extreme Islamic figures to his unbroken chain of virtuous Prophetic “*legacy*” stretching back to the earliest prophets of impeccable provenance and virtue (*i.e.* Noah, Abraham, Moses, Jesus and Muhammed the Prophet) it is transparently clear, in my view, that the Claimant was seeking to cloak the 20th century violent ideologues (*i.e.* Hassan al-Banna, Abdul ‘Ala Maududi, Sayyid Qutb and ‘Abdullah Azzam) with the *patina* of authentic, mainstream Islamic approval and respectability. In my judgement, this is something that only someone espousing extremist Islamic views would do.

General approach

307. As emphasised above, I have borne in mind that the audiences would not have had the luxury of detailed expert evidence in relation to all the historical and theological references made by the Claimant during his speeches. However, the Claimant was not merely making a series of obscure historical references to ‘freedom fighters’ as Professor Gleave suggests. The likes of Hassan al-Banna, Abdul Ala Maududi, Sayyid Qutb and Abdullah Azzam are notorious figures in the world of Islam, whose views and reputations for proselyting extremist and violent ideologies are widely known to many Muslims. If the Claimant was intending to send out ‘coded’ messages, the code was all too transparent.

Conclusion

308. In conclusion, in my judgement, in the CAGE PRISONERS SPEECH (2010), the Claimant espoused extremist Islamic positions and promoted or encouraged religious violence. The Claimant again uses *jihad* in the sense exclusively of “*fighting physically the enemies of Islam*”, *i.e.* *qital*. The Claimant praises fellow Muslims who have migrated (made *hijra*) to other lands in order physically to fight the enemies of Islam (*qital*). The Claimant suggests that there was a moral and theological equivalency between the “*good deeds*” and “*legacy*” of the earliest prophets such as Noah, Abraham, Moses, Jesus and Muhammed, and the “*legacy of good deeds* [sic]” of four notorious 20th century Islamic extremists and violent ideologues: Hassan al-Banna (the founder of the Muslim Brotherhood), Abdul ‘Ala Maududi (the founder of *Jamaat e-Islami*), Sayyid Qutb (the author of “*Milestones*” which became the ideological blueprint for Al-Qaeda and ‘ISIS’) and ‘Abdullah Azzam (who declared the Afghan *jihad*, mentored Osama bin Laden and is celebrated as the “*Godfather of global jihad*”). The Claimant suggests that the CAGE prisoners are the inheritors of

the “*legacy of good deeds*” of these infamous 20th century Islamic extremists and violent ideologues. The Claimant praise the virtues and “*good deeds*” of *jihadis* who have travelled to conflict zones such as Iraq, Afghanistan, Yemen or Somalia, and engaged in armed *jihad* in the name of Islam.

309. In my view, like the Claimant’s other speeches a significant number of people in the audience listening to the Claimant’s CAGE PRISONERS SPEECH (2010), or viewing it on line, would have regarded the Claimant as espousing extremist Islamic positions, and promoting and encouraging violent *Jihad* in the name of Islam.

Internet

310. As the Claimant well knew, his speech was filmed, for subsequent publication on the internet, where it has (to date) been watched 1,154 times and where it remains available to view to an even greater audience at e.g. www.vimeo.com/24267181.

(6) HHUGS SPEECH (2011)

311. The BBC rely on a speech given by the Claimant on 19th March 2011 at the annual dinner for Hhugs (‘Helping Households Under Great Stress’), a charity which, according to its website, was “*established to provide practical support and advice to households devastated by the arrest of a family member under UK anti-terror legislation*”. In the event, however, Mr Caldecott QC did not invite the Court to place any particular weight on the HHUGS SPEECH (2011), so I can deal with the matter fairly swiftly.

Text of the speech

312. In the course of the seven minute speech the Claimant said:

*“My dear brothers and sisters in Islam, it gives me great pleasure and honour to be here at this event organised by HHUGS. An organisation that is doing work which, I can say, very few, if any, other organisations are doing this work. **The work of supporting families of brothers who are in prison.** Allah, the Majestic and Sublime, has blessed us with a noble deed. A deed that Allah, the Glorified and Exalted, will only accept. As Allah, the Glorified and Exalted, tells us in the Quran: “Indeed, the religion in the sight of Allah is Islam” . The deed with Allah, the Exalted, is only the Islam*

*“So part of those good deeds to please Allah [the Glorified and Exalted] is to spend in the path of Allah the Majestic and Sublime]. Spend on the poor and needy. And that’s when the hadith, the messenger of Allah, our Imam, our guide, our teacher peace be upon him and his family says **One who strives to help the widows and the poor is like the one who fights in the way of Allah.** The messenger of Allah peace be upon him is saying, the one who helps and makes effort in helping the*

widow and the poor and the needy, then he is **like the one who is making jihad in the path of Allah the Glorified and Exalted.**

Helping the families of brothers who are in prison, giving to those families, supporting those families, coming to their aid when they're in times of need and help is like as if we're making jihad in the path of Allah the Majestic and Sublime. And we know jihad in the path of Allah the Exalted is of the greatest of deeds that a Muslim can take part in."

Submissions

313. The BBC submitted that the Claimant used the phrase "*making jihad in the path of Allah*" several times in the speech indicating encouragement for armed *jihad* (*qital*).
314. The Claimant submitted that the term *jihad* was used in a peaceful sense and the speech was encouraging the donation of money to the charity.

Analysis

315. The experts agreed that the primary purpose of the speech was to encourage giving to the needy (*infaq*) and charity more generally (*sadaqa*) rather than the encouragement or condoning armed *Jihad*.
316. The BBC submitted that if the Claimant wished to focus solely on charitable giving, he could easily have done so without using the word *jihad* with its modern-day negative connotations. However, since the Claimant used the word *jihad* in the original Arabic, Dr Wilkinson was not able to say whether the word *jihad* was used in the same sense as in the DEVIANT GROUPS (2009) speech (*i.e. qital*). He accepted that the overall tone of the speech was moderate.
317. Mr Caldecott QC suggested to the Claimant in cross-examination that the Claimant's choice of a *hadith* (sayings and actions of the Prophet Muhammad) that mentioned *jihad* was inappropriate at a charitable event which included members of the audience who had been detained for suspected terrorist activity (*viz. "One who strives to help the widows and the poor is like the one who fights in the way of Allah"*). The Claimant explained that since the breadwinners had gone, the widows (*almala*) had become like the poor (*miskin*) and therefore the *hadith* was appropriate.

Conclusion

318. In these circumstances, in final speeches, Mr Caldecott QC did not invite the Court to place particular weight on the Claimant's HHUGS SPEECH (2011). In my view, he was right so to suggest and, accordingly, I do not do so.

(7) BELMARSH PRISON SPEECH (2011)

319. The BBC rely upon a speech given by the Claimant at a rally outside Her Majesty's Prison Belmarsh in August 2011 to mark the end of Ramadan.

Text of the speech

320. I set out below the full text of the speech which was delivered on a grassy knoll outside the prison itself and took the form of a traditional Islamic sermon (*khutba*):

*"My dear brothers and sisters of Islam, I would firstly like to thank the organizers, the organizers for the Belmarsh Iftaar, may Allah the Exalted reward them abundantly for taking the time and making the effort in organizing **this event to show our love and unity with our brothers in Belmarsh** and around the world.*

*Secondly, I want to focus on **legacies**. I want to focus on legacies, and what is a better time than the month of Ramadhan than to focus on legacies. Allah the Glorified and Exalted tells us the wisdom behind the legislation of fasting.*

This Taqwah, this Taqwah. Selflessness piety. The Imam Ali Ibn Abi-Talib, may Allah be well pleased with him, the Fourth Caliph of the Muslims defined Taqwah and mentioned and said that Taqwah as being: Taqwa is to fear Allah, The Majestic, to act according to His revelation, to be pleased with little sustenance and to get prepared for the Day you of Departure.

*He defined Taqwah and said Taqwah is that you fear Allah the Glorified and the Exalted. The Taqwah is that you act according to Revelation, the Taqwah is that you are content with what Allah the Glorified and the Exalted has given even if it is little and that Taqwah is that **you be prepared for the day of departure i.e. death** and what comes after death, the meeting of Allah the Glorified and the Exalted on the day of Qiyamah and the Day of Judgment....*

Reflecting on the issue of Taqwah and definition by Ali Ibn Abi-Talib makes me think of legacies. A legacy of Taqwah, a legacy of piety left to us by our role models. The Prophet and the Messengers of Allah, the Prophets and the Messengers of Allah the Glorified and the Exalted, and the Prophet Muhammad, peace be upon him, specifically.

The legacy of Taqwah in terms of our oneness, our unity, our love, with the nation of the Muslims and our brothers behind bars in Belmarsh and other places in which they are struggling and striving to implement the deed of Allah the Glorified and the Exalted.

*And, Allah the Glorified and the Exalted tells us: "**The Believers are but a single Brotherhood**". The Muslims or the*

Muslim is a brother of another Muslim. And Allah the Glorified and the Exalted "The Believers are but a single Brotherhood", that the believers are nothing other than brothers. And the messenger of Allah peace be upon him tells us in the Hadith of Al-Bukhari and of Muslim: A Muslim is a brother of (another) Muslim. The Muslim is the brother of another Muslim.

*So the first legacy, the prophecy of the messenger of Allah the Exalted left for us and Muhammad peace be upon him left for us. And Muhammad peace be upon him implemented in Medina was **the legacy of the oneness of the Ummah**. The oneness of the nation and the nation of the Muslim. In Medina, the messenger of Allah Peace Be Upon Him had Abu Bakr Al-Siddiq...*

*And you had amongst them Salman al-Farsi, Salman the Persian, another close companion of Prophet Muhammad, peace be upon him. There was no racism, there was no division, there was no disunity. There was oneness as Allah the Exalted says and as we just mentioned "**The Believers are but a single Brotherhood**". The believers are nothing other than brothers and sisters in Islam.*

*So that's the first legacy to focus on in the month of Ramadhan. And it's the first legacy that we must attach to Taqwah, which is the wisdom behind the legislation of fasting in the month of Ramadhan. **The second legacy, the second legacy attached to Taqwah is the legacy of good actions**. The legacy of deed, the legacy of struggle, the legacy of striving, the legacy of hard work because Allah the Glorified and the Exalted tells us "So race to good". Make haste in doing good deeds, Allah the Glorified and the Exalted tells us: "And give good tidings to those who believe and do righteous deeds that they will have gardens in Paradise". Give glad tidings to those who believe and have Iman and do good deeds, that for them there is gardens in Paradise, and so on.*

*Allah the Glorified and the Exalted emphasising for us **the importance of deed, of good deeds** and that is a part of the legacy that the prophet and the messenger of Allah Peace Be Upon Him left for us. And for this reason, the messenger of Allah Peace Be Upon Him, when he woke up one morning with his companions, and he said 'who is fasting today?' And many of the companions were silent, but Abu Bakr Al-Siddiq, may Allah be well pleased with him, replied and said: I am, O Messenger of Allah.*

***And part of the legacy of good deeds is: to speak the truth.** Part of the legacy is: to speak the truth - uncompromisingly, to speak the truth. To see Allah the Glorified and the Exalted in their speech.*

And that's what a love for Allah tells us in the Koran "And speak to people good words". Say to mankind that which is good, say to mankind that which is good.

And the Messenger of Allah Peace Be Upon Him tells us, He who believes in Allah and the Last Day, must speak good or remain silent.

In the Hadith Bukhari and Muslim, in which the Messenger of Allah, Abu Hurayrah says: Whoever believes in Allah on the last day should speak the truth or speak good, or remain silent.

So, speaking the truth and saying good words is part of the Legacy. Not only of Muhammad peace be upon him and his family, but the Legacy of all the Prophets and the Messengers of Allah peace be upon them.

*Look at **Ibrahim** peace be upon him. Did he not speak the truth? Did he not leave a Legacy, for us, of speaking the truth? **He faced off Nimrod, Nimrūd.** Did he not speak the truth and show us that the Muslim is someone who fears Allah the Exalted only and **speaks the truth and fights, and strives, and struggles against oppression, and fights** goodly oppressed and the weak and so on.*

*If you look at **Jesus** Peace Be Upon Him, Jesus Peace Be Upon Him, did he not strive and speak the truth against **the Romans**, did he not say the word of truth against the Romans and the oppressors? And if we look at **Moses**, peace be upon him, Moses the same against Fir'aun, **Pharaoh**, did he not save, with the help of Allah the Exalted, the Israelites, the Children of Israel, and say the truth and **speak the truth in front of a tyrant ruler**, an oppressive ruler, the people of Pharaoh?*

The Muslim is someone whose heart is filled with a coat of Rahmah and mercy for creation. But at the same time it is a heart that is filled with the fear of Allah the Glorified and the Exalted and that was the first definition that Ali ibn Abi-Talib, may God be pleased with him, gave of al-Taqwa: Fearing The Sublime, Fearing Allah the Glorified and the Exalted.

And that's what Allah the Exalted says: "Be ye not afraid of them, but fear Me, if ye have Faith".

Don't fear them, o Worshippers of Allah, but fear Me if you are believers.

And that's what the Hadith, the famous Hadith in Sunan Abi Dawud the messenger of Allah, Peace Be Upon Him, used a statement, which today might be a frightening statement for us. He used the word al-Jihad. He used the term al-Jihad. But, in

what context did the Messenger of Allah, peace be upon him, use this term of al-Jihad?

*He said in this Hadith, in Abu Dawud: **The best of Jihad, the best form of Jihad a word of truth before an oppressor ruler.***

*The Messenger of Allah, peace be upon him, said **the greatest form of Jihad is to speak the truth in front of a tyrant, oppressive ruler.** So we know Muhammad peace be upon him came to the Quraish There is no god but Allah. A word of truth.*

*We know after then, after the time of Prophet Muhammad, peace be upon him, we had the likes of Abdullah ibn Zubair, Hussein ibn Ali **speaking the truth in front of tyrant and oppressive rulers.** And then we had the likes of Imam Ahmad ibn Hanbal and the likes of Ibn Taymiyyah and the likes of Muhammad ibn Abd al-Wahhab, may Allah have mercy on him, **the likes of Abdullah Azzam, may Allah have mercy on him, the likes of Sayyid Qutb,** may Allah have mercy on him, and others speaking the truth. Why? They were recalling the legacy. The legacy that was given to us by the prophets and the Messengers of Allah, the Glorified and the Exalted.*

But our speech, our speech "Man does not utter any word except that with him is an observer prepared".

*Allah the Glorified and the Exalted says that what we utter from our statements there are scribes, i.e. angels writing down the statements. So, if we don't say a word of truth, **if we don't speak the truth** and we don't aid the oppressed **and we don't struggle against the oppressors then** the angels are writing down these statements of us and **these bad deeds of us.** But rather, we should be saying the truth and speaking the truth and letting the angels write down that good speech, that right speech."*

BBC submissions

321. The BBC submitted that the Claimant knew at the time that HM Prison Belmarsh was a 'Category A' prison, which housed some of the most high profile prisoners found guilty of terrorist-related offences. These included Abu Hamza (who was jailed in February 2006 for 7 years for inciting murder and race hate) and Muktar Ibrahim, Yasmin Omar Ramzi Mohammed and Hussein Osman (the "21/7" attempted bombers convicted in July 2007 of conspiracy to murder). The BBC submitted that in declaring his unqualified support for "*our brothers behind bars in Belmarsh*" the Claimant was deliberately encouraging his audience to support the Muslim Belmarsh prisoners, regardless of their specific crimes. As such, the Claimant chose not to distinguish between those men being held at Belmarsh who had been convicted of heinous crimes, and those who were on remand or were being held without charge pursuant to anti-terror legislation. In addition, the Claimant again praised "*the likes of Abdullah Azzam*" and "*the likes of Sayyid Qutb*", both of whom were infamous for espousing

extremist views and as founding fathers of modern-day *jihadism* (see above). As such, the Claimant was clearly espousing an extremist Islamic position, namely supporting *jihad* and was liable to promote and/or encourage violence in the name of Islam.

Claimant's submissions

322. The Claimant submitted that he was asked to speak outside HM Prison Belmarsh prison to show solidarity with Muslims who it was believed were being unfairly detained. There had also been a number of complaints concerning the mistreatment of Muslims in the prison. However, even in regard to Muslims who had been rightly convicted of any crime and therefore detained in the prison, the Claimant's position is that they are still Muslims and that he ought to pray for them and to help them to continue their devotion to Islam. This did not constitute the condoning of crimes which they have committed. There was no question of the Claimant giving 'unqualified support' to those in custody. The Claimant submitted that he did not support *jihad* in the sense of it constituting a violent struggle. The only reference to *jihad* during the speech was in the following sense: "*The best of Jihad, the best form of Jihad a word of truth before and oppressor ruler.*" It was in this context that he referred to Sayedd Qutb and Abdullah Azzam.
323. Further, with regard to the list of prisoners, the Claimant submitted he did not know who was in the prison at the time and did not refer in his speech to any prisoner by name. The Claimant said he condemned the commission of the crimes referred to or the commission of any breach of the criminal law.

Analysis

324. There are three salient features to the Claimant's BELMARSH PRISON SPEECH (2011) speech, some of which echo themes in the Claimant's CAGE SPEECH (2010). First, his expressions of solidarity with the Belmarsh prisoners (*i.e.* "*The Believers are but a single brotherhood*"). Second, his reprise again of the theme of the "*legacy of good deeds*". Third, his references again to the 20th Century extreme ideologues, Sayyid Qutb and Abdullah Azzam, coupled with the suggestion that they, like the prisoners at Belmarsh, were only "*speaking truth to power*".
325. There are three key issues for determination. First, what the Claimant meant by the phrase "*speaking truth to power*" in this context. Second, whether the BBC is right in submitting that Claimant was expressing 'unqualified' support for the prisoners of Belmarsh. Third, whether the Claimant is right in submitting that his references to Sayyid Qutb and Abdullah Azzam were appropriate and innocuous because he was merely citing them as examples of those who spoke "*truth before an oppressor ruler*". To some extent, these three questions are inter-linked.
326. The Claimant begins by referring to the "*legacy of Taqwah*" as an Islamic virtue or aspiration "*to fear Allah*" so that you can be prepared for "*death or what comes after death*". He then suggests the first legacy of *Taqwah* (literally 'fear or awe of God together with an awareness of the Presence of God as a witness to our deeds') as being the "*our oneness, our unity, our love, with ... our brothers behind bars in Belmarsh and other places in which they are struggling to implement the deed of Allah*" or the "*oneness of Ummah*". (I accept Dr Wilkinson's view that, the Claimant used *taqwah* in an un-orthodox way to emphasise the unity and solidarity of

the Muslim *Ummah*, rather than in its normal sense to remind the audience to be mindful of God and to use the month of Ramadan as an opportunity for reflection (*fikr*) and repentance (*tawba*).

327. The Claimant said the second legacy of *taqwah* was the legacy of “good actions...deeds” including “speaking truth the power”. He then employs the same technique as in the CAGE PRISONERS SPEECH (2011), namely to cite examples of historical figures as positive role models of those who have demonstrated this particular virtue of “speaking truth to power” against “tyrants” and “oppressive rulers”. By these transparent means, the Claimant gives credence to the deeds of Abdullah Azzam and Sayyid Qutb by bracketing them with the early prophets, e.g. Abraham who “faced off Nimrod”, Jesus who “[spoke] the truth against the Romans” and Moses who “[spoke] the truth in front of a tyrant ruler, the people of Pharaoh”.
328. The Muslim prisoners at Belmarsh at the time comprised about 19% of the total prison population. It was well known that some of the Belmarsh Muslim prisoners had been convicted of the most serious terrorist crimes (see above). Despite this, however, nowhere in his speech does the Claimant see fit to limit his solidarity with, and praise for, all the Belmarsh Muslim prisoners and their deeds, either expressly or even inferentially.
329. In my view, no moderate or mainstream Islamic speaker would not have praised, inferentially or otherwise, the Muslim prisoners of Belmarsh for (merely) speaking “truth to power”, whilst ignoring the fact that many had been convicted of serious criminal and terrorist offences. The inciting of murder or race hate or planting of a bomb in order to kill and injure innocent civilians can in no way be equated to merely “speaking truth to power”. In truth, what the Claimant was doing in these passages was to use the virtue of “speaking truth to power” as a device or metaphor to praise the Belmarsh Muslim prisoners for their deeds, i.e. their terrorist crimes. “Speaking truth to power” was merely a metaphor or ‘fig-leaf’ for actual deeds. The Claimant’s mask slips momentarily, however, in a revealing section in the central passage in the speech where the Claimant includes the word “fights” twice in this context (“...speaks the truth and fights, and strives, and struggles against oppression, and fights...”). This sells the lie to the Claimant’s case on this point.
330. The Claimant intentionally includes in the list of role models of those who (merely) “spoke truth to power” such virtuous figures as Moses and Jesus in order to clothe the notorious and extreme *jihdist* figures of Sayyid Qutb and Abdullah Azzam with respectability (i.e. for the same reasons as explained above in relation to the CAGE PRISONERS SPEECH (2011)). It is no coincidence that Sayyid Qutb and Abdullah Azzam laid the ideological and doctrinal excuses for the very crimes for which some of the prisoners listed by the BBC at Belmarsh Prison had been convicted, i.e., terrorist attacks against civilians.
331. I do not accept Mr Bennett’s submission that the Claimant’s references to Abdullah Azzam can be viewed as simply confined to his actions in fomenting the Afghan *jihad* against the Russian invasion. The Claimant’s references are general. Nowhere does the Claimant mention Russia or the Afghan conflict in this context. Neither do I accept Mr Bennett’s submission that the Claimant’s reference to Sayyid Qutb can be properly viewed as being confined simply to his view of “speaking truth to power”.

As explained in detail above, Sayyid Qutb was famous for being the author of “*Milestones*” which became the ideological guidebook globally for extremist *Jihadi* groups such as Al-Qaeda. Any positive reference to Sayyid Qutb, unless very carefully circumscribed, would be taken by a Muslim audience as promoting violent Islamic *jihadism*.

Conclusion

332. In conclusion, in my judgement, in the BELMARSH PRISON SPEECH (2011), the Claimant espoused extremist Islamic positions and promoted or encouraged religious violence. In substance, in this speech, the Claimant is expressing unqualified support for the Belmarsh Muslim prisoners and their crimes. The technique which Mr Begg uses to signal his unqualified solidarity and praise for the Belmarsh Muslim prisoners and their deeds is not particularly subtle: he praises the Belmarsh Muslim prisoners for “*speaking truth to power*”, using this as a metaphor or fig-leaf for the conducting or encouraging of armed *jihad (qital)*. He drew direct parallels with the notorious violent 20th century Islamic ideologues Abdullah Azzam and Sayyid Qutb “*speaking the truth in front of tyrants and oppressive rulers*”. He also employs the same technique as before, of giving credence to the deeds of Abdullah Azzam and Sayyid Qutb by bracketing them with the early prophets, e.g. Abraham who “*faced off Nimrod*”, Jesus who “[*spoke*] *the truth against the Romans*” and Moses who “[*spoke*] *the truth in front of a tyrant ruler, the people of Pharaoh*”. By these transparent means, Mr Begg signalled to the audience his unqualified approval of, and praise for, the Belmarsh Muslim prisoners and their deeds, i.e. their crimes. It is no coincidence that Abdullah Azzam and Sayyid Qutb laid the ideological and doctrinal excuses for the very crimes for which some of the Belmarsh Muslim prisoners have been convicted, i.e., terrorist attacks against civilians. It is in this violent sense that his peroration or exhortation to the audience in this speech is to be understood: “*...the greatest form of Jihad is to speak the truth in front of a tyrant, oppressive ruler.*”
333. In my view, the Claimant’s BELMARSH PRISON SPEECH (2012) was particularly sinister. What the Claimant was, in truth, seeking to do was to signal *sub silentio*, his unalloyed admiration and praise for the Belmarsh Muslim prisoners for what they had done, i.e. for being virtuous and brave enough to fight. The Claimant was not only expressing his sympathy and solidarity with the Belmarsh Muslim prisoners’ for their plight, but also approval of their crimes.

Internet

334. As the Claimant well knew, his speech was filmed, for subsequent publication on the internet, where it has (to date) been watched 1335 times on YouTube and where it remains available to view to an even greater audience at: <https://www.youtube.com/watch?v=KMFyU4WcwDI>.

(8) INVITATIONS ISSUED TO ‘EXTREMIST’ SPEAKERS BY LIC

335. The BBC pleaded that invitations were issued to a series of extremist speakers to speak at the LIC between 2010 and 2014, including Bilal Phillips, Abdullah Hakim Quick, Murtaza Kahn, Sheikh Haitham Al-Haddad, and Uthman Lateef (some of

whom had been banned in other countries). The Claimant submitted that he was not part of the LIC Management Committee between December 2009 and August 2011 when most of these speakers were invited (when he was employed by Redbridge Islamic Centre).

Conclusion

336. For these reasons, ultimately, Mr Caldecott QC did not pursue this point and I therefore ignore it.

(9) PRESS STATEMENTS ISSUED BY LIC

337. The BBC relied upon a number of press statements which appeared on the LIC website for which it was said that the Claimant had been responsible in his capacity as Chief Imam. In the event, only one was significantly pursued by the BBC (see below).

338. The BBC relied upon an ‘open letter’ published by the LIC on 26th January 2016 which it submitted was an extreme response to a letter from the then Secretary of State for Communities and Local Government, the Rt Hon. Eric Pickles MP, and the Parliamentary Under-Secretary of State, Lord Tariq Ahmad to many mosques and Mulim leaders following the terrorist atrocities in Paris. The Secretary of State’s letter sought to enlist the help of the Muslim leaders to fight extremism in the following terms:

“The hijacking of a great faith to justify such heinous crimes sickens us all. As Muslims around the world have made clear such actions are an affront to Islam. ...

And yet, amid the carnage, came a sign of hope – over three million people of all backgrounds, marching to defeat the gunmen and to protect our values, free speech, the rule of law and democracy.

We are proud of the reaction of British communities to this attack. Muslims from across the country have spoken out to say 'not in our name'.

But there is more work to do. We must show our young people who may be targeted that extremists have nothing to offer them...”

339. The LIC’s open letter in response said (i) it was “insulting” to single out Muslims who were already so heavily vilified following the attacks in Paris, (ii) the “demonization” of the Muslim community continued unabated; and (iii) “we refute in the strongest possible terms” this attempt “to lay the blame for extremism and terrorism at our door”.

340. Mr Caldecott QC suggested to the Claimant in cross-examination that this was an extreme overreaction to the Secretary of State's letter. The Claimant denied that this was the case and asked why only the Muslim community was treated in this way and why similar letters had not been sent out "*to the whole white community and churches*".

Conclusion

341. In my view, the LIC open letter dated 26th January 2016, in which the Claimant admitted having a hand, was a manifest overreaction to a perfectly sensible and unobjectionable letter from the Secretary of State. Whilst the letter is not evidence of extremism *per se*, it nevertheless re-enforces the picture of the Claimant as someone who expresses intemperate views.

GENERAL COMMENTS

342. I turn to make several general comments.

Claimant's extremist messages are clear in his speeches

343. First, I have necessarily had to conduct a very detailed, linguistic, syntactical and theological analysis of each of the Claimant's speeches and other utterances. This has been necessary both in order to deal fairly with all the parties' and experts' submissions and arguments and also to satisfy myself, when 'unpacking' these speeches, that my findings in each case were logically and soundly based. However, I should emphasise that the detail and granularity of the arguments and above analysis should not obscure the following fact which emerges when reading and studying these speeches: that the various core extremist messages which emerge from the Claimant's speeches and utterances would, in my view, have been quite clear to the audiences at the time on each occasion.

Claimant's techniques used in his speeches

344. Second, it is worthwhile explaining and illustrating the various techniques used by the Claimant in these speeches to get his extremist message across to his audiences.
345. The Claimant's language in the speeches varies from the explicit to the implicit. Examples of particularly explicit extremist language are to be found in *e.g.* the KINGSTON UNIVERSITY SPEECH (2006) ("*...Take some money and go to Palestine and fight, fight the terrorists, fight the Zionists in Palestine if you want to do this*"...), and the ADVICE TO TAWFIQUE CHOWDHURY (2009) ("*...signing a deal with the devil, ...with the brutal, cunning and oppressive anti-terrorism workforce...*").
346. The Claimant also uses a variety of rhetorical, didactic and other techniques in his speeches, which have the effect of enhancing the attractiveness and authenticity of the core extremist message to his audience. In the AAFIA SIDDIQUI SPEECH (2010), the Claimant uses the supposed voice of Malcolm X to air extremist views ("*...the*

American Government... the greatest oppressor... tyrant... bootlegger... kidnapper... criminal... rapist... terrorist on earth”). In the DEVIANT GROUPS SPEECH (2009), the Claimant quotes with approval the extremist fatwa (legal opinions) of the Salafi-Wahabi scholar, Sheikh bin Baz (“...[jihad] is the best of things that brings us closer to Allah... it leads to the victory of the Believers... and destroying the disbelievers and hypocrites, and facilitating the propagation all over the world...”).

347. The Claimant also uses a variety of historical and metaphorical devices to cloak and embellish his extremist messages. In the CAGE PRISONERS SPEECH (2010), the Claimant clothes notorious 20th century violent Islamic ideologues (e.g. Sayyid Qutb and Abdullah Azzam) with respectability by linking them to unbroken chain of virtuous prophetic “*legacy*” stretching back to the earliest prophets (e.g. Moses, Jesus and Muhammed). In the BELMARSH PRISON SPEECH (2011), the Claimant uses the phrase “*speaking the truth*” as a metaphor for encouraging waging armed *jihad* (*qital*) in the name of Allah (“... *the greatest form of Jihad is to speak the truth in front of a tyrant, oppressive ruler...*”, “... *as [did] the likes of Abdullah Azzam... Sayyid Qutb...*”).
348. The Claimant also uses his position as an Imam to state definitive (extremist) religious theological positions. In the DEVIANT GROUPS SPEECH (2009), when questioned by a member of the audience to clarify for the religious meaning of *jihad*, he defines it as “*Fighting in the path of Allah the enemies of Islam*” (i.e. *qital*). He also paraphrases Sheikh bin Baz and states is a religious duty (*wajib*) for Muslims “*to hate*” states which do not rule in accordance with Allah’s Revelations.
349. However, as emphasised above, the fact that the Claimant uses these various techniques or devices, does not obscure but, rather, enhances and sharpens the power and clarity of his core extremist messages, which would have been quite apparent to significant sections of his informed and engaged audience.

Claimant’s ‘positive’ case

350. Third, it is necessary to examine the Claimant’s positive case and place it alongside his extremist speeches.
351. This reveals a conundrum in this case: there is a striking contrast between the Claimant’s apparently (benign) reputation in the local community and these (extremist) speeches and utterances set out above. It is clear that the Claimant has engaged in much inter-faith and community work over recent years, particularly with young people. It is clear that he is held in high regard by the local community, as witnessed by the testimonials from local faith and other leaders attesting to his good name. It is clear that the Claimant is, and has been, a respected and trusted figure in the Lewisham Muslim and wider community and has been for many years. How does one reconcile these two apparently conflicting pictures?
352. The answer lies, in my view, in the fact that the Claimant, Shakeel Begg, is something of a ‘*Jekyll and Hyde*’ character. He appears to present one face to the general local and inter-faith community and another to particular Muslim and other receptive audiences. The former face is benign, tolerant and ecumenical; the latter face is ideologically extreme and intolerant. He has worked hard to cultivate an image of himself as a highly respected figure in the Lewisham community. However, it is clear

that on occasions when it has suited him, and he was speaking to predominantly Muslim audiences and/or audiences who might be receptive to his message, he has shed the cloak of respectability and revealed the horns of extremism.

353. There is no evidence that any of the local community and other faith leaders who gave the Claimant testimonials (see above) were present at, or aware of, these extremist speeches by the Claimant.
354. Mr Bennett argued that the Claimant's subjective intention was relevant when making the speeches, and the Claimant has given clear evidence that he is not an extremist and did not intend to espouse extremist views. There are two problems with this submission. First, the legal test is an objective test: the issue is what meaning his words in their proper context conveyed, not what the Claimant intended to say (see above). Second, the precise meaning of the WCO, is not that the Claimant *is* an extremist but that the Claimant "*is an extremist speaker who espouses extremist Islamic positions*". It is not necessary, therefore, for the Court to find that the Claimant is himself an extremist who personally holds and believed in extremist Islamic views, but merely that he speaks and espouses extremist Islamic views. However, if and in so far as it is necessary to make such a finding, I do so. I am satisfied on the evidence that, whilst the Claimant's speeches are not always consistent, the Claimant holds and harbours extremist *Salafist* Islamic views and, from time to time, reveals these to selected Muslim and other sympathetic audiences.
355. Mr Bennett argued that the fact that on other occasions the Claimant referred to "*speaking the truth to oppressive rulers*" amounts to a 'bane' which ameliorates or washes away the clear statement in the DEVIANT GROUPS SPEECH (2009) ("*...jihad... is... one of the greatest acts of obedience and ... the best means*" etc). There are two problems with this submission. The first is that, as we have seen, the Claimant uses the phrase "*speaking the truth to oppressive rulers...*" as a metaphor for "*fighting*" oppressive rulers (see above). Second, when set against the weight of the numerous other extremist speeches and statements, the Claimant's other benign speeches pale in comparison.
356. There is also a striking contrast between the Claimant's extremist speeches and his recent repeated disavowal of extreme Islam in his witness statement and in his evidence at trial. I find his recent disavowal unconvincing. Religious extremism is tenacious and I have found no cogent evidence to suggest that the Claimant had undergone a Damascene conversion by the time of the BBC broadcast in November 2013 (or has since).
357. In my view, the Claimant's ostensible cloak of respectability is likely to have made his (extremist) message in these speeches all the more compelling and seductive to his audiences. For this reason, therefore, his messages would have been all the more effective and dangerous.

ERRORS OF FACT

358. I turn to consider the significance of two admitted errors of fact in the WCO, namely, (i) as to location, that the Claimant did not preach *Jihad* as “*the greatest of deeds*” at the East London Mosque; and (ii) as to timing, he did not so in 2013 but earlier (see above)

(i) Location

359. As to (i), in my judgement, the particular location of where the Claimant was said to have preached his message (*i.e.* whether at the East London Mosque or at LIC or at a public forum such as outside the US Embassy or Belmarsh Prison) is not particularly germane so long as the substance of the message preached is made out. I agree with Mr Caldecott QC that that precise location of the Claimant’s utterances is a classic example of a non-defamatory circumstance which has little to do with whether the sting is proved.

(ii) Timing

360. As to (ii), the WCO referred to the Claimant preaching in the year of the broadcast, 2013, whereas the speeches and postings relied upon by the BBC took place between 2006 and 2011. The meaning of the WCO is that (1) the Claimant “*is an extremist speaker*” (*i.e.* in the present tense) and (2) the Claimant “*had recently*” told Muslims that violence would constitute a man’s greatest deeds.

361. As to the first meaning (1), in my view, the cumulative weight and consistent pattern of the Claimant’s previous speeches 2006-2011 makes good the BBC’s first charge. There was been no recent Damascene conversion (see above)

362. As to the second meaning (2), in my view, the DEVIANT GROUPS SPEECH (2009) where the Claimant quoted Sheikh bin Baz’s words with approval (“*...jihad in the path of Allah it is from the best of those things that bring us closer to Allah and one of the greatest acts of obedience*”) was sufficiently recent to make good the BBC’s second charge (particularly when taken in the context of the other speeches in which he espouses extremist views).

363. However, in any event, many of the Claimant’s speeches were posted on the LIC website and (as the Claimant would have expected) remain live and accessible on the Web on a variety of sites (*viz. e.g.* on YouTube and sites advertising Islamic material such as www.kallamullah.com). These days, the Web is a living library for public speeches by public figures such as the Claimant.

364. For these reasons, in my view, neither of these errors of detail (in the sense used by Eady J in *Turcu (supra)*) is of sufficient significance to undermine the BBC’s case on justification. The substance of the charge by the BBC against the Claimant in the WCO remains ‘substantially true’.

SUMMARY AND CONCLUSIONS

365. In summary, for the reasons set out above, the BBC succeeds in its defence of justification.
366. I find the words complained of (“WCO”) are substantially true in their meanings: (1) The Claimant is an extremist Islamic speaker who espouses extremist Islamic positions. (2) The Claimant had recently promoted and encouraged religious violence by telling Muslims that violence in support of Islam would constitute a man’s greatest deed.
367. In my judgement, the Claimant’s DEVIANT GROUPS SPEECH (2009) is sufficient to make good the BBC’s case on justification on its own. It contains clear statements by the Claimant justifying both limbs of the meaning of the WCO (above).
368. In my judgement, taken cumulatively, the Claimant’s speeches and postings, represent an overwhelming case of justification for the BBC. In the KINGSTON UNIVERSITY SPEECH (2006), the ADVICE TO TAWFIQUE CHOWDHURY (2009), the DEVIANT GROUPS SPEECH (2009), the AAFIA SIDDIQUI SPEECH (2010), the CAGE PRISONERS SPEECH (2010), and the BELMARSH PRISON SPEECH (2011), the Claimant repeatedly espouses a series of extremist Islamic positions (including most of the classic extremist Islamic positions listed in paragraphs 118 -128 above) and promotes and encourages violence in support of Islam.
369. If there had been simply a single ‘one off’ speech, there might be pause for thought. However, these half-dozen speeches represent a consistent pattern of behaviour on the part of the Claimant of fomenting extremist ideas and ideology before engaged and receptive Muslim audiences. I am satisfied that the import of the Claimant’s core extremist Islamist messages would have been quite clear to substantial sections of his audiences on each occasion.
370. I agree with Dr Wilkinson’s view that the cumulative effect of these speeches is consistent with an extremist *Salafist Islamist* worldview, with positions articulated on the particular issue of *jihād* that are violently extreme, and these speeches would be regarded by the vast majority of the Muslim community as theologically extreme. In my view, they are redolent of *Jihadi Salafism*.
371. The Claimant was something of a ‘*Jekyll and Hyde*’ character: he presented a (benign) face to the local Lewisham and inter-faith community and another (extremist) face to receptive Muslim audiences on chosen occasions.
372. Even if I had found the BBC’s plea of justification was not fully made out on the evidence (which it has been), I would nevertheless still have found that the Claimant was, at best, reckless and irresponsible in his use of language when speaking to predominantly Muslim audiences about the sensitive subject of *jihād* and, accordingly, any damages would, in any event, have been nil or nominal (*c.f. Pamplin v. Express Newspapers Ltd (No 2)* [1988] 1 WLR 116).
373. Further, even if I had found the WCO bore the wider meaning contended for by the Claimant, my conclusions would have been the same.

374. It is all too easy for someone in the Claimant's position of power and influence as an Imam to plant the seed of Islamic extremism in a young mind, which is then liable to be propagated on the Internet.
375. For the reasons given in this Judgment, the Claimant's claim is dismissed.

“ANNEXE A”.

HISTORICAL CHRONOLOGY

1928	Muslim Brotherhood founded in Egypt
1947	Partition of India and Pakistan and beginning of Kashmir conflict
1948	State of Israel founded
1982	First Lebanon war
1989	Clash between Islamist Kashmiri separatists and Indian Government troops
1990-91	First Iraq War (US Operation “ <i>Desert Storm</i> ”)
1994-1996	First Chechen war
1996	Taliban seize control of Afghanistan after civil war
August 1998	Al-Qa’ida founded
<i>Nov 1998</i>	<i>Claimant appointed Chief Imam of Lewisham Islamic Centre (LIC).</i>
Aug 1999	Second Chechen war
11 Sept 2001	Attack on World Trade Centre by Al-Qa’ida (“ <i>9/11</i> ”)
20 Oct 2001	President Bush announces “ <i>War on Terror</i> ”
Oct 2001	USA and Britain commence campaign in Afghanistan
Dec 2001	NATO establishes ISAF (International Security Assistance Force)
Jan 2002	Guantanamo Bay established
Oct 2002	Chechen separatists seize a Moscow theatre and take 900 civilians hostage
2002	S-called ‘Islamic State’ or ‘ISIS’ founded by Abu Musab al - Zaraqawi
Oct 2003	ISAF mission in Afghanistan expanded
Mar-May 2003	Second Iraq war (Saddam Hussein toppled)
Aug 2003	NATO take control of multi-national peacekeeping force in Afghanistan
Sept 2004	Chechen separatists take 1,100 civilian hostages at school in North Ossetia

Oct 2004	Hamid Karzai becomes first democratically elected President of Afghanistan
7 Jul 2005	Terrorist bombings in London – 52 killed and 700+ injured (“7/7”)
21 Jul 2005	Attempted terrorist bombings in London (“21/7”)
Feb 2006	Abu Hamza convicted for inciting murder and race hate and sentence of 7 years served at HMP Belmarsh
June 2006	Clashes between Israel and Hamas in Gaza
July 2006	Second Lebanon war (between Israel and Hezbollah)
Oct 2006	<i>Claimant’s Kingston University speech</i>
July 2007	Five people convicted of 21/7 attempted bombing in London
Dec 2008	Tawfique Chowdhury’s speech to counter-terrorism officers in Cardiff
Feb 2009	President Obama announces additional 17,000 troops to Afghanistan
19 Feb 2009	<i>Claimant posts ADVICE TO SHEIKH TAWFIQUE on Web</i>
29 May 2009	<i>Claimant’s DEVIANT GROUPS SPEECH</i>
1 Dec 2009	President Obama announces additional 30,000 troops to Afghanistan
1 Dec 2009	<i>Claimant employed by Redbridge Islamic Centre (until 31 Aug 2011)</i>
3 Feb 2010	Aafia Siddiqui convicted in US court (and sentenced to 86 years)
28 Mar 2010	<i>Claimant’s AAFIA SIDDIQUI SPEECH</i>
Aug 2010	Last US troops leave Iraq
21 Aug 2010	<i>Claimant’s CAGE PRISONERS SPEECH</i>
19 Mar 2010	<i>Claimant’s HHUGS SPEECH</i>
2 May 2011	Death of Osama bin Laden (leader of Al-Qu’ada)
Jun 2011	Review of Government’s PREVENT strategy
22 Jun 2011	President Obama announces US troop reductions in Afghanistan
7 Aug 2011	<i>Claimant’s BELMARSH PRISON SPEECH</i>
31 Aug 2011	<i>Claimant returns to LIC as Chief Imam</i>

- 22 May 2013 Murder of Lee Rigby by Michael Adebolajo and Michael Adebowale
- 22 May 2013 LIC issue press statement condemning murder of Lee Rigby
- 3 Nov 2013 BBC Sunday Politics programme hosted by Andrew Neil**
- 30 Nov 2013 Claimant complaint to BBC Complaint Department
- 7-9 Jan 2014 Charlie Hebdo shootings and attack on Kosher supermarket in Paris
- 17 Jan 2014 Letter from Rt Hon. Eric Pickles MP and Lord Tariq Ahmad
- 26 Jan 2014 *LIC's PRESS STATEMENT in response to letter from Rt Hon. Eric Pickles MP and Lord Tariq Ahmad*
- 3 April 2015 Press statement posted on LIC website about 'Jihadi John'
- 13 Nov 2015 Attacks in Paris killing 130 people, including 89 at Bataclan theatre
- 22 Jan 2016 Attacks in Brussels killing 32 people, and death of 3 suicide bombers