Palestine Action and the UK's Expanded Terrorist-Connection Sentencing Regime

The First Judicial Application of Section 69 Reveals a Constitutional Tension Between Conviction and Sentencing

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The sentencing decision delivered in England on 12 June 2026 in the Palestine Action case marks one of the first prominent judicial tests of a little-noticed but constitutionally troubling provision expanded by the Counter-Terrorism and Sentencing Act 2021, under which terrorism-related consequences such as altered release arrangements, forfeiture orders and long-term notification duties can be attached to ordinary criminal convictions on the basis of a judicial finding made after conviction rather than a jury verdict. As such, the case raises an open empirical question about how this expanded regime may shape prosecutorial behaviour: once Parliament creates a mechanism of this kind, does it subtly alter charging incentives, giving prosecutors less incentive to charge terrorism offences if they know terrorism-specific consequences remain available at sentencing?

The Palestine Action Case

The case arose from a 2024 break-in at a Bristol manufacturing site operated by Elbit Systems UK, the British arm of Israeli defence company Elbit Systems, which has frequently been targeted by Palestine Action, a direct-action group that has since been proscribed as a terrorist organisation under UK law. Those involved were accused of causing £1.2 million of damage, including to 41 military assets, among them drones and other military equipment.

Importantly, however, the defendants did not stand trial for terrorism offences, and the jury was not asked to determine whether they had committed such offences. Following a retrial after an earlier jury failed to agree on the remaining counts, all four defendants were convicted of criminal damage. One of them, Samuel Corner, was also convicted of inflicting grievous bodily harm without intent.

At sentencing, Charlotte Head and Leona Kamio each received special custodial sentences of six years less 45 days for criminal damage, comprising a custodial term of four years and 320 days and a one-year additional licence period. Fatema Rajwani received a special custodial sentence of five years and eight months less 45 days, comprising a custodial term of four years and 200 days and a one-year additional licence period. Corner received three years and eight months' imprisonment for the GBH offence, after striking Police Sergeant Kate Evans with a sledgehammer and fracturing her spine, plus a consecutive special custodial sentence of five years for criminal damage, making a total term of eight years and eight months.

These were plainly substantial sentences for serious criminal offending. But the sentencing exercise was doing something else too.

Before the first trial, Mr Justice Johnson ruled that the indictment appeared to reveal a "terrorist connection" for the purposes of section 29(1C) of the Criminal Procedure and Investigations Act 1996, requiring a preparatory hearing before trial. That finding could not be disclosed to the jury, and the reporting restriction remained in place during the retrial. Once the defendants had been convicted, however, the court was required to decide a separate question at sentencing, applying the criminal standard of proof: whether the offence of criminal damage did in fact have a "terrorist connection" within the meaning of section 69 of the Sentencing Act 2020.

In the written reasons for his section 69 finding, handed down after sentence, the judge held that the statutory terrorism test under section 1 of the Terrorism Act 2000 had been met: each defendant's offence of criminal damage "involved serious damage to property", "was designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public", and "was for the purpose of advancing a political or ideological cause".

That finding meant the criminal damage offence had to be treated as more serious, required the imposition of special custodial sentences, affected release and licence arrangements, and automatically subjected each defendant to terrorist notification requirements for 15 years.

While this determination does not alter the formal conviction, it does raise a deeper constitutional question: should terrorism-specific consequences be attached to an ordinary criminal conviction on the basis of a judicial determination made after conviction, rather than through a separate criminal charge determined by the jury?

The Statutory Architecture

Before 2021, the terrorist-connection provisions applied only to a relatively limited schedule of serious offences commonly associated with terrorism, such as murder, explosives offences, hostage-taking and hijacking. But in amending section 69 of the Sentencing Act 2020, the Counter-Terrorism and Sentencing Act 2021 significantly broadened the gateway, extending the regime to any offence committed on or after commencement that is punishable on indictment with imprisonment for more than two years and is not specified in Schedule A1, where the court determines that the offence was, or took place in the course of, an act of terrorism, or was committed for the purposes of terrorism.

That is why the Palestine Action case was capable of falling within the regime. The underlying offending was criminal damage, but the statutory definition of terrorism, set out in section 1 of the Terrorism Act 2000, is broad enough to include serious damage to property where the action is designed to influence a government or international governmental organisation, or to intimidate the public or a section of the public, and is done for the purpose of advancing a political, religious, racial or ideological cause. The question at sentencing was therefore not simply whether the defendants had damaged property for political reasons, but whether the criminal damage met the statutory terrorism threshold such that the ordinary offence of criminal damage was treated as terrorist-connected for sentencing purposes.

To be sure, judges make all sorts of important determinations at sentencing already, often applying the criminal standard of proof after a Newton hearing. But is a determination on terrorism so consequential to and for a person's future life-chances that it ought to be treated differently from an ordinary sentencing "fact"?

Lord Marks's Warning

This was something that bothered several peers during the Bill's passage through Parliament. Lord Marks of Henley-on-Thames, for instance, specifically warned that defendants convicted by a jury of ordinary offences could nevertheless be sentenced on the basis of a terrorist connection determined by the judge alone at the sentencing stage.

His concern was not simply that this might increase the sentence, but that, as part of the sentencing process, a defendant convicted of an ordinary offence could be treated in law in a way more commonly associated with terrorism offending. In his words, it could have the effect of "classing the offender as a terrorist". And once consequences of that kind can attach to an ordinary criminal conviction, the distinction between conviction and sentence starts to blur.

The Government rejected Lord Marks's amendment, which would have required either an admission by the defendant in open court or a separate trial of the terrorist-connection issue. Ministers argued that the provision merely operates as an aggravating factor; that the criminal standard of proof applies; that evidence can be heard where necessary, including through a Newton hearing; and that the determination

is consistent with the ordinary judicial role in sentencing.

That response is hardly trivial, of course, and you can certainly make a case for what the Government was saying.

But Marks's objection was that treating terrorist connection as an ordinary aggravating factor failed to account for its wider consequences. Citing assault occasioning actual bodily harm – an offence that plainly falls within the more-than-two-years gateway and may involve relatively minor injury – he noted that conduct which might otherwise attract a fine or short custodial sentence could, if found to have a terrorist connection, expose the offender to far more severe consequences. Depending on the sentence imposed, those consequences can include restrictions on early release, possible forfeiture orders, and registered terrorist offender notification requirements, such as obligations to notify the police of telephone numbers, email addresses, bank accounts, vehicles and overseas travel.

As we now know, those concerns were remarkably prescient, with the court's terrorist-connection finding triggering some of the very consequences Marks warned about.

A Constitutional Laboratory?

There is, however, a further concern prompted by this case – one that Marks did not quite reach, but which points to the seriousness of the legal architecture now being implemented. In the United States, prosecutors have long been criticised for "up-charging"; that is, piling on the most serious possible charges in order to increase pressure on a defendant to accept a plea bargain. What section 69 at best unintentionally gestures at, and at worst potentially enables, is almost the mirror image: "down-charging"; that is, proceeding on ordinary criminal charges while leaving the most serious factual characterisation to be determined by the judge after conviction. That possibility raises an open empirical question about how the expanded regime may shape prosecutorial behaviour: once Parliament creates a mechanism of this kind, does it subtly alter charging incentives, giving prosecutors less incentive to charge terrorism offences if they know terrorism-specific consequences remain available at sentencing?

In written arguments, Mira Hammad, representing Kamio, hints at an answer to these questions, noting that the defendants had initially been arrested on suspicion of involvement in acts of terrorism but were not charged with terrorism offences. That, she argued, showed that "a deliberate decision was taken not to submit the Crown's case [that there was terrorism] to the arbitrament of a jury". The court, she said, should not allow the Crown to use section 69 "as a vehicle for enhancing sentence in circumstances where it has determined that a conviction for the same offence by the jury is unlikely".

As to why anyone with no sympathy for Palestine Action's politics or methods should care about any of this, it is worth remembering that legal experiments motivated by the desire to expand state power often begin at the margins, among groups regarded as troublesome, where the protections ordinarily afforded to individuals against the power of the state are attenuated at best, and frequently absent. Oftentimes, those margins have been demarcated territorially. "Nineteenth-century Ireland," as the historian W. L. Burn observed in the 1940s, formed "a social laboratory [where] [t]he most conventional of Englishmen were willing to experiment… on lines which they were not prepared to contemplate or tolerate at home."

But margins can also be constructed rhetorically, by placing particular groups beyond the boundaries of ordinary public sympathy. The slight but nagging concern lurking behind this case is that Palestine Action, through its incorporation into the legal architecture of counter-terrorism, has been rendered as just such a site of experimentation: a test case for a sentencing architecture in which ordinary convictions can be used as vehicles for attaching legal consequences more commonly associated with terrorism offending, without requiring the prosecution to secure a jury verdict on the terrorism question itself. That should be of concern to everyone, whatever their politics.

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