

ENGLAND AND WALES / JUDGMENT

R v TPD

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Judgment Approved by the court for handing down. Neutral Citation Number: [2026] EWCA Crim 16 IN THE COURT OF APPEAL (CRIMINAL DIVISION) ON APPEAL FROM the Crown Court at Central Criminal Court Her Honour Judge Rebecca Trowler KC Case No: 202503864 A2 Royal Courts of Justice Strand, London, WC2A 2LL Date: 20 th January 2026 Before : LADY JUSTICE MAY MRS JUSTICE BRUNNER SIR ROBIN SPENCER

- ----- Between : Rex

- and - TPD

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- ----- TPD was represented by Mr Kherbane (instructed by Janes Solicitors) The CPS was represented by Ms Faure Walker (instructed by CPS – Counter Terrorism Division) Hearing dates: Wednesday 10th December 2025

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 20th January by circulation to the parties or their representatives by e-mail and by release to the National Archives. Judgment Approved by the court for handing down. WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice. On the 27 November 2023 the High Court made an order granting anonymity to the appellant, prohibiting the publication of anything that would tend to identify him as being subject to a Terrorism and Protection Investigation Measures (TPIM) notice, or would identify the address or locality where he resides, or would tend to identify his parents or siblings, and directing that for the purposes of those proceedings he be identified only as “TPD”. On 14 March 2025, in the Crown Court criminal proceedings, Cheema-Grubb J ordered that the appellant’s name be withheld from the public and he should be known and referred to in the proceedings as “TPD”. The Order of Cheema-Grubb J remains in force. Lady Justice May:

Introduction

1. 2. On 6 June 2025 at the Central Criminal Court the applicant pleaded guilty to four counts of breaching the terms of a Terrorism Prevention and Investigation Measures (“TPIM”) notice. On 2 October 2025 at the same court before Her Honour Judge Trowler KC the appellant was sentenced to a special custodial sentence of 27 months comprising a custodial element of 15 months and a further 1-year special licence period, concurrent on each offence. The judge also made a Serious Crime Prevention Order (SCPO), in terms set out in the draft before the court, for a period of 3 years. The applicant’s application for leave to appeal his sentence and the SCPO were referred to the full court by the Registrar. At the end of the hearing we announced our decision to give leave but to dismiss the appeals, with reasons to follow (having given leave we refer to the applicant in this judgment as the appellant). These are our

reasons.

The TPIM notice and the breach offences 3. In June 2019, then aged 19, the appellant was sentenced to five years detention in a young offender institution, with an extended licence period of one year, having been convicted of a number of terrorist related offences committed between July 2016 and July 2017. The offences were two offences of preparation of terrorist acts, relating to the purchase of a large hunting knife with intent to commit a robbery to finance terrorism by travelling abroad, and having assisted another person to travel to Libya to fight for IS; four offences of distributing or circulating a terrorist publication, relating to the appellant sending via Telegram an execution clip from an IS publication and images of a similar nature; and an offence of collecting information useful to a person engaged in terrorism, relating to possession of a video issued by the IS media team, containing attack demonstrations and a section on how to make a bomb. Judgment Approved by the court for handing down. 4. The appellant completed his sentence on 1 December 2023. On his release he was made the subject of a TPIM notice (“the TPIM notice”). The TPIM notice was renewed in November 2024. The requirements of the TPIM notice included:

- To reside at approved premises, provided by the Home Office.
- To only use pre-approved communication devices, and all passwords provided to the Home Office/police/contact officers.
- Access to a laptop with Wi-Fi at the approved premises. He could only access pre- approved websites. He did not have access to a search engine. His internet activities were monitored.
- To be GPS monitored and tracked, at all times.
- To report to the police station each day. 5. 6. 7.
- Not to enter a place of worship unless it had been pre-approved, and / or notified. Of particular relevance in relation to the current offences, the TPIM notice included a measure by which the appellant was prohibited from meeting any person (save for limited

exceptions) without providing the Home Office with two days notice of the person's name and address, and the intended time and location of the meeting, unless the meeting was by chance, in which case he was required not to prolong it and to end it as soon as possible. In 2024 the appellant was served with a breach notice for failing to attend appointments with his practical mentor on time. He was also warned or reminded of measures after attending a job interview without notice and attending another premises without notice. He was not prosecuted for the alleged breaches (which the appellant's counsel told us were not accepted) but was reminded of the need to comply with the restrictions imposed by the TPIM notice. In January and February 2025, the appellant met with two men, O and H; both Syrian nationals who had been seeking asylum in the UK since their arrival here in September 2024. O and H were subsequently arrested; however we were told at the hearing that neither has been charged with any offences. 8. There were four meetings between the appellant and O and/or H:

- (1) The first meeting was on 3 January 2025 when the appellant was in company with O for 28 minutes. They walked together from the Islamic Centre, past the appellant's home address, past the hotel where O was living, to a café. There a drink was ordered and O showed the appellant something on a phone. They then walked back to the hotel where they parted company.
- (2) The appellant was in O's company again on 31 January 2025 for around 10 minutes, conversing as they walked from the Islamic Centre, past the appellant's home address and to the hotel where O was living.
- (3) On 9 February 2025, the appellant was in company with H for 28 minutes. They walked from the Islamic centre to the nearby hotel where H also lived. They stood Judgment Approved by the court for handing down. talking for around 10 minutes, during which time H showed the appellant something on a phone. The appellant gave H his mobile number, which H stored on his phone and made an outgoing call to the number, so that the appellant had H's number.
- (4) On 15 February 2025 the appellant left the Islamic Centre in company of both O and H. They walked to the hotel, with a fourth male for part of the way, and then sat in the bar area of the hotel together for around 19 minutes. CCTV showed that O and H encouraged the appellant to enter the hotel with them. Later on 15 February 2025 the appellant emailed his Home Office contact requesting that two people be added to the approved list of persons he was permitted to meet, stating that O and H had gravitated towards him when he attended the mosque which is the Islamic centre referred to above and an approved mosque for the Appellant to visit. He gave the full names of O and H and the address of the hotel where they were both living. On 26 February 2025 the appellant was arrested and subsequently charged with four breach offences. At interview he gave a prepared statement setting out details of his meetings with O and H and giving information about his father's terminal illness. The appellant's father had been diagnosed with pancreatic cancer in 2024. He was hospitalised in December 2024 and thereafter was discharged home for end of life care. In January 2025 the

appellant made a number of applications to the Home Office to be permitted to visit for longer hours and/or to stay at the family home but these were refused. In the event, the appellant's father died on 14 April 2025 whilst the appellant was being held on remand for the breach offences. The appellant was unable to attend his funeral. There was an application for bail which was refused. The appellant pleaded not guilty at the PTPH on 6 June 2025 at the Central Criminal Court but changed his plea to guilty later the same day, subsequently receiving the sentence which we have noted above. 9. 10. 11. 12. Sentence 13. The appellant was aged 26 at sentence. There were a number of reports and statements available to the judge:

- i) A report from Dr Robert Halsey, psychologist, dated 11 August 2025 ii) A report from Professor Robert Gleave, expert in Islamic extremism, dated 11 August 2025 iii) A statement from Imam Shafi dated 5 June 2025. Imam Shafi was the Home Office approved religious mentor (Theological Intervention Provider) assigned to meet with the appellant under the requirements of the TPIM notice.
14. We have read all of these reports most carefully. We particularly note (as did the sentencing judge) the positive progress reported by Imam Shafi in his statement. It is regrettable that, through no fault of the appellant, his Administrative Court challenge to the TPIM notice had still not been listed for hearing by the time of his arrest for the Judgment Approved by the court for handing down. 15. 16. 17. 18. 19. breach offences. Having said that, whilst the TPIM notice remained in force, the appellant was obliged to comply with its terms, as he recognised by his guilty pleas. Having set out the background the judge noted first that there are no Sentencing Council guidelines for the offence of breach of a TPIM notice. Instead she considered the analogous guideline for breach of a Criminal Behaviour Order ("the CBO guideline"), an offence which carries the same maximum sentence of 5 years. Having regard to the fact that there were four separate breaches on different occasions over a period of several weeks, she placed the offending as a whole within Culpability Category A in the CBO guideline. Whilst noting that there had been no actual harm resulting from the breaches, the judge considered risk of harm, concluding that the risks inherent in contravention of a TPIM notice, together with the fact that O and H had "had access to media depicting Islamist militancy" on their phones, meant that the risk was high, falling into Harm Category 1. She recorded that the starting point for a Category A1 offence in the CBO guideline is 2 years. The judge considered aggravating and mitigating factors. She referred to an offence of assault occasioning actual bodily harm which the appellant had committed whilst serving the sentence imposed in 2019; also to warnings which the appellant had been given following previous alleged breaches of the TPIM notice, noting however that the impact of the warnings was limited by reason of the fact that the appellant had taken steps to notify the Home Office of his association with O and H "albeit far too late". The judge declined to make any reduction for the appellant's age or to reflect the severity of the restrictions imposed by the TPIM notice. But she went on to refer to Dr Halsey's and Professor Gleave's reports, the progress noted by Imam Shafi and the fact that the offences were committed during a very difficult time when the appellant's father was diagnosed with an aggressive

and incurable form of cancer. She expressly accepted that his father's terminal condition had affected the appellant "to a considerable degree, as did the fact that, due to the TPIM notice, you were unable to see him and other members of your family during that period as often or for as long as you wished to". Referring to the Sentencing Council guideline on Sentencing Offenders with Mental Disorders, Developmental Disorders or Neurological Impairments ("the Mental Disorders guideline") the judge took the view that "there may be some, albeit limited, connection" between the depression and anxiety described by Dr Halsey and the offending. Balancing the aggravating and mitigating factors which she had identified the judge made a downward adjustment from the 2-year starting point, to 20 months, before applying a 25% discount for plea. The judge accepted the prosecution invitation to impose a SCPO. She was satisfied that there were reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the appellant in serious crime and that the terms were necessary and proportionate. She took into account that in May 2025 the TPIM notice had been revoked (the appellant by then being held on remand) and that measures under that notice were no longer in place. Grounds of Appeal Judgment Approved by the court for handing down.

20. Mr Kherbane advanced the following separate grounds of appeal:

- 1) He argued that the judge erred in principle by not giving adequate weight to the appellant's reformed mindset on the evidence before her, as a key factor in sentencing an offence of this nature;
 - 2) He submitted that the judge wrongly categorised the appellant's harm and culpability when applying the CBO guideline;
 - 3) He averred that the judge failed to give adequate weight to the uncontested medical expert evidence before her;
 - 4) He also averred that the judge failed to give adequate weight to the mitigating factors that applied to this appellant;
 - 5) Finally he argued that the judge was wrong to impose the SCPO, as on the evidence before her this was neither proportionate nor necessary. 21. Expanding his first ground Mr Kherbane submitted that the progress which an offender has made towards addressing radicalisation and extremist ideology is a key factor to be taken into account by a court when sentencing for breach of a TPIM notice. As we understood the point, it overlapped with Mr Kherbane's second ground where he sought to identify the progress which the appellant had made, as reported by Imam Shafi, as indicative of lower harm and lower culpability.
22. Mr Kherbane's second ground was that the judge miscategorised harm and culpability. Pointing to the Sentencing Council's General Guideline: Overarching Principles ("the General guideline"), which he noted was to be applied where there is no offence-specific guideline, he drew our attention in particular to this guidance given under the drop down for harm in that guideline: "Risk of harm is less serious than the same actual harm. Where

the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.” 23. 24. Mr Kherbane argued that as there had been no actual harm here by reason of the breaches of TPIM notice, the judge should have applied this guidance when considering her application of the analogous CBO guideline. He also criticised the judge’s reliance on the presence of Islamist material on O and H’s phones, given (a) Professor Gleave’s (uncontested) conclusion that neither O nor H were concerned in extremism or terrorism based on the material found on their phones and (b) the absence of any evidence indicating that the appellant had looked at any of the relevant images on O or H’s phones. The third ground concerns the weight given to the psychological evidence from Dr Halsey. Mr Kherbane drew attention to the following observations and conclusions in Dr Halsey’s report: “That breach occurred at the time when his father was suffering from a terminal illness and TPD was experiencing high levels of social isolation. In my opinion, it is Judgment Approved by the court for handing down. very likely TPD was, at the time he committed the breach, suffering from depression and anxiety arising from the impending death of his father. His ability to cope with that situation was compounded by the preventions upon him spending time with his father... Depression and anxiety are known to impact negatively upon areas of cognitive functioning including for example memory and concentration. At the time of his father’s illness, TPD would have had a reduced capacity to think clearly, make rational choices, exercise proper judgement, and fully consider the likely consequences of his actions. In my opinion, (given TPD’s history of good progress through custody and his previous adherence to the conditions of the Order), in the absence of the onset of his depression and anxiety, there is no reason to believe he would have associated in the manner in which he did with the two people from his mosque and breached the conditions of the Order.” He argued that the judge should have given greater weight to Dr Halsey’s evidence as impacting upon the appellant’s culpability, as well as in terms of mitigation more generally. As to mitigation, Mr Kherbane’s fourth ground was that the judge should have reduced the sentence to reflect age and/or lack of maturity, the appellant’s compliance with restrictions over a period of 14 months and what he submitted was the appellant’s early notification to the Home Office together with his full cooperation thereafter. 25. 26.

27. Mr Kherbane’s fifth ground criticised the judge’s decision to make the SCPO, arguing that its terms (similarly restrictive to those which had been imposed under the TPIM notice) were neither necessary nor proportionate.
28. Ms Faure Walker for the prosecution responded as follows: the judge gave appropriate weight to the evidence of Imam Shafi, which was just one aspect of all the matters which she had to consider. The evidence of the appellant’s progress was a matter to be taken into account in his favour but it was not the primary or determinative factor in the sentencing exercise. 29. She argued that the judge had been correct in her categorisation of the offending: first as to harm, the judge had been correct to consider risk of harm and had been entitled to conclude that it was high. Professor Gleave’s report did not undermine the

prosecution contention that the material found on the phones of O and H depicted Islamist militancy; whatever their own reasons for having such material may have been, the risk of the appellant accessing and being influenced by such images through his association with O and H remained and the judge was entitled to reach that view. Although the appellant had eventually notified the Home Office he had done so very late and only long after he must have known of O and H's names and the address of the hotel where they were staying, moreover his notification did not reveal that he had already met and associated with O and/or H on a number of occasions. The judge had taken account of the appellant's eventual notification to the Home Office in reducing the weight which would otherwise have applied to the aggravating factor of failing to respond to previous warnings. As to culpability, there were four separate breaches which the judge was entitled to regard as a persistent and repeated course of conduct reflected in a single sentence passed concurrently on each. Judgment Approved by the court for handing down.

30. Ms Faure Walker submitted that the effect of the appellant's anxiety and depression on his culpability for the breaches was a matter for the judge. Given the persistent, deliberate nature of the breaches the judge had been entitled to conclude that the connection between the offending behaviour and the anxiety and depression identified by Dr Halsey was limited. Moreover the judge had taken the circumstances of the father's illness and its impact on the appellant's mental health into account as matters of mitigation. She disputed the contention that the judge had given insufficient weight to the appellant's age or other matters of mitigation. 31. As to the SCPO, Ms Faure Walker argued that, by operation of section 24(11) of the Serious Crime Act 2007 together with Article 4 of the Serious Crime Act (Appeals under s.24) Order 2008, an appeal against a SCPO is limited to a review of the decision of the Crown Court. An appeal will only be allowed if the decision of the Crown Court was wrong, or unjust because of a serious procedural or other irregularity. The TPIM notice in this case having been revoked, it was neither wrong nor unjust for the judge to impose the SCPO, whose terms are different and less restrictive than had been the measures contained in the TPIM notice. Discussion and decision 32. TPIM notices are rare. They are an intelligence-led security measure issued by the Home Secretary with permission from the High Court. Authority is given to the Home Secretary to issue a TPIM notice by section 2 of the Terrorism Prevention and Investigation Measures Act 2011 ("the 2011 Act"). A TPIM notice may be issued, provided that conditions A to E set out in section 3 of the 2011 Act are met. These conditions relevantly include the following: 33. 34.
- (3) Condition C is that the Secretary of State reasonably considers that it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for terrorism prevention and investigation measures to be imposed on the individual.
- (4) Condition D is that the Secretary of State reasonably considers that it is necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism-related activity, for the specified terrorism prevention and investigation measures to be imposed on the individual. Condition E requires the Secretary of State to have obtained the

court's permission. The permission process involves up to three separate hearings: first, an ex parte hearing on the papers when the court will examine the Secretary of State's decision to issue the TPIM notice for "obvious flaws" (section 6(3)(a) of the 2011 Act) and having done so either grant or refuse permission. If permission is given, then the TPIM notice is served on the subject. There is provision for a subsequent directions hearing at which directions will be given for an inter partes review hearing at which the Secretary of State's decision to issue a TPIM notice is reviewed by the High Court on usual judicial review grounds, directed at whether the conditions at section 3 of the 2011 Act (including C and D above) were, and continue to be, met. In this case, as we have noted above, the inter partes hearing had not yet been listed by the time of the appellant's arrest for breaches of the TPIM notice. As the cases in which TPIM notices will be issued invariably involve matters of national security, the court will Judgment Approved by the court for handing down. need to consider OPEN and CLOSED material at the initial ex parte hearing and at any subsequent directions and review hearings. 35. 36. A TPIM notice will last initially for a period of one year from the date upon which it was served on the subject but may be reviewed and extended for a further year up to four times, i.e. the notice may last for a maximum of 5 years (section 5 of the 2011 Act). At all times whilst the notice is in force the Secretary of State is under a statutory obligation to keep under review whether conditions C and D are met (section 11 of the 2011 Act). This seems to us of particular relevance when considering the level of harm, including risk of harm, resulting from any breach, as to which see further below.

37. We have set out the statutory and procedural requirements for the issue and maintenance of TPIM notices in some detail, regarding this as necessary background against which to consider the submissions regarding culpability and harm in relation to this offence. In the absence of a specific guideline, we have considered, as did the judge below, how the two fundamental sentencing factors of culpability and harm are properly to be reflected in a case involving breach of a TPIM notice. 38. 39. Culpability factors identified in guidelines for breach of a CBO and guidelines for breach of a Sexual Harm Prevention Order seem to us to be straightforwardly capable of transfer to the case of breach of a TPIM notice. Culpability in relation to breach of a TPIM, like other protective orders, is to be assessed by the nature of the breach itself: brief, one-off or just short of reasonable excuse at one end of the scale and repeated/persistent at the other. Insofar as Mr Kherbane may have suggested that reports from a Theological Intervention Provider will bear on culpability for breach of a TPIM, we disagree. Culpability derives from deliberate breach of a known restriction; the reasons for breach, or the mindset accompanying breach, may or may not provide mitigation but cannot impact culpability itself. The relevant intention in relation to breach of TPIM restrictions is intent to breach the order, not intent to commit some further terrorist offence. As to Dr Halsey's evidence, it is apparent from her sentencing remarks that the judge did take this into account when considering culpability, referring to the Mental Disorders guideline and finding that there was "some, albeit limited" connection with the offending. We think that she was right to do so: the expert evidence did not suggest that the anxiety and depression associated with the appellant's concerns about his father prevented

him from understanding the requirements of the TPIM notice or from appreciating that, in meeting with O and H as he did, he was breaching those requirements. On the contrary, the fact that the appellant did eventually notify the Home Office showed that he understood and appreciated the need to do so.

40. Moving to harm, in our view a court faced with sentencing an offender for breach of a TPIM notice cannot but conclude that the harm/risk of harm consequent on breach is very serious. This is because a TPIM notice can only be issued where conditions C and D (see above) are met. The Secretary of State is required by section 11 of the 2011 Act to keep the continued application of these conditions under review at all times whilst the TPIM notice is in force. It follows that, at the point where a subject has breached the terms of their TPIM notice, (i) the notice was “necessary, for Judgment Approved by the court for handing down. purposes connected with protecting members of the public from a risk of terrorism” and (ii) the specific measures imposed under the notice were “necessary, for purposes connected with preventing or restricting the individual's involvement in terrorism- related activity”. The purpose of the TPIM restrictions is to protect the public from terrorist activity; it must follow that whilst conditions C and D continue to apply, then any breach of a measure included in the TPIM notice will expose the public to a risk of terrorism. A court sentencing for breach of a TPIM will not be in the same position as the Secretary of State in deciding to issue a TPIM notice, nor in the same position as the High Court in giving permission for that notice. The sentencing court will not see the OPEN and (in particular) the CLOSED material upon the basis of which the notice was issued and will not be in a position to make any informed assessment of gradations of harm or risk of harm. It follows, in our view, that where a TPIM notice has been issued and then maintained the sentencing court can only proceed on the basis that any breach of a measure included in the TPIM notice will expose the public to a risk of terrorist activity. The harm which is caused or risked by breach of a TPIM notice is therefore bound to be very serious harm.
41. We disagree with Mr Kherbane that the views of Theological Intervention Providers in general, and of Imam Shafi here in particular, will impact the assessment of harm made by the sentencing court. The sentencing court is not and cannot be expected to act as a review court of the decision of the Secretary of State to issue and/or maintain a TPIM notice. That is the function of the High Court which will make its decision only after consideration of all relevant material, OPEN and CLOSED. The Secretary of State would have been obliged to take Imam Shafi's reports into consideration (along with all other relevant intelligence and other material) in her ongoing review of the continued application of conditions C and D under section 11 but whilst those conditions continued to apply then, as we have indicated above, a court considering harm associated with breach of a TPIM notice would have been bound to assess the risk of harm as very serious. 42. 43. 44. Nor do we accept Mr Kherbane's suggestion, made in reliance upon the passage in the General guideline which we have set out above, that in the absence of any actual harm the court should have moved to a lower category in the CBO guideline. Had the appellant's breaches of the TPIM notice resulted in any actual harm then he would no doubt have been charged with a substantive offence

reflecting that harm. Protective orders are put in place to address risk of harm, which is why the offence-specific breach guidelines, like the CBO and the SHPO guidelines, state that “the level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused” (our underlining). These guidelines do not seek to distinguish between actual harm and risk of harm in terms of seriousness. It follows from what we have said thus far that we cannot fault the judge’s careful assessment of harm and culpability in seeking to apply the analogous CBO guideline to the breach offences here. Nor do we think that the judge erred in weighing up the aggravating and mitigating factors which applied in the case of this appellant. We commend her careful consideration of all relevant matters. We disagree with Mr Kherbane that the judge should have applied a reduction for age/immaturity: the appellant was aged 26 at sentence and had said in interview that he was doing “a degree in business Judgment Approved by the court for handing down. management. specialising in economics”. Similar information was given to the court in his bail application. That does not suggest a particular immaturity. As to the report of Dr Halsey, the judge referred to it at some length and clearly took into account the impact upon the appellant’s mental state of his father’s terminal illness as a mitigating factor. The custodial element of the final sentence was below the starting point given for a Category 1A offence in the CBO guideline. This despite the fact that, as Ms Faure Walker pointed out, there were factors which aggravated the offending before consideration of mitigation. 45. Given the issues which have been raised in connection with sentencing for breach of a TPIM notice generally, we granted leave for the appeal against sentence. However, for the reasons we have given, we dismissed the appeal itself.

46. We can deal with our reasons for dismissing the appeal against the SCPO shortly; we did not understand Mr Kherbane to have pressed this strongly before us. By application of the provisions which Ms Faure Walker identified, our powers on any appeal against the making of a SCPO are limited to a review. We agree with her that there was no procedural or other error here and that the order was one which it was reasonable for the judge to have made.

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