bribe with the intention that it be accepted or acted upon was held to amount to fraudulent conduct or purpose within section 13(4)(b).

The Court of Appeal held that section 13 applied to events occurring before its entry into force. It could not properly be described as retrospective; it did not change the substantive law, but merely changed the law of evidence in relation to the proof of events that had already occurred. In any event, there was no unfairness since it was fanciful to suggest that anyone had acted prior to the 2006 Act in the belief that he would not be required to disclose incriminating information. Gross J.'s order was therefore unanimously upheld.

The current patchwork of statutory provisions suspending the privilege in "related proceedings" gives rise to precisely the type of uncertainty which surrounded the scope of section 13 of the 2006 Act. It generates satellite litigation that is tiresome, costly and productive of delay. In its consultation paper, *The Privilege Against Self-incrimination in Civil Proceedings* (1992), the Lord Chancellor's Department proposed extending the "suspensive" model to all civil proceedings. Implementation of this proposal is long overdue.

RICHARD MOULES

TERRORISM: POSSESSION OF ARTICLES

SINCE the start of the new millennium there has been a flood of criminal law legislation. Two key themes can be identified from these new offences. First, many of them are very complicated, both structurally and in their use of language, making statutory interpretation increasingly difficult. Secondly, there is a general tendency to expand the boundaries of criminal liability, supported it seems by the Law Commission, with growing emphasis on inchoate liability and offences of preparation far removed from the perpetration of harm. Both themes can be identified in, for example, the Sexual Offences Act 2003, the Fraud Act 2006 and the Serious Crime Act 2007, and also in the various statutes criminalising activities related to terrorism. It is in the terrorism context that there are particularly difficult policy issues. For the State needs to intervene at an early stage before terrorist outrages are perpetrated, but the complexity and sensitivity of terrorist investigations and trials requires that the offences themselves must be certain so that they satisfy the requirements of legality.

In *Zafar* [2008] EWCA Crim 184, [2008] 2 W.L.R. 1013 the Court of Appeal considered the ambit of section 57 of the Terrorism Act 2000 to ensure that it met the demands of legality. Section 57 makes it an offence if the defendant "possesses an article in circumstances

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which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism". Five defendants were charged with this offence in respect of possessing documents, computer discs and drives which contained a variety of material, described as being "radical", "religious or philosophical" and "ideological propaganda", with some of it being of an extreme nature. The prosecution argued that the defendants intended to use the material to incite each other to go to Pakistan, where they would receive training to perpetrate terrorist activities against the Government in Afghanistan.

It was held before trial that documents and records, including electronically stored information, could be an article for the purposes of this offence: *Rowe* [2007] EWCA Civ 635, [2007] Q.B. 975. The defendants were convicted and appealed.

The key issue of statutory interpretation for the Court of Appeal concerned the meaning of "a purpose connected with" and whether any connection, direct or indirect, with the commission, preparation or instigation of terrorism would suffice. Whilst it was accepted as obvious that possession of chemicals or a timer for a bomb was directly connected with the commission of or preparation for a terrorist act, would a remote connection be sufficient? For example, what about the possession of a ticket to fly to Pakistan to be trained for terrorist activity? And, if that counts, what about the credit card which is used to pay for the ticket or the defendant's passport or the pen which is used to sign the passport application form? Can the lawful possession of an item trigger the section 57 offence where the defendant intends to use it to put himself or another in a position which will enable them to perpetrate a terrorist activity, even though there are still a number of steps to be completed, which may take some time to achieve? If the lawful possession of such items does fall within section 57, are we not getting perilously close to criminalising "thought crimes"?

These concerns were resolved by the Court of Appeal's decision that there had to be a direct connection between possession of the article and its use in respect of terrorist activity. It was accepted that possession of written material could fall within this offence, for example if the material contained instructions for the making of a bomb, but possession of an item to assist the defendant or anyone else to travel to Pakistan for training in terrorist activities was too remote. The Court concluded, at [29], that the provision should be interpreted so that "for a purpose in connection with" means "intends it to be used for the purpose of", and that the defendant's purpose could include the incitement of another to commit a terrorist act. Since the Recorder had not directed the jury in this

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way, and because the evidence did not support a finding of there being a direct connection between the possession of the items and intended acts of terrorism, the appeal was allowed and the convictions were quashed.

The Court left open whether possession of an article which could be used for many purposes, such as a computer, could be regarded as being possessed for a single use relating to perpetration of a terrorist act. This did not arise on the facts because the focus of the prosecution had been on whether the material on the computers was possessed in connection with prospective acts of terrorism rather than the computer itself.

This is an eminently sensible decision as regards the interpretation of section 57, which clarifies the uncertainty of "for a purpose connected with". The decision consequently narrows the scope of criminal liability, in that it is only where the defendant possesses something which can be directly connected to the perpetration of an activity related to terrorism that the provision is engaged.

However, the decision leaves a difficult policy question as to whether it is possible and, if so, appropriate to criminalise people who are in possession of such written and electronic material. In fact, bearing in mind that there was clear evidence of electronic communications which supported a plan to go to Afghanistan to fight, there were a number of offences which could have been charged instead; inchoate offences which focus on the defendant's desire that a crime be committed rather than the possession of materials. For example, section 59 of the Terrorist Act 2000 creates an offence of inciting terrorist acts to be committed overseas. Further, there is statutory conspiracy contrary to the Criminal Law Act 1977. If conspiracy was good enough for Guy Fawkes surely it remains relevant to deal with the modern terrorist. In addition, when the Serious Crime Act 2007 comes into force, the crime of intentionally encouraging or assisting an offence would appear to be available in such circumstances, even though the anticipated offence would be committed abroad.

There are important lessons to be learned from *Zafar*. For the prosecution, it is vital that the right charge or charges are chosen. But the real blame for this mess needs to be laid at the door of Parliament. If we are to have offences such as this, and ultimately that is a political decision, we all deserve much more carefully drafted legislation.

GRAHAM VIRGO

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