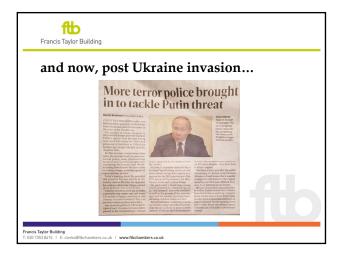
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The 'Protect Duty'
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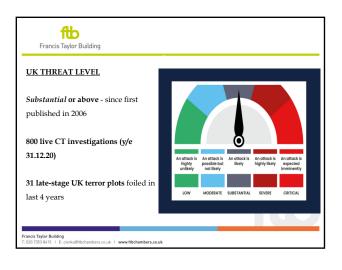
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### **Protect Duty Overview**

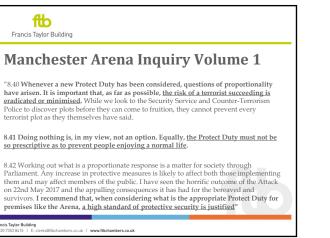
- > 2019 Manifesto commitment
- > February 2020 Consultation announced; paused due to COVID
- February 2021 Consultation launch
- $\succ~$  18-week consultation (as opposed to usual 12 weeks) UK wide
- > 10 January 2022 HMG report on 2,755 responses
- > Pre Dec 2024 draft Protect Duty bill in this parliamentary session

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	manchester arena inquiry	
	Manchester Arena Inquiry Volume 1: Security for the Arena	
	Report of the Public Inquiry into the Attack on Manchester Arena on 22 <sup>™</sup> May 2017 Chairman: The Hon Sir John Saunders	
	June 2021	
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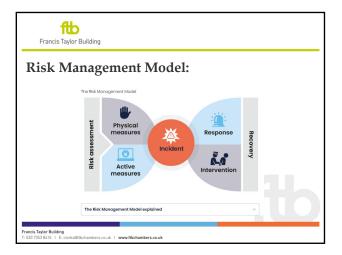


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#### Manchester Arena Inquiry Volume 2

- \$ 11.31 "Adequate communication between control rooms focused on achieving a co-ordinated response was a major failing on the night of the Attack"
- § 15.533 "Group Manager Levy's initial countermand of the mobilisation instruction was a product of the chaotic position GMFRS was in by this stage. It caused further delay. The lack of clarity around whether Group Manager Levy or Chief Fire Officer O'Reilly was in command meant that conflicting orders were given."
- § 12.567 "NWFC witnesses stated that they were uncertain about when each plan applied. Michelle Gregson stated that the information on the night of the Attack was "vast" and "vague"."

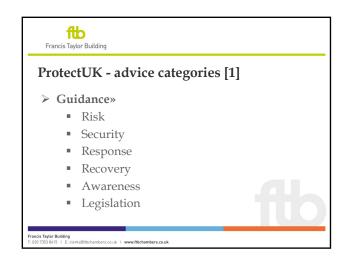
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#### LEGAL ISSUES (1)

- Who will have responsibility for security in any given location?
- How will that work in public spaces?
- How will that allocation / acceptance be assured at any given point in time?
- Extent of the roles & responsibilities of entities delivering PALs Programme?

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### LEGAL ISSUES (2)

- Will there be statutory Guidance?
- > Role of the Purple Guide\* (see MA Inq Vol 2 Section 11)
- > Extent/detail of measures and procedures to :
  - Reduce impact of 'harmful events'/fatalities / injuries.
    Improve preparedness to respond to an attack.
- > What would be **'reasonably practicable'\*\* mitigation**?
- ➤ Case law …

\* "This guide goes beyond the compliance with the Health and Safety at Work Act and covers not only legislation and good practice for Health and Safety, but other legislation and good practice across the industry including the Licensing Act 2003, the Civil Contingencies Act 2004 the Regulatory Reform (Fire Safety) Order 2005..., \*\* Capable of providing a legal basis for the PD Inspectorate to assess and make judgements on those in scope & having regard to current economic circumstances

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#### LEGAL ISSUES (2.i.) - 'reasonably practicable...'

Edwards v National Coal Board [1949] 1 KB 704 (CA) Lord Justice Asquith [at 747]:

> "Reasonably practicable" is a narrower term than "physically possible" and seems to me to imply that a computation must be made by the owner in which the quantum of risk is placed on one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them—the risk being insignificant in relation to the sacrifice—the defendants discharge the onus on them. Moreover, this computation falls to be made by the owner at a point of time anterior to the accident. <u>The questions he has to answer are: (a) What measures are necessary and sufficient to prevent</u> **any breach of s 49? (b) Are these measures reasonably practicable?**"

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LEGAL ISSUES (2.ii.) - 'reasonably practicable...'

R v Chargot and Others [2008] UKHL 73 on appeal from [2007] EWCA Crim 3032, Lord Brown [at 44]: "Sections 2 and 3 [HWSA], in contrast to s 7, do not impose a duty merely to take reasonable care; rather they impose a duty on employers to *ensure* health and safety - in the case of s 3, to conduct their undertaking so as to ensure that people are not thereby exposed to risks to their health and safety - leaving it to the employers (see s 40 of the Act) to establish if they can, on the balance of probabilities, that it was not reasonably practicable for them to do more than they did do to achieve the required objectives of health and safety"

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LEGAL ISSUES (2.iii.) - 'foreseeable risk...'

*Tangerine Confectionery Ltd and Veolia ES (UK) Ltd v R* [2011] EWCA Crim 2015 [at 36]:

> "We note that this defence does not impose on an employer the duty to take every feasible precaution, or even every practicable one; it imposes a duty to take every reasonably practicable one. What is reasonably practicable no doubt depends on all the circumstances of the case, including principally the **degree of foreseeable risk** of injury, the gravity of injury if it occurs, and the implications of suggested methods of avoiding it."

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LEGAL ISSUES (3)

- What will be the responsibility of private security industry operators for delivery of CT measures?
- To what extent will organisations be able to delegate / sub-contract all/part of their legal duties under the legislation?

<ul> <li>LEGAL ISSUES (4)</li> <li>Prior coordination on complex policies, procedures, communications and training (per Arena Inquiry)</li> <li>Conflicting roles/responsibilities / application of such policies / procedures in event of an attack</li> <li>Change in licensing procedures: <ul> <li>\$20.202 "I recommend that the Department for Levelling Up, Housing and Communities review the guidance given to all licensing authorities on the decisions they make in relation to venues that hold events, and on what level of event healthcare services may be required at the events likely to be held at those venues. The guidance should indicate appropriate licence conditions to be used. The licensing authorities should then impose conditions to be used. The licensing authorities should then impose conditions to make those standards a requirement to meet existing conditions."</li> </ul> </li> </ul>	Francis Taylor Building		
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