

RE: EXTINCTION REBELLION

POTENTIAL CRIMINAL LIABILITY

ARISING OUT OF THE OPERATION OF BANK ACCOUNTS

GUIDANCE NOTE

1. A member of Extinction Rebellion (XR) has expressed concern at potential criminal liability arising out of the operation of a bank account for the purpose of funding XR's activities, in light of the recent inclusion of XR in guidance relating to the 'Prevent' counter-extremism strategy.¹
2. The inclusion of XR in such guidance was highly controversial. However, it is important to distinguish the inclusion of XR in the guidance from the classification of XR as a proscribed terrorist organisation under Schedule 2 of the Terrorism Act 2000. The latter has not happened, and in my view will not happen. XR is plainly not a terrorist organisation, as has been publicly acknowledged by the Home Office.² Any attempt to classify XR as a proscribed terrorist organisation would no doubt be immediately and successfully challenged.
3. The member's concerns are understandable, given the media coverage of the controversial guidance referred to above. However, since XR is not a proscribed terrorist organisation, the offences of membership and support of such an organisation under s.11 and s.12 of the Terrorism Act do not apply to XR. Similarly, the offences relating to fundraising for proscribed organisations, at s.15-s.17, do not apply to XR.
4. It follows that no criminal liability arises solely from the operation of a bank account for the purpose of funding XR's lawful activities.
5. However, some activities undertaken by XR members are unlawful. Members have, for example, committed offences of criminal damage and obstructing the highway. It is possible that where a person operating a bank account authorised a payment for resources to be used to commit such an offence, they could be charged with conspiracy to commit that offence.

¹ <https://www.theguardian.com/uk-news/2020/jan/10/xr-extinction-rebellion-listed-extremist-ideology-police-prevent-scheme-guidance>

² <https://homeofficemedia.blog.gov.uk/2020/01/14/home-office-in-the-media-tuesday-14-january/>

6. In such a case, the prosecution would have to prove that the members of the conspiracy knew and intended that a criminal offence would be committed. Of course, this would have to be proved the criminal standard; so that the jury are sure.³ If the jury were not sure that any defendant had the requisite knowledge or intent, then that defendant would be found not guilty.
7. For example, if a payment were made from the bank account for a large quantity of red paint, which was then sprayed all over a government building, the person authorising that payment might be charged alongside those who sprayed the building, with conspiracy to commit criminal damage. The prosecution would have to prove that the defendants knew and intended that the offence of criminal damage would be committed. If the jury accepted the possibility that the person who authorised the purchase of the paint believed that the paint would be sprayed onto the building but then cleaned away afterwards, they would not have found the requisite knowledge and intention. Accordingly, that person would be found not guilty. Those who sprayed the paint might well be convicted.
8. To give a different example, if a person authorised the purchase of bolt cutters, which were then used to cut through a fence so that a large number of people could obstruct a runway at an airport, the prosecution might find it easier to prove the requisite knowledge and intent.
9. Clearly, such cases will be fact specific. It is important for those operating bank accounts for XR to ensure that the items of which they authorise the purchase have legitimate, lawful uses.
10. Finally, it is probably common sense that anyone operating any bank account should be aware of the potential to become embroiled in money laundering offences. They should ascertain the source of funds paid into the account, particularly any significant sums. They should not allow others to use the account for their own purposes.
11. I trust this guidance note is of some use, and I am happy to be contacted if I can be of any further assistance to members of XR.

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³ Interestingly, conspiracy offences can only be tried by a jury in the Crown Court, meaning a higher chance of acquittal, and potentially greater media attention compared to Magistrates' Courts.