

***Para 4.57** In *Lane* [2018] UKSC 36, the Supreme Court held that what was said in *Saik* [2006] UKHL 18 about the phrase 'reasonable ground to suspect' (which it treated as indistinguishable from 'reasonable cause to suspect') and in *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286, HL, to which Lord Hope referred in *Saik* (see text to n 133), did not lay down a universal proposition that if a statute speaks of a person having 'reasonable cause to suspect' (the phrase in issue in *Lane*), that will always assume that he has to have actual suspicion. The Supreme Court pointed out that since, as noted in para 4.57, the offence in question in *Saik* could be committed only if D acted with the purpose of assisting someone else to avoid either prosecution or a confiscation order, this necessarily meant, or assumed, that D had actual suspicion.

In relation to the offence in question in *Lane*, under the Terrorism Act 2000 (TA 2000), s 17(1), which provides that:

'A person commits an offence if -

- (a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and
- (b) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism'.

The Supreme Court:

- noted that when the offence of funding terrorism had first appeared in a statute in 1976 it had required D to know or suspect that the money or other property would or might be used for the purposes of terrorism but that when the offence was later re-enacted in a similar form to its current form it required (as now) D to know or have reasonable cause to suspect that the money or other property would or might be so used. The Supreme Court held that that change could only have been intended to remove the requirement for proof of actual suspicion; it was not open to the court to ignore that kind of clear Parliamentary decision;
- held that that inevitable conclusion was reinforced by other offences in TA 2000 which required D to believe or suspect, or to know, suspect or have reasonable grounds to know or suspect, the material matter, whereas s 17 and another offence were drafted in terms of knowledge or reasonable cause to suspect. This, the Supreme Court held, provided a further indication, if one were required, that the difference between actual suspicion and objectively assessed reasonable cause for suspicion was observed by Parliament in the legislation.

Lord Hughes SCJ, giving the sole judgment, with which the other members of the Supreme Court agreed, said (at [22]):

‘The requirement that there exist objectively assessed cause for suspicion focuses attention on what information the accused had. As the Crown agreed before this court, that requirement is satisfied when, on the information available to the accused, a reasonable person would (not might or could) suspect that the money might be used for terrorism. The state of mind of such a person is, whilst clearly less culpable than that of a person who knows that the money may be used for that purpose, not accurately described as in no way blameworthy. It was for Parliament to decide whether the gravity of the threat of terrorism justified attaching criminal responsibility to such a person, but it was clearly entitled to conclude that it did. It is normal, not unusual, for a single offence to be committed by persons exhibiting different levels of culpability. The difference in culpability can, absent other aggravating features of the case, be expected to be reflected in any sentence imposed if conviction results.’