

There is no offence in law of 'being a terrorist'

A report on

An Audience with Max Hill QC

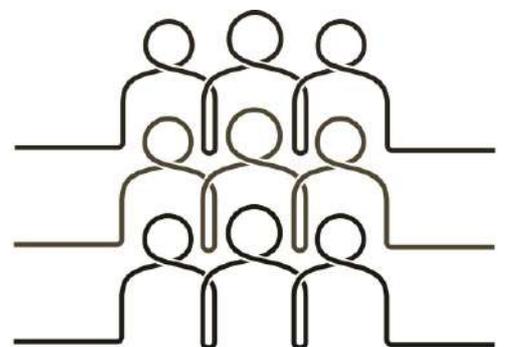
Independent Reviewer of Terrorism Legislation

Hosted by

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Foreword

It is with great pleasure that I write the foreword to this timely report. When I became the Independent Reviewer of Terror Legislation at the beginning of March last year, it soon became clear, if it was not already apparent, that it was an important time to take over the role. In the very short space of time between taking over and the end of 2017, there had been numerous attacks on British soil; including

1. 22nd March 2017, 6 people died and 50 injured – Westminster Bridge.
2. 22nd May 2017, 22 died, 59 injured – Manchester Arena attack.
3. 3rd June 2017, 7 died and 48 injured – London Bridge attack.
4. 19th June 2017, 1 dead, 9 injured – Finsbury Park attack.

At the same time as I was learning more about what it means to be the Independent Reviewer, I had embarked upon a journey across the country meeting many different people; from law enforcement agencies to communities impacted by terror legislation. One of those meetings is the subject of this report; hosted at the University of Birmingham by [ConnectFutures](#), an organisation which provides training and research around tackling extremism and exploitation. Interacting mainly with schools, colleges, communities and local organisations, this is valuable work.

The report which follows is an accurate and faithful summary of the discussions we had around very difficult topics. I met an array of people working in this space; including teachers, people from law enforcement, many leading on safeguarding issues. In some open and closed discussions we spoke about many issues, including; the precise role of the IRTL, the reach and limits of the legislation, the impact on communities and how to raise awareness; Schedule 7, TPIM's and Control Orders; and Foreign fighters and returnees. And we also touched upon areas which are not in my direct remit but which are of interest to many people, namely the impact of the Prevent policy on day to day lives. I also had the benefit of hearing from international students impacted by Stop & Search.

In the lead up to this day and since a lot has happened in addition to the attacks cited above. I have laid before Parliament my first annual review of the Acts, we have had a new Home Secretary relaunch the [CONTEST strategy](#): I have cautiously welcomed it and you can read more about what I have said on my website [here](#).

I hope that you find this report useful to you as practitioners and personally. I am enormously grateful to ConnectFutures for setting this up and look forward to coming back again to discuss what has been happening. I learned a great deal from the experience and hope that the same goes for all participants.

Max Hill QC

[Independent Reviewer of Terror Legislation](#)

June 2018

Glossary

CfCE	Commissioner for Countering Extremism
Control Orders	An order made by the Home Secretary to restrict an individual's liberty for the purpose of "protecting members of the public from a risk of terrorism".
ECHR	European Court of Human Rights
IRTL	Independent Reviewer of Terrorism Legislation
MHQC	Max Hill QC
NCND	Neither confirm nor deny
ROL	Rule of Law
Schedule 7	The powers of UK police to stop, examine and search passengers at ports, airports and international rail terminals.
TA	Terrorism Act
TEO	Temporary Exclusion Orders
TPIM	Terrorism Prevention and Investigation Measures



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1. Introduction

On Monday 30th October 2017, an important event was hosted by ConnectFutures supported by the University of Birmingham called ‘*Let’s Talk Terror Legislation: An Audience with Max Hill QC*’. The event was part of Max Hill’s remit as Independent Reviewer of Terrorist Legislation (IRTL) to move around the country listening to people’s experiences of terror legislation and explaining how it works. The aim is mutual learning: making the law transparent and understandable to a wide range of interested people and in return learning first hand of problems and issues on the ground. This report details how Max Hill explained his work and what participants’ concerns were. It is hoped that this report can highlight to a wider audience in government and elsewhere how people see the impact of terror legislation and what sorts of further action needs to be taken - either in terms of the legislation itself or in terms of communication and education about its actual workings to grassroots communities and organisations nationally.

The day was divided into three: firstly, a larger audience of different groups for a forum at the University of Birmingham then a smaller group of strategic partners for more intense discussion (with Chatham House rules), followed in the afternoon by a meeting with community partners at Christchurch C of E Primary school in Sparkbrook, Birmingham. Overall some 100 people attended, with the three largest groups being 3rd sector/NGO/community participants; academics (lecturers and students); and school/college personnel (safeguarding leads and senior management). Prevent leads, police, local authority, NHS and HMPPS were also represented. To set the context, the initial session also showcased a film made by ConnectFutures about former extremists, titled ‘[The Woolwich Boys - from Gangs to Extremism](#)’.

2. The role and brief of the Independent Reviewer of Terrorism Legislation

Background: *The IRTL reviews the operation of the UK’s terror laws and publishes the findings and recommendations in regular reports. It is a role unique to UK, with no country having a similar role within counter-terror. Their appointment typically lasts for 3 years and they report to Parliament and the Home Secretary. The previous two commissioners were Lord Carlisle (2001-11) and David Anderson QC (2011-17). Max Hill QC was appointed in 2017 and has 4 part time staff in his office. He previously worked as a criminal advocate who has experience in terrorism prosecution cases.*

See: <https://terrorismlegislationreviewer.independent.gov.uk>

Max Hill outlined his brief as providing annual reports on the operation of terror legislation. The key context of these reports is the need to find the balance between protection or security versus rights and freedoms. These are embedded in legislation on rights. Article 10 on freedom of expression, for example, can be derogated in instances of terrorist publication. TPIM’s restrictions are against Article 8 regarding the right to private life, but are regularly upheld by the High Court as being compliant with the ECHR.

Max Hill’s role is to review new proposals to check for compliance (necessity and proportionality). He is clear that terrorists should have nowhere to hide but also that we should not throw away the freedoms we all enjoy in order to catch a few. As a lawyer he would be concerned with the notion that we have normal laws for an ordinary scenario and emergency special powers at certain times. In France, some of the emergency provisions are being introduced into the normative legal regime, which could be seen as a retrograde step.

The extension to the Section 58 offence under the Terrorism Act (TA) of ‘collecting information’ useful to those preparing terrorist acts should therefore be scrutinised. There need to be safeguards for curiosity – what about those who are ‘disgusted’ by what they see online but come back to the website? Are they the individuals our laws should be catching?

A key message relates to the distinction in law between violent and non-violent extremism. The latter can be seen as a thought crime, and not a sufficient basis for legislating against an entire population. Nonetheless, violent extremism is not limited to just the final move, and our criminal offences deal with precursor activities and preparation of the event (Section 5 of the TA 2000). We must observe the margin between this and criminalising and prosecuting individuals for doing nothing which constitutes a preparation of violence but who simply think in a way we do not like. That is what the Prevent strategy is for – and why Prevent is outside the IRTL’s remit.

Max Hill also commented on the Woolwich Boys film, particularly how it demonstrated the shift from general criminality and gang activity into terrorism, as well as the important focus on far-right terrorism. To understand terrorism, we must learn lessons from general crime, and this may also provide some solutions and expertise. Gang culture and the policing to deal with this can capture individuals who might go on to commit terrorist attacks.

3. Areas of concern emerging from questions submitted in advance

Participants were invited to submit a question in advance, in reply to the invitation ‘*What’s the one question you’d like to ask Max Hill?*’ Only a proportion of these could be tackled on the day, but the aim was for Max Hill to be able to take these away and have an overview of the sorts of concerns people have around terror legislation. While Prevent is not part of the IRTL’s remit, inevitably many questions were raised around the impact of this, both from educationalists and those working in areas such as the NHS and police. This demonstrates the overlap of Prevent and other terror legislation in people’s lives and how the independent scrutiny role may not be understood outside of the Prevent sphere, particularly when communities want to understand their rights in a more informed way. As well as more personal questions about how MHQC was finding his new role (and how he might explain it to an 18 year old), there emerged five major areas of concern from the list of 82 questions received, as follows:

3.1 The reach and limits of legislation

Questions were raised as to whether the effectiveness of response to terrorism was about the better use of existing statutory instruments or about creating more. Should legislation be tightened? Was there a role for international law? How could legislation help to bring organisations together to effectively combat terror?

3.2 Balance in legislation

There was concern about striking the balance between introducing legislation to tackle extremism/radicalisation without creating prejudice amongst those that live peacefully in our communities. Is UK CT law and policy sufficiently balanced to ensure all equivalent acts are treated equally? What steps should be taken by the British government to be able to prosecute extremists but at the same time preserve the rights of the people?

3.3 Impact on and work with communities

A major concern was the long-term impact of terrorism legislation on relations between different sections of British society. The stigma and perceived Islamophobic nature of anti-terror legislation was frequently alluded to, and the problem of its negative impact as a

recruiting tool for radicalisation. An issue was how to legislate to protect the civil liberties of groups such as Muslims who want to be critical and dissenting at times of certain state policies/practices that impact on their enjoyment of citizen rights. Would such protection enable British Muslims to work better with the state in tackling extremism and radicalisation? There were issues of timing and focus in the queries: how important is the role of early help and pre-criminal support to tackle issues related to radicalisation, extremism and terrorism? How is terrorism in high risk asylum seekers to be mitigated? Does the media exaggerate the threat of terrorism, and if so, in order to safeguard against terrorism do we have to stop being politically correct? Overall, there appears to be a need for an explanation of what a 'community-focused' approach to dealing with terrorism is, and whether current approaches have led to cooperation or have further marginalised minority communities.

3.4 Educational and NHS settings

Those in educational settings wanted to know how schools can do better in preventing young people being drawn into extremism, how best to create safe spaces, and how early years and primary schools can prevent radicalisation in later years. Specific questions related to whether teaching British values would have stopped British home-grown terrorists from committing such acts, and how to support a young person's thirst for knowledge regarding world affairs while mitigating the risk this presents for the possibility of radicalisation. How can debate about difference be encouraged in a healthy way, accepting views that we may not understand? There were targeted questions about Prevent, what the expectation of schools is in implementing it, the future for Prevent regarding the changing role for teachers, and how to better prepare staff to deal with the challenges they face in meeting the Prevent agenda in primary schools. Those in the NHS wanted more information on the role of Prevent in the NHS. A significant question was whether the Prevent strategy had been evaluated in terms of how it is promoted, including the agencies responsible for delivery.

3.5 Ideology and motivation

Some questioners raised the underlying issue of how or whether ideology can be challenged or 'fought'. Can the perspective of the terrorist ever be right? This relates to the issue of how work on terror legislation addresses the political/social concerns of those that would be radicalised. Is legislation divorced from these views (i.e. that we should not capitulate to any grievances that terrorists have) or is it linked in some way (that we have to have a dual/multi-pronged approach to dealing with radicalisation, including addressing concerns like foreign policy)?

4. Questions and responses on the day

This section does not follow the strict ordering of questions as raised by participants on the day, but again groups them in themes, to signal the major points of concern and to avoid repetition. The key points of response from Max Hill (noted as MHQC) are given, as the explanations may be helpful to those who were not there at the time and might appreciate learning more of the complex – and changing – background to terrorism legislation. At the end of each of section the questions for the future and possible actions are highlighted.

4.1 Schedule 7.

A major concern related to Schedule 7¹. There was personal experience as well as complaints by students that had been noted by university staff. Students felt it was discriminatory, having their electronic devices scrutinised and experiencing repeat stops, rather than being subject to what should be 'exceptional' powers. Some Muslim students would delete their photos and personal information from their smartphones/ laptops before they went to an airport out of a perceived fear of authorities seizing material or being stopped and searched. One participant pointed out that the David Anderson QC² report found Border police being unhappy about implementing 'racist' powers. The question raised was whether there was a legal way to prevent border police operating in a 'criminologically discriminatory way'. There is seen to be no legal recourse to challenge the decision, and hence the Schedule was not seen as defensible.

Schedule 7 was seen to have too few convictions, 'leaving a sour taste in 80,000 people'. Police are also seen to be 'stretched' so that they miss a great deal. On the other hand, it was felt that the net of CT legislation was too wide in what it catches, with the example given of Mohamed Rabbani³ not disclosing his password. *"If this is what we're convicting terrorists for, it loses its value"*.

There was particular concern about repeat stops. It was suggested that there should be a judicial review of stops where there are 'fishing' expeditions on mosque members and students.

Clarifications and amplifications from MHQC included the fact that there is 'high discretion' and 'low discretion'. Port stops do not operate in a vacuum, but sometimes they seem to: maybe criminal history or intelligence indicated that a person should be stopped, so that there is something driving the repeat nature of stop. MHQC reported saying to the Libyan community in Manchester, in the aftermath of the Manchester attacks, that if they travel and take the route that Abedi⁴ is known to have taken, they have to expect that the chance of them being stopped is heightened.

However, intense focus has been applied on Schedule 7 from the Beghal⁵ and Miranda⁶ cases. An amended Code of Practice has been drawn up since the Beghal case, and

¹ Under schedule 7, UK police can stop, examine and search passengers at ports, airports and international rail terminals. Unlike with some other police powers to stop and search, there is no requirement for an officer to have a "reasonable suspicion" that someone is involved with terrorism before they are stopped. A passenger can be held for questioning for up to nine hours and those detained must "give the examining officer any information in his possession which the officer requests". Any property seized must be returned after seven days, but data from mobile phones and laptops may be downloaded and retained by the police for longer. Those detained are compelled to answer questions from the police and must not "obstruct" or "frustrate" any police searches. If someone fails to co-operate they are deemed to have committed a criminal offence and could face up to three months in prison, a fine or both.

² Report from David Anderson QC, previous IRTL, on handling of UK terror attacks March-June 2017

³ Mohammad Rabbani, Director of Cage, was stopped at Heathrow under Schedule 7 and convicted of an offence under the TA for refusing to give the pin number of his mobile phone.

⁴ Salman Abedi carried out the Manchester attack 2017

⁵ *Beghal v DPP* was a 2015 judgment of the Supreme Court of the UK concerning powers of the police in England and Wales. Sylvie Beghal was returning from visiting her husband in Paris when the police stopped her at East Midlands Airport. They questioned her under Schedule 7, Paragraph 2 of the Terrorism Act 2000 whereby no reasonable suspicion of past or future offences is required, documents can be copied and retained and individuals can be detained for a maximum of six hours.

⁶ David Miranda was detained at Heathrow airport in 2013 for carrying files related to information obtained by the US whistleblower Edward Snowden. The Appeal court said the detention of Miranda was lawful but clause under which he was held was incompatible with the EHRC.

guidance given to officers that they must not stop on ethnicity alone and must have a number of considerations related to terrorism. There have been Improvements over the last five years, from 60,000 stops to 17,000 in the past year, because of increasing efficiency of information. There are continuing debates over ‘reasonable grounds’ for suspicion.

It was admitted that there are large gaps in numbers between those examined and detained for one hour, those detained for longer than an hour and then those finally charged (which is a small proportion). This raises the question of whether, if only a few are being charged, are we in fact stopping too many. But IRTL was clear that Schedule 7 is here to stay and that perceptions need to be tackled.

Questions and actions for the future: There is acknowledgement that many people think Schedule 7 is random/ethnicised, and if it were, this would be a serious infringement. There appears to be a serious gap between perceptions and experiences of people about being detained under Schedule 7 and the official workings of the law and guidance to police and Border officials. Are the ‘reasonable grounds’ made transparent? How can perceptions be changed?

4.2 TPIM’s and Control Orders

There was a concern that there is an infringement on family rights and freedoms with Control Orders, for example when children are stopped from having computers. It was reported to be traumatizing for children when armed officers come to search their home.

It was explained that Control Orders have been replaced by TPIM’s⁷, as Control Orders were found not to be necessary and proportionate. There are now few of these, but they are important in the case of returning fighters. It was agreed that they could be more flexible, for example with it not being necessary for someone to relocate.

Questions and actions for the future: Participants were advised that when they have been affected by such orders they should bring to light the unintended consequences of this or the effect on the families. A question might be who exactly should be notified and made aware, and whether there are well known and publicised mechanisms for logging concerns and experiences.

4.3 Foreign Fighters and returnees

Questions were raised about how the UK should deal with British citizens who want to return to the UK after fighting for ISIS⁸. This was in the context of the then Foreign Office Minister, Rory Stewart, advocating that returnees from Syria and Iraq should all be killed⁹: participants wanted to know MHQC’s response on this. One participant had friends in Syria who were aid workers who might run the risk of being arrested – or worse – on return. There was a concern that if British citizens were ‘assassinated’ this would act as a recruiting system for the likes of ISIS – but the feeling was that this possibility was not recognised by those ‘at the top’. With one provision being the withdrawal of citizenship, the wider discussion was

⁷ Current numbers on <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Lords/2018-01-18/HLWS403/>

⁸ 400 of 850 British ISIS jihadis have already returned to the UK with around 54 convicted. <http://www.bbc.co.uk/news/world-41679377>

⁹ <https://www.independent.co.uk/news/world/middle-east/british-isis-fighters-syria-must-be-killed-rory-stewart-a8014431.html>

around rights of a citizen and around dual nationality, that is whether people with a single nationality can be rendered stateless.

A concern was the apparent partiality in UK government response, and the unequal designations as a 'terrorist'. Different examples were given: that British people going to fight against ISIS are less likely to be prosecuted than Muslims going to fight against ISIS; or that those who join Kurdish groups are not criminalised, yet those who went to Syria, but did not commit a crime, are still guilty. The perception was that ISIS and the Peshmerga commit the same atrocities but are not judged in the same way. Questions were raised as to whether there are examples of prosecution for people joining neo-Nazi far right groups. It was seen as significant that there is no prosecution for those joining the Israeli army as there might be for those joining Hamas or Hezbollah.

It was pointed out by MHQC that the law just defines terrorism; it does not differentiate between groups. It is down to the prosecution to show evidence that one falls within the definition and the other does not. An example was given of the Sarwar case 2014/2015¹⁰: Sarwar claimed he was on the anti-IS side so should be protected against prosecution, but he lost his appeal and was convicted. It is not for a court of law to delineate cases according to UK Foreign Policy, but it was satisfied in this case that the activity of this individual satisfied the Section 1¹¹ definition. However, concerns remain about whether the Section 1 definition is too broad. Apparently, it was thought with the Gul case¹² that the court would clip the definition, but it did not.

Participants were reminded that there is no offence in law of 'being a terrorist'; that there is no crime of aspiration. The question therefore is whether a more creative approach is needed for instances such as the Bethnal Green girls, i.e. whether it is an offence simply to travel, or whether their naivety should be taken into account.

A further concern was about rehabilitation of fighters, whoever they fought for. It was mooted that whenever people engage in foreign action they will not reintegrate, but engage in the next cycle of violence. It was pointed out that the Home Office claims that they work on this, but their strategies for rehabilitation or reintegration were not seen as transparent.

Questions and actions for the future: It would seem that definitions of terrorism and what constitutes 'preparatory acts' still cause concerns about stigmatisation, partiality and inappropriateness. There could be more information to the public about legal definitions and how they are applied, as well as communities and individuals being informed of their rights. More information could also be shared on what the UK was doing to help people to rehabilitate into society.

4.4. Prevent related issues in schools and community

It was significant that Prevent does not come under the remit of the IRTL, but that many questions revolved around Prevent, either because people thought it did, or that it should, or that the IRTL could relay concerns to the appropriate authorities. It was asked whether MHQC was advising ministers on what to do to review Prevent and make it more effective.

¹⁰ The mother of Yusuf Sarwar co-operated with police after her son travelled to Syria but said she felt betrayed by the length of the jail sentence he received (12 years and eight months for conduct in preparation of terrorist acts). He claimed to be travelling for humanitarian work.

¹¹ Section 1 of the TA 2000 is the 'Interpretation' of terrorism

<https://www.legislation.gov.uk/ukpga/2000/11/section/1>

¹² Mohammed Gul was a law student convicted for uploading jihadi videos onto the internet.

He encouraged attendees to ask the commissioner of the new CfCE (Commissioner for Countering Extremism) to define what they are doing, what extremism is and which groups they will talk to in countering it, including the media.

One major concern was the impact on the Muslim community, with the perception that Prevent targeted only Islamist extremism and disproportionately stigmatised Muslims. *'East Birmingham is one of the hotspots in Europe for Prevent related activity: you have only spoken about Islamist extremism, it is not just about Islamist discussion'*. MHQC was clear that legislation and programmes were not in place simply to deal with Daesh-inspired terrorism, although the bigger threats and vulnerabilities based on police assessment were from Islamist extremism. He drew attention to how the 2017 statistics¹³ would show a sharp increase in the use of legislation for arrests, detention and charges in extreme right-wing cases. He was emphatic that our legislation fits all and is not directed at one segment of the community.

As with Schedule 7, it seems a question of perception. MHQC acknowledged that there was a perception within Muslim communities that there is a special strand of legislation targeted at them. He thought it important to remind people that the killers of Lee Rigby and Jo Cox were both convicted for murder. Prosecutors use general crime statutes and common law, and communities need to better understand that in order to feel reassured.

This leads to tasks for communities. A top down imposition is bound to be more difficult in terms of reception and application than a more open conversation involving all levels of society and giving local communities to influence what comes from government. MHQC argued that we do not have a "Muslim problem", nor a Muslim community that is part of the problem. The community is part of the solution and needs to be seen as such.

A particular concern came from teachers and others involved in education, regarding any over- (or under-) reaction to student behaviour because of the Prevent duty. It was felt that if people do not have interaction and exposure to the Muslim community, their ignorance sounds alarm bells when students display signs of religion. Families are stigmatised and an air of suspicion is built up in society against Muslims, especially with media reporting. One participant revealed how teachers are terrified of getting it wrong and having students who are the next front-page headlines. There were genuine anxieties about how to engage with the Prevent duty and 'keep kids and families onside'. There was seen to be a special problem with kids who were autistic or otherwise vulnerable. Teachers felt there was a lack of funding, and a lack of suitable training, and that they were told to 'just deal with' it by the government. *'WRAP¹⁴ is not enough to pick up kids at risk'*.

MHQC reminded teachers that long before Prevent became statutory, there were safeguarding duties under the Education Act, and that teachers had been meeting these for a long time. Teachers were told that the reporting duty under Prevent did not absolve them from safeguarding young charges. In the legal world there is the advent of intermediaries to get children through criminal proceedings, and teachers were advised that they were the intermediaries in education and what they knew about general crime they should apply to terrorism.

There was also a question of how to deal with controversial issues such a foreign policy, and MHQC acknowledged the perception that Prevent means that foreign policy cannot be touched as it becomes a trigger for reporting. Yet his view was that no subject should be off

¹³ *'New figures show improved referrals to Prevent and a rise in far-right concerns'* Figures released by Home Office, March 27- 2018. / <https://www.wired-gov.net/wg/news.nsf/articles/DNWA-AX9DJH>

¹⁴ Workshop to Raise Awareness of Prevent (basic free Home Office funded training for schools)

limits, and there is problem if conversations are not engaged with because of a fear of Prevent.

Yet from participants it became clear that it is not just about student comments, but about real involvement. One headteacher revealed how the exposure to radicalisation of children in the city on a daily basis is 'unimaginable'. In their school they had the younger sibling of someone who pleaded guilty to terrorism charges the previous week. The question was asked, how was the school to deal with the 15 year old boy, with the parents of terrorists and their contacts? Is there going to be a case against them? Another participant said that women were providing the money and were the new tip of the next iceberg. *'We need a real understanding from educational departments and political departments and police of the reality of children in this country'*.

This led to a discussion on thought crime, and how it would be alarming and divisive to try to legislate in that area. If the law goes as far as 'aspiration for terrorism' that does not seem far enough away from thought crime. There needs to be some sort of preparatory action for this to be prosecuted.

A view from police participants was that *'We cannot legislate ourselves out of this'*. It was thought to be a fundamental issue of prevention, early intervention and countering mindsets, looking at the different reasons why people become radicalised. Like other crimes, *'we now know we must look at reasons why people commit crimes'*. It was agreed that terrorism legislation is not just a Muslim problem, but there is disproportionate under reporting of far-right cases in mainstream media.

Questions and actions for the future: With regard to Prevent and definitions of terrorism, attendees are encouraged to 'keep an eye' on the commissioner of the new CfCE (Commissioner for Countering Extremism) to understand their remit and who they are reaching out to. It was suggested that there needs better understanding in communities of how prosecutors use general crime statutes and common law, so that communities feel reassured. People in schools need to understand the link between general crime and terrorism. But it remains to be clear about who will provide this understanding for communities and schools. Prevent was seen by many participants as a hindrance rather than help, and needed a rebranding, particularly of negative wording. Significantly, government WRAP training was seen as insufficient, and more funding was needed for extensive training. On the other side, the government needed to understand the realities of radicalisation in schools. All this raises questions of mutual communication and whether there are adequate mechanisms for this.

4.5 Engagement with the community

A repeated question related to the relationships of communities with government, and processes of consultation. It was felt that there was much fantastic work within Muslim organisations, who had experts in their field, but there was a reluctance to engage with people on the ground when it came to legislation, for example engaging with the Muslim Council of Britain. Many organisations are good at highlighting issues, but are not given solutions.

A suggestion was that the government has 'paranoia' about granting legitimacy or credibility to certain groups through a meeting. MHQC thought government should have these types of open meetings with groups and organisations, but that that was 'their call'. It was suggested that there is no grand mufti in Islam, so possibly the government does not know who to engage with. However, it was pointed out that there were representative bodies of

Muslims. It was argued that the government have spent money creating fresh organisations when Muslims are already working on issues locally. This creates an ‘ulterior’ Muslim community that the government is seen to be happy to engage with, but which may sometimes lack community credibility. *‘There is no media coverage of our charitable work, it is an insular world’.*

There was significant discussion of the role of imams. *‘There are government cuts in youth areas and conversation is cut down about Jihad, this forces the kids to come online. Imams are too scared to talk about these issues. Where are the conversations with imams and Mosques who can effect change?’* It was pointed out that Imams lose credibility with the youth when they condemn 9/11 but do not condemn Syria. One view was that some imams are not up to the task, in that they do not always have expertise in social and international issues, which are different from theological issues. It was felt that people running programmes are needed who have experience on the ground talking to young people, and can fix their misconceptions about war being a good place, or about gangsters being ‘hard’. MHQC agreed there was an issue about youth, revealing that at Mosque and community centre level, there was a real problem where young Muslim professionals were refusing to come on Mosque committees for fear of their Mosque producing the next terrorist and with that affecting their future career prospects. He had put this in the Forward Thinking report¹⁵ and given it to government. A mosque in Leicester had a school visit cancelled as white parents did not want their children going to a Mosque. One headteacher concurred with this, having a similar experience of parents who had a perception of her school being a ‘Muslim school’.

Generally, it was mooted that there can be distrust of government. One participant said *‘Ministers don’t see the impact on us. Young people have no faith in the system when they say things like ‘kill them all’.*¹⁶

The police agreed on the need to bring the community along. They needed to obtain intelligence in communities, but also to create an atmosphere and understanding that tackling this is not selling your community but doing a community service.

The issue of the Stop and Search panels was raised, with having an independent body to randomly select records to see reason for that stop being seen as a ‘powerful tool which provides accountability and oversight.

Questions and actions for the future: While *legislation* is top down and is a job for Parliament, MHQC agreed that as far as *strategy* is concerned, there is a perception of an equally top-down imposition without a regional voice. Participants were advised that they should take this concern to the Home Office and tell them not enough has been done with the grassroots and that more funding is needed. There was a ‘golden opportunity’ with the CfCE, as this needs to involve real grassroots voices from the start if it is to be accepted as being genuinely representative. It is clear that how the government identifies and works with various Muslim ‘communities’ or ‘representatives’ still needs much thought.

4.6 Prisons and radicalisation

An issue was raised about how to ensure that terrorists once prosecuted and imprisoned would not radicalise others. Could ideology be ‘fixed’ or was prison just a holding ground?

¹⁵ UK ‘Building Bridges’ Programme. Community Roundtables: A report on the aftermath of the terrorist attacks in London and Manchester, July 2017

¹⁶ A reference to Foreign Office Minister Rory Stewart who said that the only way of dealing with British Islamic State fighters was to kill them in almost every case

The response to this covered a number of different areas. Sentencing provisions which were set 17 years ago certainly needed reviewing. However, obligatory minimum sentences should not be imposed, and should be left to judges. Increasing the discretionary maximum may make things better or worse, as offenders would be going to prison for longer but the problem may not be solved. It was not felt that separation centres, putting all offenders such as Adebela¹⁷ together, were the answer, as done in other countries – they would just ‘talk terror’. Instead existing mechanisms should be used: Prevent is available at all stages, even if the person is convicted. The Desist and Disengagement programme is also available. The rule of law must be followed: although some will persist with their ideology, this does not mean that they can never be let out. It is important to have faith in the intelligence community when people are released, as they have a remarkably high rate of success.

4.7 Information

Participants were concerned about whether there was sufficient information sharing. It was felt that there was too much secrecy in the counter-terror area, for example with the reasons given for referrals usually missing, which made it difficult for those working in this area.

MHQC explicitly stated that his role was unfettered access. However, this was a gradual process – telephone data had been secret Schedule D material in criminal proceedings, withheld until required for disclosure, but now it was the backbone of every case. The tool of NCND¹⁸ was an important one for security and intelligence services but a blanket response of NCND brings a danger that articulate and intelligent defendants can take advantage of it.

5. Conclusion

The huge range of questions and concerns demonstrates how important this role of the IRTL is. The fact that a substantive number of questions veered into Prevent related concerns (not officially his brief) shows that perhaps we need an equivalent *Independent Reviewer of Prevent Legislation and Strategy* who would be able to go around the country listening and explaining in the way that the IRTL does. MHQC has come under criticism for talking to organisations such as CAGE, but, as he has pointed out, engagement is not the same as endorsement. His job is not to decide the proscriptions of the various organisations, but to learn of the effects and to talk to whoever is necessary to fulfil his role.

On the explanatory side of this event, many issues were clarified. Firstly, there was the question of the boundaries of his role. The reason for his office is that legislation in this area is hugely controversial and complex: it is often difficult for people to separate the effects of Prevent from the effects of Schedule 7 or Stop and Search, when there is a perception of stigmatisation on grounds of religion or ethnicity. But knowing exactly what the legislation does or does not cover may help those on the front line to make Prevent related decisions.

This is because of knowledge of when legislation kicks in, relating to the differences between extremism and violent extremism, as well as to the contested area of the ‘pre-criminal’ space. We were reminded that *there is no offence in law of ‘being a terrorist’*. Hence it is

¹⁷ Michael Adebela is a Muslim extremist jailed for life after being convicted of the murder of soldier Lee Rigby. It was reported to a High Court Judge that he is ‘charismatic’ and looked up to by fellow prisoners, and intelligence has suggested that he has helped convert other inmates to Islam.

¹⁸ Neither Confirm Nor Deny

about deeds, not thoughts. Therefore, controversial discussion in schools, higher education or indeed anywhere should not be off limits. We should not legislate in the pre-criminal space – there is no crime of ‘aspiration’. For any intervention, there needs to be ‘mind-set plus’, that is, preparatory *action*.

So, in law, the designation of acts as criminal, not terrorist, is important. Max Hill liked the film of the [Woolwich Boys](#), particularly in the context of needing a parallel emphasis on far right as on Islamist activity. He pointed out that the killers both of Jo Cox and of Lee Rigby had been tried for murder, that is, a for a criminal, not a terrorist act. In this country, the law does not convict people for ideology. There is no distinction in crime whether a person is a neo-Nazi or Islamist extremist – which is important when people think there is some sort of legal bias.

The core reason for the office, as Max Hill has stressed repeatedly in his writing, is the need for an *‘intense focus on the balance between the right of citizens to live in peace without interference from the State, and the need for society to protect itself from any real risk to national security’*. A key question is of how much legislation is needed. Considerable discussion at the event revolved around the treatment of returning foreign fighters. Max Hill’s position is that we already have a raft of legal measures and we do not need to ratchet up and create new legislation, even with increased terror attacks. He certainly would not want the possibility of a death sentence, as had been proposed by Rory Stewart of the FCO. One example MHQC gave for not countenancing this was of the adolescent Bethnal Green girls who went out to Syria, whose minds might not be ‘fully formed’. Research on former extremists by ConnectFutures¹⁹ would also underscore the possibility of a turnaround, as well as formers sometimes being highly valuable in recounting their journeys and experiences to educate others. But MHQC was able to confirm that when there is actual evidence of having fought, then prosecution and trial is going to be necessary. This is not about ignoring real terror threats.

It could be argued that we are fortunate in the UK to have this office of Independent Reviewer. Within security limits, it does try to make transparent the complex machinery of the law in counter-terror, and ensures that there is constant scrutiny and reporting of the checks and balances, so that we are neither a police state nor soft on terrorism. MHQC was convincing that we do not need more legislation, but to ‘bring the community along’ with what we have.

Therefore it was instructive to hear from practitioners (police, teachers, social workers, NHS) that far more resources need to go into training and outreach work if the community is indeed to be ‘brought along’. Many concerns remain for the IRTL to take back. These include

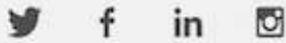
- The perception and experience of racism and stigmatization in the workings of Schedule 7 and Prevent, whether repeat stops at borders or undue focus on Islamist extremism
- The trauma for families of Control Orders
- The differentiated categorisations of foreign fighters and of what constitutes terrorism, and under whose definitions
- The need for consultation with the community, particularly Muslim communities, and awareness of the full range of what different organisations are bringing to the field, not just the government favoured ones.
- The need for more finance and in-depth training on terrorism, extremism, crime and Prevent, to understand differences between violent and non-violent extremism, and the workings of the law.

¹⁹ <https://www.connectfutures.org/wp-content/uploads/2018/01/UK-Formers-Families-Final-1.pdf>

Advice from MHQC to participants included:

- Keeping an eye on the new Commissioner for Countering Extremism, asking them what they are doing, what extremism is, and who they will talk to.
- Going directly to the Home Office to say that not enough is done with the grassroots to generate strategy
- Maintaining free speech and discussion in schools and elsewhere on issues such as foreign policy, not clamping down; and remembering that safeguarding is not just about Prevent, but is a general duty.

The question remains about whether 'the community' has access to the Home Office or the CfCE in order to raise questions - whether this is through a formal mechanism or through informal events that are not managed by local Prevent leads. It is not clear that people know of the mechanisms to make a complaint or to demand accountability, or even whether these channels are actually in place. Community events such as this audience with MHQC are immensely important in transparent two-way communications about the workings of legislation, but of course even these are able to reach only a small proportion of people. We in ConnectFutures hope that the event and its report can be useful in wider dissemination as well as future discussions and training.



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