



House of Commons  
Home Affairs Committee

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# Roots of violent radicalisation

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*Volume II*

*Additional written evidence*

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## The Home Affairs Committee

The Home Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Home Office and its associated public bodies.

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### Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom).

### Committee staff

The current staff of the Committee are Tom Healey (Clerk), Joanna Dodd (Second Clerk), Eleanor Scarnell (Inquiry Manager), Darren Hackett (Senior Committee Assistant), Victoria Butt (Committee Assistant), John Graddon (Committee Support Officer) and Alex Paterson (Select Committee Media Officer).

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# List of additional written evidence

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(published in Volume II on the Committee's website [www.parliament.uk/homeaffairscom](http://www.parliament.uk/homeaffairscom))

1	Paul Gregory Simmons BA DipTP MRTPI	Ev w1
2	Committee on the Administration of Justice	Ev w3
3	Association of Colleges	Ev w6
4	Cageprisoners	Ev w10: 11
5	Professor Clive Walker, School of Law, University of Leeds	Ev w14: 20
6	Lord Trimble	Ev w23
7	Internet Services Providers' Association	Ev w23
8	Association of Chief Police Officers	Ev w25
9	National Union of Students	Ev w26

# Written evidence

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## Written evidence submitted by Paul Gregory Simmons BA DipTP MRTPI

### SUMMARY

1.0 The Committee is seeking evidence and informed comment on the roots of violent radicalisation. Part of that remit, as expressly stated, is to determine the major drivers of, and recruitment to, terrorist movements linked to (a) Islamic fundamentalism (b) Irish dissident republicanism and (c) domestic extremism. In examining any or all of these phenomena it is vital that we understand the narrative framework which informs and develops them, and in which the potential or actual adherent locates himself and rationalises his actions. Narrative is itself a major “driver” of, and recruitment to, terrorist movements, and one of crucial significance.

1.1 My submission focuses on the narrative framework which informs domestic extremism, and I conclude with recommendations for challenging the potency of that narrative.

### PERSONAL DETAILS

2.0 My name is Paul Gregory Simmons, and I am 53 years of age. I make submissions to the Committee from a long-standing interest in the relation between the Koranic text and jihadism. I have a Bachelor of Arts degree in English Literature and Other Literatures (York University, 1980). Since leaving University I have worked in local government. I have not pursued an academic career and have no published work to my name save for a very modest output of published letters. These include a letter published in the *Times*' Saturday Magazine (on 27 February 1999) on the subject of the text of the Koran and its relation to jihadism, attached as Appendix 1, and a letter published in the *Times* on 25 January 2010 on the same subject (attached as Appendix 2) in response to a letter from Lord Pearson of Rannoch.<sup>1</sup>

2.1 On 22 January 2011, I participated in an on-air discussion of some length on the same subject with Mr. Jonathan Dimpleby as part of the BBC Radio 4 “*Any Answers?*” programme.<sup>2</sup>

### SUBMISSION

3.0 One may reasonably infer that the narrative framework which informs acts of violence carried out in connection with Irish dissident republicanism will be, for those drawn to it, a story of the betrayal of Irish interests by the British and Irish governments and by other once-militant republican groups. Once a coherent narrative of betrayal has been established and promulgated within the group, it becomes the source of and the justification for actions which we label terrorist or criminal, but actions which the member of the group sees not as terrorist or criminal but as striking a blow for the cause. However, my focus is on the narrative drivers of domestic extremism, and the first thing necessary is to set out the principal features of that narrative.

3.1 The principal recruiting-sergeant for radicalisation is a narrative which calls on young men of fighting age to join an army whose high purpose it is to restore Islam, Allah's religion, to the place of supremacy it should enjoy. It declares that it would already have achieved this supremacy but for the intransigence of the infidel, and the perversity of Jews and Christians who fail to recognise that the Prophet fulfils their own scriptures and has spoken Allah's final word to mankind on all matters of life and death, faith and morals. The call to join this world-wide army is a call to forsake all other occupation as worthless by comparison, and to set aside the pleasures of peaceful domestic existence and the claims of family life. These are to be viewed, properly, as nothing more than a mere temptation to remain standing idly-by whilst Allah's war remains to be fought and whilst Allah's enemies resist and seek to thwart His purposes.

3.2 Whilst there is of course an intellectual battle to be fought for the cause of Allah, the young men are left in no doubt that for those who are in earnest in their desire to serve in Allah's army there must be a willingness to engage in actual and literal warfare, a blood and guts jihad, a willingness not only literally *to slay* as a matter of fact, but a willingness, as a matter of fact, *to be slain*. The call goes out that to enlist in Allah's army is to engage, at last, with the real business of this temporal and transient life, namely war for the sake of the greatest cause there has ever been: war for Allah, for Islam His religion, and for the honour of Allah's Prophet. The narrative plainly declares that prosecuting this war may well require the ultimate sacrifice, including death by suicide-bombing.

3.3 To set the context for war, the narrative accuses the Jews of mischievously redacting the revelations of Allah given in Old Testament times to make it appear that the Jews were the chosen people of Allah, and accuses the Christians of the ultimate blasphemy and heresy of attributing divinity to Christ, when Allah has made plain through the Prophet that Allah shares His divinity with no-one. To add to their perversity the Christians fail to acknowledge that it is the Prophet, not Christ, who is Allah's final and complete revelation of the divine will. The error and perversity of the infidel is that he does not worship Allah.

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<sup>1</sup> Appendices not printed.

<sup>2</sup> *The Times* has also published letters from me on the subject of imprisonment (24 October 2009, Appendix 3), on the subject of the BBC's televised Gaza Appeal (26 January 2009, Appendix 4), and on the subject of the resurrection of Christ (8 April 2009, Appendix 4). Appendices not printed.

3.4 The narrative declares that Allah is merciful, that any who accept Islam are forgiven, and that those who have accepted the Prophet's revelations have chosen the right path. However, those who reject His revelations, particularly those who have the temerity to fight against Islam or to disrespect his Prophet or to attack Allah's people as has happened recently in Iraq and in Afghanistan (and in countless spheres across the globe over the last 1,300 years since the times of the Prophet) are fuel for the fires of hell and deserve no mercy. To be killed in battle is the just reward of the infidel, the Jew and the Christian, and if captured they can have no claim to considerate treatment since over them the Prophet has given the jihadist "complete authority".<sup>3</sup>

3.5 On the authority of Allah's Prophet, the young men are assured that only the infidel could think it a mischance or an evil to be killed on the field of battle. They could not be more mistaken: to slay others for Allah is good not an evil and to be slain for Allah is good and not an evil or a mischance. To slay and be slain in one action, as occurs with suicide-bombing, is to achieve a perfect unity of action and sacrifice for the sake of the cause.

3.6 And what will be the reward for young men who are in the literal sense slain in Allah's war? They are promised delights for eternity, a life of ease in Gardens like those of the Taj Mahal, surrounded by young women whose only aim is to serve and please.

3.7 This is the narrative in a nutshell. It offers young men from all walks of life the chance to participate in a battle of the most profound consequence and significance, in the prosecution of which they secure their own eternal well-being and a guarantee of unending future pleasure. Whilst the particular narrative in question is unique in that it has characteristics replicated nowhere else, the Committee will recognise the attraction throughout history to young men in particular of calls from recruiting sergeants to fight for noble causes, each with its own banner.

3.8 If there is any merit in what I have said so far, the question arises how the narrative particular to domestic extremism may be challenged.

3.9 The conventional approach to the deterrence of jihadism at the level of "hearts and minds" trusts that a dispassionate and cooler analysis *must* demonstrate, whether it is accepted or not, that the outrages the recruit is planning are not countenanced by Islam—indeed, that so far from countenancing them, the deeds he plans represent a warped and perverse travesty of Islam.

3.10 To underline the point there may be perhaps firstly an appeal to those Koranic verses which speak of peace and restraint: Allah does not love the aggressor. Welcome though their presence is, these verses are in fact comparatively few in number, and this ray of hope is easily disabled by the recruiting sergeant with the exegetical gloss that the "peaceful" verses were given to the Prophet when in *Medina* ie when Mohammed had only a small band of faithful followers and was obliged to act circumspectly; with the triumphal taking of *Mecca* and the subsequent rapid expansion of Islam, so the gloss has it, the peaceful verses have been forever "abrogated"—set aside—and are now a redundant footnote.

3.11 However, the real root of our problem is that the suicide-bomber, jihadist or campus radical can advance a case, rationally and in a cogent manner, to show how the Koran *as a whole* supports him, and thus that his actions are Islamic. This may be an assertion offensive to many and may strain the patience of the Committee but I regard this as a fact of life with which we have to deal. What is certain and undeniable is that he can point to a multitude of individual Koranic verses as "proof texts" for war—whether in retaliation for assault by the enemies of Islam or as a pre-emptive act where treachery is feared, or in response to resistance to the rightful claim of Islam to global supremacy. In seeking to engage with such men we waste time and resources trying to show them a peaceful Koran.

3.12 There may be an appeal, secondly, to the massive and labyrinthine *Haddith* literature (the reported sayings and actions of Mohammed, collected from various sources over the ages) in the hope of demonstrating that in his own person and actions Mohammed acted with tolerance and moderation. Unable to deny, since it cannot be denied, that the founder of the religion of Islam took up the sword and shed blood, this approach seeks to make clear that this was done only on the basis of strict necessity. However, the *Haddith* literature is vast and even within Sunni Islam (which accepts the authority of the *Haddith*) it is widely agreed that the literature contains a *spectrum* of material from the reliable provenance to that of more ambiguous provenance. For this reason the *Haddith* literature can as readily be cited to support and consolidate the outlook of the young men in question. In short for practical purposes it avails little or nothing in the deterrence of jihadism, whatever merits it otherwise embodies.

3.13 There may be an appeal, thirdly, as from wiser heads to young hot-heads, that violent jihad is not the way forward and that it is the duty of the British Muslim to earn a living, bring up a family, and to join the hundreds of thousands of his co-religionists who worship peacefully at the local Mosque. Again, this call will

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<sup>3</sup> 4th Sura verse 91.

all too easily appear to the jihadi as an invitation to neglect or abdicate from the duty central to his narrative<sup>4</sup> ie to throw caution to the four winds and to wage a literal and bloody war against the enemies of Islam in pursuit of the supremacy of Islam, it being possible for the jihadi at any time in history and in any geo-political context to reason himself into the conviction that he is not himself the aggressor—since he is well aware that Allah does not love the aggressor—but is merely the agent of divine retaliation.

3.14 Thus, all these conventional approaches to the deterrence of jihadism simply bounce off the jihadi or “campus radical” as tennis balls thrown at a tank. Can we do any better? One is of course mindful that for every single radical who is actually deterred from his course many lives may be saved and injuries avoided.

3.15 I have concluded that the narrative which informs domestic extremism is a *rational* response to the code of conduct and honour the jihadist plainly discerns in the Koranic discourse, which he accepts as the divine command. It is of no earthly use, as it were, to seek to persuade him that the narrative is in the leastwise inconsistent with that discourse.

3.16 Therefore I conclude that the first step on the path to the rejection of jihadism will be taken, if and where it is ever taken, when the jihadist begins to engage in a process which subjects that discourse itself to a more sceptical and questioning approach, asking in respect of it the difficult questions which occur to many impartial observers. This can in my view only occur in the spirit of open and free debate, rationally and unconstrained by any consideration other than a search for the truth. We are duty-bound, in the spirit of that muscular liberalism coined by Mr. Cameron in his speech to the 47th Munich Security Conference in February of this year, to do all we can to facilitate and encourage that critical approach.

3.17 In conclusion, we may consider one example from history, that of the *kamikaze* squadrons, where observance of the *Shinto* warrior code of honour (death before dishonour, defeat or capture) and the ascription of divinity to the Emperor were powerful enough to lead young men to act in effect as suicide-bombers, a very unusual form of warfare and one with striking similarities to the threat we now face. Even some officers in those squadrons eventually became sceptical, losing faith as it were in the myth or narrative to which they were required to subscribe. We should do all we can to encourage potential jihadists on today’s campuses or elsewhere to question for themselves the basis for the value-system they have thus far adopted.

## RECOMMENDATIONS

1. We should do all we can to encourage potential jihadist whether on campus or elsewhere to question the basis for the value-system he has thus far adopted and the narrative to which he subscribes. This may be by developing our engagement via the internet or by other means with potential recruits to terrorism.

2. In doing so we should accept that a link may plainly be drawn between the text of the Koran and the jihadist narrative, and that it is not only the jihadist but the impartial and open-minded observer who is able to draw that link. We should therefore engage with the jihadist on that basis, one of intellectual integrity and honesty, and seek to raise legitimate and difficult questions about that discourse.

June 2011

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## Written evidence submitted Committee on the Administration of Justice

Thank you for the invitation to the Committee on the Administration of Justice (CAJ) to make a submission in relation the Home Affairs Committee examination of the root causes of violent radicalisation. CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

Northern Ireland is often praised for being a successful model for combating terrorism. Yet CAJ has long believed that human rights abuses fed and fuelled the conflict in Northern Ireland. The undermining of human rights cannot be tolerated and a fresh approach against terrorism, which incorporates the preservation of both the rule of law and international human rights, is needed.

It would appear that the lessons offered by the experience of Northern Ireland have not been learnt as we have seen various policies and practices that appear to have the ability to have negative impact as did similar undertakings here.

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<sup>4</sup> Cross-referenced to the Koranic discourse eg 2nd Sura verses 190–194, 216–217, 244, 249; 3rd Sura verses 140, 146, 152, 167–9, 195; 4th Sura verses 74–77, 84, 89, 91, 95, 101, 104; 5th Sura verses 33–35; 8th Sura verses 39, 65, 9th Sura verses 5, 29, 38–39, 73, 111, 123; 22nd Sura verse 39; 47th Sura verses 4, 35; 48th Sura verses 16, 29; 49th Sura verse 15; 61st Sura verses 10–11; 66th Sura verse 9.

The following submission draws primarily from three documents, which are available in full from our website:<sup>5</sup>

- Submission from the Committee on the Administration of Justice (CAJ) to the United Nations Committee on Economic, Social and Cultural Rights (March 2009);
- Testimony from Aideen Gilmore, Deputy Director of the Committee on the Administration of Justice (CAJ) to Congress of the United States: Foreign Affairs Committee, Sub-committee on International Organizations, Human Rights and Oversight Hearing on “Fulfilling the Promise of Peace: Human Rights, Peace and Reconciliation in Northern Ireland and Bosnia” (September 2010); and
- *War on Terror: Lessons from Northern Ireland*, a CAJ report which fed into the global study on Terrorism, Counter-terrorism and Human Rights undertaken by the Eminent Jurists Panel and organised by the International Commission of Jurists (January 2008).

We draw your attention to four brief points from Northern Ireland which the Home Affairs Committee can draw on when considering the “roots of violent radicalisation” and ways to prevent violent political opposition.

1. *Socio-economic factors* may be a significant and influential recruitment factor for those becoming involved in political violence in Northern Ireland, as we have noted elsewhere, including in our submission noted above to the UN Committee on Economic, Social and Cultural Rights and in the CAJ testimony before US Congress last year.

CAJ is of the view that abuses, both real and perceived, around social, economic, and cultural rights fed and fuelled the conflict in Northern Ireland. This conflict impacted most significantly on the poorest communities, with overt violence interfacing with social and economic rights issues.

According to the government’s own measure of deprivation, 19 out of the 20 most deprived areas in Northern Ireland are located in either North or West Belfast or in Derry. It is no coincidence that these were the areas which saw the highest levels of violence throughout the conflict. For example, out of 1,647 deaths in Belfast during the conflict, 1,240 (75%) occurred in north and west Belfast. Indeed this figure constitutes 34% of the total number of deaths in Northern Ireland during the conflict (3,636). The most comprehensive official data is called the Northern Ireland Multiple Deprivation Measures (MDM). The most recent MDM figures published in March 2010 show that the historically poorest areas in Northern Ireland are in many cases no better off, and in some cases are relatively worse off, than they were during the conflict.

Importantly, a recent study carried out by the Consultative Group on the Past (tasked by the Northern Ireland Office with examining the impact of the events of Northern Ireland’s conflict) found that:

“Particular areas bore the brunt of the violence during the last 40 years. Working class and border areas, in particular, experienced victimisation, ranging from economic and social deprivation to the oppressive presence of military and paramilitary forces”.<sup>6</sup>

Given the significance of economic, social and cultural rights in ensuring that political stability and peace is maintained, it is important to note that statistics show that in the decade following the commencement of the peace process, the proportion of workless households actually increased in those neighbourhoods impacted most by the conflict. This would suggest that those living in areas of most need are now relatively worse off in socio-economic terms even than they had been during the conflict.

Inequality in deprivation between the two communities is also apparent. Whereas in 2005, 13 out of the top 20 most deprived areas were predominantly Catholic, this has now risen to 16. Thus 16 out of the top 20 most deprived areas (80%) are predominantly Catholic.

These statistics tell us two worrying things—the first is that the prosperity that has been experienced by the wealthiest areas of Northern Ireland from the late 1990s has bypassed these poorest sections of our society. The second is that the areas which experienced the worst levels of violence are as badly off, or worse off, than they were during the conflict—and are thus not feeling the benefits of the peace process. This is clearly not a recipe for long term political stability.

If the people in our most disadvantaged communities do not feel the economic benefit of the peace process, they will feel left behind. CAJ fears what the cost of that isolation could be.

2. In light of recent increased political violence in Northern Ireland, it is vital to consider the historical evidence which demonstrates that *upholding human rights and fostering participation and political engagement are more effective ways of stemming political violence than emergency powers*. The government needs to ask why violence is on the rise and how to effectively deal with it.

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<sup>5</sup> Committee on the Administration of Justice website, [www.caj.org.uk](http://www.caj.org.uk)

<sup>6</sup> Report of the Consultative Group on the Past, January 2009, p. 26. See [www.cgpmi.org/Is/doc/Consultative%20Group%20on%20the%20Past%20Full%20Report.pdf](http://www.cgpmi.org/Is/doc/Consultative%20Group%20on%20the%20Past%20Full%20Report.pdf)

It is widely recognised that a heavy-handed response to social discontent and emergency legislation in Northern Ireland proved to be ineffective at combating political violence: the implementation of internment in 1971, for example, was followed by the worst violence of the conflict. Talks between the British government and the IRA in 1974 led to the 1975 ceasefire, together with the creation of a cross-community power-sharing parliament, this led to a decrease in violence in 1974–75. 1975 was also the year that internment was ended.

It was only in 1985, the year of the Anglo-Irish Agreement, that incidents of political violence, primarily shootings and bombings, reduced to the 1970 level. The pre-1970 levels were not reached until the political progress of the mid-1990s and the subsequent IRA ceasefire.

Given these timeframes and sequences, there is the need to consider the wisdom of past actions and responses so as to assist society in moving forwards.

Academic research demonstrates that “emergency powers, coupled with a lack of real political progress until the mid-1990s, has [sic] sustained the level of violence by replenishing the ranks of paramilitary organizations”.<sup>7</sup>

Former government officials such as Lord Diplock and Lord Gardiner have recognised the counter-productivity of special powers. For example, The Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland (the Gardiner Report) states:

We acknowledge the need for firm and decisive action on the part of security forces; but violence has in the past provoked a violent response... The continued existence of emergency powers should be limited both in scope and duration... A solution to the problems of Northern Ireland should be worked out in political terms, and must include further measures to promote social justice between classes and communities... In Northern Ireland memories are long, and past oppression serves to colour present experience; but a more united community is the only real answer to the dilemma of maintaining peace while preserving liberty... Terrorism and subversion in Northern Ireland can only be defeated, or guarded against, by the energetic pursuit of measures against them by the Government, and—equally important—of continued, parallel progress in other fields of social, political and economic activity, especially of community relations as a whole.<sup>8</sup>

Counter-terror measures in Northern Ireland have proven to be counter-productive and in general impact disproportionately on minority groups. Application of such measures can be perceived as a means of *demonising communities* and thus exasperate feelings of exclusion, which raise the fundamental questions of whether such measures deter individuals from engaging in terrorist activities and whether they may inspire anti-state emotions in individuals enough to enthuse engagement with violent anti-state activities.

It may be arguable whether individuals who use politically-motivated violence are generally provoked by the use of *emergency legislation*, yet Irish political dissenters have a long history of being very aware of legislation and the use and abuse of special powers. CAJ has expressed concern that the suspension of the stop and search powers under section 44 of the Terrorism Act 2000 would not curtail the use or over-use of stop and question/search in Northern Ireland given that section 21 of the Justice and Security (NI) Act 2007 powers are even more broad than those granted in section 44 as reasonable grounds for suspicion is not required for a constable to be able to stop and question an individual.

CAJ maintains that in Northern Ireland the implementation of counter-terrorism legislation can incite terrorism. There have been growing reports of harassment and media stories of individuals being stopped and searched up to 20 times in one day (again, what is important is not only reality but perceptions). Equity monitoring systems are not in place so as to be able to determine who is being stopped and searched and whether there is any reason to believe that the powers are being used in an indiscriminate or disproportionate fashion. It would, however, be surprising if these efforts were not targeted at those working class communities seen by the authorities to pose most danger to the peace process, thus giving momentum to the real or perceived grievance and harassment among some of Northern Ireland’s most disadvantaged communities.

As noted above, it is essential to bear in mind that problems can stem, not just from abuse of powers, but also from perceived grievances. For example, whilst it is accepted that internment was a disastrous policy in relation to Northern Ireland, we question whether administrative detention is so very different in impact. We note with concern, for example, the fact that breaching a Terrorism Prevention and Investigation Measure (TPIM), which is a civil order, would amount to a criminal offence. This amounts to an unacceptable blurring of the line between civil and criminal law; the criminalisation of an offence that is not actually criminal in nature. As such, these proposals are disproportionate, draconian and overly punitive in nature and may result in further alienation and marginalisation of individuals and communities. Indeed, it is hard to reconcile such measures with the new Prevent Strategy objective to “prevent people from being drawn into terrorism”. CAJ would caution against the potential cause-and-effect between such policies and violent extremism.

<sup>7</sup> O’Connor, Michael P, and Celia M Rumann. “Into the Fire: How to avoid getting burned by the same mistakes made fighting terrorism in Northern Ireland”, *Cardozo Law Review*, April 2003.

<sup>8</sup> Lord Gardiner, Chairman. Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland. Presented to Parliament by the Secretary of State for Northern Ireland by Command of Her Majesty, Cm 5847, January 1975.

CAJ would maintain that the process of proscribing organisations in Northern Ireland did little to quell their impact or recruitment. Moreover, the inconsistent application of proscribing organisations further embedded feelings of bias and injustice among many, notably from the republican and/or nationalist community.

3. History has demonstrated that what transpires inside the *prisons* can have significant impact on community support for proscribed organisations. Prison reform is very much a current topic in Northern Ireland, but long-term resolution of the near-constant disputes with political prisoners in Maghaberry needs careful consideration and the present stance by the Office of the First Minister and Deputy First Minister not to engage with Republican prisoners on protest is deeply worrying. This is particularly so given the fact that, thanks to devolution, the local Minister of Justice has thus far been instrumental in attempting to negotiate and circumvent further prison-based disputes. A policy of “not engaging” should not be viewed as an effective “preventative approach” to suppress violence.

July 2011

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### Written evidence submitted by the Association of Colleges

The Association of Colleges (AoC) represents and promotes the interests of Further Education, Sixth Form and Tertiary Colleges and their students. Colleges provide a rich mix of academic and vocational education. As independent, autonomous institutions established under the Further and Higher Education Act 1992, they have the freedom to innovate and respond flexibly to the needs of individuals, business and communities.

The following key facts illustrate Colleges’ contribution to education and training in England:

- Every year Colleges educate and train three million people.
- 831,000 of these students are aged 16 to 18 compared with 423,000 in schools.
- 63,000 14 and 15 year olds study at a College.
- One-third of A-level students study at a College.
- 44% of those achieving a level 3 qualification by age 19 do so at a College.
- 69% of those receiving an Education Maintenance Allowance (EMA) study at a College.
- Colleges are centres of excellence and quality. The average A-level or equivalent point score for Sixth Form Colleges is 800.1, compared with 761.6 for school sixth forms. 96% of Colleges inspected in 2008/09 were judged satisfactory or better by Ofsted for the quality of their provision.

#### INTRODUCTION

The Prevent Strategy was useful in providing funding and national focus to support local co-operation between Further Education Colleges. The examples below give some details of specific examples. The Strategy also facilitated national working with the Police Counter Terrorism Branch.

AoC produced guidance for our members on preventing violent extremism which was funded by the Department for Business, Innovation and Skills. This helped Colleges identify people who may be vulnerable, develop their own guidance and materials to use with students.

We are concerned, however, that decisions by Government may reduce the ability of Colleges to combat the roots of violent extremism on campus and locally.

#### CUTS TO FUNDING ADDITIONAL ACTIVITIES FOR 16–19 YEAR OLDS

For the last 10 years Colleges and schools have been able to claim funding specifically for activities which support a broad education for young people and that they have used to pay for tutorials, additional courses and enrichment activities, for example sport and arts activities. Colleges use the “entitlement” funding to directly support student success in their chosen courses and qualifications and/or to help them progress into higher education and/or employment.

The Department for Education has reduced this funding for the entitlement from 114 hours to 30 hours. We fear that this cut might threaten the ability of Colleges to help vulnerable students with additional tutorials and mentoring activity.

#### RESTRICTIONS ON FREE TUITION

The Government’s Skills Strategy, published in November, said that Colleges would be expected to start charging potential students aged 19+ on particular types of benefits for their education. It means that adult students on “inactive” benefits will have to meet 50% of the costs of courses (other than those doing basic literacy and numeracy). Colleges fear that this will particularly affect single mothers, those on incapacity benefit and the “working poor”.

“Inactive” benefits are tax credits, housing benefit, income support and other income related benefits such as those claimed by single parents with children under 7, incapacity benefit and certain disability allowances.

Included amongst the courses for which a fee will now be levied is English for Speakers of Other Languages. The Association of Colleges estimate that this will affect 99,000 people, three-quarters of whom are women, who will now be expected to pay a fee of between £400 and £1,200. There is a real fear that this will lead to more people becoming disengaged from the rest of society through an inability to speak English.

We feel that Colleges should be allowed the freedom within their adult learner budgets to target support according to local needs.

#### RESPONSES FROM THREE INDIVIDUAL COLLEGES

AoC received responses from three Further Education Colleges in relation to the terms of reference published by the Committee. We have included these, in full, below.

##### BRADFORD COLLEGE

###### *How risk is identified and by whom and how is the information shared*

Within the Bradford District there is a well-established partnership approach working towards the prevention of violent extremism and terrorism. The partnership is made up of representatives from West Yorkshire Police including the Counter Terrorism Unit, Bradford College, Education Bradford, Bradford Council and Bradford University. The partnership includes a Gold and Silver Group. The Gold Group has the strategic lead and the Silver Group implements the strategy. Both Groups meet regularly throughout the year and feed into the District's community cohesion/prevent action plans. Standing items on the agenda include the monitoring and reporting of risk and tension monitoring across all the partner agencies. Information is then shared with partners so they can monitor or report back any areas of concern within their respective institutions/organisations.

###### *What work Bradford Colleges have done in this area, including partnership working*

Bradford College continues to play an active part through its partnership with the Gold and Silver Group. We have held a number of activities with our students to promote the *Prevent* agenda:

- placing a member of staff on secondment working with the police to test out their tools and obtain feedback from students;
- organising two theatre group sessions in partnership with the police; and
- seminars and discussion groups with students on Prevent.

All the sessions undertaken within the College have engaged over 400 students from a diverse range of learners.

The Head of Security has regular liaison with the Police and Counter Terrorist Unit as and when appropriate. The College also has a Police Constable working on campus who is available to provide support to students. The Inspector, Sergeant, Police Constable, Equality and Diversity Manager and Head of Security have also recently held a meeting to review the partnership work that has been undertaken between the police and College to ensure best practice and have agreed to hold such meetings on a six monthly basis.

###### *What work Bradford College are planning for the future*

Bradford College is still actively involved in the Gold and Silver Groups within the Bradford District; a meeting has been arranged to discuss and develop actions against the Prevent Strategy that was published in June. The College, through its Equality and Diversity Manager, will be Chairing an Education Sub Group of the Silver Group; the terms of reference will be developed after the wider meeting being held to look at the new Prevent Strategy. Following this meeting Bradford College will embed actions into its Community Cohesion Strategy and Equality Objectives as appropriate.

###### *What would help Bradford College continue this work? What are the barriers?*

Financial resource would always be helpful to enable the College to undertake a range of activities both for students and staff through Continuing Professional Development. It would be good to share practice and ideas with other Colleges on how they are addressing and embedding the new Prevent Strategy. It would also be good to have some clearer guidance for FE/HE especially in light of the new strategy.

###### *To make recommendations to inform implementation of the Government's forthcoming revised Prevent strategy.*

We will become clearer on this following our meeting to look at how we address and implement the new strategy within the Bradford District through our partnership.

## BARKING AND DAGENHAM COLLEGE

### *How risk is identified and by whom*

Each Learner in Barking and Dagenham College has his/her own Personal Coach whose role it is to directly oversee the learner's pastoral, tutorial and academic needs. They get to know well their group of learners over the course of the year and so are best placed to spot signs of radicalisation or involvement in extremism. We also have a specialist team of Opportunities Coaches who are trained in interpersonal work and learners are referred to them to discuss problems they are having while at College. Concerns relating to "Preventing Violent Extremism" (PVE) would be conveyed to one of the two PVE officers in the College who are the gatekeepers for referral to outside agencies and have had training. One is the Director of Personalised Learner Support Services and the other is the Head of Study Support.

### *How is information shared*

The College has a variety of Concern forms which can be used for PVE issues or a simple email to one of the two PVE officers will suffice. In the past we have referred concerns directly to the Met Police Channel unit, but now the Local Authority has identified a coordinating person who takes referrals and sends them to the relevant person in the Borough.

### *What work Colleges have done in this area, including partnership working*

- The Director of Personalised Learner Support Services attends Policy Exchange meetings for PVE and London College PVE meetings to contribute to the discussion about how this work should progress.
- Barking and Dagenham College hosted the first of the LSIS PVE FE College workshops on PVE and most of the attendees were key College managers.
- The Director of Personalised Learner Support Services is a member of the Borough Tension Monitoring Group and attends about 6 times per year to share and receive intelligence about violent and potentially violent behaviour in the community. This group is attended by several borough Departments as well as the local Police and NHS.
- The College has had several sessions for learners called "Act Now" which is an active role-playing session for youngsters to make them aware of radicalisation and how the police respond to this threat.
- The College has drawn up a PVE Strategy Document with Action Plan in 09/10. It served us well for a year but we have not taken it further this year, as central government is rethinking its strategy and we are awaiting guidance.
- We have had a bespoke PVE and Ethnic Diversity workshop run by the College Youth Worker for our Student Council, to raise their awareness of the threat of radicalisation and violent extremism while maintaining and respecting the diversity of faith and ethnicity in the College community.
- We have had occasion to refer one learner to the Met Police Channel unit.

### *What work Colleges are planning for the future*

We are awaiting a steer from Central Government but we intend to continue with close working with the Metropolitan Police as indicated above. We are also planning to contact "Faith Matters" regarding working in partnership on a College project. We would also be interested in having some key staff on a "Train the Trainers" course in PVE so we can more easily spread the awareness across college staff.

### *What would help Colleges continue this work. What are the barriers etc?*

1. PREVENT is a negative title for this work.
2. PVE strategy needs to be clearly identified as broader than targeting Islamic Fundamentalism. For instance, in Barking and Dagenham we have BNP concerns too.
3. It is not clear how progress in relation to PVE relates to the OFSTED inspection criteria in FE.

## BLACKBURN COLLEGE

### *How risk is identified and by whom*

The vigilance of Blackburn College staff both in and out of the classroom is a key component to identifying risks to students and the college community.

The PVE agenda is incorporated into the Safeguarding training cross College both internally and with specialist staff development from different agencies.

The College works with the Community Cohesion and Prevent teams in the police, accessing a range of training both with staff and students.

PVE is also embedded in the Safeguarding referral process in Blackburn College. The College has successfully embedded the PVE agenda into its student support approaches. The College promotes the well-being of students including enforcing safe behaviours in the use of the internet. Blackburn College is confident in seeking further support from the community and other local partners to work with individuals or groups of students.

The College also works with partner agencies such as the police in an operational way in order to provide a safe learning environment and campus.

The Principal, Ian Clinton, is a key member of the Champion Principals Group on Preventing Violent Extremism. The Head of Learner Services represents the College on the Pan Lancashire Channel Panel. The College is also represented at the Lancashire Prevent Forum and the Contest Strategy Group. The College is also part of the Blackburn with Darwen Community Cohesion Group with several schools and the local authority.

The Channel process is integral to the Contest strategy, the Government's strategy for dealing with counter terrorism. Within the Contest strategy there are four strands, Prevent, Pursue, Protect and Prepare.

The Prevent strategy has a number of objectives linked to supporting: vulnerable institutions, challenging ideologies and supporting individuals who may be at risk of being drawn into violent extremism. The College works as part of the Channel project in Blackburn with Darwen and now pan-Lancashire which looks at supporting individuals, using existing collaboration between local authorities, the Police, Statutory partners and local communities to:

- Identify individuals at risk of being drawn to VE.
- Assess the nature and extent of that risk.
- Develop the most appropriate support for the individual concerned.

The role of Multi-agency Channel Panel is to develop an appropriate support package to safeguard those at risk of being drawn into VE based on an assessment of their vulnerability. The panel is chaired by the local authority and includes statutory and community partners.

#### *How is information shared?*

The Channel process, with which Blackburn College works, is not for gathering intelligence. The process, in common with other programmes, does require the sharing of personal information about people at risk.

An information sharing agreement is in place at local level to facilitate this process, and the College also works with the community tension reports for partner agencies.

The College works with a range of different agencies to meet the diverse needs of learners effectively and shares information requested in accordance with data protection guidelines.

#### *What work has Blackburn College done in this area, including partnership working?*

Blackburn College aims to be a centre of excellence for demand-led education, to be the provider of choice for employers and to work with learners and stakeholders to enhance employability and social cohesion. In 2009–10 the College was invited to present a good practice workshop in enhancing Social Inclusion and Community Cohesion at the Annual AoC Conference. The College is an active partner in community leadership, with other College leaders as well as statutory agencies and community groups.

The College is a local and national leader on the Inclusion and Social Cohesion agendas and the student population of the College reflects the diversity of the local authority. 58% of the student population are from widening participation backgrounds and 33% from BME backgrounds. Social deprivation, poverty of aspiration, integration and cohesion are key drivers within the local authority and the College has strategic objectives aligned to these agendas. In seeking to develop the curriculum and services it provides, the College is in consultation with a range of groups in order to fully meet the needs of its learners and the local economy. In doing so, the College has developed student, staff and community voice dialogues titled "100 Voices" events to develop understanding and provide a safe place for debate around issues challenging the local population, such as Interfaith dialogues, "Forced and Arranged Marriage" and "Vulnerability to Extremism" events have been developed to great effect. The student voice and engagement processes have informed our improvement planning, self-evaluation and policy review.

These dialogues have been commended as a case study in Diverse Britain stating "Blackburn College embraces the difference of its staff and students... Blackburn College is successful in its approach to diversity." The College recognises and works to support cohesion within the context of challenging political and faith agendas within the local area. Previously the College was a Lead College developing "Act Now" to work with Preventing Violent Extremism. The College was one of two exemplar FE Institutions establishing the Principals Champion Group to develop a Toolkit which helps the sector contribute to the PVE agenda. Vulnerability to Extremism is embedded into Safeguarding training.

The College is also a key FE member of the Lancashire Community Cohesion Partnership (LCCP) which explores alternative perspectives about six of the Lancashire Community Cohesion Partnership's (LCCP) research themes: Recession/deprivation, Urban/rural issues, Black and minority ethnic populations and race relations, Traditional white communities, Health and well being Intergenerational issues.

*What work Blackburn College is planning for the future*

Blackburn College is now a member of the new Lancashire Channel Panel. There is currently work being undertaken with the Police Prevent team to map events and training as part of the new Prevent strategy, reviewing the ongoing professional development needs for staff to build capacity for preventing violent extremism.

“Challenging prejudices” and “exploring and promoting diversity” is embedded in our proactive *Every Learner Matters* tutorial model. Blackburn College is a recognised leader in the community and contributes to driving economic development and regeneration through our participation and leadership. A key part of our role includes our success in engaging with the social challenges our community and learners face.

The College Chaplaincy provides a safe environment within the College and has links with the Student Union and Blackburn Cathedral to facilitate debates and dialogues on controversial issues. This has been very successful in engaging University Centre students and staff and will be fully incorporated across the FE activities in the next academic year. The Chaplaincy meets regularly with the Blackburn with Darwen Interfaith Chair and is currently actively involved in developing activities within the College and community for the forthcoming interfaith week in October 2011.

*What would help Blackburn College continue this work. What are the barriers?*

Nationally the reduction of entitlement funding from 114 to 30 hours will impact considerably on the contact and supervisory time tutors will have with students. This had led many Further Education providers to look at alternative models of tutorials, these are likely to include an increased focus on one-to-one tutorials. This reduction in entitlement funding nationally could hit the particular area of working in many Colleges that have a pro-active response around PVE agenda. Despite the reduction in this funding Blackburn College will however continue the range of pro-active and innovative work to identify those students “at risk” and work with local statutory agencies to ensure vulnerable persons are supported. This may be a challenge for the sector to continue to offer comprehensive pastoral support and enrichment programme. Targeted additional funding will be needed to enable the sector to develop its response in line with the new PVE agenda.

July 2011

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**Written evidence submitted by Cageprisoners**

Cageprisoners is a not-for-profit company limited by guarantee which operates as a human rights NGO. The organisation seeks to work for political Muslim detainees, specifically those interned as a result of the War on Terror and its peripheral campaigns, by raising awareness of the illegality and the global consequences of their detention. By promoting due process, the vision of the organisation is to see a return to the respect of those fundamental norms which transcend religion, societies and political theories.

Cageprisoners comprises of an advisory group which includes patrons, seasoned activists, lawyers, doctors and former detainees. From the group, a board has been elected which oversees the strategy and management of the organisation and its employees. By working in such a way the working environment of the organisation can constantly be reviewed in light of its aims and objectives.

**1.0 EXECUTIVE SUMMARY**

1.1 The original *Prevent* strategy proved to be counter-productive both in terms of its strategy and its implementation. The government has attempted to rework the way in which it approaches the Muslim community, and unfortunately the revised formulation only seeks to further alienate Muslims from the mainstream of society.

1.2 The organisation Cageprisoners has put together a submission to the Home Affairs Committee in order to provide an alternative narrative to assumptions made by the Committee.

1.3 In relation to the areas of concern of the Committee, we seek to provide responses to points 4 and 5—relating to appropriateness of current preventative approaches and making recommendations. We provide here an executive summary of our report in order to give an overview of our concerns.

**2.0 PROBLEMS WITH THE PREVENT STRATEGY**

2.1 The approach that has been taken by the government in relation to “radicalisation” seems to very much target the Muslim community, as with its predecessor. There is no specific targets that have been identified, and rather, it is the entire community that is suspected.

2.2 The approach further sets the tone that the government is imposing a version of Islam on the Muslims in the UK that it deems to be acceptable. Thus legitimate political opinions and concerns are to be sidelined. The language of “extremism”, “radicalism” and “terrorism” is being used interchangeably with theological positions being taken by Muslims.

2.3 The continued failure of the government to identify foreign and domestic policy concerns of the Muslim community is a continued factor in the alienation of the community. Terrorism has proven to be a choice of methodology once alienation has taken place, and so the suggestion that it is an ideological struggle is very far from understanding the root causes for such behaviour.

2.4 Political rejection of parliamentary democracy being noted as factor in the radicalisation of Muslims is absurd. Those Muslims who reject such a system exercise their critique of the UK’ systems in the same way as any other group, it does not necessitate that they are leaning towards terrorism.

2.5 The *Prevent* programme was specifically introduced in order to target and spy on the Muslim community. Its continued use will continue to present it as a “spy” programme which will again only reinforce current perceptions of profiling.

2.6 The fact that terms such as “extremism” and “radicalisation” do not have fixed legal definitions. This has resulted in great confusion for Muslims as they seek to try and understand how they are being viewed. With “radicalisation” being included in this shifting strategy, the Muslim community will begin to feel increasingly alienated as they will not be able to express themselves fully.

2.7 The strategy gives the impression that Muslim political “extremism” and “radicalism” is a pathway to violence and terror. In fact according to the strategy only 15% of those convicted have previously been linked to alleged “extremist” groups.

### 3.0 RECOMMENDATIONS

3.1 The resources dedicated to *Prevent* would be better spent on policing and investigation work.

3.2 The names/organisations of those involved in supporting *Prevent* should be published in order for the Muslim community to see where advice has been sought. Without this, they will assume that the various communities that exist in the UK have not been adequately consulted.

3.3 Muslims will continue to reject any such strategy if they feel that their voice has not been heard, this should be rectified by the government to make them feel included in the process.

3.4 The strategy should incorporate alternative analyses of political violence and its root causes.

3.5 There should be an independent investigation into the causes of terrorism by conducting interviews with convicted terrorism suspects. Understanding their rationale will help to inform any strategies better.

3.6 Any project or website funded by *Prevent* should be clearly labelled. By having it publicly known which activities are in relation to *Prevent* the Muslim community will feel that they are not being spied on, but rather being engaged with.

3.7 There must be clear processes in place, for Muslim communities to challenge/overturn *Prevent* projects that they have concerns about.

3.8 Any strategy should make it clear that the government is not seeking to impose a version of Islam on the Muslim community that is alien to them. That Muslims have the right as citizens to freedom of political thought, assembly and association, and that *Prevent* should not be used to deny them those rights.

3.9 The Government should clarify whether support for resistance to occupation overseas falls within the definition of extremism in the glossary.

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### Further written evidence submitted by Cageprisoners

*To consider the appropriateness of current preventative approaches to violent radicalisation, in light of these findings, including the roles of different organisations at national and local level*

#### 1.0 Profiling Muslims

1.1 A major flaw identified (by the Review) in the last *Prevent* policy is confusion of *Prevent* policies with integration policies. This appears to have been addressed and is welcome. However only 20% of all *Prevent* activity has been exclusively terrorism related and 80% cohesion and integration (point 6.26 of *Prevent* report). We do not believe that there is justification for a *Prevent* policy that encompasses the entire Muslim community.

1.2 There is no change in the narrative that underpins the policy, from the original. The narrative in relation to terrorism, “extremism”, “and “radicalisation” and Muslim/Islamic issues is heavily influenced by US and UK think tanks and policy groups, ie it is ideological and political. The bibliography and sources in the *Prevent* review are overwhelmingly non-Muslim. Hence many of the statements in relation to Islam in the review display a lack of deep understanding of Islam and theological/sectarian issues.

1.3 Traditionally local authorities have excluded from funding religious or political activities. *Prevent* activities are both religious and political. We think Local authorities are ill equipped for this role and it will simply end up damaging the excellent community relations built up by councils in many areas.

1.4 *Prevent* is a political programme more than counter terrorism. We are concerned that the police, teachers and other professionals are being “politicised” and asked to play a role in a political programme that is about Muslim politics and Islamic theology. This is something of which they have little understanding and it is not their role.

## 2.0 Analysis of the problem/root causes of political violence

2.1 All terrorists and acts of political violence have an ideology. But terrorism and political violence is not caused by ideology. Terrorism is a methodology not an ideology.

2.2 British Muslims believe that the violence emanating from the Muslim world is a direct consequence of the political situation in those countries, and western involvement in occupation, support for dictatorships that have, and continue to, cause so much suffering to Muslims. There is not a single reference to this in the strategy.

2.3 We also do not accept that some commit acts of terrorism because they don't support parliamentary democracy. This is more to do with alienation from the entire system than it is with parliamentary democracy in particular.

2.4 The strategy seems to draw on all kind of sources in analysing causes and the problem, except the most obvious one, those that have been convicted of terrorism and related offences throughout Europe. It breaks down their social characteristics, age and ethnicity, but not their views and motivations. This should be redressed in order to provide a correct conceptual framework for understanding these issues.

## 3.0 Targeting the Muslim community as a whole, secrecy and spying

3.1 The strategy states “*the percentage of people who are prepared to support violent extremism in this country is very small*” (para 3.3). We know that the number of those who have gone on to plan or commit acts of violence is even smaller. Despite this the *Prevent* policy targets almost all aspects of Muslim community life. The strategy goes on to talk about prevent activity focussed on Muslims in schools, madrassahs, universities, prisons, mosques, Muslim charities, Muslim women, community projects and activities overseas ie almost every aspect of Muslim life. We cannot see a justification for such a comprehensive targeting of the lives Muslims lead.

3.2 Local authorities knowing that *Prevent* is unpopular have tended to badge projects as cohesion and not to mention the funding programme on documents and activity (it is normal Government practice to require Councils to publicise the funding programme).

3.3 Some projects have been commissioned disingenuously under the guise of community interests eg the spy cameras in Birmingham or the Muslim needs research in Liverpool which was in effect a community mapping exercise of Muslim organisations for the benefit of the police and local authority officers, and to which the community objected strongly. Information on all projects funded by *Prevent* has not been forthcoming and sometimes shrouded in secrecy. Thanks to the efforts of the Tax Payers Alliance this information was collated, however some councils refused to provide information.

3.4 Communities should be able to challenge *Prevent* projects about which they have concerns.

3.5 Those Muslims that have concerns about *Prevent*, its principles, its aims, and do not wish to engage with it or its activities, should have the freedom to choose not to get involved. However this freedom cannot be exercised if *Prevent* projects are disguised and not clearly labelled. In some cases Muslim scholars have not been aware that they have participated in *Prevent* funded activity, and have indicated they would not have attended had they been aware of this fact.

## 4.0 The problem of definition, the law and labelling of people

4.1 Terms, definitions and labelling are having a major impact on Muslim rights.

4.2 We are concerned that the strategy will further erode Muslim rights and freedoms and increase religious discrimination. These rights have already been affected by terrorism laws. This legislation added to the *Prevent* strategy which uses, loosely defined labels such as “extremism” and “radicalisation” interchangeably with terrorism and violence, creates an impression that they are all unlawful activities and a threat. This message is reinforced by media stories. This can legitimise officer perceptions and prejudices about Muslims and lead to differential treatment.

4.3 Who is responsible for defining or labelling an individual or group as extremist or radical, or vulnerable to extremism? And what rights do those so labelled have to challenge that label, particularly if they are to be denied rights such as to funding, access to jobs, to book publicly funded venues, exclusion from talking or activism on campus, non-attendance by government figures at events, and probably an intelligence file.

4.4 Much of this labelling takes place via the media and think tanks, and relies on propaganda, out of context quotes, and appears to be a moving target. Groups once considered moderate, and who have in a real sense co-operated with the *Prevent* agenda from the early days, are now considered extremist (para 3.18).

The strategy gives the impression that Muslim political “extremism” and “radicalism” is a pathway to violence and terror. In fact according to the strategy only 15% of those convicted have previously been linked to extremist groups (5.37).

*To make recommendations to inform implementation of the Government's forthcoming revised Prevent strategy*

## 5.0 Profiling Muslims

5.1 The resources dedicated to prevent would be better spent on policing, intelligence work, and preventing terrorism.

5.2 The majority of the Muslim community will remain unsupportive of the *Prevent* strategy, and view that their concerns have been ignored.

5.3 It would be useful for civil servants to publish names of advisers, think tanks, and consultants that have been used to draft the strategy.

## 6.0 Analysis of the problem/root causes of political violence

6.1 As long as the causal analysis is flawed and at odds with the overwhelming majority of Muslims, the policy will not enjoy much support from them.

6.2 Independent academic research, interviewing those convicted of terrorism should be conducted and results available widely to get a real understanding of causes rather than relying on theory, conjecture and propaganda.

## 7.0 Targeting the Muslim community as a whole, secrecy and spying

7.1 Muslims and their groups should be free to choose to engage, or not, in *Prevent* projects/activities. *Prevent* funded projects, and activity should clearly display “funded by Prevent logos” in line with protocols for other funding regimes.

7.2 Full details of projects funded, amounts, and what activities, achievements, should be available to local communities, and nationally for scrutiny by the Muslim community.

7.3 There must be clear processes in place, for Muslim communities to challenge/overturn *Prevent* projects that they have concerns about.

## 8.0 The problem of definition, the law and labelling of people

8.1 The Strategy should make it clear at the outset, that extremism and radicalism is not unlawful and can be healthy. That Muslims have a right as citizens to freedom of political thought, assembly and association, and that *Prevent* should not be used to deny them those rights.

8.2 The Government and Local authorities should list clearly those beliefs considered to be “extremist” and “radical”. It should ensure that all public service providers know that this applies equally to all communities not just Muslims.

8.3 It should publish lists of those groups and individuals locally and nationally who fall within these definitions and, hence are ineligible to apply for funding, excluded from public debate, and booking venues.

8.4 It should lay down clear procedures for those who wish to challenge their exclusion.

8.5 The Government should clarify whether support for resistance to occupation overseas falls within the definition of extremism in the glossary.

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## Written evidence submitted by Professor Clive Walker, School of Law, University of Leeds

### INTRODUCTION

1. This paper responds to the call for evidence from the Home Affairs Committee in connection with its inquiry on “The roots of violent radicalisation”. The paper is confined to just one aspect of that inquiry, namely, “To examine the operation and impact of the current process for proscribing terrorist groups”.

2. Discussion in this paper derives from my research over many years into anti-terrorism laws. Fuller details and arguments on these issues may be found in my book, Walker, C., *Terrorism and the Law* (Oxford University Press, Oxford, 2011) (see chapter 8 on “Extremist organizations, expressions, and activities”).

### PROSCRIPTION OF ORGANISATIONS ENGAGED IN VIOLENCE

3. Part II of the Terrorism Act 2000 deals with the proscription of organizations. Under the Terrorism Act 2000, section 121, the interpretation of “organization” includes any association or combination of persons, a phrase wide enough to encompass diffuse networks such as Al-Qa’ida and self-generating combinations inspired by their ideologies. However, the looser the network, the more difficult will become proof of group membership, rather than loyalty to personal confederates. As a result, the first lesson is that proscription does not primarily act to criminalise membership. This point is reflected in the very modest number of prosecutions under Part II in Britain. While membership charges are more constant in Northern Ireland, they often provide an added, not unique, charge. In summary, successive governments have called in aid three arguments for proscription:<sup>9</sup>

“First, it has been, and remains, a powerful deterrent to people to engage in terrorist activity. Secondly, related offences are a way of tackling some of the lower-level support for terrorist organisations. ... Thirdly, proscription acts as a powerful signal of the rejection by the Government—and indeed by society as a whole—of organisations’ claim to legitimacy. ... The legislation is a powerful symbol of that censure and is important.”

4. Organizations designated as concerned in Irish terrorism have long been proscribed—in the case of the IRA, proscription has existed since 1918. Under the Terrorism Act 2000, Part II, proscription can only be nationwide, so that no group is proscribed in Northern Ireland alone, though some have no capability or impact in Britain. The listings under the Terrorism Act 2000 are established in two ways. First, groups which were mentioned in prior legislation are listed afresh in Schedule 2. Extra groups may be added under section 3(3) by order, but no Irish group has been listed (nor, as yet, de-listed) since 2000. Three points are submitted for consideration by the Committee arising from this brief description.

- (a) The practice of national coverage of proscription may be disproportionate as affecting some Irish groups which do not operate in the Britain (and the same point could be made about more international banned groups which do not operate in Northern Ireland). One appreciates that operational convenience favours national orders and also that partial coverage may incentivise the displacement of activities. Nevertheless, there should be reasoned justification for national coverage in every case and not simply an assumption of necessity.
- (b) Deproscription of Irish groups (such as the IRA) is a highly sensitive political issue but is one which must be faced if “normalisation” is to progress as a process. The Independent Monitoring Commission<sup>10</sup> confirmed that by 2008 the Provisional IRA was withering away.<sup>11</sup> Given the subsequent disbandment of the Independent Monitoring Commission, there is a real danger that the momentum in the process of security normalisation in Ireland will falter. As time passes, the proscription of groups which have been confirmed as no longer armed or even harbouring intentions of resuming violence will become unsupportable in law. Since deproscription would be a momentously sensitive decision in Ireland, it is recommended that a special commission be established to check finally on decommissioning by the relevant groups already identified by the Independent Monitoring Commission. The process will require liaison with the Republic of Ireland.
- (c) The Independent Reviewer of Terrorism Legislation (David Anderson QC) suggests that “The absence of an organisation said to be concerned in Northern Ireland related terrorism from the list of “specified organisations” under the Northern Ireland (Sentencing) Act 1998 should be given particular weight when the proscription of such an organisation is reviewed.”<sup>12</sup> The Independent Reviewer is right to seek to avoid a total disconnection between proscription and specified organisations. However, the schemes do serve different purposes, with specification reflecting a political “stick and carrot” approach towards equivocation about political change. The evidence for a decision in one process should be available and considered in decisions in the other, but, as confirmed in *Re Williamson*,<sup>13</sup> the two processes are distinct.

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<sup>9</sup> Hansard HC Standing Committee D, col 56 (18 January 2000), Charles Clarke.

<sup>10</sup> Northern Ireland (Monitoring Commission etc) Act 2003.

<sup>11</sup> *Nineteenth Report* (Cm 7464, London, 2008) ch 2.

<sup>12</sup> Anderson, D, Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006 (Home Office, London, 2011) para 4.36.

<sup>13</sup> [2000] NI 281.

5. No (non-Irish) domestic group has ever been proscribed under the terrorism legislation. Welsh and Scottish extremists have not possessed the sophistication, threat or overall strength to warrant suppression. The same applies to animal welfare and environmental violent militants. In *Animal Rights Extremism*, the Home Office expressed itself as unconvinced that proscription would assist.<sup>14</sup> Some neo-Nazis have been arrested and convicted under anti-terrorism laws.<sup>15</sup> These reactions appear attractive in creating symmetry with the *jihadis*, but such individuals generally lack the sophistication, the scale, and the international linkages to make proportionate this application of anti-terrorism laws. Nor have they been organised within any settled group which could attract proscription.

6. Reflecting the growing threat from international terrorism, section 3 can also apply to groups primarily based abroad, and these targets have been the subject of 46 orders (with one deproscription).<sup>16</sup> Thus, the list is relatively fluid compared to the Irish list, though in the sole direction of accretion. This trend is aided by the fact that the Terrorism Act 2000, section 3, applies a steadfastly executive approach to the activation of proscription. In *Lord Alton of Liverpool & others (In the Matter of The People's Mojahadeen Organization of Iran) v Secretary of State for the Home Department* (hereinafter the “Alton case”),<sup>17</sup> the test in section 3(4) has been interpreted as applying in two stages. The first stage is whether the Secretary of State has an honest belief on reasonable grounds to satisfy the statutory test in section 3(4). Then a second stage addresses whether discretion should be used to apply proscription on policy grounds. Once an order has been made, there is no statutory time-limit for review or reissuance, though the Home Secretary has reassured that “We do not put their names in a filing cabinet and forget about them”.<sup>18</sup> Proscription orders are kept under rolling review every twelve months by the Proscription Review and Recommendation Group and the Proscription Working Group, convened within the Office for Security and Counter Terrorism within the Home Office, but with Northern Ireland Office, Foreign and Commonwealth Office, Cabinet Office, police and security agency support.<sup>19</sup> The *Alton* case considered regular review to be required by administrative law,<sup>20</sup> so it is unclear whether sufficient observance of the “legality” of this restriction on freedom of association is achieved by means of a non-statutory and closed system. Nor has the current system resulted in any deproscription on the Government’s own initiative since, as the Independent Reviewer observes, the cards are stacked against Ministerial action: “Taking some organisations off the list could well be unpalatable to foreign governments. Huge political sensitivities would undoubtedly attend any governmental deproscription initiative with a bearing on Northern Ireland.”<sup>21</sup>

7. A further problem is that the modes of legal challenge either to an initial order or by way of subsequent deproscription are not at all user-friendly. The Terrorism Act 2000 allows for an application under section 4 to the Secretary of State for setting aside an order. This first stage of challenge largely involves an administrative review which, while no doubt thorough, does not allow for independent scrutiny or the involvement of the applicant.<sup>22</sup> If refused (and none of the 11 applications has been conceded by the Minister),<sup>23</sup> the second step is an application for review by the Proscribed Organisations Appeal Commission (“POAC”). Direct application to POAC is not allowed—the government wishes to consider the matter first and also to save possible expense.<sup>24</sup> The procedures may be used to contest the initial order for proscription and to challenge the continuing propriety of an order. The establishment of the POAC under section 5 of the Terrorism Act 2000 was an advance over previous arrangements, but the system suffers from considerable weaknesses. The only successful deproscription via POAC application was the *Alton* case,<sup>25</sup> which concerned the People’s Mojahadeen Organization of Iran. Albeit that the application was successful, that case illustrated several problems.

8. In summary, the problems with the systems for review and challenge are as follows:

- (a) It may be difficult to locate a person or group ready and willing to bring an application. Having been proscribed, there will be reluctance to associate oneself with illegality. Notably, the *Alton* case was not brought by a former group member, and the issue of standing was surprisingly not raised. Though a wide interpretation was thus given to “person affected”, it will still involve

<sup>14</sup> (London) para 3.7.5.

<sup>15</sup> See especially the cases of Martyn Gilleard (*The Times* 26 June 2008, p 20); Nathan Worrell ([2009] EWCA Crim 1431); Neil Lewington (*The Times* 16 July 2009, p 23); Terence Gavan (*The Times* 16 January 2010, p 29); Ian and Nicky Davison (*The Times* 15 May 2010, p 31).

<sup>16</sup> See SI 2008/1645.

<sup>17</sup> PC/02/2006, 30 November 2007 at paras 67, 68; *Secretary of State for the Home Department v Lord Alton of Liverpool* [2008] EWCA Civ 443 at para 22.

<sup>18</sup> HC Standing Committee D, col 65 (18 January 2000), Charles Clarke.

<sup>19</sup> Lord Carlile, Report on the Operation in 2007 of the Terrorism Act 2000 (Home Office, London, 2008) para 42, Report on the Operation in 2008 of the Terrorism Act 2000 (Home Office, London, 2009) paras 53, 55; Anderson, D., Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006 (Home Office, London, 2011) para 4.6.

<sup>20</sup> PC/02/2006, 30 November 2007 at para 73.

<sup>21</sup> Anderson, D., Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006 (Home Office, London, 2011) para 4.14.

<sup>22</sup> Anderson, D., Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006 (Home Office, London, 2011) para 4.12.

<sup>23</sup> Anderson, D., Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006 (Home Office, London, 2011) para 4.11.

<sup>24</sup> Hansard HL vol 613, col 262 (16 May 2000), Lord Bassam.

<sup>25</sup> PC/02/2006, 30 November 2007. Unsuccessful applications were made by the Baluchistan Liberation Army, the LTTE and the PKK in 2009: Lord Carlile, *Report on the Operation in 2001–2009 of the Terrorism Act 2000* (Home Office, London) para 68.

considerable courage to take a stance as a supporter and risk being labelled as a sympathizer or even a terrorist. Immunity is granted by section 10 from criminal proceedings for an offence under any of sections 11 to 13, 15 to 19, and 56 of the 2000 Act arising from any submissions in an application. But this half-hearted concession does not relate to other offences or rule out other retribution such as immigration proceedings.<sup>26</sup>

- (b) The costs of litigation before POAC may also be too substantial for many groups to contemplate.<sup>27</sup>
- (c) The POAC review is limited. By section 5(3), the POAC shall allow an appeal against a refusal to deproscribe if it considers that the decision to refuse was “flawed when considered in the light of the principles applicable on an application for judicial review”. This phrase was meant to avoid full review of the factual merits. Furthermore, under general administrative law, POAC procedures will have to be exhausted before turning to the Divisional Court. This point was sustained in *R (on the application of the Kurdistan Workers’ Party and others) v Secretary of State for the Home Department*.<sup>28</sup> While the statute seems to close off judicial activism, the *Alton* case suggests a more permissive view applies in practice, since the Court of Appeal confirmed the need for an “intense and detailed scrutiny”.<sup>29</sup> On the basis of that review, the POAC had concluded that the Home Secretary’s decision had been flawed at the first stage and had confused current involvement in terrorism with “a secret mental reservation” about eschewing violence for ever as well as seeking explicit renunciation as an absolute requirement.<sup>30</sup> At the second stage, the POAC graciously accepted that the minister had not refused to deproscribe as a diplomatic sop either to Iraqis or Iranians. But the Court of Appeal strongly criticised the minister: “It is a matter for comment and for regret that the decision-making process in this case has signally fallen short of the standards which our public law sets and which those affected by public decisions have come to expect.”<sup>31</sup>
- (d) The constitution and procedures of the POAC are set in Schedule 3 and in the Proscribed Organisations Appeal Commission (Procedure) Rules 2007.<sup>32</sup> By Schedule 3 paragraph 1, appointments shall be made by the Lord Chancellor. Given that members “shall hold and vacate office in accordance with the terms of his appointment”, there is no guarantee of statutory independence for the purposes of Article 6 of the European Convention.
- (e) In common with other areas of terrorism litigation, any applicant will experience reduced due process safeguards. By paragraph 5 of the Rules, the Lord Chancellor shall make procedure rules, including for determining without an oral hearing in specified circumstances, for determining the burden of proof and admissibility of evidence,<sup>33</sup> and for securing that information, including reasons for decisions,<sup>34</sup> is not disclosed contrary to the public interest. Though legal representation is to be allowed, the rules may provide for full particulars to be withheld from the organization or applicant and from any representative, and the POAC shall be empowered to exclude persons (including representatives) from proceedings. Under paragraph 7, the relevant law officer may appoint a “special advocate” to represent the interests of an organization or other applicant. Lord Carlile has also suggested that the quality of review could improve were POAC to be provided with a security-cleared case assistant.<sup>35</sup>

9. Moving to suggested reforms, the following should be considered. Basically, the review system could be enhanced if the POAC assumed the role not only of reactive appeal tribunal but also proactive review commission. In this way, each proscription order should undergo independent scrutiny. It is therefore suggested that the Secretary of State for the Home Department should still be empowered to issue initial orders<sup>36</sup> but that any new proscription order should be referred forthwith to the POAC which should have the power to confirm or set aside the order within a deadline of 12 months. In addition, any proscription order should expire after three years but then should be renewable, which means that POAC should be tasked with reviewing each renewal order on a three yearly cycle.<sup>37</sup> Unless POAC confirms that sufficient evidence exists or persists to justify proscription, the order should lapse. The existing reviews, by the Independent Reviewer and also the

<sup>26</sup> Hansard HC Standing Committee D col 111 (25 January 2000), Charles Clarke.

<sup>27</sup> A figure of £50,000 is quoted for potential litigation in 2003 by Anderson, D, *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006* (Home Office, London, 2011) para 4.32.

<sup>28</sup> [2002] EWHC 644 (Admin).

<sup>29</sup> [2008] EWCA Civ 443 at para 43.

<sup>30</sup> *Ibid* paras 338, 342.

<sup>31</sup> *Ibid* para 57.

<sup>32</sup> SI 2007/1286 as amended by SI 2007/3377.

<sup>33</sup> Under supplementary r 25, the POAC may receive other evidence that would not normally be admissible.

<sup>34</sup> See the Terrorism Act 2006, s 22(11).

<sup>35</sup> *Report on the Operation in 2004 of the Terrorism Act 2000* (Home Office, London, 2005) para 47.

<sup>36</sup> Thus, no delay need be incurred. Compare Anderson, D., *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006* (Home Office, London, 2011) para 4.24.

<sup>37</sup> Lord Lloyd called for annual reviews, but most orders are not seriously disputed: *Inquiry into Legislation against Terrorism* (Cm 3420, London, 1996) para 13.32.

Home Office groups should continue, but this added judicial based review is necessary to reflect more fairly and effectively the interests of freedom of association. This extra review is warranted because the proscription list has become much wider and has assumed much greater longevity than envisaged in 2000. The other reviews have value, but the Independent Reviewer lacks formal powers to change individual decisions while the Home Office reviews lack independence, transparency, and even quality of scrutiny (*per* Alton). Challenges under European Convention standards have failed to date<sup>38</sup> but will better be answered in the future either under Article 17 or under the limitations to Articles 9 to 11 if it can be shown that reasoned and proportionate measures are being taken and kept actively under independent review.

10. Within the context of a more formal and fixed review system, consideration could be given to allowing participation and representations from a wide range of interested parties. The POAC can assume the role of inquest in the same way as the coroner's court, with a mixture of "privileged participants" (with "a proper interest") and other interested parties by leave of the court.<sup>39</sup> The modified POAC system would not resolve the core problem of secret justice, but it would place an onus on the justification of continued proscription rather than the current drift in favour of continued suppression. The POAC should be expressly allowed to rehear cases rather than being confined to judicial review principles. It should be expressly required to observe the standards set by article 6 of the European Convention on Human Rights. It would then be for the POAC (and the courts on appeal) to work out whether due process standards akin to control orders or akin to challenges to financial sanctions<sup>40</sup> should be applied. In all likelihood, the standards in *AF (no 3)*<sup>41</sup> as applied to control orders when individual liberty is at stake, will probably not be replicated in proscription cases.

11. To improve the scrutiny, the Secretary of State for the Home Department should be required by statute to lodge with a proscription order a declaration which addresses:

- (a) The nature and scale of an organisation's activities.
- (b) The specific and active threat that it poses to the United Kingdom.
- (c) The specific and active threat that it poses to British nationals overseas.
- (d) The extent of the organisation's presence, cohesion, and capabilities in the United Kingdom.
- (e) The need for the United Kingdom jurisdiction to give direct practical support to counter-terrorism in other countries.

This checklist is adapted from the official statement of relevant considerations which was first announced in 2000.<sup>42</sup> Suggested amendments here include an elaboration of the threat in (d) and, in (e), a demand for practical evidence of support and not just a need "to further United Kingdom foreign policy goals by pleasing other governments".<sup>43</sup>

12. The subjection of proscription to stricter review processes has been a feature of legislation in closely comparable jurisdictions.

- (a) In Australia, the Security Legislation Amendment (Terrorism) Act 2002 (as amended by the Criminal Code Amendment (Terrorist Organisations) Act 2004), allows for proscription under the Criminal Code 1995 (Division 102) by two pathways.<sup>44</sup> There may be a finding of the court on conviction for a terrorist offence. Alternatively, the Governor General may promulgate a regulation when the Attorney General is satisfied that an organization has been listed by the United Nations Security Council or is a terrorist organization engaged in a terrorist act. Regulations last for two years and are reviewed by the Parliamentary Joint Committee on Intelligence and Security ("PJCIS"). As was argued by the PJCIS, "The automatic cessation of a listing has been effective in institutionalising the review and ensuring that any chances in circumstances have been taken into account, for example, the renouncement of violence, entry into a peace process, and so forth."<sup>45</sup> The PJCIS has also emphasised the need for a statement of the criteria being applied for any listing,<sup>46</sup> echoing a point made earlier. As observed by the Law Council of Australia:<sup>47</sup>

<sup>38</sup> See *Sheldrake v Director of Public Prosecutions; Attorney General's Reference (No 4 of 2002)* [2004] UKHL 43 at para 54 per Lord Bingham.

<sup>39</sup> See Coroners Rules 1984, SI 1984/552, rr 20 and 37; Coroners and Justice Act 2009 s.47; R (on the application of the *Secretary of State for the Home Department*) v *Assistant Deputy Coroner for Inner West London* [2010] EWHC 3098 (Admin).

<sup>40</sup> See *Secretary of State for the Foreign Office and Commonwealth Affairs v Maftah and Khaled* [2011] EWCA Civ 350.

<sup>41</sup> [2009] UKHL 28.

<sup>42</sup> Hansard HL vol 613, col 252 (16 May 2000), Lord Bassam.

<sup>43</sup> Anderson, D., *Report on the operation in 2010 of the Terrorism Act 2000 and of Part 1 of the Terrorism Act 2006* (Home Office, London, 2011) para 4.2.

<sup>44</sup> See (Sheller) *Report of the Security Legislation Review Committee* (Canberra, 2006) (which proposes the repeal of the association offence); Attorney General, *National Security Legislation Discussion Paper* (Canberra, 2009); Law Council of Australia, *Anti-Terrorism Reform Project* (Canberra, 2009).

<sup>45</sup> Parliamentary Joint Committee on Intelligence and Security, *Inquiry into the proscription of "terrorist organisations" under the Australian Criminal Code* (Canberra, 2007) para 6.15. The Committee recommended a three year cycle.

<sup>46</sup> See for example PJCIS, *Review of the re-listing of Al-Qa'ida and Jemaah Islamiyah as terrorist organisations under the Criminal Code Act 1995* (2006); Parliamentary Joint Committee on ASIO, ASIS and DSD ("PJCAAD"), *Review of the listing of six terrorist organisations* (2005).

<sup>47</sup> Law Council of Australia, *Anti-Terrorism Reform Project* (Canberra, 2009) pp 51–52.

“The absence of transparent criteria has inevitably made it difficult to allay public fears that the proscription power might be utilised for politically convenient ends rather than to address law enforcement imperatives.

The lack of clear, publicly available criteria has also contributed to the fear and alienation felt by certain groups within the Australian community, particularly Arab and Muslim Australians, who are unable to obtain a clear sense of what attributes, beyond religious and ideological commonality, render an organisation susceptible to being proscribed as a terrorist organisation.”

The further lesson to be learnt from Australia is that the experience of the PJCIS is not satisfactory and should not be followed. PJCIS review is not mandatory under section 102.1A of the Criminal Code. It is also more fundamentally a usurpation of a judicial function for a legislative committee to stand in judgment on an individual case of legality, especially as a parliamentary committee is bound to be tainted with party political dictates. Parliamentary scrutiny of individual orders within the UK has improved in recent times from an abysmal standard but still does not allow for direct participation by those affected. As a result, the Law Council of Australia recommends its replacement with a judicial process.<sup>48</sup> However, this proposal was not reflected in the Anti-Terrorism Laws Reform Bill 2009 which instead envisaged an independent listing advisory committee to advise the Attorney-General.

- (b) Under section 83.05 of the Canadian Criminal Code (inserted by the Anti-Terrorism Act 2001), any “entity” may be listed by regulation by the Governor in Council when, on the recommendation (based on reasonable grounds) of the Minister of Public Safety and Emergency Preparedness, the Governor is satisfied that there are reasonable grounds to believe that the entity is involved in, or associated with, terrorism. The power is subject to judicial review within sixty days, subject to special rules as to evidence disclosure and admissibility. Any listing must be confirmed by the Minister every two years.
- (c) Finally, judicial determination has been advised by the Report of the Special Rapporteur, *Protection of Human Rights and fundamental freedoms while countering terrorism*.<sup>49</sup>

#### PROSCRIPTION OF GROUPS GLORIFYING VIOLENCE

13. The United Nations Security Council Resolution 1624 of 14 September 2005 calls upon states to “[p]rohibit by law incitement to commit a terrorist act or acts”. Powers to proscribe organizations which glorify terrorism have been delivered by the Terrorism Act 2006, section 21.<sup>50</sup> A new section 3(5A) inserted in the Terrorism Act 2000 specifies that the power to proscribe under section 3(5)(c) shall encompass the “unlawful glorification of the commission or preparation (whether in the past, in the future, or generally) of acts of terrorism”. “Glorification” requires the reasonable expectation that the audience will emulate terrorism in present circumstances (section 3(5B)), and it comprises any form of praise or celebration (s 3(5C)). Two groups (Al-Ghurabaa and The Saved Sect) were banned in July 2006.<sup>51</sup> Five more were listed in January 2010 as reflecting variant names of the first two, though in terms of organizational history, the founding group was al-Muhajiroun.<sup>52</sup>

14. The boundaries of “glorification” are chronically uncertain and potentially threatening to free speech. The point was fully debated during parliamentary passage. As a result, the word, “glorification”, was relegated from primary use under section 1 because of its vagueness, and it became simply an illustration of “indirect incitement”. Unfortunately, the same change was not made to section 3(5)(c). The wording should now be altered to achieve the same respect for expressive rights as under the Terrorism Act 2006, section 1. This objective could be secured by adopting similar wording as from section 1. It might also be considered whether “reasonable expectation” of emulation demands a sufficient degree of causation. Accordingly, the threshold test should be whether the indirect incitement creates a “substantial risk” of emulation.

15. Another potential problem might be to ascribe responsibility to an organization arising from speech by a member. Must every remark by every member be taken as “official” policy, or must impugned statements emanate from prominent or multiple members? The same point could arise with unsanctioned activities, but violent acts probably require joint planning and often evince formal claims of responsibility. It is easier for an individual to make a wayward impulsive remark on behalf of a group than to carry out an impromptu bombing and ascribe responsibility to the collective. There is a need here for some legal rules to clarify attribution, perhaps based on the holding of office, repetition over time, or repetition by multiple voices. Otherwise, this mode of proscription can become problematic.<sup>53</sup>

“... the issue of attribution is significant because the members of any organisation are rarely a homogenous group who think and talk as one. On the contrary, although possibly formed around a common interest or cause, organisations are often a battleground for opposing ideas, and may

<sup>48</sup> Law Council of Australia, *Anti-Terrorism Reform Project* (Canberra, 2009) p 55.

<sup>49</sup> (A/61/267, Geneva, 2006)) para 26.

<sup>50</sup> The Australian Anti-Terrorism Act (No 2) 2005 allows listing by the Attorney-General and prosecutions for activities where the organization advocates a terrorist act contrary to s 102(1A) of the Criminal Code.

<sup>51</sup> SI 2006/2016, Hansard HC vol 449, col 490 (20 July 2006).

<sup>52</sup> SI 2010/34.

<sup>53</sup> Law Council of Australia, *Anti-Terrorism Reform Project* (Canberra, 2009) p 53.

represent a forum in which some members' tendencies towards violent ideology can be effectively confronted and opposed by other members. The result is likely to be the legitimization of a process of guilt by association."

16. A further issue is that the profusion of organizational names in 2010 points to an endemic weakness in the mechanism of proscription as applied to *jihadi* movements which are far removed from the historically and geographically defined proponents of Irish or other nationalist terror groups whose names are legends in songs and inscribed on gravestones.

#### ADDED GROUNDS FOR PROSCRIPTION?

17. In his recent review, Lord Macdonald was asked to consider whether "the incitement of violence or hatred should become reasons for proscribing organisations that openly espouse this sort of behaviour."<sup>54</sup> This instruction was somewhat obscure, since the direct and indirect incitement of violence or hatred is already forbidden by law, as indicated elsewhere in this paper. So, the proposal must relate to some broader forms of activity. One possibility might be the precursor step of espousing violence or hatred without actually inciting others to those beliefs.<sup>55</sup> The other possible extension would be to move away from the confines of "terrorism" (broad though the term already is) and to establish a parallel proscription regime for groups which espouse or indirectly incite (in the Terrorism Act 2006 sense) racial or religious hatred.<sup>56</sup> In response, Lord Macdonald concluded that, while individuals should be prosecuted, groups should not be subject to new restraints: "Such a legislative step would be strikingly illiberal, extraordinarily difficult to enforce and it would probably run counter to the Review's overriding purpose to roll back State powers."<sup>57</sup>

18. The result is to leave a number of potential candidates for action beyond the realms of the current terrorism legislation. Two might be considered. Most frequently discussed is Hizb ut-Tahrir, which "remains an organization of concern and is kept under close review"<sup>58</sup> and was even mentioned as a candidate for a ban in the 2010 election manifesto of the Conservative Party.<sup>59</sup> Whether proscription would be a worthwhile venture may be doubted. As a matter of principle, there is a right to publish extreme and offensive speech, a right existing not just in European human rights doctrine but long recognised at the heart of English common law.<sup>60</sup> This protection is especially vital for the discourse of political movements, as Hizb ut Tahrir would claim to be. Next, as a matter of operational convenience, the ability of the security agencies to monitor and gather evidence from extremist discourse should trump rendering it less accessible and more guarded in public.<sup>61</sup>

19. The other frequently cited candidate is the English Defence League. While its discourse may often be considered to be "extreme", evidence of its encouragement of terrorism is lacking. Certainly several of its members have been convicted of public order offences, including the founder, Stephen Lennon.<sup>62</sup> But to conflate hooliganism or racism with terrorism would be worthy of the same condemnation as voiced earlier by Lord Macdonald. Unpalatable and unwelcome traits in society may possibly become the subject of the government's "Prevent" strategy,<sup>63</sup> but their immediate labelling as "terrorism" risks the negation of society's values for the sake of remote threats which are better dealt with by other means. In the light of Breivik's attacks in Norway and his claims to links with English far-right extremists, an investigation by the Security Service may reveal a more threatening situation,<sup>64</sup> but it has certainly not become manifest to date.

#### CONCLUSION

20. Expressive speech or associations which encourage violence should not be tolerated. The anti-terrorism legislation reflects a long-standing notion of "militant democracy"<sup>65</sup> in which any state based on legitimate foundations within democracy, accountability, and respect for individual rights should confront opponents who abuse its tolerance. However, the responses to violent speech or violent associations should themselves be proportionate. In applying the test of proportionality, account must be taken of the myriad of less contentious offences than those in the Terrorism Acts 2000 or 2006. Their application in priority would be in line with long-established counter terrorism policy of favouring prosecution to forms of security orders. Such offences

<sup>54</sup> Lord Macdonald, *Review of Counter-terrorism and Security Powers* (Cm 8003, London, 2011) p 7.

<sup>55</sup> Home Office, *Review of Counter-terrorism and Security Powers; Findings and Recommendations* (Cm 8004, London, 2011) p 30.

<sup>56</sup> Home Office, *Review of Counter-terrorism and Security Powers; Findings and Recommendations* (Cm 8004, London, 2011) p 31.

<sup>57</sup> Lord Macdonald, *Review of Counter-terrorism and Security Powers* (Cm 8003, London, 2011) p 8.

<sup>58</sup> Hansard HC vol 472 col 588W (19 February 2008), Tony McNulty.

<sup>59</sup> Invitation to Join the Government of Britain (London, 2010) p 105.

<sup>60</sup> See *Redmond-Bate v DPP* [1999] All ER (D) 864; *Percy v DPP* [2001] EWHC Admin 1125; *Dehal v Crown Prosecution Service* [2005] EWHC 2154 (Admin); *Tabernacle v Secretary of State for Defence* [2009] EWCA Civ 23. But compare *Norwood v DPP* [2003] EWHC 1564 (Admin); *Hammond v DPP* [2004] EWHC 69 (Admin); *Abdul and others v DPP* [2011] EWHC 247 (Admin).

<sup>61</sup> Lord Carlisle, Report on the Operation in 2001–09 of the Terrorism Act 2000 (Home Office, London) para 72.

<sup>62</sup> www.bbc.co.uk/news/uk-england-suffolk-14278957.

<sup>63</sup> See Home Office, *Prevent Strategy* (Cm.8092, London, 2011).

<sup>64</sup> "Cameron orders MI5 review of far-right extremists" *The Times* 26 July 2011 p 7.

<sup>65</sup> See Lowenstein, K, "Militant democracy and fundamental rights" (1937) 31 *American Political Science Review* 417, 638.

include soliciting murder under the Offences against the Person Act 1861, section 4.<sup>66</sup> Public order offences can apply to beheading videos<sup>67</sup> or vituperative protests outside an embassy.<sup>68</sup> Another aspect of proportionality is the recognition of the importance of values other than security, including the value of political discourse for minorities. Whilst the messages of extreme groups are often reprehensible, their views must primarily be negated by more speech rather than silencing by proscription in order that the extremists, the government, and the public can be educated and can learn to respond politically without fear or exaggeration.

July 2011

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### Further written evidence submitted by Professor Clive Walker, School of Law, University of Leeds

#### INTRODUCTION

1. This paper is supplementary to my previous paper dated 1 August 2011. It seeks to update that paper with later information and to respond to some of the arguments raised in the Oral Evidence taken before the Committee on the 6 December 2011. Consistent with the previous paper, these later comments will be mainly confined to the Committee's interest in proscription, in other words, "To examine the operation and impact of the current process for proscribing terrorist groups".

2. Nevertheless, since the Prevent policy is so germane to the inquiries of the Committee a further published paper on these wider policy issues is appended for the attention of the Committee. It may provide some antidote to the rather lurid views expressed in the Oral Evidence Q368, 369, and 373, that universities and the internet represent prime sites of vulnerability for the fostering of terrorism. The oft-quoted fact that 30% of terrorists have attended university simply marks them as normal within the general population. Attendance at universities and the use of the internet are not inherently greater vulnerabilities to society than the use of the M1 motorway by the 7/7 bombers to reach their targets or the fact that, no doubt, they shopped from time to time at a supermarket to purchase peroxide. It is an inherent aspect of contemporary terrorism that society faces "neighbour terrorism"<sup>69</sup> and not terrorism from easily identifiable and culturally distinct outsiders or aliens. Society must not be lured by terrorism into paranoia against the normal activities of neighbours but should instead seek to concentrate on those abnormal activities which threaten violence.

3. Discussion in this paper again derives from my research over many years into anti-terrorism laws. Fuller details and arguments on these issues are found in my book, Walker, C, *Terrorism and the Law* (Oxford University Press, Oxford, 2011) (see chapter 8 on "Extremist organizations, expressions, and activities"), which should be consulted.

#### RESPONSES TO ORAL EVIDENCE

4. The possible proscription of Hizb ut-Tahrir and the English Defence League which is considered in the Oral Evidence is discussed fully in my previous submission (paras.18 and 19). The reason for inaction is not their lack of formal organisation (contrary to the implication from Oral Evidence Q363). Rather, the evidence is lacking that these organisations have engaged in, or encouraged violence, at least after the prospect of the Terrorism Act 2006 offences of incitement caused them to restrain their public pronouncements (as stated by Oral Evidence Q366). Account should also be taken of the intelligence value of keeping open some channels of communication to extremism, as well as the value of freedom of expression which does encompass speakers who are offensive and disagreeable.

5. More generally, the view of David Anderson QC, that proscription can be "a slippery slope" is characteristically wise counsel (Oral Evidence Q380). The slipperiness of that slope is illustrated not only by his example of the futility of banning the Aryan Strike Force (Oral Evidence Q386) but also by the actual banning of Muslims Against Crusades in November 2011.<sup>70</sup> Here is a body without substance or "brand equity" (Oral Evidence Q393). It was no more than a name-plate posted on the internet which was devised by Anjem Choudary and others to represent a viewpoint rather than any organisation. It follows that other name-plates can easily be substituted in the future and that the Muslims Against Crusades name-plate, so solemnly shut down, represented no discernible membership or resources as would befit an organisation. Action against it by way of proscription therefore achieved little of substance in the prevention of terrorism. It is suggested that criminal aspects within the activities of Muslims Against Crusades, if any, should have been better dealt with via public order offences or as incitements under the Terrorism Act 2006, thereby avoiding the creation of a needless cycle of according unwarranted publicity and substance to claims of state oppression of marginal viewpoints which are being deliberately presented in ways to provoke such overreaction.

6. Deproscription is a pressing issue for reform, as is further underlined by David Anderson QC (Oral Evidence Q381, 396). Without any statutory time-limit to proscription orders or statutory periodic review

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<sup>66</sup> See *R v el-Faisal* [2004] EWCA Crim 456; *R v Hamza* [2006] EWCA Crim 2918; *R v Saleem, Javed, and Muhid* [2007] EWCA Crim 2692.

<sup>67</sup> See the case of Subhann Younis (Glasgow District Court, *The Times* 29 September 2005, p 3).

<sup>68</sup> See the case of Anjem Choudary (*The Guardian* 22 July 2006, p 14).

<sup>69</sup> See Walker, C, "'Know Thine Enemy as Thyself': Discerning Friend from Foe under Anti-Terrorism Laws" (2008) 32 *Melbourne Law Review* 275.

<sup>70</sup> Proscribed Organisations (Name Changes) Order 2011, SI 2011/2688.

system, there is no assurance that a sufficiently rigorous degree of oversight is currently applied to the continuance of the proscription orders which have been issued since 2000. One appreciates from the evidence of the Home Office Minister that the Home Office has established a Proscription Working Group (Oral Evidence Q418). But without any transparency in its constitution, including published criteria, membership, and timetable, and without any fairness in its process, including notice to those potentially affected and an invitation to make representation and to divulge the continuing grounds for proscription, the Select Committee ought to be highly sceptical that this administrative system is effective or fair. Time-limits on orders are essential, as recognised with Terrorism Prevention and Investigation Measures and also financial listing orders. One may then debate whether any challenges to the outcome of review should rest with Parliament or with the courts. I remain of the view that both are required. The People's Mojahedin Organisation of Iran (PMOI) case (see below) illustrates that Parliament cannot effectively find the time for the detailed scrutiny required to achieve fairness, nor does it have effective powers to cross-examine or demand disclosure. That was the experience of Lord Alton on behalf of the PMOI, whose attempts to make headway in Parliament ultimately failed whereas resort to the courts was decisive. Thus, I cannot entirely endorse the view of David Anderson QC (Oral Evidence Q397) that the prospect of Parliamentary review "would operate quite effectively in concentrating the Minister's mind and perhaps emboldening the Minister, in a case where a foreign Government might quite like the idea of the proscription but we can't see that it satisfies the test any more, to bite the bullet and have it de-proscribed." The PMOI case suggests otherwise and also casts doubt on whether "you can trust Parliament to do a good job and you can trust the Minister to feel suitably intimidated by the thought of bringing a bad case to Parliament." My own view is that Parliament should certainly play a role in the application of public policy, but a court process should be available when the rights of defined individuals and organisations are distinctly affected by that public policy. The doctrine of the rule of law, as enshrined in the Constitutional Reform Act 2005, section 1, demands this duality.

7. Ascription: My previous paper raised the problem of "ascription"—in what circumstances should the actions or views of an individual be treated as the actions or views of the organisation to which the person belongs? This problem has become acute with non-hierarchical and undisciplined networks such as Al-Qa'ida. In so far as the Oral Evidence suggests that the ascription problem is minimal (Q388), it is respectfully suggested that the evidence is otherwise. Ascription is a real problem, and one tangible example in recent years concerns Case T-284/08 *People's Mojahedin Organisation of Iran v Council* [2008] ECR I-3487 (the judgment was affirmed largely on grounds not relevant to ascription in Case C-27/09, decided on 21 December 2008). Though the litigation concerned financial listing rather than full proscription, the ascription problem arose in much the same way. The facts were that the People's Mojahedin Organisation of Iran (PMOI) had been proscribed under the Terrorism Act 2000 in the UK in February 2001. It was listed under Article 2(3) of Regulation (EC) No 2580/2001 so as to impose financial restrictions in 2002. But then the UK proscription order was lifted in 2008, following the decision in *Alton of Liverpool & others (In the Matter of The People's Mojahadeen Organization of Iran) v Secretary of State for the Home Department*.<sup>71</sup> However, at the behest of the French government, the listing was continued under the Council Decision 2008/583/EC of 15 July 2008. The new grounds for listing were a 2001 French investigation into the PMOI and criminal charges brought on 19 March 2007 and 13 November 2007 against alleged members of the PMOI. These charges alleged the "laundering the direct or indirect proceeds of fraud offences against particularly vulnerable persons and organised fraud" having a link with a terrorist undertaking, contrary to French law by Act No 2003/706 of 2 August 2003. Yet, the European Court of Justice was doubtful whether these prosecutions should count against the PMOI (para.66):

"Nor is it possible, in the absence of more accurate information, to verify the truthfulness and relevance of the allegation made in the statement of reasons, according to which several of the alleged members of the applicant are being prosecuted for a series of offences in connection with a terrorist undertaking. In this respect, the applicant maintains that, apart from the judicial inquiry opened in France in 2001, it knows of no member or supporter whatsoever being prosecuted in a Member State for financing terrorist activities or any other criminal activity in relation to the applicant, contrary to what is asserted in the statement of reasons. Moreover, none of its members or supporters has ever been convicted of unlawful activities relating to terrorism or its financing. The Council did not in any way refute those assertions in its defence."

In this way, the issue of ascription has certainly been problematic in seminal litigation concerning an alleged terrorist organisation, and the problem is inherent and chronic with post-modern terrorism networks which are often formed fleetingly and without clear direction or organisation.

8. There is some consideration given in the Oral Evidence as to whether counter-terrorism laws produce community disharmony. My own research endorses the view of David Anderson QC that the main pinch points are stop and search powers (formerly in section 44 of the Terrorism Act 2000) and port controls (Schedule 7 of the Terrorism Act 2000). Stops and searches have been substantially reconstituted with more restraints and safeguards in section 47A,<sup>72</sup> resulting in far fewer exercises of the power. It remains to be seen whether this trend will continue into the year of the London Olympics. As for Schedule 7, David Anderson QC rightly recognises that reform of the powers and their operation are required. It follows that proscription is not as

<sup>71</sup> PC/02/2006, 30 November 2007 at paras. 67, 68; *Secretary of State for the Home Department v Lord Alton of Liverpool* [2008] EWCA Civ 443 at para. 22.

<sup>72</sup> Terrorism Act 2000 (Remedial) Order 2011, SI 2011/631, which is being replaced by the Protection of Freedoms Bill 2010–12 cl.61.

prominently depicted as a cause of the souring of relations with the police, but one should not entirely discount its impact amongst some ethnic groups which are affected by the impacts of foreign conflicts, especially Tamils, Kurds and Kashmiris. The main solution to the potential negative impacts on them of proscription has been police reticence in enforcement. Thus, there is strong evidence from the reported cases that police effort is directed at financial rather than political support. The flying of flags in support of proscribed organisations (even outside of Parliament in the case of the LTTE) is not prosecuted. One might also add that the singing of sectarian songs about the IRA or Loyalist counterparts at Scottish football matches has likewise attracted much more tolerance from the police than from the Scottish Executive<sup>73</sup> or even UEFA.<sup>74</sup>

9. One further point about community disharmony is that adoption of the “suspect community” thesis should be treated with great caution. In its most coherent version, the thesis might sustain that the perception of an official “suspect community” policy could conceivably arise “through a host of readily available emotional, material and ideological resources”.<sup>75</sup> However, hard evidence for any official policy or sanctioned practice in that direction is generally lacking,<sup>76</sup> aside from the difficulties in conceiving British Muslims as a single cohesive “community” given their diversity in ethnicity, cultures, social and economic standing, and even religious beliefs. A heightened impact of counter-terrorism laws on localities where Muslims are more prevalent than average would still not amount to discrimination within the “suspect community” thesis, provided the threat is being defined and addressed on objective and reasonable terms beyond race, ethnicity or religion. This point was sustained before the European Court of Human Rights in regard to the uneven impact on Northern Ireland Catholics of security laws and operations in the 1970s.<sup>77</sup>

10. Finally, there is some discussion in the Oral Evidence about Project Channel as representing a suitable programme for those at risk of membership of proscribed groups or at risk of other forms of political violence. Whilst preventative measures are worthwhile in counter-terrorism, just as in counter-crime or counter-drugs, the constitution and operation of Project Channel leaves much to be desired. Though a non-security label is put upon the initiative, there arise attendant dangers of loose labelling and net-widening: “Which self-appointed busybodies will use what yardstick to define a ‘radical’, an ‘extremist’ or ‘a Wahhabi’?”<sup>78</sup> The programme should be treated to a strong dose of constitutionalism. There should be a statutory basis and clear rules as to intake, treatment, record-keeping and data protection, and discharge. Otherwise, it might become as damaging and dangerous to an individual’s reputation to be labelled as a graduate from Project Channel as to be labelled in intelligence files as an extremist or subversive.

#### DEVELOPMENTS SINCE PREVIOUS SUBMISSION

11. Two important judgments of the Indian Supreme Court have now been reported and should be drawn to the attention of the Select Committee. The cases are *Arup Bhuyan v Assam* (3 February 2011) and *Sri Indra Das v Assam* (10 February 2011). In both cases, the Indian Supreme Court interpreted the offence of membership of a banned organisation, which is made criminal by the Terrorist and Disruptive Activities (Prevention) Act, 1987, section 3(5) and is subject to punishment of up to five years rigorous imprisonment and a Rs.2000/- fine. The argument was the same in both cases—that a literal reading of the offence would punish mere guilt by association. Therefore, the Supreme Court read in the requirement of proof of being an “active” member, meaning that the defendant must be proven to have resorted to acts of violence or incited people to imminent violence, or to have done an act intended to create disorder or disturbance of public peace by resort to imminent violence. Without that restrictive interpretation, the offence would breach Articles 19 and 21 of the Indian Constitution:

“19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right:

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;

...

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

<sup>73</sup> See the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2011.

<sup>74</sup> In the most recent enforcement action Celtic was fined 15,000 Euros for illicit chanting in December 2011. Rangers have also been fined repeatedly.

<sup>75</sup> Pantazis, C and Pemberton, S. “Restating the case for the ‘Suspect Community’” (2011) 51 *British Journal of Criminology* 1054 at pp.1056–1057.

<sup>76</sup> See Greer, S. Anti-terrorist laws and the United Kingdom’s “Suspect Muslim community” (2010) 50 *British Journal of Criminology* 1171.

<sup>77</sup> *Ireland v United Kingdom*, Application number 5310/71, Series A 25 (1978) paras.225–232.

<sup>78</sup> Siddiqui, H. “Muslim-bashing dilutes our democratic values” *Toronto Star* 11 June 2006, p.A17.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

#### 21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.”

12. These judgments are more sympathetic to the value of free speech and association than is embodied in the more balanced approach of the UK courts or the European Court of Human Rights. Indeed, the Indian Supreme Court expressed a preference for US precedents which advance a more absolutist protection of free speech and association.<sup>79</sup> Nevertheless, they represent a useful counterpoint to those who call for the more rigorous application of proscription laws. Since enactment in Great Britain in 1974, the principal purpose of proscription has been to serve as a symbolic condemnation—to express society’s revulsion at violence as a political strategy as well as its determination to stop to it. This purpose is especially evident in Britain, where there were no convictions from 1990 to 2001, and few since that time (as confirmed in the Oral Evidence Q378). Aside from the very exceptional cases involving organisers,<sup>80</sup> for most would-be terrorist “foot-soldiers”, it takes a blatant and crass admission on the part of an individual, such as assuming the role of the “emir” in Britain of Osama bin Laden, for the prosecution to be able to prove affiliation to a body as amorphous as Al-Qa’ida.<sup>81</sup> Prosecution of such agitators should normally be the province of public order offences or even solicitation of murder, which better avoid any focus on political motivations. Rather than prosecution, the more effective and important functions of proscription are to send warning signals to extremists and to offer assurance to the public.

December 2011

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#### Written evidence submitted by Lord Trimble

You ask two questions. The first being, “The extent to which the UK Government has learnt the historical lessons of counter-terrorism policy in devising its current Prevent Strategy, including the impact of counter-terrorism measures on affected communities”. I have not followed all the detail on the Prevent strategy, but my distinct impression was that the strategy as originally formulated did not follow the experience in Northern Ireland. In particular the idea that non violent extremists could be used to counter violent extremists was seriously flawed. This, however, has been remedied and the revised strategy and the Prime Minister’s Munich speech accord better with our experience.

Your question also mentions the impact on affected communities. This occasioned some problems in the early phases, but that ceased as the intelligence led approach got into its stride and security force actions were better targeted.

On your second question, the current threat is similar in character to the original threat and the approach that neutralised the latter is likely to do the same to the former and is congruent with the Prevent strategy.

12 January 2012

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#### Written evidence submitted by Internet Services Providers’ Association (ISPA)

##### RADICALISATION WEBSITES

##### ABOUT ISPA

The Internet Services Providers’ Association (ISPA) UK is the trade association for companies involved in the provision of Internet Services in the UK. ISPA was founded in 1995, and seeks to actively represent and promote the interests of businesses involved in all aspects of the UK Internet industry.

ISPA’s membership includes small, medium and large Internet Service Providers (ISPs), cable companies, content providers, web design and hosting companies and a variety of other organisations. ISPA currently has over 200 members, representing more than 98% of the UK Internet access market by volume.

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<sup>79</sup> See especially *Brandenburg v. Ohio* 395 U.S. 444 (1969); *United States v. Robel* 389 U.S. 258 (1967).

<sup>80</sup> See *R v Rangzieb Ahmed* [2010] EWCA Crim 1551.

<sup>81</sup> See the case of Ishaq Kanmi, *The Times* 11 May 2010, p. 23 (Manchester Crown Court).

## BACKGROUND TO THE LEGAL FRAMEWORK

The regulatory framework that underpins the UK internet industry is the eCommerce Directive, which was transposed in 2002 in the UK as the eCommerce Regulations. It attributes different degrees of liability to different types of online intermediaries according to the role they play in the internet eco-system.

Access providers are commonly referred to as ISPs (internet service providers) but are more accurately described as internet access providers. They connect customers to the internet, either through fixed or wireless connectivity. As access providers only pass traffic across a network, they are deemed “mere conduits” under e-Commerce Regulation 17, and are exempted from liability<sup>82</sup> in recognition of the fact that they play no role in the content of the communications they carry: ie, they do not determine what it is, they simply carry it from one place to another.

Hosting providers host others’ content online, from the websites of large corporations to individual’s personal websites or user generated content posted on websites. Under e-Commerce Regulation 19, hosting providers are not liable for the content they host as long as they do not have actual knowledge of unlawful activity or information. However, upon obtaining such knowledge, hosting providers must act expeditiously to remove or disable access to the information, and may become liable if they fail to act. This affords online intermediaries limited liability over the content they host and access they provide.

The 2006 Terrorism Act created several new offences of relevance to online content. Section 1 created an offence of encouragement of terrorism, Section 2 the dissemination of terrorist publications and Section 3 the application of notices to intermediaries in relation to section 1 and 2.

## RESPONSE TO QUESTIONS

### *1. The extent to which you think UK ISPs host material posted by violent extremist groups*

The majority of “violent extremist” content is hosted abroad and not in the UK. The Home Office itself has said that the “great majority” of terrorist-related websites of most concern are hosted abroad.<sup>83</sup> Such material is likely to be hosted in countries where legal protections are different than the UK, such as the US where the First Amendment affords greater protection and thus enables content to be more freely hosted.

Furthermore, UK companies act responsibly and cooperate with law enforcement. Importantly this is backed up by legislation, the 2006 Terrorism Act, which contains the offences of encouragement of terrorism and dissemination of terrorist material. If an ISP failed to remove the content upon receipt of a valid notice under Section 3 of the Act, it would be committing an offence.

### *2. Your policy (if you have one) for removing material linked to violent extremist movements upon request from the authorities, or a comment on what the usual practice is amongst ISPs*

If law enforcement approaches a hosting provider under the Terrorism Act provisions regarding liability for hosting terrorist content, they are compelled to take it down. ISPA worked closely with the Home Office around the legislation and helped provide guidance on the serving of Section 3 notices under the Terrorism Act. Where this is not the case, or where the material is not covered by the Terrorism Act, then it will depend on individual ISP’s policies on taking down content.

As the Committee may be aware, government and law enforcement have set up a unit, the Counter Terrorism Internet Referral Unit (CTIRU), which enables members of the public to anonymously report violent extremism. This is then reviewed by the CPS and if it meets the threshold as set out in the legislation and is hosted within the UK, a notice may be sent requesting that the content be removed. As the content reported is analysed using the existing legislation, this takes the burden away from an intermediary.

### *3. Any legal or other obstacles you face in removing such material*

When Section 3 notices of the Act are invoked to remove material then there is no issue; when they’re not invoked it becomes more problematic. As in other areas, ISPs are not best placed to determine what constitutes violent extremism and where the line should be drawn. This is particularly true of a sensitive area like radicalisation, with differing views on what may constitute violent extremist. Whilst there may be clear instances of material that breaches the Terrorism Act, in other, more ambiguous cases, our members lack the clarity of over what constitutes “actual knowledge” and whether the content need be removed.

If material is hosted outside of the UK then an UK intermediary is unable to remove it. To improve this, greater international cooperation could be explored, although what constitutes violent extremist under the law in one country is not necessarily the same elsewhere.

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<sup>82</sup> As mere conduits access providers “shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as result of that transmission.” (e-Commerce Regulation 17).

<sup>83</sup> PREVENT Strategy, p.37

4. *Whether ISPs themselves take pro-active steps to monitor and remove material, and whether it would be reasonable to expect them to do so*

ISPs generally do not monitor material they host. They often have neither the resources nor expertise and legally are not compelled to do so. Recital 47 of the ECD explicitly states that there is no obligation to monitor.

We find it impractical for ISPs to be expected to proactively monitor material given the sheer volume of content online, and undesirable given the implications for freedom of expression. As Government itself acknowledged in November last year at the London Cyber Conference, it is important that freedom of expression online is maintained. By compelling ISPs to monitor content on contentious areas, there is a potential chilling effect on industry and a risk of making private companies moral arbiters. That said, some online services and communities may choose to have individual policies of removing content and employ moderators to review and remove content.

Instead of proactively monitoring content, the current approach of notice and takedown, which is backed up with a legislative framework, is the most effective and practical solution. This is demonstrated by the low volume of violent extremist content hosted in the UK.

January 2012

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**Supplementary written evidence by the Association of Chief Police Officers**

There were two things that were under-developed in the evidence that ACC John Wright and I gave to the Committee today. The first was in relation to the comments that I made on the work of Professor Martin Innes of Cardiff University.

Martin Innes' work is central to the question posed by the Committee in advance about the extent to which Prevent policing has had a positive impact and about a growing understanding of 'what works'. The question from Michael Ellis MP was slightly more closed in that he raised questions about whether the criticism of Prevent policing had damaged the overall approach.

Whilst I had an opportunity to formally rebut that proposition, I prayed in aid Innes' work as an objective and independent assessment. I therefore thought it might be useful to put the Innes research into your Committee. I attach a copy of the report.

The second issue was something that was more explicitly explored with other witnesses. It is the question of whether our Prevent strategy is sufficiently comprehensive and embedded. Understandably, the Committee asked John Wright and me about the future of the Police Prevent strategy. It occurred to me, on reflection, that the Police focus tends to be at the counter-terrorism end of the spectrum in tackling radicalisation. By the time it crosses our threshold it is, in some senses, almost too late. What has been established in recent years is the very powerful sense of partnership in dealing with extremism across the whole spectrum. Local authorities, schools and other Government agencies have all played their part.

The Association of Chief Police Officers (ACPO) is seized of the fact that the Government's Prevent strategy was explicitly focussed on counter-terrorism but made reference, throughout, to the need for a complementary integration strategy (see pages 2, 6, 13, 23 and 24). Indeed, the report from the CLG Select Committee of March 2010 recommended more work at the centre on a strategy for cohesion but conclude that it should be de-coupled from Prevent. The report stated, categorically, that "Prevent depends on a successful cohesion and integration strategy". ACPO believes that there is a continuing gap and that the gap can only be closed through a strategy that operationalises a programme of work involving local authorities, education and other agencies that are better able to address extremism wherever it occurs. The Police have a role to play if that extremism is targeted on evidence or other criminal intent.

1 November 2011

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**Written evidence submitted by the National Union of Students**

1. The National Union of Students (NUS) is a voluntary membership organisation which makes a real difference to the lives of students and its member students' unions. We are a confederation of 600 students' unions, amounting to more than 95% of all higher and further education unions in the UK.

2. Through our member students' unions, we represent the interests of more than seven million students. Our mission is to promote, defend and extend the rights of student and to develop and champion strong students' unions, including those in higher education institutions to ensure learners' interests are represented.

**EXECUTIVE SUMMARY**

3. NUS welcomes the opportunity to respond to the Committee's call for evidence on "The Governments Inquiry into Roots to Radicalisation".

4. NUS, through its Welfare and Social Policy work, has since 2009 delivered a project funded by the department for Business, Innovation and Skills (BIS) to increase understanding of Prevent amongst students' union staff and elected officers.

5. We understand that the inquiry will be looking to examine the relative importance of universities as one possible fora for violent radicalisation. It is this fora—universities—which our response will focus on.

6. We will also provide evidence for consideration on our perspective of current preventative approaches to violent radicalisation, and the role of universities, students' unions and NUS.

7. In doing so we will also provide comment on our perspective of some of the potential drivers to radicalisation and risk factors for recruitment to terrorist movements linked to Islamic fundamentalism and domestic extremism (far right extremism) in particular.

#### UNIVERSITIES AS A FORA FOR RADICALISATION

8. NUS do not believe radicalisation to be wide spread at institutions across the UK. However, we recognise that it may take place at some institutions, and that universities and colleges have a responsibility in ensuring the safety and welfare of all students (and staff).

9. Open debate, the exchange of opinions and the development of student ideas and understanding are central to the culture of universities in promoting freedom of speech and ensuring academic freedom. Similarly, freedom of expression and speech are basic human rights to be protected and are protected by law.

10. It is NUS' belief that although universities provide obvious fora for those who seek to radicalise students, universities are one of the only places where such views and opinions can be challenged effectively in open forums and debates.

11. Students' unions are at the heart of ensuring our colleges and universities are places in which a diversity of people and opinions are not only accepted, but celebrated. The range of activities and events that take place in students' unions demonstrate this diversity of interests, ideas and opinions and this is to be encouraged, not restricted.

12. NUS has worked with its member students' unions to ensure that where there are risks posed by speakers these risks are identified and mitigated (outlined later in this response).

#### PREVENT AND THE ROLE OF UNIVERSITIES

13. The Prevent Strategy outlines the government's belief that universities and colleges have an important role to play in delivering *Prevent*—particularly in exercising their duty of care to protect the welfare of their students, consistent with their academic freedom and learning (recognised in the recent UUK report).

14. NUS recognises the role of university institutions in working alongside Government to mitigate against risks of radicalisation; however, we don't feel there is sufficient advice and guidance for institutions on how to implement this.

15. Our conversations with staff in institutions and the HE sector indicate that they are unclear about what is expected of them.

16. It is NUS' view that the government should provide clearer guidance for the sector on what role they expect institutions to play in the delivery of Prevent. We have concerns about some of the objectives of operational plans of Prevent in universities and with students.

17. It is NUS' view that the police and security services have a limited understanding of university structures and who they should engage with regarding issues of radicalisation and violent extremism.

18. There should be more focus on building understanding about the higher education sector amongst those who are tasked to deliver the Prevent Strategy.

19. Universities already have some support mechanisms, although not universally consistent, in place which support "vulnerable students". NUS has some concerns about the risk of these services being reduced as funding is restricted from these pastoral and support services in institutions, and the subsequent risk this may pose.

#### PREVENT AND THE ROLE OF STUDENTS' UNIONS

20. Students' unions also have some responsibility in protecting the welfare of students and in particular mitigating the risks associated with external speakers.

21. Universities are accustomed to debate and protest; and tension can arise and sometimes erupt between different political, social and identity groups on campus.

22. At times, external speakers invited to attend these debates or events can provide a risk to particular groups of staff and students safety, and/or to the reputation of the institution or students' union.

23. Students' unions have a right to refuse individuals and groups who threaten the safe environment students' unions provide for their members. "No platform" policies, as well as equal opportunities policies, are tools in which students unions provide and maintain a safe environment for their members.

24. However, "no platform" can also be a blunt tool for making decisions about particular speakers.

25. It is NUS' perspective that building an environment where the rights of "freedom of speech" and "freedom from harm" can coexist often requires more practical support than that which had previously been provided by the sector.

26. NUS therefore produced guidance for our members—students' unions—to this effect (supported by funding from DBIS). Importantly, the guidance also supported students' unions in the context of new regulation by the Charity Commission.

27. The guidance seeks to provide information and advice to students' unions on considering their legal implications as charities; considering the safety and welfare implications of visiting speakers, and how to manage associated risks of external speakers speaking or presenting at events organised by the students union.

28. We are aware that some students' unions have been approached by the police or local Prevent teams asking them to "pass on the details of students who show signs of 'vulnerability' towards radicalisation". Although this is part of the government and police's Prevent strategy to identify and refer those "susceptible to embarking down a path to radicalisation", NUS finds this language and approach problematic for numerous reasons and will continue to challenge the government and police nationally in using this approach operationally.

29. NUS finds the government's definition of "vulnerable" unhelpful and potentially open to abuse where individuals or groups are identified, and fails to recognise the subjectivity of political, social and cultural norms.

30. We recognise the complex issues related to the Prevent Strategy.

31. We will continue to discuss with the government our members' concerns about the implementation of the Prevent strategy, as well as support its delivery where appropriate within institutions.

#### THE ROLE OF UNIVERSITIES AS SPACES FOR PUBLIC DEBATE

32. Universities are important spaces, and primarily spaces, for debate and discursive dialogue in the pursuit of knowledge. Freedom of speech and freedom of expression are important factors that allow this to happen. As such, universities are places where radicalism in its broadest sense can and does happen and should be encouraged.

33. NUS believe that universities are ideal places for students to challenge the status quo and challenge accepted norms in society, as well as to air their grievances with "authority figures" and challenge/hold to account those "in power".

34. Universities should be places creating politically engaged citizens who participate in society in a variety of ways.

#### ROOTS TO RADICALISATION AND THE RADICALISATION PROCESS

35. NUS does not take the view that radicalisation is a linear process. We believe more research needs to go into understanding the roots to radicalisation, in particular to what extent, if any, this takes place as a result of "extremist" speakers on campus.

36. NUS believes that the inquiry should consider the wider global and political discourses and public/foreign policies that feed into the narratives upon which violent extremists found their beliefs.

37. NUS has real concerns about the rise of far right extremism in our communities and within universities. It is our belief that these groups only further marginalise the Muslim community (and others), which in turn further feeds other extremist narratives, for example Al Qaeda.

38. In addition, there is anecdotal evidence to suggest that the UK's foreign policy and its involvement and role in international conflicts are contributing factors to the radicalisation of some people in the UK generally.

39. NUS observes that debates on these issues are often shut down both locally at the grass-roots level and nationally, for example, when people seek to question and challenge politicians on these issues.

40. We have heard people express frustration in not being able to express and debate these issues, in particular British involvement in international conflicts. We believe that these debates are important for all in society to have the freedom to express their perspectives and political beliefs, and that it's important that these debates are not restricted or prevented from taking place.

41. Regardless of whether limiting debate contributes directly to radicalisation, we believe the frustration and grievances attributable to not being able to participate in such debates contributes to increased tensions between groups and possibly to sympathetic attitudes towards extremist perspectives.

42. NUS recommends that the committee consider ways in which such debates can be encouraged and take place both in universities and more widely in society.

#### NUS PROJECT WORK TO REDUCE EXTREMISM AND HATE SPEECH

43. In 2009 NUS was funded by the Department for Business, Innovation and Skills (BIS) to carry out a programme of work which included increasing good relations and helping lower the likelihood of students being drawn into or promulgating extremist views as part of the Prevent agenda.

44. The NUS project was developed in response to concerns significant at the time, such as concerns about possible “radicalisation” of students at further and higher education institutions. In addition, there was a need to respond to issues and challenges students’ unions and students of faith were experiencing including how to increase engagement with faith groups and respond to issues of discrimination, and sporadic tensions between different groups on campus.

45. The project aimed to help students’ unions rise to these challenges and build good campus relations. This included, amongst other things, providing information and advice on the Prevent agenda (which has been revised following the new Strategy).

46. The first stage of this project funded via Prevent ended in March 2011.

47. We received further funding from BIS in April 2011 for the current financial year. This work has developed to include the production of guidance for students’ unions—“*Managing the risks associated with external speakers: guidance for students*” (discussed above).<sup>84</sup>

48. We have provided advice and guidance on when it may be appropriate for students’ unions to prevent a speaker from speaking, or mitigate the risk of a particular speaker for example inciting hatred or providing a perspective without challenge.

49. NUS is committed to student welfare and safety and students’ unions are key to promoting a safe environment for students where they can go about their lives free from prejudice, discrimination, physical harm and verbal abuse.

50. Our project was developed out of recognition that deepening good campus relations forms a key part of working to avoid and prevent extremism. It is our belief that bringing together different ethnic and religious communities and promoting openness and tolerance helps creates safe, empowered and resilient communities.

#### NUS AND THE FEDERATION OF STUDENT ISLAMIC SOCIETIES

51. The Federation of Student Islamic Societies (FOSIS) is the largest student Islamic representative organisation in the UK. They represent about 100,000 Muslim students in further and higher education institutions.

52. FOSIS are a “Student Organisation in Association” of NUS. As part of NUS’ constitution, national student organisations having a substantial student membership uniting students for any purpose, are known as “Student Organisations in Association”.

53. FOSIS have worked in collaboration with NUS on many of the projects detailed above and have fed through our democratic processes as any other “Student Organisation in Association” would.

54. It is NUS’ view that the government should seek to engage and work with FOSIS who are well placed to provide challenge and opportunities for Muslim students to communicate and direct their diverse political perspectives.

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<sup>84</sup> www.nusconnect.org.uk/asset/News/6013/Hate-Speech-Guidance-Web.pdf