

Counter-extremism law: an update¹

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In October last year, the Government announced its new counter-extremism strategy.² In my view this Strategy marks a major shift, possibly even a watershed, in public policy. There is of course continuity with the past. In 2007, Gordon Brown introduced 'Prevent' as part of the Government's anti-terrorism strategy. Prevent focused on combatting ideologies most closely associated with terrorism, in other words, violent extremism, and sought to address this problem through funding programmes of community cohesion and supporting 'mainstream voices' within Muslim communities.

In 2010, the new Coalition Government commissioned an inquiry which was rather critical of the 2007 Prevent strategy. In particular, it worried that Government funding had found its way into the hands of Islamic extremists who, while they did not advocate the use of violent means, nonetheless were committed to the sort of programmes of radical Islamism shared by terrorists. The new 2011 Prevent strategy sought to deal with this by including within its scope non-violent extremism.

Extremism was, and still is, defined as 'the vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.'

However, the 2011 Prevent strategy was noteworthy for its repeated insistence that the law would not change: 'we remain committed to protecting the freedom of speech which many of those same extremists set out to undermine.'³ The Strategy made reference to public authorities using existing legal powers, but no new ones were deemed necessary. As a result, there was quite a clear distinction in the Strategy between criminal behaviour and extremist speech. This bifurcation is nicely summarised in one paragraph dealing with religious groups:

Where faith groups or institutions are supporting terrorism we will take law enforcement action. Where they are expressing views we regard as extremist those views will be subject to challenge and debate.⁴

Of course, the law did change right at the end of the Coalition Government's period of office with the introduction of a new public sector duty to 'have due regard to the need to prevent terrorism' under s. 26 of the Counter-Terrorism and Security Act 2015. But the Statutory Guidance issued alongside that duty is once again careful to mark the distinction I have already noted.

preventing people becoming terrorists or supporting terrorism requires challenge to extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups. And the strategy also means intervening to stop people moving from extremist (albeit legal) groups into terrorist-related activity.⁵

¹ This is the lightly amended text of a talk at a side-event ('Are Christians Extremists?') organised by *Christian Concern* at the Church of England General Synod on 17 February 2016.

² *Counter-Extremism Strategy*, Cm 9148 (October 2015).

³ *CONTEST: The United Kingdom's strategy for countering terrorism*, Cm 8124 (July 2011), para. 5.3

⁴ *Ibid.*, para. 5.71.

⁵ HM Government, Revised *Prevent* duty guidance for England and Wales (16 July 2015), para. 8.

So, from 2011-2015 there was a clear distinction between terrorism, which involves the use or threat of violence against the government or general public for ideological ends, and extremism, which is vocal or active opposition to fundamental British values. The former requires significant legal intervention; the latter does not. In particular, extremism is a problem because it can lead to terrorism, which is the real problem.

As I said, the October 2015 Strategy marks a major change.

First, extremism is treated as a social problem in its own right.

‘we must go further. We must counter the ideology of non-violent and violent extremism alike’.⁶

‘The overriding purpose of this strategy is to protect people from the harm caused by extremism.’⁷

Secondly, there is an implicit hypothesis that true religions and beliefs are compatible with each other and are not extremist. The Strategy quotes Lord Ahmad approvingly:

‘Our faith communities live, learn and breathe alongside each other; indeed they give oxygen to each other to strengthen the harmonious society we all value. This shows the extent of diversity in our great country. Together we are one family and that is where we reveal our greatest strength.’⁸

And:

‘We will therefore commission an independent review to understand the extent to which Shari’a is misused...’⁹

Thirdly, the Government asserts the need for new legal powers to address the problem of extremism.

‘[T]here remain extremists in our society who cause an immense amount of harm, while being careful to stay just the right side of the law. In addition to strengthening our use of existing powers against such extremists, we will introduce new, carefully targeted , powers to challenge the most active and persistent individuals and groups.’¹⁰

Notice the new assumptions in the 2015 Strategy: there are true and false interpretations of religions, and Government can determine which is which. In particular, true religions support Western-style liberal democracy. Controversy about religious and political values is peripheral; underneath the surface-differences we all basically agree. Being exposed to, and coming to believe, certain views (‘extremist views’) is a harm from which the Government can and should protect you, particularly if you are a child. So Government needs new legal powers to do so.

What are these new legal powers?

Here things get a little more complex. The strategy says that there will be new powers to ban extremist organisations that promote hatred and draw people into extremism, to restrict the harmful activities of the most dangerous extremist individuals; and to restrict access to premises which are repeatedly used to support extremism. The Strategy also says that there will be strong safeguards, a high level of judicial scrutiny, and clear guidance for the police and local authorities.

⁶ *Counter-Extremism Strategy*, para. 39.

⁷ *Ibid.*, para. 41.

⁸ *Ibid.*, para. 84.

⁹ *Ibid.*, para. 48.

¹⁰ *Ibid.*, para. 101.

The powers won't be used against privately-held views or people expressing religious beliefs. They will not curtail the democratic right to protest or close down debate or limit free speech.¹¹

The last Queen's Speech mentioned two further areas of regulation: new powers for Ofcom in relation to channels which broadcast extremist content, and an extension of the Disclosure and Barring Service to enable employers to check whether an individual is an extremist, so that they can be prevented from working with children.

Beyond that, there are also current moves to tighten up Charity regulation, giving the Charity Commission new powers to prevent individuals from becoming trustees or senior managers.¹² And the fundamental British values agenda has already had a significant impact on schools and further education colleges. We are dealing here with a wide-ranging policy-orientation which influences many different areas of the law.

A lot of these new powers are to be contained in a Counter-Extremism Bill, which has yet to be published. Indeed, we do not even have a consultation paper yet.

What we did have, for a few weeks over Christmas, were some detailed proposals from the Department of Education on how to regulate Education in Out-of-School settings.¹³ And it is interesting to see how the Counter-extremism Strategy gets translated into practice. The Strategy expresses concern that 'some supplementary schools may be teaching children views which run contrary to our shared values, encouraging hatred of other religions'. The context implies that the concern lies particularly with some supplementary Islamic schools (*madrassas*). In response the Government proposes a new system for the regulation of all 'intensive education settings'.

The Consultation document sets out the basic elements of the new system: compulsory registration, inspection by Ofsted to ensure compliance with certain standards, and sanctions to prevent individuals who have failed to register or who have breached the standards from working with children, and to prevent the use of inadequate premises. The standards to be applied include 'undesirable teaching, for example teaching which undermines or is incompatible with fundamental British values, or which promotes extremist views'.¹⁴ The consultation document suggests that sanctions could cover any work with children in out-of-school settings (not just 'intensive' out-of-school settings), so a group which failed to register as required could find itself barred from any work with children at all or using its property for any 'educational' purpose.

The scope of activities covered seems extremely broad. The paper refers to 'tuition, training or instruction', and also 'activities and education for children in many subjects including arts, language, music, sport and religion'.¹⁵ The paper assumes that there are particular problems with 'intensive' education which is defined as more than 6-8 hours a week, whether regularly or 'for a fixed period of time, for example during school holidays or in the run up to exams'.¹⁶ So this would appear to cover everything from a regular after-school maths club to a day-long music masterclass. It also includes any religious activity which could be construed as 'educational'. In short, any structured and supervised activity with under-19s outside the home for more than the threshold number of hours in any given week would be covered.

¹¹ *Ibid.*, paras. 111 – 115.

¹² See the current Charities (Investment and Social Protection) Bill 2015.

¹³ Department for Education, *Out-of-school education settings: call for evidence* (November 2015).

¹⁴ *Ibid.*, para. 3.19.

¹⁵ *Ibid.*, para. 2.5.

¹⁶ *Ibid.*, para. 3.7.

A group of concerned MPs debated these proposals in Westminster Hall on 20 January. Some of you may recall that just in advance of that debate, Sir Michael Wilshaw, the Head of Ofsted, said 'of course Sunday Schools will be included'. To which David Cameron replied, 'Of course they won't be included.' They are actually both right. On the proposals as published, most Sunday Schools will not meet the threshold number of hours per week. But any church youth work which at any point in the year meets for more than six hours in any given week would.

It is interesting, I would suggest, that what started out in the 2015 Strategy as a concern about some madrassas teaching young Muslim boys for several hours each day and being a vehicle for the dissemination of extremist forms of Islam turns into a comprehensive scheme for the registration and regulation of all work with young people above a fairly low threshold of contact.

This is by no means a *fait accompli*. In his report on the operation of the Terrorism Acts of September 2015, David Anderson QC identified 15 distinct legal problems any new legislation will need to surmount. The Home Affairs Select Committee is currently conducting an inquiry into the effectiveness of the Government's anti-extremism strategy. In his evidence to that Committee, David Anderson expressed his scepticism about extending the law any further. It is clear that the Parliamentary Joint Committee on Human Rights shares that scepticism, and on 4 February it announced its own inquiry into the Strategy, looking particularly at the religious and educational aspects. The next months will be critical in seeing just how far the Government can go with this Strategy.¹⁷

Should we be worried? Surely Christians are not extremists? There is a lot that could be said on that question. But we must recognise that given such broad discretionary powers there is always going to be a risk that anyone holding unconventional or minority views on any matter of religious, ethical or political controversy could be tarred with that brush. I think (along with large numbers of our fellow-citizens, whether Christian or not) we should be very worried about the illiberal turn the Government has now taken in response to the undoubtedly real threat of Islamist terrorism. I very much hope that the Church of England collectively, and we as individual members, will take a lead in resisting the seductive allure of a policy which strikes at the heart of what it means to live in a free society.

¹⁷ For further background, see the very helpful Briefing Paper by Joanna Dawson, *Counter-extremism policy: an overview* (House of Commons Library, no. 7238, 5 February 2016).