

Submission to the Joint Committee on Human Rights on the Counter Terrorism & Border Security Bill



June 2018

1. INTRODUCTION

- i. The Muslim Council of Britain (MCB), founded in 1997, is an inclusive umbrella body of mosques, charities, schools and Islamic associations that represents the largest cross-section of Muslims in Britain. It is pledged to work for the common good of society as a whole.
- ii. The MCB's affiliate base reflects the diversity of Muslims in the UK, being made up of a range of ethnic, geographic and theological backgrounds.
- iii. The MCB has long spoken about the various threats posed to our society, terrorism being one of them. The MCB has remained in communication with our affiliates, produced sermons and booklets on how Muslim communities can co-operate with authorities where needed. The MCB has commented publicly, as well as consulted with affiliate members on this issue.
- iv. The MCB has been running a national listening exercise throughout 2018, in order to engage with Muslim communities on the issue of terrorism.

2. COUNTER TERRORISM

- i. The UK government has adopted six pieces of counter-terrorism legislation from 2000 – 2015, with this latest Bill proposing to amend at least seven others, including Criminal Justice Act 2003 and the Serious Crime Act 2007.
- ii. Upon studying the range of laws that Parliament has passed, many human rights groups have argued that there are enough to deal with the current threats posed to the UK.
- iii. Prime Minister Theresa May's campaign speech on June 6th 2017 included the lines "If our human rights laws stop us from doing it (*prosecuting terrorism suspects in court*), we'll change the laws so we can do it."¹
- iv. The MCB considers this kind of policy to be counter-productive to the aims of counter-terrorism. All CT policies must be underpinned by the rule of law and a firm acceptance of inalienable human rights for all. If the Prime Minister, and the UK government by extension, believes that human rights can be denied to some, then this is a problem for all.
- v. The fear that counter-terrorism legislation may lead to the denial of basic freedoms also plays directly into the hands of terrorists. If the UK government's response to terrorism is to curtail civil liberties and human rights, it risks undermining the society we are all trying to protect.

¹ https://twitter.com/theresa_may/status/872181737933217794?lang=en

3. EXPRESSIONS OF SUPPORT FOR A PROSCRIBED ORGANISATION, PUBLICATION OF IMAGES, OBTAINING OR VIEWING MATERIAL OVER THE INTERNET

- i. The MCB understands the importance of having a public list of proscribed organisations whose aims and values include terrorism, as it is unconscionable to support them. We have welcomed, for example, the inclusion of National Action² as the first far-right extreme group.
- ii. Clause 1 makes it an offence to “express an opinion or belief that is supportive of a proscribed organisation” while being reckless as to whether a person receiving the expression may be “encouraged to support a proscribed organisation.”³ The MCB would appreciate clarification on whether this still means that evidence for supporting and recruiting for proscribed groups is examined properly and thoroughly.
- iii. This raises the concern that individuals may be criminalised and sentenced simply for expressing a view, with no burden of proof to provide evidence that others have been recruited. As has been pointed out by Liberty’s Policy Manager, Rachel Robinson: “blurring the boundary between thought and action by locking people up simply for exploring ideas undermines the foundations of our criminal justice system.”⁴
- iv. Max Hill QC has also warned that we “should not criminalise thought without action or preparation for action.”⁵
- v. Clause 2 makes it an offense to publicise an image of clothing or any other article that would suggest a person is a member or supporter of a proscribed organisation.
- vi. The MCB has concerns about the widening of terrorism legislation to the lengths that clauses 1 - 3 go to, which have also been raised previously by the former independent reviewer of terrorism legislation.⁶ Powers granted as detailed in Section 13 of the 2000 Act should be sufficient to make judgements about intentions and support for proscribed groups.
- vii. While it is welcome that there appears to be a recognition that – unlike as is claimed by sections of the media and the right-wing commentariat – it is not mosques that are the locus of radicalisation, but online spaces, it is alarming that the government should seek to make it an offence to download or record information on three or more occasions, as Clause 3 proposes.
- viii. The real question is how to best deal with this in reality. We understand that those who upload such “terrorist” material, may already be liable for prosecution. This is welcome. However, specifically making an automatic

² <https://www.gov.uk/government/news/national-action-becomes-first-extreme-right-wing-group-to-be-banned-in-uk>

³ Counter Terrorism & Border Security Bill Explanatory Notes
<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0219/en/18219en.pdf>

⁴ <https://www.theguardian.com/uk-news/2018/jun/06/anti-terrorism-plans-criticised-make-thoughtcrime-reality>

⁵ <https://terrorismlegislationreviewer.independent.gov.uk/tom-sargant-memorial-lecture-for-justice-24th-october-2017/>

⁶ <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2016/12/TERRORISM-ACTS-REPORT-1-Dec-2016-1.pdf>

blunt cut-off that 3 or more downloads warrants arrest and potentially imprisonment, unless there is an argument that is accepted by counter-terror police, appears as if it is going too far. It is unclear what the rationale or evidence is that justifies this specific cut-off.

- ix. This legislation does little to stop the platforming of terrorist material by third parties and social media, whose responsibility should not be overlooked in the spread of terrorism.
- x. To make the download and sharing of this kind of information illegal would impact academic inquiry, and stifle the ability of people to research, as evidenced in the arrest and subsequent acquittal of the Nottingham Two⁷. The explanatory notes clarify that the offence will only bite where the person downloads material knowing that the information is likely to be useful for terrorist purposes, however, how can this be proved? Three instances are not enough to establish a “pattern of behaviour” that may suggest a person is considering using that information for terrorist purposes, and this clause moves the burden of proof onto the individual, rather than the government to prove that the information was downloaded knowingly and deliberately.

4. EVIDENCE OBTAINED UNDER PORT AND BORDER CONTROL POWERS, DETENTION TERRORIST SUSPECTS: HOSPITAL TREATMENT

- i. Given the rising threat, it is important that security forces have the powers required to keep our nation safe, whilst also retaining the shared principles of a just, equal and human centric value system.
- ii. Noting a 58% rise⁸ in terror-related arrests but only a third of them resulting in criminal charges, and the vast majority of them being male, British and of Asian appearance, there are significant worries about the ways in which the British Muslim community has been targeted, particularly under Schedule 7.⁹
- iii. Schedule 7 confers police with powers to interrogate, transfer an individual to another location and/or question for 6 hours. It is welcome that there is a statutory bar proposed on Schedule 7 admissions in any subsequent criminal trial, but there is still evidence of disproportionately high questioning of persons in the Asian ethnic category (28% Asian, 29% white). In 2017 almost one-third of subsequent detentions were Asian, compared to a drop to 12% of people in the White category being detained.¹⁰
- iv. The explanatory notes detail that under existing legislation constables have the power to arrest without a warrant, with reasonable suspicion as the basis.

⁷ <https://www.theguardian.com/commentisfree/2008/aug/18/terrorism.civilliberties>

⁸ <https://www.independent.co.uk/news/uk/crime/terrorism-arrests-uk-2017-record-home-office-parsons-green-police-westminster-london-bridge-a8245396.html>

⁹ <https://www.bl.uk/collection-items/impact-of-counterterrorism-measures-on-muslim-communities>

¹⁰ <https://terrorismlegislationreviewer.independent.gov.uk/wp-content/uploads/2018/01/Terrorism-Acts-in-2016.pdf>

- v. For this reason, it is incredibly important for the government to provide clear guidelines as to what constitutes “reasonable suspicion” of a person to be a terrorist. It should also be made clear what unconscious bias and Islamophobia training officers are provided with before they are able to carry out this duty.
- vi. The MCB expects the government to:
 - i. Define what is reasonable suspicion
 - ii. Monitor who is being stopped (by faith and race)
 - iii. Accept third party oversight as to whether the law is being applied in the intended fashion or explanations provided where certain metrics are breached e.g. disproportionate numbers in any one background
 - iv. Introduce an accessible appeals or complaints procedure relating to Schedule 7 stops

5. PERSONS VULNERABLE TO BEING DRAWN INTO TERRORISM

- i. Many organisations have called for an independent review of “Prevent”, one of the four strands of counter-terrorism policy.^{11 12 13 14}
- ii. The MCB continues to be concerned about the widening of “Prevent”, contrary to the grain of numerous analyses from counter-terrorism practitioners, academics and policy makers, which challenge the effectiveness of the strategy.^{15 16 17}
- iii. There are significant human rights concerns about “Prevent” and the impact it has had on Muslim children¹⁸ and young people¹⁹ in terms of freedom of speech, expression and freedom and association in a campus context.²⁰
- iv. In October 2015, the MCB published a document of “Prevent” case studies following a meeting with David Anderson QC, which outlined the

¹¹ Liberty <https://www.libertyhumanrights.org.uk/sites/default/files/Westminster%20Hall%20Briefing-Implementation%20of%20Prevent.pdf>

¹² Human Rights Watch

<https://www.libertyhumanrights.org.uk/sites/default/files/Rights%20Watch%20UK%20and%20Liberty%20briefing%20-%20an%20independent%20review%20of%20Prevent.pdf>

¹³ House of Lords <http://www.middleeasteye.net/news/uk-government-faces-calls-review-effectiveness-prevent-795761237>

¹⁴ Home Affairs Select Committee <http://www.rwuk.org/home-affairs-select-committee-calls-for-independent-review-of-prevent/>

¹⁵ https://www.opensocietyfoundations.org/sites/default/files/eroding-trust-20161017_0.pdf

¹⁶ I was told, “Don’t push the issue too far. It is really a counter-Islamic strategy.” – Gavin Robinson, 20 Jan 2016

<https://publications.parliament.uk/pa/cm201516/cmhansrd/cm160120/halltext/160120h0001.htm#16012030000552>

¹⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/543937/How_well_are_further_education_and_skills_providers_implementing_the_Prevent_duty.pdf

¹⁸ <http://www.middleeasteye.net/columns/what-prevent-referral-figures-don-t-say-the-impact-muslim-young-people-1836550075>

¹⁹ <https://www.bbc.co.uk/news/uk-41927937>

²⁰ Ideology, utopia and Islam on campus: The Legal Story, paragraph 15
<http://journals.sagepub.com/doi/full/10.1177/1746197917694183>

- shortcomings, including the viewing of Muslim communities through the prism of security.²¹
- v. The MCB's response to the Counter Terrorism and Security Act 2015 outlines the basis upon which there has been an undermining of trust and human rights and civil liberties in Muslim communities.²² The resulting self-censorship, the lack of transparency and expansion of "Prevent" risk being a threat to cohesive societies that can effectively respond to terrorism.
 - vi. Given these challenges, the Muslim Council of Britain reiterates its call for an independent review of Prevent, to ensure we move towards an effective, trusted means of keeping our nation safe.

6. CONCLUSION

- i. The MCB welcomes legislation that intends to keep the UK and its people safe from harm and understands that the terror threat level has been at "severe" for some time, meaning an attack is highly likely.²³
- ii. There are significant challenges to be met, particularly in the global context of growing violence in regions that the UK is inextricably linked to, whether this is through political or economic links.
- iii. It is also important in the national context. With five terrorist attacks in 2017 alone, it is key that the government develops an effective means of understanding why they have come about, in order to find an effective means of stopping them.
- iv. However, the MCB remains concerned about whether there are adequate safeguards, sufficient provisions for judicial oversight and the appropriate levels of transparency in place to reassure the public that there will be no discrimination in the implementation of these expanded powers. and no loss in goodwill of those who already fear being singled out and treated in a discriminatory way that does not further our security interests.
- v. The MCB calls for an appeals or complaints procedure relating to Schedule 7 stops at ports and borders.
- vi. The MCB urges the Home Office to consider introducing safeguards and oversight in order to protect against any discriminatory application.
- vii. The MCB urges the Committee to ensure that the balance between safety and security, civil liberties and human rights and impact on communities is carefully considered when assessing the introduction of new offences.

²¹ <https://www.mcb.org.uk/wp-content/uploads/2015/10/20150803-Case-studies-about-Prevent.pdf>

²² <https://www.mcb.org.uk/wp-content/uploads/2015/01/Response-to-the-Counter-Terrorism-and-Security-Bill.pdf>

²³ <https://www.mi5.gov.uk/threat-levels>