

# Operating with Impunity

Hateful extremism: The need  
for a legal framework







# Foreword

Since the London bombings in 2005, successive governments have sought to address the extremist threat. Yet, as this report shows, the problem of hateful extremism has got worse. The ecosystem of hateful extremism has evolved at a rapid pace and has changed substantially over the last decade. Technological advancements, the lack of regulation of online platforms, and the use of sophisticated tactics by extremists are just some of the reasons why we have seen a significant growth in hateful extremism. As Lead Commissioner, I have seen first-hand the harm hateful extremism is having on our citizens and our communities, on our freedoms and rights, and our democracy.

As Government struggle to contain this growing threat, their efforts have been hampered by an ambiguous and incoherent counter extremism policy and approach. This was also why a proposed Extremism Bill in 2015 failed to materialise.

This report highlights two stark realities. Firstly, due to a lack of laws designed to capture the activity of hateful extremism, extremists have been able to exploit gaps in existing legislation. As a result, this is permitting some of the most shocking and dangerous extremist activity and material in Britain. The real-life examples we provide demonstrate that hateful extremists intend to create a climate conducive to terrorism, hate crime and violence; or seek to erode and destroy our democratic freedoms and rights. They are able to do so lawfully, freely and with impunity. Secondly, the failure of our laws to keep pace with the evolving and modern-day hateful extremist threat. Not only have law enforcement agencies and regulatory bodies expressed their concern about the significant operational challenges they face in countering hateful extremism, extensive polling demonstrates that the public believe more needs to be done to counter extremism. As it stands, the current situation is untenable.

As a society, we have decided hate crime and terrorism are sufficiently dangerous that, over the years, we have built a legal and operational framework to counter these crimes. This report argues that the same is now needed to tackle hateful extremism, a distinct activity in its own right. In contrast to the proposed Extremism Bill, this report outlines the specific activity we believe should be captured by legislation, the harm it is causing, and the democratic justification for why a proportionate legal framework is necessary.

We directly address concerns around freedom of expression and the need to protect this fundamental right. We also demonstrate how it is possible to distinguish legitimate, offensive and dissenting speech from some of the worst and most dangerous extremist activity that is currently taking place in Britain. We have evidenced the high threshold of extremist materials and behaviours we are concerned about. A legal framework will provide clarity, as opposed

to the continuing ambiguity and confusion, and will provide reassurance and transparency to not only law enforcement, regulators and statutory agencies, but also to the public. Although we outline some of the possible powers a new legal framework could have, we do not provide the full details of what this legal framework would look like. Having identified the hateful extremist activity that we believe a legal framework should capture, this report seeks to demonstrate why such a framework is needed. Our key recommendation to the Government is to now commit to devising such a framework, because there is sufficient and necessary justification to do so.

I want to thank Sir Mark Rowley for his hard work and commitment in leading this review. Mark and I have had to grapple with a difficult and complicated topic, but we believe there is now an opportunity and a viable way forward that is compatible with our legal and human rights obligations. Extremism can never be fully eradicated in a society. However, a successful democracy is one that is able to confine and contain hateful extremism, not allowing it to pollute the mainstream. This requires both legal and non-legal measures. I hope the Government will now take this opportunity to construct a much-needed legal framework to protect our democracy.

A handwritten signature in black ink, appearing to read 'Sara Khan', with a long horizontal flourish extending to the right.

**Sara Khan**  
Lead Commissioner





# Foreword

My last role in policing was a national responsibility leading ‘Counter Terrorism Policing’ (‘CT Policing’) from New Scotland Yard. During those four years, from 2014 to 2018, I saw terrorism and extremism transforming. Terrorism morphed from small secret organisations to terrorism inspired and encouraged via social media. Terrorist leaders split their efforts between the long-established tactic of planning large scale attacks and the new tactic of spreading their ideology, online and through their agents, to grow support and use this outreach to inspire some of their new followers into ‘lone actor’ attacks. Islamist terror groups such as Daesh were first to use this new approach at scale, but extreme right wing terror groups have now also used the same tactics to grow and become another smaller, but significant, global threat.

Delivering the 2018 Policy Exchange Colin Cramphorn Memorial Lecture shortly before retirement caused me to reflect after the awfulness of 2017, with five attacks and 36 murdered. It struck me then that, despite the necessary learning and rapid improvements CT Policing and MI5 were making as a result of those attacks, the big issue was extremism – sitting like the hidden portion of the iceberg under the water. Extremism, the spread of hateful ideologies that legitimise violence, was creating an ever-bigger pool for terrorists to recruit from, as well as increasing hate crime and tensions between communities. Extremism wasn’t new, but the magnifying effect of social media had transformed it from a sideshow to a major threat.

The most worrying factor though was the national ability to address the extremism threat. Whilst we have a well-established counter terrorism machinery across police, intelligence agencies, government and others, we have nothing of real weight to counter extremism. Hence, I support Sara Khan and the Commission’s attempts to address extremism and was ready to assist when she asked me to take on this legal review.

Sara’s work to try to improve understanding and to focus cross-government and society effort on the most toxic elements of extremism, i.e. hateful extremism, seems to me to provide a fresh opportunity. A more focused lens perhaps means we can finally bring the law to bear on this problem and steer well clear of treading on fundamental principles of freedom of speech.

During this review, I have been horrified by what I have seen, on two counts:

- Firstly, the ghaſtlineſſ and volumes of hateful extremist materials and behaviours in the UK at preſent is, even for me, truly ſhocking. I believe readers of this report will be appalled by our examples of what is currently lawful.
- Secondly, the gaping chasm in the law that allows hateful extremists to operate with impunity.

Conſequentially, we have ſet out to achieve two goals; to build conſenſus that the ſcale, ghaſtlineſſ and threat of hateful extremism requires new legal interventions; and to chart a way forward to begin filling that dangerous legal void.

Finally, thank you to Sara, her team, and all thoſe we have conſulted and have provided us with evidence.



**Sir Mark Rowley QPM**

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# Background and Terms of Reference

The Commission's flagship report, *Challenging Hateful Extremism*,<sup>1</sup> identified and evidenced a new category of extremist activity, described as "hateful extremism".<sup>A</sup> This includes:

- Behaviours which incite and amplify hate, or engage in persistent hatred, or equivocate about and make the moral case for violence;
- which draw on hateful, hostile or supremacist beliefs directed at an out-group who are perceived as a threat to the well-being, survival or success of an in-group; and
- cause, or are likely to cause, harm to individuals, communities or wider society.

There are determined individuals and organisations who engage in persistent extremist activity and are often responsible for propagating dangerous extremist narratives. They are recruiting and radicalising vulnerable people to their cause, irrespective of the damage and harm they are causing to others and to our society. Since our inception in 2018, we have heard from victims who felt let down by the authorities, who were concerned that existing powers were not being used effectively or consistently and that there may even be gaps in the law. The Commission therefore committed to undertake a review of current legislation relevant to hateful extremism. Former Assistant Commissioner for Specialist Operations of the Metropolitan Police Service, Sir Mark Rowley, was asked by the Lead Commissioner, Sara Khan, to lead the review. He was tasked to:

- **Identify whether there are gaps in existing legislation or inconsistencies in enforcing the law in relation to hateful extremism; and**
- **Make practical recommendations that are compatible with existing legal and human rights obligations.**

This report is the conclusion of the Commission's review and is intended to be a policy report rather than a detailed legal analysis. We have examined existing legislation in relation to hateful extremism from a policy and operational perspective, rather than a full and detailed examination of the law. In undertaking this review, the Commission sought insights from academics and lawyers, and held over 100 meetings with law enforcement agencies, experts, and practitioners across England and Wales. We also engaged with religious leaders, politicians, civil society and free speech organisations, charities, and human rights activists. In addition, we commissioned the National Centre for Social Research (NatCen) to deliver a study exploring how existing law balances freedom of expression rights with the rights of victims of hateful extremism.

The description of hateful extremism in *Challenging Hateful Extremism*, as outlined above, served as a useful starter definition as we began work on the review and is based on understandings of an 'in-group' and 'out-group' social identity theory. These groups

<sup>A</sup> This report uses endnotes [numbers] to reference sources and footnotes [letters] to provide additional detail to content in the main text.

reflect a person's identity and roughly divide in-groups as those that we identify with versus out-groups that we do not. In extremist beliefs, understanding shifts to see the out-group as threatening the survival, well-being or success of an in-group, therefore motivating a hostility towards this out-group.<sup>2</sup> After analysis of further evidence, we have further refined our description of hateful extremism.

For this report and in future, we define hateful extremism as:

**Activity or materials directed at an out-group who are perceived as a threat to an in-group motivated by or intending to advance a political, religious or racial supremacist ideology:**

- a. To create a climate conducive to hate crime, terrorism or other violence; or**
- b. Attempt to erode or destroy the fundamental rights and freedoms of our democratic society as protected under Article 17 of Schedule 1 to the Human Rights Act 1998 ('HRA').**

Such activity can include, for example:

- Disseminating ideological extremist propaganda and disinformation, materials, symbols and narratives, both offline and online. This can also include glorification of terrorism and terrorists;
- Attempts to radicalise, indoctrinate and recruit others, such as young and vulnerable people to extremist ideologies; or
- Stirring up hatred or inciting, inspiring, encouraging, glorifying or justifying violence against a group of people identified as an out-group who are perceived as threat to the well-being, success or survival of an in-group.

**This is not a legal definition but a working definition.**

The scope of this report covers England and Wales.

Please note that some of the content of this report may be upsetting.



# Executive Summary: Key Findings and Recommendations



- 1.1 The extremist threat is a serious challenge, which Government has grappled with for many years. Previous efforts to counter extremism, such as the 2013 Government Extremism Taskforce and the 2015 Counter-Extremism Strategy, have been well-intentioned but had only limited success. In other instances, efforts have outright failed. For example, the Government's proposed Extremism Bill in 2015 failed to emerge because it was unable to provide a legally acceptable definition of extremism or provide clarity on the actual problem and harm the Government sought to address, while ensuring the protection of civil liberties.
- 1.2 The inability of governments to effectively address extremist behaviour is exemplified by the activity of hate preacher Anjem Choudary. It is alleged that Choudary helped to motivate at least 70-100<sup>3</sup> people to turn to terrorism. His propagation for a theocratic caliphate arguably sought to undermine and erode Britain's democratic rights and freedoms, and yet the authorities did not have the legal means to stop him. For many years, despite the harm he caused to individuals and to our country, Choudary was able to operate lawfully and freely in Britain until 2016, when he was eventually convicted for the specific terror offence of inviting support for the terrorist group Daesh. The lack of legislation to capture his extremist activity, that fell outside of terrorism, is an example of the continuing policy and legislative failure in restricting the dangerous extremist activity of such individuals.
- 1.3 Today, we continue to see a wide spectrum of ideologically motivated extremist groups, individuals and platforms, whose activity does not meet the terrorism threshold, but which is helping to create a climate conducive to terrorism, hate crime and violence; or which is eroding the fundamental rights and freedoms of our democratic society. Neo-Nazi and Islamist groups in Britain, who have not been proscribed and are therefore operating lawfully, seek to replace our democracy with a Nazi and Islamist society respectively. They are actively radicalising others and are openly propagating for the erosion of our fundamental democratic rights. Their aim is to subvert our democracy. This is a threat to our civilised democratic order which cannot be taken for granted, and requires a robust and proportionate legal response.
- 1.4 To date, attempts to capture hateful extremism (as defined below) have consistently been examined through the lens of counter terrorism policy and legislation. We believe this is a futile and flawed approach and has been the wrong prism to counter hateful extremism. In contrast, little consideration has been given to existing human rights legislation which seeks to prevent attempts by extremists to erode and destroy the democratic rights and freedoms of our society. This is outlined in Article 17 of the European Convention on Human Rights (ECHR), which has been incorporated into UK law through the Human Rights Act (HRA) 1998.
- 1.5 Article 17 explicitly states "nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein....".<sup>4</sup> Article 17 prohibits the abuse of fundamental rights, as outlined in our legislation, by extremist ideologies which are considered incompatible with democracy. It provides democracies with a robust tool to protect themselves from extremist and anti-democratic activity which seeks to destroy such freedoms and rights. Counter terrorism legislation is rightly focused on the specific problem of terrorism and

therefore does not and should not be expected to capture the breadth of extremist activity we define here in the report. In contrast, hateful extremism is a distinct activity in its own right outside of terrorism and hate crime and requires its own legislation to capture and prevent it.

**Hateful extremism is activity or materials directed at an out-group who are perceived as a threat to an in-group<sup>B</sup> motivated by or intending to advance a political, religious or racial supremacist ideology:**

- a. To create a climate conducive to hate crime, terrorism or other violence; or**
- b. Attempt to erode or destroy the fundamental rights and freedoms of our democratic society as protected under Article 17 of Schedule 1 to the Human Rights Act 1998.**

- 1.6 This report specifically addresses some of the challenges that have undermined previous efforts to tackle extremism. For example, we provide a narrow and clearer definition of hateful extremism and set out how to ensure that efforts to curb extremists do not disproportionately undermine freedom of expression or other civil liberties.
- 1.7 Therefore, following our review into existing legislation relevant to hateful extremism, our main recommendation to the Government is to commission work to devise a legal and operational framework to counter hateful extremism. This provides a realistic and meaningful approach to tackle hateful extremism, avoiding the shortfalls of previous attempts. We are concerned hateful extremism will continue to persist and worsen in the next decade unless a new and strategic approach is taken.

## Key findings

Throughout this report we have evidenced why a contemporary legal framework is needed based on the following three key reasons:

- 1.8 **Firstly, the nature and scale of extremist activity that is currently lawful in Britain is shocking and dangerous.** The two areas of law most relevant to hateful extremism are hate crime and terrorism, both of which are illegal in England and Wales. However, only some extremist activity is captured, most notably by the stirring up of hatred offences under Sections 3 and 3A of the Public Order Act 1986; and counter terrorism legislation (Sections 1 and 2 of the Terrorism Act 2006 and Section 57 of the Terrorism Act 2000 among others) which focuses on encouragement, including glorification and dissemination of terrorist publications for the purposes of commissioning, preparing or instigating acts of terrorism.
- 1.9 **A great deal of hateful extremist activity is currently lawful in Britain primarily because of the lack of legislation designed to capture the specific activity of hateful extremism and additionally the existing scope in current hate crime and counter**

<sup>B</sup> These groups are based on understandings of 'in-group' and 'out-group' social identity theory which reflect a person's identity and roughly divide in-groups as those we identify with versus out-groups that we do not. In extremist beliefs, understanding shifts to see the out-group as threatening the survival, well being or success of an in-group, therefore motivating a hostility towards this out-group.

**terrorism legislation, designed to capture these crimes but not hateful extremism.**

This means many extremists are able to operate lawfully, freely, and with impunity. In the absence of legislation to address hateful extremism in Britain, it is currently lawful to:

- **Glorify terrorism, so long as one avoids encouraging the commission, preparation, or instigation of acts of terrorism or related offences.**
  - For example: praising the actions and ideology of terrorists such as Anders Breivik, the 9/11 hijackers, Thomas Mair, or Brenton Tarrant to a wide audience, which may include children. Sharing content which commends their attacks could be legal, as long as one avoids making a statement that is likely to be understood, by a reasonable person, as a direct or indirect encouragement or inducement, to the public to commit, prepare, or instigate acts of terrorism.
- **Intentionally stir up racial hatred, so long as one avoids being threatening, abusive or insulting and, in the case of religious hatred, avoids being threatening when doing so (similar offences with variations apply to other protected characteristics).**
  - For example: forming a Neo-Nazi extremist group which persistently praises the actions of Adolf Hitler and encourages members to spread Holocaust denial material and antisemitic conspiracy theories, so as long it is not abusive, insulting, or threatening.
- **Publish and distribute material to intentionally stir up racial or religious hatred as long as the material avoids being threatening, abusive, or insulting in its content.**
  - For example: a fascist extremist organisation circulating pamphlets which promote false claims about a 'white genocide' intended to stir up hatred against a racial or religious group, but which are not threatening, abusive, or insulting.
- **Collect material that encourages terrorism, including material which seeks to persuade the reader to commit terrorist acts, so long as the person does not possess it in circumstances which give rise to a reasonable suspicion that the possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. This is true even for the most extreme violent terrorist material, such as torture and executions.**
  - For example: Possessing Islamist extremist propaganda materials, such as violent sermons and ISIS beheading videos.

1.10 **We believe praising and glorifying terrorists and their murderous actions help create a climate that is conducive to terrorism** and such extremist activity should be outlawed as part of a new legal hateful extremism framework. We continue to see online extremist messaging boards that glorify UK and non-UK terrorists such as Brenton Tarrant, Thomas Mair, Andres Breivik, Robert Bowers, David Copeland, Osama Bin Laden, and others, with little punitive action.

1.11 **Secondly**, although the challenge of extremism is not new, we are concerned that our laws have failed to keep pace with the growing, evolving, and modern-day threat of hateful extremism:

- **In the last decade, the threat of hateful extremism in Britain has changed beyond recognition.** Despite the existence of both a Prevent and a Counter-Extremism Strategy, hateful extremism is growing, evolving rapidly, and becoming more complex. Extremists have professionalised, are ‘intellectualising’ extremist rhetoric in an attempt to infiltrate the mainstream, and are co-ordinating locally, nationally and transnationally, aided by online platforms. The public are increasingly concerned and want action.
- **Alongside a persistent Islamist extremism threat, new threats include the Incel subculture<sup>c</sup> and growth in Far Right extremist actors and organisations.** Further challenges are presented by a rise in ‘mixed, unstable or unclear ideology’,<sup>d, 5</sup> cases in which there is no definitive ascribing to any one single extremist ideology. We are particularly concerned by the targeted radicalisation of young people and the lack of criminal sanctions against those who intend to radicalise young people into extremism. Such activity is currently lawful, despite the long term harm to children, as long as it does not include the encouragement, preparation or instigation of acts of terrorism. This is despite it creating a climate conducive to terrorism, hate crime, or other violence and/or is attempting to erode and destroy the fundamental rights and freedoms of our democratic society.
- **In the absence of a legal hateful extremism framework, an operational infrastructure to counter hateful extremism is severely lacking.** Over the decades, Britain has built a robust operational counter terrorism machinery which has evolved in response to the changing terrorist threat. In contrast, our national counter extremism approach and machinery is weak, poorly co-ordinated, and behind the curve. As we have outlined in *Challenging Hateful Extremism*,<sup>6</sup> national counter extremism policy has been confused and ineffective.
- **As a result, law enforcement bodies and regulatory agencies, including Counter Terrorism Policing and national advisors for hate crime policing, and regulatory bodies such as Ofsted and the Charity Commission, face significant operational challenges in countering hateful extremism.** They have shared concerns that the lack of legal (criminal, civil, and regulatory) mechanisms has resulted in ambiguity and confusion, and is undermining their ability to confront hateful extremism. Both hate crime and counter terror policing are concerned by the gaps in existing legislation – which is allowing hateful extremism to flourish – and support our call for a legal framework for hateful extremism.
- **We are also concerned by the lack of extremism expertise within policing and the criminal justice system.** Extremists from the same ethnic and religious communities as their victims repeatedly target and harass them, often stirring up hatred and violence through the use of extremist religious terms or different languages not recognised or understood by law enforcement agencies. Too often those within

<sup>c</sup> Incel refers to the Involuntarily Celibate movement.

<sup>d</sup> According to the Home Office, “mixed, unstable or unclear ideology” reflects “instances where the ideology presented involves a combination of elements from multiple ideologies (mixed), shifts between different ideologies (unstable), or where the individual does not present a coherent ideology yet may still pose a terrorism risk (unclear)”.

the criminal justice system are unable to discern the difference between robust theological arguments and carefully constructed campaigns of threats, hatred and intimidation by extremist actors. This has allowed many extremists to continue to engage in such activity and has silenced religious or ethnic British minority victims. There is a lack of cultural and religious extremism expertise within community policing and the criminal justice system to recognise stirring up of hatred if religious or theological terminology is used and in an unfamiliar language.

- **The failure of our laws to have kept pace with the evolving threat of hateful extremism and the absence of a legal framework has impacted our ability to counter online hateful extremism.** The online world has connected and magnified extremist threats through the dissemination of extremist content, extremist conspiracy theories, and in recruiting online. On mainstream platforms, extremist content is often subtly disguised, utilising memes or drawings. On fringe sites, hateful extremist content can be explicit, graphic, and advocate extreme antisemitic, anti-Muslim, Islamist, or other supremacist ideologies. Research suggests that online extremism can often have real world, offline harms.
- **We welcome the proposals laid out in the Government's Online Harms White Paper for a strong regulatory regime. However, at present there is not a clear mechanism to ensure these powers would be applied to hateful extremism.** No definition of 'extremism' was provided by the Government, which is described as "legal but harmful" activity. While the Government has stated that illegal activity, such as terrorism and hate crime, will be considered a priority category, which will be set out in secondary legislation, there is insufficient detail concerning how online extremism will be dealt with. To date, the Government's response to the Online Harms White Paper consultation did not engage with the concept of hateful extremism.
- **If a legal framework for hateful extremism is developed, as we recommend, this could be incorporated into the Online Harms Bill and provide clarity for both social media companies and the future regulator, Ofcom.** This would ensure a more robust response to online extremism. In the absence of such a framework, we do not believe the threat of online hateful extremism will be minimised sufficiently. The Online Harms Bill needs to go much further in addressing online hateful extremism and will not in itself offer a sufficiently robust response to the prevalent and appalling hateful extremist activities and material online.
- **We are concerned about the proposed framework's current split between 'Category 1 services' and 'Category 2 services' (platforms), based on reach and risk, whereby Category 2 services will not be obliged to act on harmful but legal content (except in the case of children and if the service is deemed likely to be accessed by children).** As our report shows, it is the smaller platforms which propagate and host some of the most dangerous extremist content in Britain. While smaller platforms could still be considered a 'Category 1 service', namely based on risk, we are concerned about the lack of details on the criteria which will determine which services should sit under which category.
- **We recommend the Government elevate hateful extremism as a priority threat and to issue its own Code of Practice.** The Code could include a classification system for extremist conspiracy theories and disinformation based on a wide set of criteria,

including an assessment of reach and influence; as well as a scale of harm to individuals, to public order, and to undermining our democratic rights and freedoms. Such a Code of Practice could become a guide and reference point for both the regulator and online platforms. This Code could also help provide clarity, conformity, consistency and transparency in assessing hateful extremism content. It should not be left to online platforms to determine their own criteria.

- 1.12 **Thirdly, it is possible to set a high legal bar in legislating and creating new powers against the dangerous activity of hateful extremism, while protecting freedom of expression legislation (Article 10 of Schedule 1 to the HRA 1998).** However, freedom of expression does not protect statements that unlawfully discriminate against, harass, or stir up violence or hatred against other persons and groups, particularly by reference to their race, religious belief, gender or sexual orientation. Nor is anyone permitted to use their right to freedom of expression to limit or undermine the human rights of others. As case law demonstrates, freedom of expression may be restricted where the action in question will result in a denigration of the rights of others.
- **It is important to recognise and protect against the risks of over-reach when it comes to potential restrictions on free speech.** Efforts to restrict hateful extremism should not be disproportionate nor restrict content and behaviours that fall outside of hateful extremism. There has, in recent times, been criticism of the policing of hate crime and hate incidents, and the authorities inappropriately being drawn into public debate on issues in relation to offence. Ensuring the correct balance is critical; we must avoid ‘over-reach’. However, we evidence in this report repeated examples of ‘under-reach’ in relation to hateful extremism, which is allowing extremists to persistently operate lawfully despite their dangerous activity.
  - **Our suggested approach would be to create a determinedly high bar for new legal powers, linked to ‘intent’ and specific serious harms as we have outlined.** Subjective policy approaches, such as those for ‘hate incidents’, should be avoided and instead an adoption of clear objective standards should be taken. This ensures proper protection for freedom of speech, which can only be legitimately curtailed where necessary and proportionate. Our method guards the boundaries of free speech, which was laid out by Lord Justice Sedley in 1999:  
**“Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having”.<sup>7</sup>**
  - **The failed attempt by the Government in 2015 to put forward their proposed Extremism Bill should not deter them to renew efforts to legislate against hateful extremism.** The approach taken by the Government was rightly criticised as they sought to provide solutions to a problem which they had not clearly defined. The Commission has taken the opposite approach. We have outlined the dangerous activity of hateful extremism, the harm it is causing and provide the democratic justification for why a proportionate legal framework is necessary.



## Hateful extremism: A new approach

- 1.13 **Our definition of hateful extremism highlights that solely looking at extremist activity through the lens of counter terrorism and/or hate crime is flawed.** Yet this was the approach taken by successive governments for many years. As a result, extremist groups and individuals who did not engage in terrorism, evaded being caught by counter terrorism legislation and were able to continue to propagate the same extremist ideologies held by terrorists, helping to create a climate conducive to terrorism, hate crime, and other violence.
- 1.14 **In our definition of hateful extremism, we have highlighted how a significant amount of hateful extremist activity attempts to erode and destroy the democratic rights and freedoms of our society.** There has been a lack of appreciation by policy makers on how hateful extremist activity, outside of terrorism and traditional notions of national security, seeks to erode, diminish, and even destroy the democratic rights and freedoms contrary to Article 17 of Schedule 1 to the HRA 1998.
- 1.15 **Article 17 provides democracies with a robust basis to protect themselves from extremist and anti-democratic activity which seeks to destroy our freedoms and rights.** Article 17 provides a key legal tool which could be incorporated into a hateful extremism legal framework to ensure our democracy protects itself from such dangerous activity. This is why we have explicitly included it as part of our working definition of hateful extremism.
- 1.16 **The lack of powers outlawing the activity of hateful extremist groups is one of many examples in this report of insufficient legal redress.** Some extremist groups are caught by the legislation on proscription. The Home Secretary has the power to proscribe an organisation under Section 3 of the Terrorism Act 2000, if they believe that the group is involved in terrorism, and it is proportionate to do. This captures some Islamist and extreme right wing terrorist groups but fails to capture those organisations who share and promote the same dangerous ideologies but fall short of the current definition for being concerned with terrorism, despite helping to create a climate that is conducive to it. As an example, this is evident in the proscription of Neo-Nazi organisation National Action but is not the case for other Neo-Nazi groups: Combat 18, Order of Nine Angles and British National Socialist Movement and the dangerous extremist rhetoric they propagate. This legislative gap leaves active British fascist, Neo-Nazi and Islamist extremist organisations, who oppose our democracy and seek to replace it with a fascist or Islamist society, to operate freely. A future legal framework could consider hateful extremism proscription offences against such organisations outside of terrorism proscription offences and result in the banning of such groups.
- 1.17 **Other Western democracies have sought to find practical solutions to protect their democratic order from such extremism.** This report includes examples from several other jurisdictions who have sought to use legislation to tackle extremism. We recognise that, although the contexts in other Western countries are different, the problem of hateful extremism and the harm it is having is very similar.

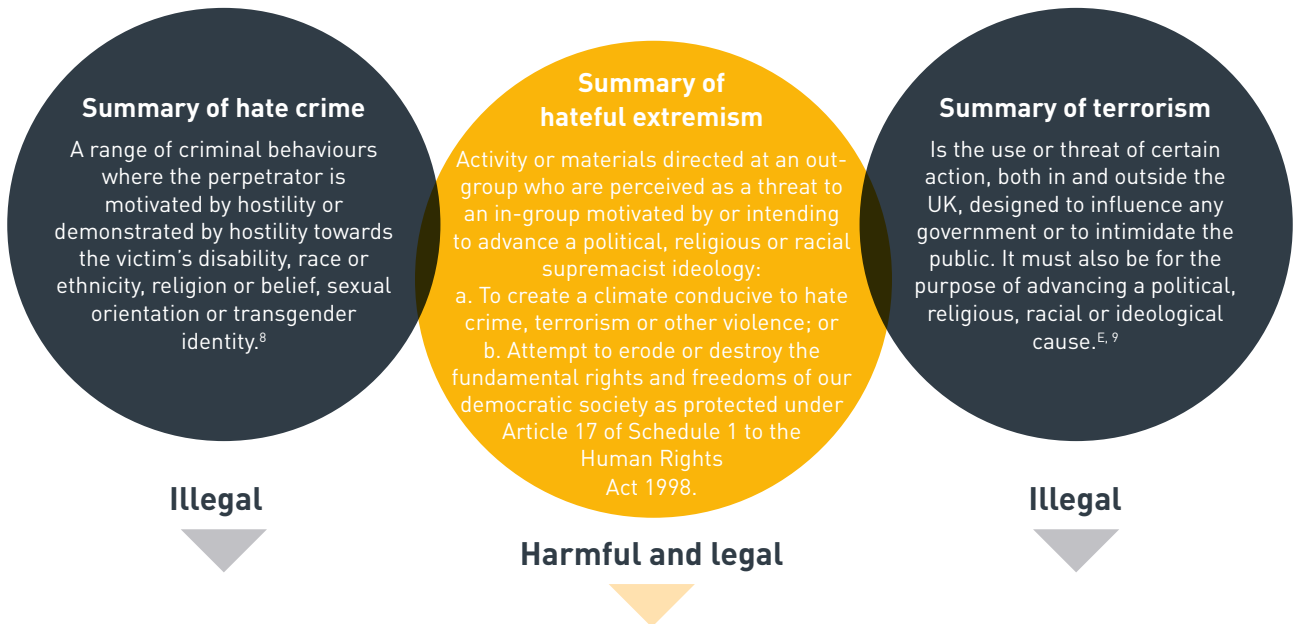
- 1.18 **It is important to emphasise that relying solely on legal measures to counter hateful extremism is an incorrect approach. Both legal and non-legal interventions are required.** In our *Challenging Hateful Extremism* report, we identified the importance of building a whole society response. It is imperative that a range of interventions are used to engage and support different individuals, such as young people drawn into extremism. They will require counselling or conflict mediation, rather than legal interventions. However, there is insufficient action taken against persistent extremist individuals and organisations who play a leading and influential role in radicalisation, recruitment and in propagating hateful extremist narratives with the intention of creating a climate conducive to hate crime, terrorism, or violence; or who are attempting to erode and even destroy the fundamental rights and freedoms of our democracy. A different approach is required for such actors, and this does include use of the law.
- 1.19 Hence, considering the legislative gap, and the hateful extremist threat, **our primary recommendation is for the Government to commission work to develop a legal framework to counter hateful extremist activity to enable law enforcement, regulatory, and other statutory bodies to ensure there is a more effective response.** Such a framework will facilitate a new operational infrastructure that would be embedded across institutions to ensure a robust and transparent response to hateful extremism guided by the law. We recognise constructing such a framework will be a complex but necessary piece of work and requires in-depth legal knowledge and expertise. We are open to whether such measures would require a legal definition or a suite of offences.
- 1.20 **A legal framework to combat hateful extremism could include civil, regulatory or criminal provisions and would also need to focus on** i) intent; ii) evidence of serious or persistent behaviour; iii) evidence of promoting a supremacist ideology; and iv) evidence of activity that is creating a climate conducive to terrorism, hate crime or violence or activity in breach of Article 17. The framework may include:
- Powers to tackle those who intentionally and persistently engage in hateful extremism. This could include banning groups and organisations or imposing conditions on individuals, with criminal sanctions for breach.
  - Restrictions on the material extremists produce, possess or share and those storing or transmitting it if it reaches a high threshold. For example, possessing the most serious material which glorifies or encourages terrorism, as suggested by the Chief Coroner Mark Lucraft QC. The intent would be to mirror the effect in child sexual offences legislation, making possession an absolute offence – with the same safeguards for journalists, academics and others. We believe this will sit best in a dedicated framework for hateful extremism, unless a solution can be found to incorporate it into counter-terrorism legislation.
  - Specific offences to capture behaviours that are currently legal, such as glorifying terrorism, where it avoids encouraging emulation of conduct that amounts to the commission or preparation of acts of terrorism.
  - Powers which would enable all law enforcement agencies, regulators, public bodies and government bodies to tackle issues within their remit, including Ofsted, the Charity Commission, and Ofcom.



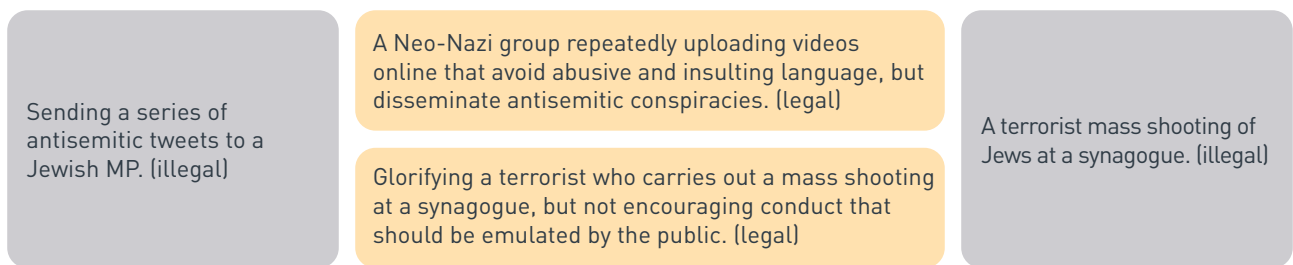
- Legal safeguards which could include a focus on proving intent, objective assessments of hateful extremism, high levels of authority required to instigate a prosecution as well as clear freedom of speech, journalistic and other safeguards.
- The potential for developing a robust classification system that would categorise and assess the scale, influence and harm of hateful extremist activity and material.

- 1.21 **This report has evidenced how repeat and persistent activity of hateful extremism, motivated by or for the purposes of advancing a political, racial or religious supremacist ideological cause spans across individuals, groups and organisations.** We have seen how the threat is magnified by online platforms and others who enable the transmission of hateful extremism whether through a lack of capability, recklessness or design. For a legal regime to be successful, it must impact across this whole ecosystem of hateful extremist actors and their enablers.
- 1.22 In light of the legal gaps which allows extremists to operate with impunity, we call on the Government to implement our recommendations. Collectively, we must all take this threat to our citizens, our communities, and our democracy seriously and act decisively to ensure, as a nation, that we are able to respond to activity that seeks to normalise the stirring up of hatred and violence, and damage social cohesion or our democratic society.
- 1.23 The infographic on the following page outlines in more detail the current hateful extremism legislative gap.





**Theoretical example in practice: Antisemitism**



**Summary of legal provisions – hate crime**

- Aggravated offences – Crime and Disorder Act 1998
- Enhanced sentencing provisions – Sentencing Act 2020

**Summary of legal provisions – hate crime and hateful extremism overlap**

- Stirring up hatred, Sections 3 and 3A in the Public Order Act 1986

**Summary of legal provisions – hateful extremism**

- Nil

**Counter terrorism laws since 2000, including:**

- Terrorism Act 2000
- Terrorism Act 2006
- Counter-Terrorism and Security Act 2015
- Counter-Terrorism and Border Security Act 2019

**Summary of laws – terrorism and hateful extremism overlap**

- Possession and glorifying terrorist content or for terrorist purposes, Section 1 and 2 of Terrorism Act 2006 and Section 57 of Terrorism Act 2000

**Recommendations for the Government**

- Recommendation 1** – To commission a legal and operational framework to robustly counter the hateful extremism threat.
- Recommendation 2** – To expand current offences relating to stirring up hatred and strengthen current resources and capability of law enforcement agencies.
- Recommendation 3** – To elevate hateful extremism to be a priority threat alongside terrorism and online child exploitation; and to implement the most robust proposals in the Online Harms White Paper.

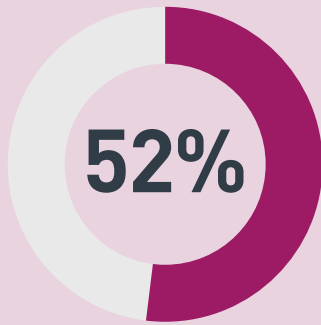
<sup>5</sup> Legal definition of terrorism as defined in the Terrorism Act 2000 is included in Annex B.





# The Growing Challenge of Hateful Extremism: A Snapshot

# Hateful extremism is growing in scale and complexity, using disinformation and targeting out-groups through extremist conspiracy theories



of respondents to our November 2018-January 2019 call for evidence in England and Wales had **witnessed extremism** in some way.<sup>10</sup>

In the year to November 2020, 24% of British public respondents polled had witnessed or experienced views promoting, endorsing or supporting extremism in the previous 12 months.<sup>F, 11</sup>

Over half (58%) of British public respondents polled felt that **extremist behaviour had increased** over the four years to November 2020.<sup>G, 12</sup>

**15%** of young people and **20% of young male** respondents to a May 2020 poll said it is true that the official account of the **Nazi Holocaust is a lie** and the number of Jews killed by the Nazis during World War II has been **exaggerated on purpose**.<sup>H, 13</sup>

25-34 year old respondents to a September 2020 poll were **five times** more likely (30% vs 6%) than 65-74 year olds to agree or strongly agree with the antisemitic conspiracy theory that, "Jews have disproportionate control of powerful institutions, and use that power for their own benefit and against the good of the general population".<sup>I, 14</sup>



<sup>F</sup> Nationally representative YouGov poll

<sup>G</sup> Nationally representative YouGov poll

<sup>H</sup> Focalddata poll of 2,076 UK 16-24 year olds

<sup>I</sup> Hanbury Strategy poll of 2,000 UK adults



## Young people are being drawn in to hateful extremism

**54%** of all Prevent referrals for April 2019-March 2020 were aged 20 and under.<sup>15</sup>

From January 2019 to June 2020,

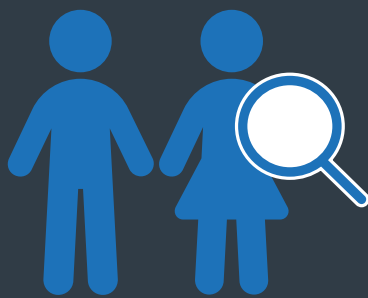
**over 1500**

children under 15 in England and Wales had been referred to Prevent.<sup>16</sup>

**682 under-18s in England and Wales were referred to Channel for Far Right concerns** in April 2017-March 2018, over five times as many as the 131 referred in the same period in 2014-5.<sup>17</sup>



It was reported in September 2020 that **children as young as 12 in the UK** are being drawn into Far Right circles.<sup>18</sup>



Among a May 2019 poll of 1,011 young British Muslims and 1,011 young non-Muslim white Britons aged 18-30, **one fifth** of respondents across both of these groups **consistently agreed with “nonviolent extremist statements”**.<sup>J, 19</sup>

<sup>J</sup> Savanta ComRes poll of 2,022 British adults aged 16-30

## Hate crime and terrorist threats are also increasing

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**145%** 

Between April 2012-March 2013 and April 2018-March 2019 there was a **145% increase** in the number of offences recorded as hate crime in England and Wales (42,255 to 103,379 offences).<sup>20</sup>

During April 2019-March 2020 half of religiously motivated hate crimes were targeted against Muslims (up from 47% in the same period in 2018/19) and 19% were against Jews (up from 18% in 2018/19).<sup>21</sup>



There were **over 800 terrorist investigations** across the Counter-Terrorism network as of September 2020,<sup>22</sup> up from over 700 in 2018.<sup>23</sup>

Between March 2017 and March 2020, nine terror attacks were carried out on UK soil,<sup>24</sup> while a further 22 terrorist plots targeting UK soil were foiled between March 2017 and September 2019.<sup>25</sup>



# The internet is magnifying hate crime, extremism and terrorism

WWW

Internet users were **more likely to encounter hateful content online in 2019 than in 2017** (53% up from 47%).<sup>K, 26</sup>

Between July and September 2020, Facebook took action on **22.1m pieces of hate speech content on its own platform** and a further **6.5m pieces of hate speech content on Instagram** globally (Instagram hate speech content was up from 3.2m between April and June 2020).<sup>27</sup>



Among respondents to the Commission's November 2018-January 2019 call for evidence, **56% of the England and Wales public** and **73% of England and Wales practitioners** agreed that **"a lot more"** should be done to counter extremism online.<sup>28</sup>

In August 2020, internal Facebook documents showed that **several million users globally were in groups which promoted the QAnon conspiracy theory**.<sup>29</sup>



**Engagement with QAnon groups** on Facebook and Twitter **doubled in March 2020 alone**.<sup>30</sup>

Between 1 June 2018 and 22 July 2020, ISD identified **36 Facebook groups dedicated to Holocaust Denial**. The Facebook pages and groups had a **combined number of followers of 366,068** and an average number of members of 10,168.<sup>31</sup>



As of May 2019, the European white nationalist group **Generation Identity** had **70,000 followers for its official Twitter accounts**.<sup>32</sup>

A study published in 2017 found **evidence of online radicalisation or attack planning in 61% of cases**. Amongst this sample **44% of UK-based convicted "extreme-right-wing" terrorists were found to have engaged with extremist media** (the most common type being video), whilst **at least 30% accessed extremist online ideological content**.<sup>L, 33</sup>



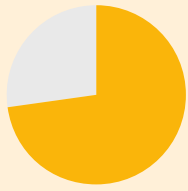
**6,000-8,000** items of antisemitic content alone were uploaded on average every day between April and July 2020 to just one forum board on just one platform.<sup>34</sup>

<sup>K</sup> Ofcom poll of UK people aged 16+

<sup>L</sup> Study looked at 223 UK-based convicted terrorists



## The public are worried



**73%**  
of adult respondents to a June 2018 poll were concerned about **rising extremism**.<sup>M, 35</sup>



**78%**  
of adult respondents to a June 2018 poll thought **more needed to be done** to tackle extremism in the UK.<sup>N, 36</sup>

Of those in the UK having had experience of, or who were concerned about, hate speech or the incitement of violence online, an Ofcom January-February 2020 poll found **over half**

**57%**

felt **more should be done to regulate video-sharing platforms** such as YouTube, while

**66%**

felt this way about **social media platforms** such as Facebook and Twitter.<sup>37</sup>



**33%** of adult respondents to a February-March 2019 Ofcom poll in the UK were **concerned about children becoming radicalised online**.<sup>38</sup>



<sup>M</sup> Poll of 1,495 adults (aged 18+) from Great Britain, collected by YouGov

<sup>N</sup> Poll of 1,495 adults (aged 18+) from Great Britain, collected by YouGov

# The Failure of Our Laws to Keep Up: The Modern-Day Threat of Hateful Extremism

3.1 Hateful extremism is not a new challenge facing our society. However, the evolution of the nature, scale, and complexity of modern-day extremism has made tackling it even more difficult, and the need to act even more pressing. Legislation has not evolved sufficiently to address the challenges that hateful extremism presents, such as the rise and influence of unregulated fringe online platforms, the emergence of new extremist ideologies, and sophisticated tactics that target young people. The extremist activities outlined in this chapter exist largely in the legal area between counter terrorism and hate crime legislation. As a result, many hateful extremists are able to operate in dangerous and harmful ways outside of the scope of existing law.

## Extremism: a long-standing challenge

- 3.2 For almost 20 years, successive UK governments have set up different initiatives and frameworks which identified extremism as a significant problem.<sup>39</sup> Although the threat of hateful extremism has evolved and has become even more pressing, the challenge of extremism is certainly not new. A well-documented case in point is the authorities' inability to prosecute dangerous extremists such as Anjem Choudary, senior leader of the proscribed Salafi-Islamist extremist group Al-Muhajiroun. It is alleged Choudary helped to motivate at least 70-100<sup>40</sup> people to turn to terrorism in Britain and Europe.<sup>0, 41</sup> For many years, and despite his links, Choudary was able to operate lawfully and freely in Britain until 2015 when he was charged, then convicted and imprisoned in 2016, for the offence of inviting support for a proscribed organisation, Daesh, as outlawed by counter terrorism legislation. Prior to 2015, his extremist activity – to the frustration of law enforcement agencies – did not result in prosecution, despite the damage done by Choudary's radicalising activities.
- 3.3 While much of Choudary's content stopped short of explicit threats or advocating violence, it is our view that Choudary was engaged in hateful extremism. He helped create a climate conducive to terrorism through a persistent espousing of hateful extremist rhetoric, which could have a slow but radicalising effect on those vulnerable to his messages.<sup>42</sup> His propagation for a theocratic caliphate stood in sharp contrast to Britain's democratic rights and freedoms.
- 3.4 The case of Choudary demonstrates two points. Firstly, the ability of hateful extremists to operate then – and now – without the threat of prosecution in the absence of a legal framework dedicated to hateful extremism. Secondly, the overt focus to catch Choudary through counter terrorism legislation was the wrong legal lens, as he consistently fell short of terror offences pre-2015. Arguably, the existence of a legal hateful extremism framework could have allowed police to arrest Choudary earlier, preventing him from radicalising others who went on to commit acts of terrorism resulting in many deaths. It is also unlikely that media outlets would have risked giving Choudary a platform for his views through interviews and other appearances, had he been convicted earlier on.<sup>P, 43</sup>

<sup>0</sup> These reportedly include Usman Khan who committed the 2019 Fishmongers Hall terror attack, and Khuram Butt who committed the 2017 London Bridge terror attack. Choudary was also reportedly linked with Taimur Abdulwahab al-Abdaly, responsible for a suicide attack at a Christmas market in Stockholm, and Michael Adebolajo, one of the murderers of Fusilier Lee Rigby in 2013. While there was no evidence to prove Anjem Choudary directly instigated any terror plots, some argue that he gave individuals a justification and encouragement to take violent actions.

<sup>P</sup> Choudary had commanded considerable media attention, including on television debates such as BBC Newsnight and 60 Minutes, and in newspaper articles. This gave a significant platform to his views and made his material more widely available. Choudary was, for example, able to publicly praise the 9/11 hijackers, calling them "magnificent" and stating his hopes that they would be "accepted as martyrs in the eyes of God". The Evening Standard reported that Choudary wanted to see Downing Street with the 'flag of Allah' flying over it. The Guardian also reported Choudary's support for the caliphate, which was part of the conduct for which he was prosecuted, convicted and imprisoned.

## The evolving nature and threat of contemporary hateful extremism

3.5 Hateful extremism has evolved significantly over the last decade.<sup>44</sup> Alongside a persistent Islamist extremism threat, new threats include the Incel threat, a significant growth in Far Right extremist actors and organisations, and an increasing shift towards recruitment and active dissemination of extremist content through online platforms.<sup>45</sup> Extremists have professionalised, are co-ordinating locally, nationally and transnationally, and are aided by online platforms. The development of social media and ‘alt-tech’<sup>Q,46</sup> platforms, such as Gab, Parler, Telegram, and BitChute, have facilitated the rapid and far-reaching spread of extremist propaganda, disinformation, and extremist conspiracy theories. There are few UK regulations for mainstream social media or alt-tech platforms,<sup>R</sup> and their algorithms can reportedly contribute to users being driven to more and more divisive content.<sup>47</sup> This was the case for Facebook, where its algorithms “exploit the human brain’s attraction to divisiveness” as part of “an effort to gain user attention and increase time on the platform”.<sup>48</sup> As a society, we are trying to govern these online spaces using legislation often enacted before 2010, which lags behind recent technological advances. We examine the challenge presented by online extremism further in the chapter ‘Legal but Harmful’: Online Extremism and the Proposed Online Harms Bill.

### Case Example: Hateful extremism of the Incel subculture

‘Involuntary celibates’ (or ‘Incels’) are an overwhelmingly male online community, whose members understand society as a three-tiered hierarchy dictated by physical appearance. Incels place themselves at the bottom of the pile,<sup>49</sup> meaning that they perceive themselves to be forced into involuntary celibacy. The Incel worldview has been described as “a virulent brand of nihilism”,<sup>50</sup> with many Incels advocating violence against women. It is part of the broader online ‘manosphere’ including Pick Up Artists, Men Going Their Own Way and Men’s Rights Activists, a loose collection of websites, forums, and blogs that embrace misogyny.<sup>51</sup>

Extremist hatred which has been fuelled online has resulted in real-world violence, with 47 deaths linked to the Incel worldview since 2014.<sup>52</sup> Elliot Rodger was the first to gain notoriety for his 2014 Incel-motivated attack in which he killed six people and injured more than 22 others before taking his own life in Isla Vista, California.<sup>53</sup> Prior to his attack, Rodger prepared a manifesto and uploaded videos to YouTube. These identified the primary targets for his hatred. Females were especially targeted, for failing to be attracted to him or show him any attention; but males within his age bracket were also singled out if they were popular and/or had girlfriends.<sup>54</sup> Rodger sought to “exact revenge on the society” which he felt had seen him “denied” sex and love.<sup>55</sup> Since his death, Rodger has since been venerated as a martyr for the Incel community. Christopher Sean Harper-Mercer, like Rodger, created his own manifesto before fatally shooting nine and injuring a further nine people in Oregon in 2015.<sup>56</sup> Similarly, Alek Minassian declared that an “Incel rebellion has begun” and glorified Rodger as “supreme leader” before

<sup>Q</sup> Many alt-tech platforms ‘market themselves in opposition to the mainstream platforms, which they argue, assert varying degrees of illegitimate censorship on their movement’.

<sup>R</sup> The only UK regulation directly targeted at limiting online hateful extremist content are The Malicious Communications Act 1988 and the Communications Act 2003.

committing his attack in Canada in 2018 that left 10 dead.<sup>57</sup> These cases highlight the terroristic impact of extremist propaganda and its potential to inspire others to commit acts of Incel-based violence.

Several Incel websites contain memes emphasising the Incel notion that women who put ‘nice guys’ in the ‘friend zone’ are committing some kind of crime against them, and deserve to be punished for it, individually or collectively:

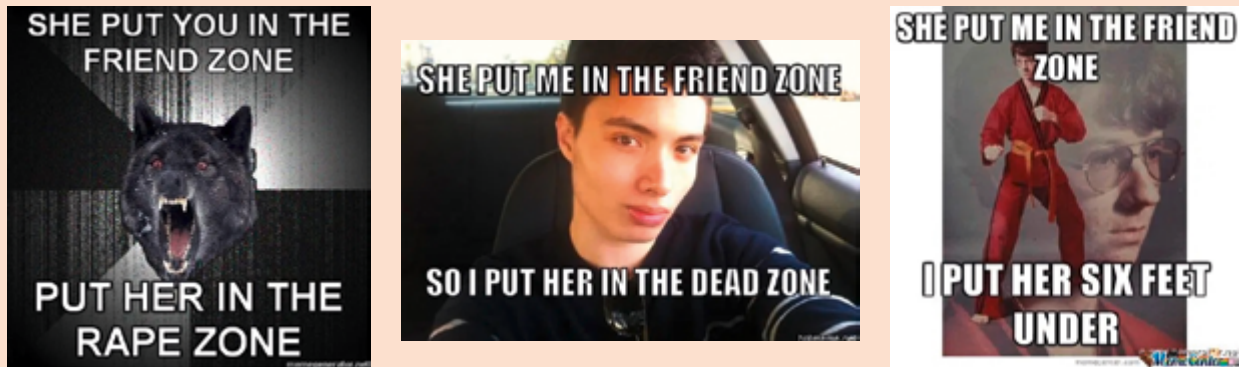


Figure 1 – Images: Memes glorifying violence against women.<sup>58</sup> The second meme contains an image of Elliot Rodger. Source: Internal government source

Figure 2 – Image: Cartoon meme glorifying violence.<sup>59</sup> The cartoon strip meme depicts an interaction between a male and female. The female rejects the male’s romantic interest in her, saying “I like you too...but...as a friend...nothing more”. In the next image, the male appears to have tears in his eyes and is aiming a gun to his own head, but then in the last image he shoots the female who appears to be dead. The image therefore implies the glorification of violence against females who reject male interest in romantic relationships. Source: Internal government source



The Anti-Defamation League has uncovered an intersection between Incel and typical white supremacist ideologies.<sup>60</sup> A 2019 *Independent* article<sup>61</sup> featured a meme widely circulated on radical right forums, shared by Philip Manshaus, depicting Far Right terrorists as ‘chads’ – a term from Incel culture to describe ‘desirable males’. Presented as humorous images, memes “enable the spread of elements of far-right ideology by allowing extreme messages to masquerade as medium-specific parody”.<sup>62</sup>



Figure 3 – Image source: Independent<sup>63</sup>

While instances of real-world violence perpetrated by Incels remain relatively rare, the Counter-Terrorism Division of the Crown Prosecution Service has encountered a rise in extreme misogynistic hate speech in the UK, mainly perpetrated by Incels.<sup>64</sup> They noted that the “spread of Incel ideology [in the UK] has been linked to an increase in misogynistic murders and several mass killings in Northern America”.<sup>65</sup> Evidence gathered by HOPE not hate on websites promoting an extreme misogynistic worldview found that, after the USA, the UK is one of the major sources of user traffic.<sup>66</sup> UK traffic came second globally for three popular Incel sites and fourth globally for a fourth Incel site.<sup>67</sup> In 2020, Middlesbrough-based Anwar Driouich was jailed for having an explosive substance.<sup>68</sup> Driouich’s alleged motivation for preparation of explosives was addressed in court as Incel-inspired.<sup>69</sup> In December 2020, Gabrielle Friel was found guilty of preparing for terrorist acts and accused of having “expressed affinity with and sympathy for one Incel-motivated mass murderer” with “a desire to carry out a spree killing mass murder”.<sup>70</sup>

We consider the Incel subculture to meet our definition of hateful extremism, as their activities create a climate conducive to terrorism, hate crime and violence. The Law Commission are currently consulting on an amendment to hate crime law to add sex to protected characteristics as part of reforms to hate crime law.<sup>71</sup> We would support this action.

## Extremists targeting young people for radicalisation

3.6 Attempts to engage young people with extremist content has long been a tactic of extremists, to differing degrees.<sup>5, 72</sup> We believe that any attempt to radicalise a child into extremism is a form of grooming.<sup>7, 73</sup> This is a position which has previously been adopted by government<sup>74</sup> and the family courts, with Mr. Justice Hayden QC stating that radicalisation should be considered a form of child abuse and pinpointing the likely psychological vulnerability of those targeted.<sup>75</sup>

<sup>5</sup> For instance, high-profile cases of children leaving the UK to join Daesh is well documented.

<sup>7</sup> The NSPCC define ‘grooming’ as when ‘someone builds a relationship, trust and emotional connection with a child or young person so they can manipulate, exploit and abuse them’.



### Case Example: Umar Haque and the radicalisation of children

Umar Haque is a British national, who worked as a tutor at Ripple Road Mosque's Essex Islamic Academy in Barking, East London<sup>76</sup> and the Lantern of Knowledge School in Leyton.<sup>77</sup> Haque was convicted in January 2018, after trying to recruit a "mini-militia" of children to launch simultaneous Daesh-inspired attacks in multiple locations across London.<sup>78</sup>

In an effort to manipulate his students' worldview, Haque exposed them to extremist videos, including footage of beheadings, the 9/11 attack, and Daesh propaganda, with the intention of creating a militia of teenage boys.<sup>79</sup> His actions included preparing children for martyrdom by making them carry out role play attacks, including re-enacting attacking police officers.<sup>80</sup> A report from the specialised psychotherapist who conducted clinical sessions with some of the children reported that they spoke of having flashbacks of the videos they had seen, nightmares around death and punishment in the afterlife, and confusion and frustration surrounding Islam, non-Muslims, and Daesh.<sup>81</sup> It has also been reported that 35 of the children Haque attempted to radicalise are now receiving long-term support,<sup>82</sup> demonstrating the harm caused by his attempted radicalisation of them.

Haque abused his position by seeking to radicalise a large cohort of children, in the advancement of Islamist extremism. Although Haque's deliberate and sustained grooming of young children was treated as an aggravating factor in his sentencing for counter terrorism offences, there is no specific legislation which seeks to criminalise and punish those who groom children to further their own extremist ideologies. Whilst there are a range of child protection laws and wider laws applicable,<sup>u</sup> there is no specific criminal law, short of directly encouraging terrorism, that criminalises efforts to radicalise children into extremism, if those efforts to radicalise children do not include the encouragement, preparation, or instigation of acts of terrorism.

The only specific legislation around radicalisation can be found in the Counter-Terrorism and Security Act 2015,<sup>83</sup> which places a duty on public bodies in the exercise of their functions, to have "due regard to the need to prevent people from being drawn into terrorism".<sup>84</sup> For offences of training with intent to commit a terrorist act, it is a legal requirement to prove that the person receiving the training has the intent to use it for terrorism. Where children are the subject and they have been groomed for extremist purposes, this is not the case.

- 3.7 The radicalisation of young people is a growing problem. The growth and diversification of online platforms have increased opportunities for extremists to influence individuals. The Prevent statistics for April 2019 to March 2020 show that 54% (over 3,400 individuals) of all Prevent referrals were aged 20 or under, and 24% came from those under 15 years old.<sup>85</sup> Between 1st January 2019 and 30th June 2020, more than 1,500 children under the age of 15 were referred to the Prevent programme.<sup>86</sup> In the same time frame, 17 children have been arrested in relation to terrorism offences.<sup>87</sup> Some were as young as 14 years old, and CT Policing have highlighted the radicalising role of the internet these cases.<sup>88</sup>

<sup>u</sup> Such as charity and safeguarding regulations.

3.8 In 2019, two teenagers were named as the ringleaders of the Neo-Nazi ‘Sonnenkrieg Division’, one having previously joined terrorist group National Action as a schoolboy. However, we see this across a range of ideologies, and it was recently reported that children as young as 12 were being sought out by extremist groups.<sup>89</sup>

3.9 Some extremists use specific tactics to attract young people. This can include using a range of content and platforms to reach larger audiences, including younger people, and disguising the content through memes, videos, or diagrams to conceal its extremism. Far Right groups and leaderless collectives (i.e. groups with no assigned leader or hierarchy), for instance, have actively sought to popularise memes that use dark humour and characters to contribute to a distinct subculture. These include Pepe The Frog, a cartoon character which was co-opted by the Far Right as a mascot. While adults can also create and resonate with memes as much as young people, the use of supposedly humorous ‘in-jokes’, memes, and gamer terminology – along with the distinct subculture found on image boards – could increase the appeal of right wing extremism amongst younger people, while reinforcing a sense of an in-group. The sociable, peer-to-peer discussions that take place on online platforms is also likely to enhance interaction.<sup>90</sup> Under current laws, the bulk of this content is legal and online platforms are under no obligation to remove it.



Figure 4 – Source: Independent A Sonnenkrieg Division poster threatening violence against Prince Harry.<sup>91</sup>

3.10 This raises a wider point around harmful materials online and the ease with which young people can access and be influenced by them. The seriousness of vulnerable audiences engaging with hateful extremist content has been identified by key law enforcement bodies, with Assistant Commissioner Neil Basu, National Lead for Counter Terrorism Policing at the Metropolitan Police Service, stating:

**“... the amplification of extremism and its ability to incite a vulnerable section of the population towards terrorism [...] is probably my greatest single fear”.<sup>92</sup>**

3.11 While the Counter-Terrorism and Border Security Act 2019 amended the offences of encouragement of terrorism (Section 1 Terrorism Act 2006) and dissemination of terrorist publications (Section 2 Terrorism Act 2006) to account for conduct aimed at a child or vulnerable adult,<sup>93</sup> certain hateful extremist content is not captured by Section 1 or Section 2. Such behaviours not captured include praising the actions of terrorists (in a way that does not encourage emulation) and sharing hateful extremist materials (such as Neo-Nazi or Islamist extremist materials) in a way which does not encourage



or induce the commission, preparation, or instigation of acts of terrorism. As sharing such material would not meet the terrorism threshold, the Act doesn't alleviate our concerns in regard to hateful extremists seeking to radicalise young people and the vulnerable. We also feel that, given this focus on young people and the vulnerable in counter terrorism laws, such a focus should be mirrored in any legal framework intended to tackle hateful extremism.

### **Case Example: Zoomer Night run by Patriotic Alternative**

Patriotic Alternative is a UK registered company, created in November 2019 by Mark Collett, the former publicity director for the British National Party. The group is described as a "White nationalist political group".<sup>94</sup> The Deputy Director is Laura Towler who, like Collett, has a strong social media presence. Patriotic Alternative has promoted white nationalist and white supremacist narratives.<sup>95</sup> The organisation aims to combat the "replacement and displacement" of white Britons by people who they state "have no right to these lands".<sup>96</sup>

Activities that seem designed to attract young people have included live interviews on their YouTube channel with teenagers considered to be the rising stars of the Far Right, and the use of computer gaming platforms.<sup>97</sup> For instance, a 'Zoomer Night' event was live-streamed to the public on Patriotic Alternative's YouTube channel on 27 July 2020. The term 'Zoomer' refers to members of Generation Z (individuals born in the late 1990s and early 2000s). Teenage hosts used games and music as a vehicle to expound their views and demonstrate apparent relatability with young online audiences.

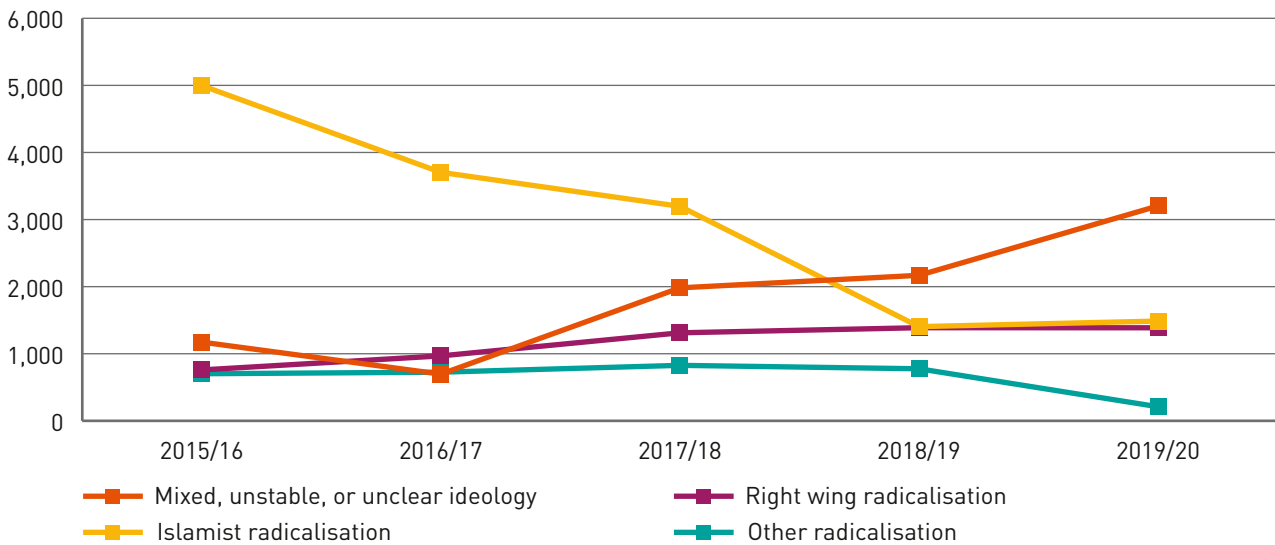
The topics discussed and sentiments expressed consistently fell within the remit of hateful extremism. Out-groups, such as migrants, were portrayed as a threat to the survival of white society, while the presenters expressed Far Right narratives. For instance, in quotes collected from the video while it was still available to a public audience, they claimed that "BAME people [are] replacing white people in every aspect of society", and used dehumanising language, suggesting "the entire country [is] being colonised" and "invaded" by ethnic minorities.<sup>98</sup> The language of threat and implied violence was used throughout the event. Phrases such as "white genocide" were employed, with audience members calling for a "Zoomer revolt".<sup>99</sup> The hosts advised viewers that teenagers should be lured into the movement under the guise of "wouldn't you like to be free of this guilt that's been exposed on you?" and suggest that "once they're free from school, and perhaps even when they're in school, they are ripe for our message".<sup>100</sup>

This video remained on a mainstream social media platform and does not contain illegal content, as it does not directly incite violence or demonstrate support for a proscribed terrorist group. Counter Terrorism Policing refer to content such as this as 'mindset material' and it is used in almost every terrorist prosecution to evidence intent towards terrorist acts. Yet mindset material is not currently illegal to possess, in circumstances where possession is not for a purpose connected with the commission, preparation, or instigation of an act of terrorism. This particular video stayed online for several months. Although the video has now been made private, it was originally posted publicly and all of the content referred to in this case study was publicly available at the time that it was posted.

Mark Collett and Laura Towler contextualise the actions of Patriotic Alternative as an exercise in freedom of speech.<sup>101</sup> Their behaviours are not currently addressed by either hate crime or counter terrorism legislation because they neither directly threaten individuals or groups with protected characteristics or explicitly encourage violence or terrorist acts. However, it is our view that their active dissemination of a racial supremacist ideology does meet our definition for hateful extremism.

3.12 This exposure to online extremist content is contributing to the radicalisation of some teenagers and drawing others into terrorism.<sup>102</sup> The growth in mixed, unstable or unclear ideology Prevent referrals is another possible indicator of this.<sup>103</sup> The Prevent statistics for April 2019 to March 2020 reflected significant growth in mixed, unstable, or unclear ideology, comprising over half (51%) of all Prevent referrals for this period.<sup>104</sup> This represents an almost five-fold increase in the mixed, unstable or unclear ideology category for Prevent referrals from just three years ago when they comprised only 11% of all referrals.<sup>v, 105</sup> As the graph below illustrates, a significant proportion of recent Prevent referrals were drawn to violence across multiple ideologies.<sup>106</sup>

**Prevent referrals by type of concern, years ending March 2016 to March 2020**



Source: Home Office<sup>w, 107</sup>

Figure 5

3.13 One worrying example of the potential effect of the mixing of multiple extremist ideologies relates to school shootings. As revealed to us by Counter Terrorism Policing, there are groups online, spread across multiple jurisdictions, which glorify previous school shooters including those responsible for the Columbine High School massacre on 20th April 1999, which led to the death of 12 students. Some of the young people inspired by this are also attaching themselves to Incel or other

<sup>v</sup> Please note: prior to the year ending March 2018, 'Mixed, unstable or unclear' referrals were categorised as 'unspecified'.

<sup>w</sup> Please note: prior to the year ending March 2018, 'Mixed, unstable or unclear' referrals were categorised as 'unspecified'.

hateful extremist ideologies, as part of their justification for such violence. There are fears that these hateful ideologies could escalate into action without suitable intervention tools.

## Changing tactics of extremists

3.14 Extremist tactics are evolving. Our evidence indicates that extremists are increasingly employing three key tactics:

### 3.14.1 **Intellectualising extremism to become more strategic and manipulative in presenting and co-ordinating their ideologies, both online and offline.**

Extremists often exploit democratic language of ‘human rights’ and ‘free speech’ to justify and intentionally stir up hatred against others, radicalise communities, and provide the ideological building blocks which inspire and encourage supporters to take violent action. This manipulation of ‘free speech’ escalates the spread of their narratives and can galvanise widespread support. It can also increase their financing through advertising and selling merchandise over social media to their supporters.<sup>108</sup>

### 3.14.2 **Collaboration across local, regional, and international state and non-state actors, operating both online and offline, creating real-world implications in the UK.**

This collaboration is achieved by spreading dangerous extremist rhetoric online while engaging in extremist activity offline. The Commission evidenced this in Sunderland where local, national, and international Far Right actors co-ordinated their efforts to spread disinformation and exploit local tensions, in an attempt to incite hatred against Asian and Muslim men.<sup>109</sup> These efforts were advanced by the Canadian media group Rebel Media, who worked with Stephen Yaxley-Lennon to promote their activity, with one video amassing 100,000 views.<sup>110</sup> Extremist propaganda was disseminated online, whilst an unprecedented 13 rallies were held over 13 months which risked inflaming tensions further.<sup>111</sup> An investigation by *The Guardian* in 2018 highlighted how Yaxley-Lennon was receiving “financial, political and moral support from a broad array of non-British groups and individuals, including US thinktanks, rightwing [sic] Australians and Russian trolls”.<sup>112</sup>

- As another example, following the 2017 Westminster terror attack it emerged that Russian bots, which were reported to be backed by the Russian Government, were behind a misleading image of a Muslim woman seemingly ignoring a terror attack victim in Westminster. This image went viral in an attempt to stoke racial hatred.<sup>113</sup>
- We have also seen how the transnational threat posed by Islamist extremists impacts Britain, including the distribution of Daesh propaganda which contributed to the radicalisation and recruitment of British teenagers to leave the UK for Syria.<sup>x</sup> We have also seen how Barelvi extremists in Pakistan, who preach hatred against Ahmadiyyah Muslims, have galvanised supporters in Britain.<sup>114</sup>

<sup>x</sup> This includes the Bethnal Green teenage girls who left London to join Daesh in Syria.

- Much more remains to be done to dismantle extremist networks at an international level. With shifts towards populism in other Western democracies, international consensus around how to identify and tackle extremism has become blurred. Work has been done to combat Islamist extremism in response to the Daesh threat, but does not adequately address the challenge of Far Right extremism. The lack of a co-ordinated international counter extremism effort needs urgent redress and requires political leadership.

### Case Example: Anti-Ahmadiyya extremism

Ahmadiyya (or Ahmadi)<sup>Y, 115</sup> community leaders in Britain say animosity towards them and their ability to practise their religious beliefs freely is directly linked to an Islamic fundamentalist ideology filtering into the UK. This has been propagated by extremist clerics in Pakistan and their supporters in the UK, and encouraged by religio-political movements such as Khatme Nabuwat.<sup>Z, 116</sup> The extent of such hatred was laid bare in 2014 when Ahmadi Muslim shopkeeper, Asad Shah, was murdered in Glasgow by Tanveer Ahmed, for what Ahmed alleged was disrespecting Islam.<sup>117</sup>

In April 2016, leaflets calling for Ahmadis to face the death penalty if they refuse to convert to mainstream Islam and using the derogatory term “Qadianis” to describe Ahmadis, were displayed at the Khatme Nabuwat Centre in South London. Quotes from the leaflets distributed in the UK include:

- “Qadianiat is like cancer for the Muslim ummah”
- “Boycott of Qadiani community as a whole. Do not let Qadianis attend your functions, weddings and funerals. They should be resisted at all levels”
- “If within three days he [an apostate] returns to the Islamic fold, leave him unscathed, otherwise it is obligatory to award him capital sentence” [in reference to Ahmadi Muslims who are referred to as [apostates].<sup>118</sup>

<sup>Y</sup> Ahmadiyya Muslims are a minority religious community founded by Hazrat Mirza Ghulam Ahmad, who his followers accepted as the promised Messiah and Imam Al-Mahdi who was prophesised. Theological differences have led to intra-religious hate and hostility against the Ahmadi community by other Muslims.

<sup>Z</sup> Khatm-e-Nabuwat is also known as Majlis-e-Tahaffuz-e-Khatme Nabuwat (‘The Assembly to Protect the End of Prophethood’).



Figure 6 – Anti-Ahmadi Leaflets found at Stockwell Green Mosque. Source: BBC News<sup>119</sup>

A report by the All-Party Parliamentary Group (APPG) for the Ahmadiyya Muslim Community raised concerns that conferences held in the UK run by Khatme Nabuwwat have served as a proxy for anti-Ahmadi views and divisive narratives.<sup>120</sup> The APPG Inquiry heard how extremist clerics have been able to freely enter the UK to carry out fundraising activities and deliver inflammatory sermons, while some have even entered the UK to attend Khatm-e-Nabuwwat conferences.<sup>121</sup> As recently as August 2018, Khadim Hussain Khursheed Alazhari was allowed entry to the UK to attend a conference, despite openly promoting violence against Ahmadis in Pakistan.<sup>122</sup>

A Charity Commission statutory inquiry into the Khatme Nabuwwat Centre found serious regulatory concerns. After an investigation lasting almost three years, the inquiry concluded that the charity was responsible for a series of failings “amounting to misconduct and/or mismanagement”.<sup>123</sup> It found that the charity had no framework or controls in place in relation to the distribution of literature or hosting of speakers at its premises. The inquiry also raised concerns on the Khatme Nabuwwat Centre’s association with the Pakistani organisation bearing the same name due to its anti-Ahmadi material on its website and alleged connections to extremism.<sup>124</sup> Since the inquiry, the charity has taken steps to resolve the regulatory concerns. However, we continue to have grave concerns about the activity of hate groups such as Khatm-e-Nabuwwat who are able to actively operate and exist, despite their dangerous activity.

The dissemination of literature, online hatred, and the delivery of inflammatory sermons calling for the boycott and even death of Ahmadi Muslims by extremist clerics are an attempt to erode or destroy the religious rights of a minority group. This is a violation of our democratic freedoms guaranteed under human rights law. Yet, in the absence of a clear legal framework for hateful extremism, extremists have freely continued their derogation of the Ahmadi community through networks for years, including UK-based charities. Our recommendation for a legal framework on hateful extremism is therefore critical to appropriately tackle the extremist activity of such preachers and organisations, while protecting the right of Ahmadi Muslims to practise their faith freely without fear.

**3.14.3 Integrating extremist narratives into conspiracy theories and weaponising public crises.** Extremist narratives underpin some of the best-known and most recent conspiracies, such as the antisemitic, baseless QAnon conspiracy.<sup>125</sup> The FBI reportedly considers prominent conspiracy theories, including QAnon, as potential motivators which could trigger domestic extremists to enact violence.<sup>126</sup> Many conspiracy theories or narratives based on disinformation actively target and stir up hatred against a particular out-group, and can spread rapidly over social media. This has intensified during the COVID-19 pandemic, which showed that extremists are able to effectively exploit, worsen, and weaponise public crises for their own ends. Extremist groups and individuals are exploiting the pandemic by spreading disinformation, blaming out-groups to spread anti-Western,<sup>127</sup> anti-immigration and populist views,<sup>128</sup> and pushing baseless conspiracy theories.<sup>129</sup> Some have even encouraged people to deliberately infect Jewish and Muslim communities with COVID-19.<sup>130</sup> Up to half of respondents who use social media report they have encountered information flagged by a social media company as potentially untrustworthy/untrue.<sup>131</sup> Extremists can also exploit the socioeconomic complications brought about through societal shocks – such as the COVID-19 pandemic – which may present further opportunities for individuals and/or communities to become more receptive to extremist messages.<sup>132</sup> There is already evidence of growing community tensions, social divisions and rising hate crime.<sup>133</sup> Some of these concerns were discussed by Assistant Commissioner Neil Basu, National Lead for Counter Terrorism Policing at the Metropolitan Police Service, during the Home Affairs Select Committee 23 September 2020 evidence session.<sup>134</sup> Basu stated:

**“COVID-19 has amplified that problem [the rise in hateful extremism and the consequences for the terrorist threat]. But my experts tell me we have not seen an increase in TACT-related material; what we have seen is an increase in hateful extremism-related material, if I were to use Sara’s [Khan] Commission’s definition”.**<sup>135</sup>

The dangerous consequences and harms caused by some extremist conspiracy theories to our democracy, and by those who peddle them, need to be grappled with by legislators. This is not reflected in existing legislation. The effectiveness of the Online Harms Bill in tackling conspiracy theories and disinformation is critical in this regard as we examine later in this report.

## **Our laws are failing to respond to the hateful extremist threat**

**3.15** In this chapter we have demonstrated how hateful extremism is not a new challenge. The evolving and modern-day manifestation of extremism is becoming increasingly difficult to counter and contain, to the detriment of our collective safety. We face significant challenges, which include the growth of some extremist ideologies, some of which are old and some new; the rise and influence of unregulated online platforms; the changing tactics of extremists; and the failure to recognise the many harms caused by hateful extremist activity.



- 3.16 In the next chapter we highlight how, in the absence of a legal and operational framework for hateful extremism, the ability of law enforcement agencies and regulators to respond to hateful extremist activity or material is seriously impeded.



# The Operational Challenges Facing Law Enforcement Agencies and Regulatory Bodies



4.1 This chapter highlights a recognition across law enforcement agencies and regulatory bodies that hateful extremism is widespread and damaging to society, and that current frameworks and judicial practices do not appear to prevent such harms or effectively protect victims. In the absence of a legal framework designed to capture hateful extremism, law enforcement agencies and regulatory bodies told us that they lack the legal and operational powers needed to curb and restrict hateful extremist individuals and organisations. The Commission for Countering Extremism has met and engaged with both the National Police Chiefs' Council leads for hate crime and Counter Terrorism Policing (CT Policing). The Commission has also met with regulators including The Office for Standards in Education, Children's Services and Skills (Ofsted), Ofcom, and the Charity Commission for England and Wales (the Charity Commission). Regulatory bodies play an important role in the proactive governance of institutions to protect communities from harms and it is important they remain well-equipped to counter the evolving threat of hateful extremism. A summary of our key findings are listed below:

- 4.1.1 National Advisors for hate crime policing told us that, while legislation to tackle hate crime is largely adequate, they believe there is a shortfall in tackling hateful extremist groups and content. They also suggested there is insufficient resource to investigate online hateful extremism and that a legal framework for hateful extremism would provide greater scope for police to build their capacity in disrupting extremist content online.
- 4.1.2 CT Policing told us that a robust legal framework to address the growing phenomenon of hateful, and often violent, extremist material is needed. They highlighted many examples of individuals clearly engaged in hateful extremist activity, such as promoting and possessing terrorist or violent extremist material, but who were not being captured by current counter terrorism legislation because their actions did not meet the required threshold.
- 4.1.3 Regulators, including the Charity Commission and Ofsted, told us that a legal framework for hateful extremism could provide a robust mechanism to prevent extremists from taking positions of authority within charities and schools, where known extremists have been able to exploit their positions previously. They also believe a framework would enhance their ability to protect society from extremist harms.
- 4.1.4 Without appropriate legislation to counter hateful extremist activity, statutory agencies, regulators, and law enforcement are not fully equipped to fulfil their responsibility in preventing and challenging hateful extremism. This can be mitigated by developing a legal and operational framework which would help provide the clarity everyone seeks.

## Law enforcement

### Hate crime policing

- 4.2 The National Police Chiefs Council (NPCC) is a national co-ordination body for law enforcement in the UK and the representative body for British police chief officers. A designated Deputy Chief Constable and an advisor provide the leadership and co-ordination on hate crime operations, and help policing to co-ordinate improvements and reform to hate crime responses across forces.
- 4.3 In their view the existing legal approach for enhanced sentencing for core offenders, supplemented by specific offences such as stirring up of hatred,<sup>AA</sup> provide adequate tools to respond to hate crime in most circumstances. However, when it comes to disrupting hateful extremists, they identify two areas of possible shortfall: combatting hate groups and hateful extremist content.
- 4.4 They believe that the current means for tackling membership of, or support for, groups that engage in hateful extremist narratives needs to be strengthened. Under English and Welsh law, an organisation can be proscribed if it commits, promotes, prepares or is concerned in acts of terrorism.<sup>AB, 136</sup> In the view of national advisors for hate crime policing, with the exception of National Action,<sup>AC</sup> Government has been slow to react to other Neo-Nazi groups who have not been proscribed but who propagate the same ideology and contribute to creating a climate conducive to terrorism or violence. They informed us that they are becoming increasingly aware that some extremist actors are conscious of legal precedents and legislation, helping them remain on “the right side of the line”.
- 4.5 National advisors for hate crime policing also told us that the reach and influence of extremist groups originating from outside the UK is difficult to disrupt. The ability of such groups to create a climate conducive to terrorism or violence is evident in the case of white supremacist Thomas Mair. Mair was sentenced to life imprisonment for the murder of Labour MP Jo Cox and his attack on Bernard Kenny, who came to Cox’s defence. In his sentencing remarks, Mr Justice Wilkie acknowledged that Mair had “admiration” for “white supremacist creeds”.<sup>137</sup> Mair had an interest in international Far Right groups, such as pro-Apartheid outlet for South African ex-patriots and supporters, the Springbok Club, and US Neo-Nazi organisation, National Alliance.<sup>138</sup> **National advisors for hate crime policing told us that a more robust and internationally connected intelligence system on extremist groups and individuals could have indicated Mair’s risk to commit a violent act.** The legal framework therefore needs to keep pace with extremists connecting online and the spread of propaganda across national boundaries.
- 4.6 In comparing international approaches to hate crime with that of the UK, national advisors for hate crime policing highlighted Germany’s framework to address and record ‘ideological motivations’. They suggested that by concentrating on ideologies

<sup>AA</sup> The Public Order Act 1986 includes specific offences of stirring up hatred on the grounds of race (Part III), and religion and sexual orientation (Section 29B). All the offences cover threatening words, behaviour or material, and are committed where the offender intended to stir up hatred. The race offence also covers abusive or insulting words and circumstances where hatred is likely to be stirred up.

<sup>AB</sup> As defined in Section 3(5) of the Terrorism Act 2000, an organisation is involved with terrorism if it commits, promotes (including unlawful glorification), prepares or is concerned in acts of terrorism.

<sup>AC</sup> National Action is a racist Neo-Nazi group that was established in 2013. Its ideology promotes the idea that Britain will inevitably see a violent ‘race war’, which the group claims it will be an active part of. National Action was proscribed in December 2016.

(recording Far Right/Far Left/Islamist crime) Germany has a stronger intelligence focus on hate groups and seemingly successful examples of 'exit programmes' for group members.

- 4.7 With regard to hate speech, national advisors for hate crime policing told us that the UK has a high threshold for committing stirring up of hatred offences, particularly in relation to religion and sexual orientation. While accepting that this was the intention of Parliament in drafting legislation, hate crime police reportedly find some requirements for this legislation to be limiting in tackling growing hateful extremism, such as needing evidence of these offences being 'threatening' and requiring proof of intent.
- 4.8 Hateful extremist rhetoric can create tension and hatred between and within communities. However, investigating materials and hate content shared online requires significant resource. The Commission were told that investigating online extremism is insufficiently resourced and police are often reliant on the support of social media companies in active investigations. A legal framework for hateful extremism would give greater scope to police to build up capacity to disrupt extremist content online.
- 4.9 They did, however, acknowledge that there is a sense of frustration amongst victims from different ethnic and religious communities that the stirring up of hatred and violence aimed at them, through the use of religious terms or different languages, were not recognised or understood by law enforcement agencies and the criminal justice system more generally. These systems' inability to discern the difference between robust theological arguments and carefully constructed campaigns of threats, hatred and intimidation by extremist actors is concerning. This has allowed many extremists to avoid prosecution, and has silenced religious or ethnic minority victims. The Commission for Countering Extremism believe the gaps in existing legislation around stirring up of hatred is not the only problem: it is the lack of expertise within community policing and the wider criminal justice system to recognise stirring up of hatred if religious or theological terminology is used and is in an unfamiliar language.

### **Counter Terrorism Policing**

- 4.10 CT Policing comprises The National Counter Terrorism Policing Network of UK police forces, working closely with security and intelligence agencies to prevent, deter, and investigate terrorist activity. At the centre of the network sits the National Counter Terrorism Policing Headquarters (NCTPHQ), which devises policy and strategy, co-ordinates national projects and programmes, and provides a "single national CT policing voice for key stakeholders including government, security agencies and other partners".<sup>139</sup>
- 4.11 They told the Commission that the amplification, volume and easy access to hateful extremist material and propaganda online and its ability to incite vulnerable sections of the population towards terrorism poses a major challenge to law enforcement.
- 4.12 Under existing counter terrorism law, it is an offence to possess a document "likely to be useful" to a person in "committing or preparing an act of terrorism".<sup>140</sup> Additionally, it is an offence to "disseminate" terrorist publications.<sup>141</sup> But there is no offence of

possessing terrorist or extremist propaganda. At present, criminal prosecutions may only rely upon such material as evidence of an extremist mindset, described as 'mindset material'. However, unless the material is of a kind that encourages terrorist acts, or likely to be useful to a person preparing an act of terrorism, mindset material on its own can often be legal, despite the inherently harmful content. It is in this space that CT Policing recognise extremists deliberately pushing against this boundary to propagate hateful extremist narratives, seemingly with impunity.

- 4.13 CT Policing told us that a robust legal framework to address the growing phenomenon of hateful, and often violent, extremist material is needed. They highlighted many examples of individuals clearly engaged in hateful extremist activity or who promoted and possessed terrorist or violent extremist material but were not being captured by current counter terrorism legislation. The lack of legal powers to deal with hateful extremists presents a challenge for counter terrorism police to take disruptive action, even when the extremist propaganda they possess is of the most offensive and shocking character.
- 4.14 CT Policing outlined evidence of the radicalising effect of terrorist and hateful extremist materials on children. They expressed enormous concern about the recent growth in referrals of under 15s to Prevent and the rise of young males becoming interested in violent extremism without a clear ideology. CT Policing have seen a growth in the number, complexity, and sophistication of extremist narratives, thus widening the pool of radicalised individuals which could feed into the terrorist threat.
- 4.15 They believe that current counter terrorism laws were not designed to tackle hateful extremist narratives shared in videos or through memes. Many hateful extremists are deliberately and skilfully masking content in this way to avoid falling within the scope of counter terrorism legislation. Increasingly, extremists are using subtle, coded, or suggestive language to garner support from audiences, but do so in a way that avoids breaking the law. For example, the Huffington Post obtained a digital copy of the style guide for Neo-Nazi and white supremacist website, Daily Stormer, which described detailed ways for its users to wrap up extremist content into humour as a deliberate attempt to veil incitement to violence.<sup>142</sup> CT Policing require more experts in extremist propaganda to assess such content. That is why the Commission believes a classification system with a defined scope of content that would fall within hateful extremism would be required alongside a legal framework.

## Regulatory bodies

- 4.16 The lack of a legal framework addressing hateful extremism also has implications for regulatory and statutory agencies, and their work in preventing extremism and protecting society. Below is a summary of feedback that we have received from regulatory bodies.

### Ofsted

- 4.17 Ofsted inspects a range of institutions and services providing education and skills for learners of all ages in England, with the exception of some privately funded independent schools. Since the Trojan Horse incident in Birmingham in 2013,<sup>AD, 143</sup>

<sup>AD</sup> The Trojan Horse event, also known as "Operation Trojan Horse" refers to claims of an organised attempt to introduce an Islamist or 'Salafist' ethos into several schools in Birmingham, which came to light through an anonymous letter to Birmingham City Council in 2013.

Ofsted has worked closely with the Department for Education and other government departments to strengthen the safeguards protecting children from extremism. Despite this, Ofsted have told the Commission that weaknesses remain.

- 4.18 Under the Prevent Duty, all schools are required to promote fundamental British values.<sup>AE, 144</sup> However, Ofsted have said that their experience of inspecting schools against this requirement over the last four years has highlighted harmful ideas and practices that the current government definition of extremism<sup>AF, 145</sup> does not address, including racist, homophobic, and misogynistic ideas. In their view, this has led to a lack of clarity about what is acceptable in schools and what isn't, and makes it more difficult to take action where harm is being done. A definition of hateful extremism, Ofsted have argued, would make it easier for them to provide clear guidance to inspectors.
- 4.19 In light of the lack of clarity within the Government's definition of extremism, Ofsted have suggested to us that consensus and leadership is urgently required from the Government about the boundaries between extremism and views that can be legitimately expressed under freedom of expression. This would empower Ofsted to tackle harmful extremist practices in schools and send a clearer message about what activity will not be tolerated. Ofsted told us that a legal framework for hateful extremism would underpin a robust inspection framework for countering extremism in schools.
- 4.20 The Commission learned that procedures for removing school leaders with links to hateful extremist organisations are not adequate. While Ofsted and the Department for Education have been working to improve the pre-registration procedures for new independent schools, Ofsted finds that current legislation does not provide robust measures to preclude individuals with extremist links from becoming involved in the management of independent schools. For example, despite a 2016 High Court judgement describing Shakeel Begg as an extremist,<sup>AG, 146</sup> he was allowed to continue in his position as a trustee of Olive Tree School in Lewisham.<sup>147</sup> As such, to empower and support Ofsted, and the education sector in their duty to protect children from extremists, the law needs updating urgently.

### Charity Commission

- 4.21 The Charity Commission regulates approximately 168,000 registered charities in England and Wales. In 2018, the Charity Commission published 'Protecting charities from abuse for extremist purposes'<sup>148</sup> to support trustees in exercising their duty to manage their charity's resources responsibly, by ensuring that they are not exposed to undue risk.
- 4.22 The Charities (Protection and Social Investment Act) 2016<sup>149</sup> was designed to provide tougher regulatory powers to the Charity Commission through, amongst other powers, the introduction of a new discretionary disqualification power and expansion of circumstances in which people are automatically disqualified from charity

<sup>AE</sup> First set out in the 2011 Prevent Strategy.

<sup>AF</sup> The 2015 UK Government definition of extremism was "the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist".

<sup>AG</sup> Shakeel Begg was a trustee of the Lewisham Islamic Centre (LIC) and had a role in the governance of Olive Tree Primary School. The LIC was the proprietor of the school until its closure.

trusteeship and holding senior management functions. Crucially, the Charities Act 2016 now allows the Charity Commission to take account of a person's conduct outside of a charity, either past and/or continuing, that is or is likely to be damaging to public trust and confidence in charities.

- 4.23 The Charity Commission's regulatory powers are only exercisable after satisfying specific legal tests<sup>AH</sup> and otherwise acting in conformity with its duties as a public authority. Some individuals are automatically disqualified by law, this includes individuals convicted of certain offences.<sup>150</sup> The offences include those under counter terrorism legislation.<sup>151</sup> However, a great deal of hateful extremism is not captured under counter terrorism legislation. The Commission for Countering Extremism therefore recognises the significant challenges faced by the Charity Commission to address and minimise extremists in the charity sector in the absence of any specific legislation to address hateful extremism. The Charity Commission proposed that an expansion of the provisions for automatic disqualification to incorporate hateful extremism would be a helpful change. In such instances, individuals would automatically be disqualified from acting as trustees or senior managers within charities; the consequences of acting whilst disqualified include both criminal and civil offences.
- 4.24 A clear example of this is the Charity Commission's statutory inquiry<sup>152</sup> to examine concerns relating to Dr Zakir Naik's trusteeship of Islamic Research Foundation International and over the charity's continued funding for religious broadcasting channel, Peace TV.<sup>153</sup> Naik was also a prominent speaker on this channel.<sup>154</sup> In November 2019, Ofcom had suspended Peace TV's licence for broadcasting extremist material including one inciting murder.<sup>155</sup> Naik's extremist views led to a decision by the then Home Secretary, and upheld by both the High Court and Court of Appeal, to exclude Naik from entering the UK.<sup>156</sup> Yet despite these factors, the Charity Commission told us that it has faced difficulty to automatically bar Naik as trustee of a UK charity because his extremist actions do not come under the scope for disqualification.
- 4.25 The Charity Commission also told us that it experiences a recurring issue over extremism in charities linked to funding, for example whether or not there exists an inappropriate influence over a charity as a result of the funding that it receives. The Charity Commission advised us that this is particularly difficult to prove and, unless there is a legal prohibition, the decision as to whether or not to accept or continue to accept a funding source is for the trustees of the individual charity to consider. This can therefore leave charities vulnerable to being exploited by extremists.
- 4.26 The Commission for Countering Extremism therefore believes that a legal framework dedicated to countering hateful extremism, underpinned by clear criteria, would provide a more effective mechanism by which the Charity Commission could regulate conduct and material which is contributing to the activity that is defined in our definition of hateful extremism. This clarity could offer the Charity Commission a mechanism to prevent extremists from taking a position of charity trusteeship and enhance the regulator's ability to effectively tackle extremism in the charity sector.

<sup>AH</sup> Section 76A of Charities (Protection and Social Investment) Act 2016 sets a range of conduct to be considered when the Charity Commission exercises its powers: a) that a particular person has been responsible for misconduct or mismanagement, that the person knew of the misconduct or mismanagement and failed to take any reasonable step to oppose it, or that their conduct contributed to it or facilitated it.



## Summary

4.27 In this chapter we have outlined that there are complications to countering hateful extremism beyond the existing laws, which frustrate the efforts of law enforcement and regulators to prevent extremist harms. A solution would be a legal framework for countering hateful extremism. This would underpin an operational framework for civil and regulatory arrangements, institutionalising counter extremism efforts across public bodies, local authorities, law enforcement agencies and regulatory bodies. In the absence of such a framework the current muddled and confused approach will continue to act as a barrier to developing a whole society approach to reduce and minimise hateful extremist activity.



# Legal Gaps Exploited by Hateful Extremists



- 5.1 This chapter seeks to identify the legal gaps which enable hateful extremists to persist. We do not intend for this to be a complete legal analysis. Rather, we are looking to provide a practical and operational perspective on current legislation and how far it can and cannot respond to hateful extremism.
- 5.2 There are several areas of law which may apply to hateful extremist behaviour, including regulatory, civil and equality laws. However, in this chapter we will focus on the most relevant laws to hateful extremism; **hate crime** and **counter terrorism legislation**.

**As a result of the lack of any legal framework or legislation to proscribe hateful extremist activity, examples of activities that are currently legal might include:**

- Outwardly praising the actions and ideology of terrorists such as Anders Breivik, the 9/11 hijackers or Brenton Tarrant to a wide audience, including sharing content which commends their attacks but stopping short of directly encouraging the commission, preparation or instigation of acts of terrorism.
- Possessing Islamist propaganda materials, such as violent sermons and Daesh beheading videos, and sharing them online in circumstances that do not give rise to a reasonable suspicion that they are held for a purpose connected with the commission, preparation or instigation of an act of terrorism.
- Repeatedly uploading videos online containing anti-Arab conspiracies and blaming Arabs for various harms across the world and political grievances, intending to stir up hatred while promoting a racial supremacist ideology provided the videos avoid using threatening, abusive or insulting words or behaviour.
- An organisation circulating inflammatory pamphlets which promote false claims intended to stir up hatred against an ethnic or religious community which also promote racial supremacist narratives, but which do not include threatening or abusive or insulting components.
- Praising the terrorist actions and ideology of Osama Bin Laden to a group of schoolchildren, without explicit or implicit encouragement to emulate his actions.
- Activity which intends to radicalise and recruit children to support terrorist ideologies through sharing online propaganda that glorifies and justifies terrorist acts without encouraging them to commit, prepare or instigate acts of terrorism.
- An Islamist organisation holding events, inviting Salafi-jihadi preachers and Al Qaeda ideologues who routinely espouse Islamist extremist ideology to speak and publishing their work provided that they avoid using abusive, insulting or threatening words or behaviour.

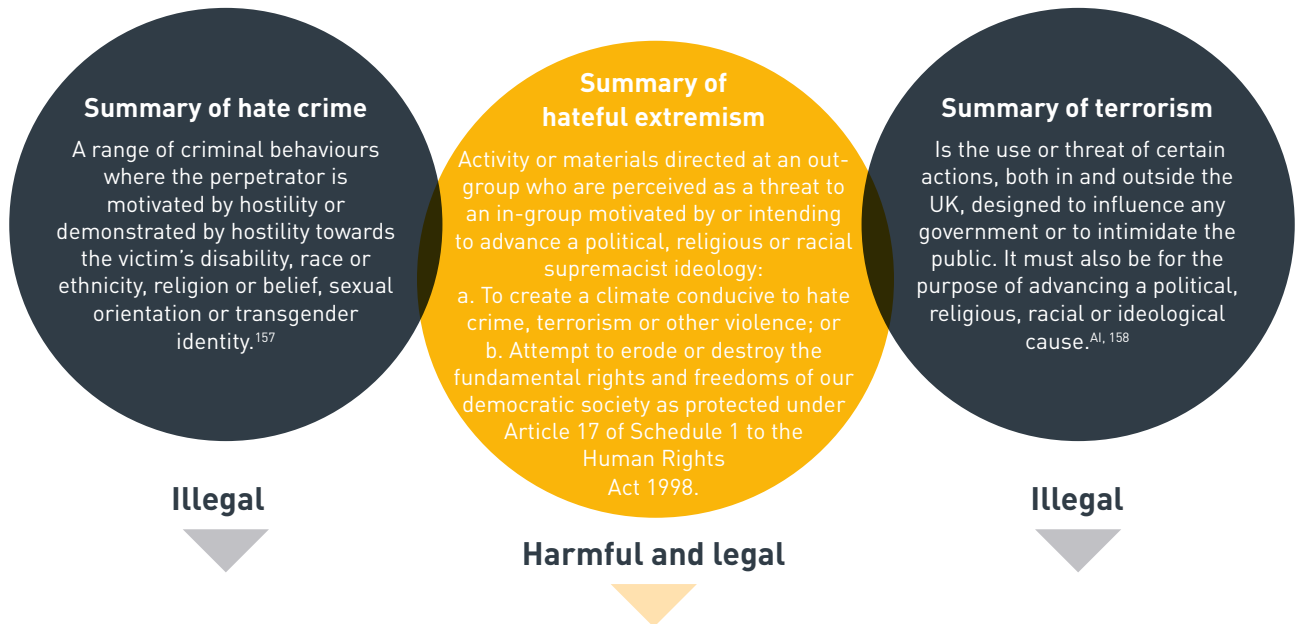
- 5.3 This occurs because of the lack of legislation designed to capture the specific activity of hateful extremism as we have highlighted in the executive summary. It is currently lawful to:

- Glorify terrorism, so long as one avoids encouraging emulation of conduct that amounts to the commission or preparation of acts of terrorism;
- Intentionally stir up racial hatred, so long as one avoids using threatening, abusive or insulting words or behaviour and in the case of religious hatred, avoids using threatening words or behaviour when doing so (other offences of stirring up racial and religious hatred share the same characteristics);
- Publish and distribute material to intentionally stir up racial or religious hatred as long as the material avoids being threatening, abusive or insulting in its content; and
- Collect material that encourages terrorism, including material which persuades the reader to commit terrorist acts in circumstances that do not give rise to a reasonable suspicion that they are held for a purpose connected with the commission, preparation or instigation of an act of terrorism. This is true even for the most extreme violent terrorist material, such as torture.

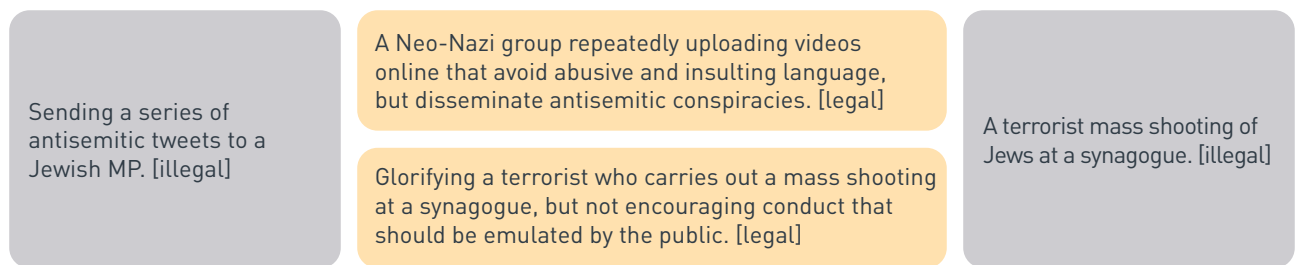
5.4 While there is some overlap between hateful extremism and hate crime on the one hand, and hateful extremism and terrorism on the other, a great deal of hate crime and terrorist activity is distinct from hateful extremist activity, which does not fall into the scope of either set of legislation. The case examples across this report evidence the materials and behaviours that thrive within the legislative gaps. In many ways, extremists can operate freely and lawfully, despite the harm they are causing. This can be frustrating to victims, law enforcement agencies and wider civil society.

5.5 The infographic on the following page outlines in more detail the current hateful extremism legislative gap.





**Theoretical example in practice: Antisemitism**



**Summary of legal provisions – hate crime**

- Aggravated offences – Crime and Disorder Act 1998
- Enhanced sentencing provisions – Sentencing Act 2020

**Summary of legal provisions – hate crime and hateful extremism overlap**

- Stirring up hatred, Sections 3 and 3A in the Public Order Act 1986

**Summary of legal provisions – hateful extremism**

- Nil

**Counter terrorism laws since 2000, including:**

- Terrorism Act 2000
- Terrorism Act 2006
- Counter-Terrorism and Security Act 2015
- Counter-Terrorism and Border Security Act 2019

**Summary of laws – terrorism and hateful extremism overlap**

- Possession and glorifying terrorist content or for terrorist purposes, Section 1 and 2 of Terrorism Act 2006 and Section 57 of Terrorism Act 2000

<sup>AI</sup> Legal definition of terrorism as defined in the Terrorism Act 2000 is included in Annex B.

## Hate crime legislation

- 5.6 Hate crimes are a range of criminal behaviours that can be described as “any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person’s disability or perceived disability; race or perceived race; religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity”.<sup>159</sup>
- 5.7 Incitement of racial hatred offences were first introduced in England and Wales as early as 1965<sup>160</sup> and current hate crime laws took effect more than 20 years ago.<sup>161</sup> Hate crime laws are spread over multiple statutes and include many physical criminal offences, such as assault, the sentence for which can be increased, or a more severe type of sentence imposed, if the court finds that the offending was motivated by racial or religious hostility.<sup>162</sup> These are not wholly new offences and are instead a framework to treat hate-motivated offences, which are recognised as being a serious crime.
- 5.8 Between 1986 and 2008, offences of stirring up racial and religious hatred and hate based on sexual orientation have been introduced. These laws vary in detail, but they all focus on threatening (or in the case of race, abusive or insulting) words, behaviour or displays of written material intended or (in the case of race) likely to stir up hatred. As such, ‘hate crime’ refers to three distinct provisions:
- *Aggravated offences* where the offence is motivated by, or the defendant demonstrated hostility towards, a protected characteristic;
  - *Enhanced sentencing provisions* where the offence was motivated by, or the defendant demonstrated hostility towards, a protected characteristic; and
  - *Stirring up* of racial and religious hatred or hatred on the grounds of sexual orientation offences.
- 5.9 The Law Commission recently presented a significant degree of criticism regarding current hate crime laws and raised concerns around their clarity and application, noting that:
- “legislative activity has resulted in a significant volume of hate crime laws. However, many stakeholders argue that the laws we now have are overly complex and draw arbitrary distinctions between the different communities they protect”.**<sup>163</sup>
- 5.10 Law enforcement, in particular national advisors for hate crime policing, have found that a higher threshold for committing stirring up hatred offences, particularly in relation to religion and sexual orientation, is limiting efforts in tackling hateful extremism and does not capture the ideological motivations of hate groups and extremist actors.

## The overlap of hate crime and hateful extremism: stirring up offences

5.11 The overlap between hate crime legislation and hateful extremism emerges in the stirring up of hatred offences, where the material is threatening (or in the case of race, threatening, abusive or insulting). The main ‘stirring up’ offences under Parts 3 and 3A of the Public Order Act 1986 relate to:

**“a new set of offences criminalising conduct intended or likely to stir up hatred that may not otherwise be unlawful. [...] The offences based on stirring up racial hatred apply where a person engages in certain forms of threatening, abusive or insulting conduct and either their intention was to stir up racial hatred or, having regard to all the circumstances, racial hatred was likely to be stirred up. [...] They address conduct intended or likely to cause others to hate entire national or ethnic groups. They do not require proof that hatred has in fact been stirred up, merely that it was either intended or likely to be stirred up”.**<sup>164</sup>

5.12 While some parts of these ‘stirring up’ offences could be applicable to hateful extremism, such as criminalising conduct intended, or likely to, cause hate to groups, these offences hinge on threatening, abusive or insulting components in relation to racial hatred. With regards to stirring up religious hatred, a higher threshold is used where only threatening words, behaviour or material are sufficient. This means hateful extremist actions, behaviours, or content which are intended to stir up racial hatred but are not done in a threatening, abusive, or insulting manner (and religious hatred which is not done in a threatening manner, but nevertheless is intended by the perpetrator to incite religious hatred) would not contravene this legislation.

**Hate crime is based on hostility and hatred, often in the absence of supremacist ideology, whereas hateful extremist activity is motivated by or intended to advance a supremacist ideological worldview.** We are currently seeing a large amount of extremist activity which is clearly intended to stir up various types of hatred, but is done in a non-threatening way so is ‘legal’ under the Public Order Act (or, alternatively, this conduct may be threatening, abusive or insulting but is not being investigated by the police or prosecuted by the Crown Prosecution Service, or alternative charges are pursued with a racially aggravated element).

5.13 Only 13 prosecutions were made for stirring up offences in England and Wales in 2018-2019.<sup>165</sup> The low number of prosecutions under incitement offences demonstrate that the vast bulk of incitement that we would classify as hateful extremist does not meet the definition of incitement offences, or the threshold for prosecution of such offences.

5.14 Those who were convicted include Jonathan Jennings, who posted a number of inflammatory messages on the social networking sites YouTube and Gab. The content of his posts included calls for Muslims to be forcibly sterilised, statements that those who tried to convert others to Islam should be sentenced to death, and support for “bomb a mosque day” which had been suggested by another extremist who was later jailed for stirring up religious hatred. Jennings was sentenced to 16 months’ imprisonment.<sup>166</sup>

5.15 Another example is the case of Joshua Bonehill-Paine, who was sentenced to 40 months' imprisonment for distributing posters calling for "anti-Jewification" of areas of London and calling for a "#SummerofHate" against Jews.<sup>167</sup> Furthermore, Bonehill-Paine tried to organise antisemitic demonstrations in Golders Green, an area of London with a large, established Jewish community, and displayed posters with an image of Auschwitz and the text "We've become complacent and allowed for weeds to grow in the cracks of London. It's time to clear them up with Round-Up and Liberate Golders Green for future generations of White People [sic]".<sup>168</sup> When hateful extremist activity meets the current legal threshold for hate crime (that it is threatening, or in the case of race, abusive or insulting), it is captured and perpetrators are arrested and charged. However, when it does not meet this threshold, but the perpetrator intends to stir up hatred, the law falls short and law enforcement agencies can often find themselves powerless.

5.16 A further issue with stirring up offences relates to when we consider what materials fall under the legislation. As the Law Commission state in their Hate Crime Laws Consultation Paper:

**"There is a potential gap in the legislation. The offences in sections 18, 19, 23, 29B, 29C and 29G refer only to "written material". Sections 29 and 29N go on to define "written material" as including "any sign or other visible representation". Several recent incidents involving inflammatory images create grounds for concern over this potential gap. These include Islamophobic cartoons cited by the Home Affairs Committee, and [an antisemitic] mural in East London".<sup>169</sup>**

5.17 In considering what could be captured under 'Islamophobic cartoons', and to avoid ambiguity, it is useful to look to examples cited by the Home Affairs Select Committee. Such content would not include content such as the Charlie Hebdo cartoons, but would include:

**"a cartoon of a white woman being gang raped by Muslims over the 'altar of multiculturalism'; a cartoon stating that 'Muslims rape' [and] a cartoon that we reported depicting a group of male, ethnic minority migrants tying up and abusing a semi-naked white woman, while stabbing her baby to death" that are "plainly intended to stir up hatred".<sup>170</sup>**

5.18 While certain legislation can pick up actions and content we would consider to be extremist, for example extremist behaviours<sup>171</sup> or recordings<sup>172</sup>, we are worried that harmful materials, such as memes or GIFs, may not be caught under current legislation and may be distributed on a much wider scale before being picked up. Other areas of law, such as those around communications, may pick up such content, but they will not have the same weight as labelling the behaviour as a hate crime offence, and do not go far enough in recognising the harm caused by such materials.

### **Counter terrorism legislation**

5.19 Given the UK's long history with domestic terrorism, terrorism laws have been consistently revised to respond to evolving threats. However, as with hate crime legislation, counter terrorism legislation was never intended to also protect against acts of hateful extremism, as we have defined. As such, it leaves gaps in the law, which can allow hateful extremists to flourish.



5.20 For example, at the 2017 London Bridge inquest, Chief Coroner for England and Wales, Judge Mark Lucraft QC (Judge Lucraft), expressed deep concern that there is currently no offence for possessing terrorist or extremist propaganda material. The result of this gap in the law means it:

**“may be impossible to take action even when the material is of the most offensive and shocking character”,<sup>173</sup> with Judge Lucraft QC suggesting that “consideration should be given to legislating for further offences of possessing the most serious material which glorifies or encourages terrorism”.<sup>174</sup>**

5.21 Judge Lucraft QC went on to make a comparison with recent moves to outlaw other harmful materials online, such as prohibited images of children, stating that:

**“in the field of pornography, legislation of recent years has criminalised possession of carefully defined categories of the most offensive material (see for example section 62 of the Coroners and Justice Act 2009). Having reflected upon the evidence in these Inquests and in the Westminster Bridge Terror Attack Inquests, I have formed the view that consideration ought to be given to legislating for further offences of possession of the most serious material glorifying or encouraging terrorism”.<sup>175</sup>**

### **Case Example: Khuram Butt**

**Khuram Butt** was a Pakistani-born British citizen and the suspected ringleader of the 2017 London Bridge attack that killed eight individuals.

In the months and years preceding the attack, Butt accessed and viewed a large amount of extremist material online.<sup>176</sup> The material was varied and included Daesh propaganda, violent images, and sermons from extremist preachers.<sup>177</sup> For example, “images included mass executions and an image of a man with a spade inserted into his face”.<sup>178</sup> MI5 noted the materials he was accessing suggested he “consumed and appeared to approve of Islamist extremist propaganda”.<sup>179</sup> His engagement with Anjem Choudary’s proscribed Islamist group, Al-Muhajiroun, was well-known and Butt was known to be associating with Al-Muhajiroun figures on a regular basis in 2015,<sup>180</sup> including Choudary himself.<sup>181</sup> Butt had also joined a rally with well-known extremists outside a London mosque, in July 2015.<sup>182</sup>

He was reported to authorities at least twice; once to MI5, and once to the anti-terror hotline by his brother-in-law for becoming increasingly extremist in his views and behaviours, which included distributing anti-Western texts and links to jihadi sites. He even featured on the documentary ‘The Jihadis Next Door’, aired on Channel 4 in 2016.<sup>183</sup>





*Figure 7 – Khuram Butt (circled) in ‘The Jihadis Next Door’*

The evidence of Butt’s consumption of Islamist extremist content was known, as noted above.<sup>184</sup> There are offences for possessing a document likely to be useful in committing an act of terrorism (Section 58, Terrorism Act 2000) and of disseminating terrorist publications (Section 2, Terrorism Act 2006). While it is important to note that tactical decisions not to pursue Butt may have been made,<sup>185</sup> his known actions before the attack fell under neither of these laws.

As noted above, Judge Lucraft QC commented on the significance of mindset material in such an attack in his Preventing Future Deaths report, following an inquest into the attack. While mindset material is sufficiently ghastly that it is routinely presented in court to illustrate the terrorist intent of a suspect, there is currently nothing stopping individuals from accessing and possessing such content in large quantities. We do not believe this is appropriate, namely because people may become normalised to such violent material. Legislation outlawing possession of such material would not be enough by itself to eradicate the gap in the law which allows hateful extremism to flourish, but it could have potentially allowed Butt to be picked up and prosecuted earlier. Butt was an active subject of interest to MI5 and went on to commit an act of terrorism.<sup>186</sup> Judge Lucraft QC noted that “the lack of such an offence [the possession of materials which encourage terrorism] may sometimes prevent CTP taking disruptive action which could be valuable in their work of combatting terrorism”.<sup>187</sup>

We support implementing the recommendation laid out by Judge Lucraft QC, that the Government legislate for offences regarding possessing the most serious material which glorifies or encourages terrorism.

- 5.22 The legal framework around terrorism is different to hate crime and is based on the definition found in Section 1 of the Terrorism Act 2000. This definition of terrorism involves the use or threat of political violence to intimidate governments or communities (see Annex B for full legal definition).
- 5.23 Counter terrorism legislation, understandably, is extensive and comprehensive. Since 2000, the Government has passed over 10 different Acts to establish robust and distinct laws and police powers to modernise the UK's approach to countering terrorism. The legal touch point between hateful extremism and terrorism is most prominent where preventative counter terrorism measures have been created to prevent the 'encouragement of terrorism'. Three specific offences allow for this:
1. Section 1, Terrorism Act 2006<sup>188</sup> outlaws, in summary, statements that intentionally or recklessly direct, encourage or induce the commission, preparation or instigation of acts of terrorism. 'Encouragement' includes 'glorification' of the commission or preparation of acts of terrorism.
  2. Section 2<sup>189</sup> outlaws the "dissemination of terrorist publications" with similar intent.
  3. Section 57 of the 2000 Act<sup>190</sup> deals with "possession for terrorist purposes" of material (including digital documents, videos etc.). It must be proved that the article was possessed "in circumstances which give rise to a reasonable suspicion that ...possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism".

### ***Overlap of counter terrorism and hateful extremism: proscription and mindset materials***

#### **Proscription**

- 5.24 Counter terrorism laws can capture some extremist groups through legislation on proscription. Proscribed organisations are listed in Schedule 2 of the Terrorism Act 2000. When an organisation or group is proscribed, it becomes illegal to be a member or invite support for the group.<sup>191</sup> The Home Secretary has the power to proscribe an organisation under Section 3 of the Terrorism Act 2000, if they believe it is involved in terrorism, and it is proportionate to do. For the purposes of the Act, this means that the organisation:
- Commits or participates in acts of terrorism;
  - Prepares for terrorism;
  - Promotes or encourages terrorism (including the unlawful glorification of terrorism); and
  - Is otherwise concerned in terrorism.
- 5.25 If these requirements are met, the decision on whether to proscribe groups is then largely discretionary and will be based on a range of factors, including the specific threat posed to the UK, the extent of the organisation's presence in the UK, and the nature and scale of the organisation's activities. As such, this test is much more subjective than the first and is rooted in countering terrorism and terrorist activities

(as there is no specific proscription laws to counter hateful extremist groups). So, while some Neo-Nazi groups, such as National Action, have been proscribed, many others who express the same extremist ideology, but do not stray into actions concerning terrorism, despite causing other serious harms, are able to do so lawfully in the absence of any legal framework for countering hateful extremism. Such groups include:

5.25.1 **Combat 18:** an organisation which takes its name from the first and eighth letters of the alphabet - A and H, the initials of Adolf Hitler. The group has been associated with acts of terrorism and violence overseas, including arson attacks.<sup>192</sup> According to the founding issue of the group's magazine, their founding aims were to ship "all non-whites back to Africa, Asia, Arabia, whether alive or in body bags," execute "all Queers" and "white race mixers," "weed out all Jews in the government, the media, the arts, the professions," execute "all Jews who have actively helped to damage the white race," and "put into camps the rest until we find a final solution to the eternal Jew".<sup>193</sup>

5.25.2 **Order of Nine Angles (O9A):** an extremist occultist movement, which draws significant influence from National Socialist ideology and advocates violence and entryism to meet its ideological goals of undermining civil institutions and social order.<sup>194</sup> Although National Socialism features significantly in O9A ideology, it is not principally fascist; it combines elements of occultism, Satanism and mysticism with antisemitism, the veneration of Nazism and the endorsement of violence.<sup>195</sup>

5.25.3 **British National Socialist Movement:** an organisation founded in 1968, with the intention of continuing the National Front's Nazi apologism and antisemitism within the restrictions brought in by the Race Relations Act 1968.<sup>196</sup> The group currently maintains an active presence on the internet and a sticker campaign offline. Recent themes have included an Adolf Hitler quote poster campaign and a campaign to defy Black Lives Matter.<sup>197</sup>

5.26 It is important to remember that the laws about proscription are written into counter terrorism legislation; they were never intended to capture hateful extremist groups. So, while they may be efficient for countering terrorism, there is a clear legal gap that allows hateful extremists to either create a climate conducive to terrorism, hate crime or other violence; or damages, undermines or attempts to erode or destroy the fundamental democratic freedoms and rights of our society. Under a hateful extremism framework, there would be a legal basis to restrict such extremist and dangerous activity. A future legal framework could consider hateful extremism proscription offences against such organisations outside of terrorism proscription offences and possibly result in the banning of such groups. There are many examples where injunctions with criminal sanctions for breach have been used to counter other problems such as gang injunctions and antisocial behaviour injunctions and analogous approaches have the potential to help confront hateful extremism.<sup>198</sup>

5.27 It is arguable that other countries operate a tougher stance on proscription than the UK while also respecting freedom of expression. While there is obviously a difference between the political and constitutional contexts of other jurisdictions, the issues faced are the same and other countries are going further. Germany, for example, also

enshrines freedom of expression in their law<sup>AJ, 199</sup> and has used proscription based on the German Association Act multiple times in 2020, reportedly including for the Far Right extremist group Sturm-/Wolfsbrigade-44 in December 2020<sup>200</sup> and Combat 18 Deutschland in January 2020.<sup>201</sup> Such designations of illegality can come about if the purposes or activities of an association are contrary to criminal law or are contrary to the constitutional order or the concept of international understanding. Arguably, given Germany have proscribed Combat 18 and we have not, we do not have this level of protection in our legislation.

### **Possession of extremist content and mindset material**

- 5.28 Counter Terrorism Policing refer to large amounts of terrorist propaganda as 'mindset material'. This is primarily material that can indicate the individual's mindset, including their potential intent to breach counter terrorism laws. Possession, or even sharing, of these materials is often legal, but when prosecuted under legislation, it will usually be by one of the three legislative provisions outlined on page 59. It is important to note that individuals may view such material without ever planning or committing an attack, but possessing the most serious material which glorifies or encourages terrorism raises significant concerns about the possessor and their purpose.
- 5.29 While 'mindset material' can contain highly graphic and worrying extremist content, on its own, it can often be legal, particularly when we consider glorification. Currently, glorification of terrorism is legal as long as there is no encouragement of emulation. This includes both possessing or sharing material which glorifies terrorism. As above, Section 1 and Section 2 of the Terrorism Act 2006 relate to what constitutes an offence when collecting and sharing terrorist propaganda and material. The determining factors are whether there is direct or indirect encouragement of terrorism for the purposes of committing a terrorist act, from which the recipient could reasonably infer that they should emulate this. Material which glorifies terrorists is only an offence when it encourages others to commit similar terrorist atrocities.

#### **Case Example: 'Akhtar' – Possession of Daesh propaganda videos**

*The following example has been provided by a government source. It does not contain references because the case has not been publicised. A fictitious name has been used in this case study to protect the individual's identity.*

In 2019, during a police search of an address in London, 'Akhtar' was arrested following the discovery of 150 Daesh propaganda videos on his personal hard drive. The videos contained graphic details of public executions (including murders committed by children), beheadings and violent interrogation. The files also included extracts from terrorist publications, such as Dabiq and Al Hayat, and speeches from Daesh leaders, including Abu Mohamed al-Adnani. The length of the videos ranged from 30 seconds to nearly an hour of graphic violent content.

These videos were clearly designed to legitimise and glorify the terrorism and violence perpetrated by Daesh forces, with the aim of advancing their political and ideological cause and creating a climate conducive to terrorism. However, only one video met the

<sup>AJ</sup> Article 5 of Germany's Basic Law is dedicated to protecting freedom of expression.

threshold for a terrorism offence. This was a 29-minute instructional video, featuring a live demonstration on how to kill a person with a knife and how to construct a home-made bomb. Police also uncovered a 12-minute clip of the same video, containing the knife demonstration, which was sent to another person via WhatsApp.

This video met the threshold because it encourages the preparation or instigation of acts of terrorism (Section 57, Terrorism Act 2000 and Section 1, Terrorism Act 2006), and under Section 58, Terrorism Act 2000, it is an offence to possess or make a record of information which is likely to be useful to a person committing, or preparing to commit, an act of terrorism. Subsequently, 'Akhtar' was charged for possession of a single document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, and a second charge of distribution of a video via WhatsApp. However, the other 149 videos of concern – including murders committed by children – fell short of explicitly encouraging terrorism and therefore are not illegal to own or to share, despite their clearly hateful extremist content.

The relationship with hateful extremism is explicit. All the videos contained graphic violent acts and propagate the views of Islamist extremists that amplify hate and make a moral case for terrorism. Propaganda materials such as these clearly contribute to creating a climate conducive to terrorism. Yet, in 'Akhtar's' case, all but one had been found to be legal to possess.

- 5.30 In 2014, in their Report into the murder of Fusilier Lee Rigby, the Intelligence and Security Committee ('ISC') recommended that engaging with "extremist media should be taken extremely seriously".<sup>202</sup> While the Counter-Terrorism and Border Security Bill 2019 changed the law to cover material that is only viewed or streamed, rather than downloaded to form a permanent record,<sup>203</sup> the possession offences did not in themselves change. As this is the case, the only material it is illegal to view online (or possess) is material that is useful to terrorists in circumstances which do not give rise to a reasonable suspicion that their possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. This would include specific content such as bomb-making instructions, which is much narrower than the harmful materials that we would describe as hateful extremism. It is arguable that, in reference to mindset materials, the Government still has not gone as far as the ISC intended.
- 5.31 Expressing support for terrorism isn't illegal, so long as one does not encourage or incite others to act or express support for a proscribed terror group. This means people in trusted positions, or positions of power, could theoretically praise and glorify, for example, Bin Laden or Anders Breivik, regardless of its radicalising effects on others. To give an example, it was recently reported that videos glorifying the Christchurch mosque attacker Brenton Tarrant, who killed 51 people, were widely available on YouTube.<sup>204</sup> Five videos uploaded by the same account call Tarrant a hero and were reportedly still available to watch, as at 30 November 2020, despite YouTube owner Google being notified.<sup>205</sup> Former head of counter terrorism at the Foreign Office, Sir Ivor Roberts, warned that the content had the potential to encourage similar attacks, warning that the "ease of accessibility" of extremist content online "poses a significant threat to internal security in the United Kingdom". He concluded "the



British Government should act decisively both to legislate against the spread of violent ideologues and demand they [platforms] use vigorously and expeditiously the tools which already exist to take down extremist content”.<sup>206</sup>

- 5.32 Judge Lucreft QC’s recommendation, discussed previously, would be comparable to current offences around possession of images of child sexual exploitation, terrorist material, and extreme pornography, all of which have been made illegal. The current legislation criminalises possession of carefully defined pornographic images of children (see for example Section 62 of the Coroners and Justice Act 2009). No intent to share with others or to commit sexual assaults on children is required, simply possession of the images. This legislation also illustrates that the necessary, effective safeguards can be found to protect those with legitimate reasons for possession such as journalists and academics (Section 64) or those producing classified films (Section 63).
- 5.33 **In considering how to legislate against possession or sharing of terrorist-related material in circumstances or of types that are currently legal, it may be preferable to do it under criminal law, as a part of a hateful extremism framework, than to expand terrorism laws.** Terrorist offences come with a whole suite of additional legal powers that reflect their gravity. Dealing with these matters under standard criminal law may be more proportionate and could help ensure that diversionary options are available, for example, for young offenders where appropriate.

### ***Why simply strengthening current laws is not good enough***

- 5.34 As this chapter has outlined, there is a limit to the protection offered by hate crime and counter terrorism laws in terms of preventing acts of hateful extremism. Even if the current laws on hate crime and counter terrorism are strengthened, and recommendations by Judge Lucreft QC and the Law Commission, are enacted, the lack of legislation designed to capture the specific activity of hateful extremism continues to allow such activity to be lawful.
- 5.35 Some of the activity we identify in this report, such as the active dissemination of extremist propaganda or the attempts to radicalise and groom young people into hateful and violent extremist ideologies, will not be captured, even if existing legislation is strengthened as articulated above. We can only fill this gap and better protect everyone from the harms of hateful extremism by bringing in a dedicated and focused legal framework. Such a framework will enable a new operational infrastructure that would be embedded across our institutions, to ensure we have a robust response to hateful extremism guided by the law.
- 5.36 There have been previous attempts by government to put forward a legal framework for dealing with ‘extremism’. In 2015, an Extremism Bill was announced in the Queen’s Speech.<sup>207</sup> The Bill was publicised with a purpose to:
- “unite our country and keep you and your family safe by tackling all forms of extremism”; and
  - “combat groups and individuals who reject our values and promote messages of hate”.<sup>208</sup>



- 5.37 It promised, amongst other benefits, to “strengthen government and law enforcement powers to stop extremists” and “to address the gap in government and law enforcement’s powers to deal with extremism that falls below the thresholds in counter-terrorism legislation”.<sup>209</sup> However, no detailed proposals emerged, and the Bill failed to come to fruition.
- 5.38 We believe the reason the Government failed to legislate against extremism in 2015 was an inability to articulate the extremist activity it was concerned by and the harm it was causing. The Government did not publish any consultation (or Green or White Paper) on either the definition of the extremist activity that it proposed to tackle, the concepts of ‘British values’ and ‘non-violent extremism’, or the details of the proposed new measures within the Bill. As such, they tried to put forward a solution without identifying the activity and harm they were trying to protect against, or the goal they were seeking to achieve. However, over the last five years, the problem of what the Commission has defined as ‘hateful extremism’ has become increasingly concerning. We have defined a much clearer subset of activity to focus upon, the harm it is causing and a democratic justification for interference in such behaviours. In this report, we have also laid out where the gaps in the current law are, and the legislative gaps which allow hateful extremists to operate with impunity.
- 5.39 A legal framework to combat hateful extremism could include civil, regulatory or criminal provisions and would also need to focus on i) intent; ii) evidence of serious or persistent behaviour; iii) evidence of promoting a supremacist ideology as outlined in our definition; and iv) evidence of activity that is creating a climate conducive to terrorism, hate crime or violence or activity in breach of Article 17. The framework may include:
- Powers to tackle those who intentionally and persistently engage in hateful extremism. This could include banning groups and organisations or imposing conditions on individuals, with criminal sanctions for breach.
  - Restrictions on the material extremists produce, possess or share and those storing or transmitting it if it reaches a high threshold. For example, possessing the most serious material which glorifies or encourages terrorism, as suggested by Judge Lucraft QC. The intent would be to mirror the effect in child sexual offences legislation, making possession an absolute offence – with the same safeguards for journalists, academics and others. We believe this will sit best in a dedicated framework for extremism, unless a solution can be found to incorporate it into counter terrorism legislation.
  - Specific offences to capture behaviours that are currently legal, such as glorifying terrorism.
  - Powers which would enable all law enforcement agencies, regulators, public bodies and government bodies to tackle issues within their remit, including Ofsted, the Charity Commission, and Ofcom. Legal safeguards which could include a focus on proving intent, objective assessments of hateful extremism, high levels of authority required to prosecute as well as clear freedom of expression, journalistic and other safeguards.

- The potential for developing a robust classification system that would categorise and assess the scale, influence and harm of hateful extremist activity and material.

**5.40** Hateful extremism is particularly challenging in the online space. The following chapter outlines the threat of online extremism, existing legislation that applies, and a critique of the Government's Online Harms Bill.

# **‘Legal but Harmful’: Online Extremism and the Proposed Online Harms Bill**

**“The last two decades have seen a revolution in communications technology. The rise of the internet and social media has offered extraordinary new opportunities to engage with one another and on an unprecedented scale. However, there is also increased scope for harm [...] The criminal law has struggled to keep pace with these changes”.**<sup>210</sup>

Law Commission (2020)

6.1 This chapter evidences the threat of hateful extremist content online and the extent to which it spreads and grows over the internet, as well as its potential to physically manifest into hateful extremist behaviours in the offline world. In doing this, we distinguish illegal terrorist content online (which the Government is taking affirmative action to remove) from legal but harmful hateful extremist content, which remains unaccounted for in the law. After outlining the threat posed by online extremism, we assess the Government’s attempts to counter harmful content online through the Online Harms White Paper and current laws related to online activity, before giving an overview of how other jurisdictions have tried to tackle the issue of harmful online content.

## **‘Legal but Harmful’: The threat of online extremism**

- 6.2 Online content can lead to real harm. Online platforms (e.g. message boards, social media, image sharing boards) and other forms of communication allow extremist groups to disseminate hateful and frequently violent, propaganda across societies and borders at enhanced scale, speed and sophistication. This is often uncensored. The Commission’s 2018 public consultation found that, among respondents, 56% of the public and 73% of practitioners felt that “a lot more” should be done to counter extremism online. 52% of respondents reported having witnessed some form of extremism in some way, and of those, 45% reported seeing this online.<sup>211</sup>
- 6.3 Over the last few years, the Government has made considerable progress in working to remove illegal terrorist content online, including establishing the Counter-Terrorism Internet Referral Unit (CTIRU) in 2010, to refer illegal terrorist content to technology companies for removal. We have also seen dedicated efforts from major companies and platforms, with the formation of the Global Internet Forum to Counter Terrorism (GIFCT) in 2017, an international, industry-led forum to tackle terrorist content online. Although the Government has made significant efforts to deal with illegal terrorist content, the hateful extremist material we are outlining in this report is insufficiently being captured.
- 6.4 Online extremist activity has changed considerably since the Government’s first Counter-Extremism Strategy in 2015. Despite the increased prevalence of hateful and harmful extremist content online, we have, to date, not seen evidence of a new policy approach in government to counter the mobilisation of extremists online. Jonathan Hall QC, the Independent Reviewer of Terrorism Legislation, stated in December 2020 that “in my view, the correlation between incidents of online viewing and detected terrorism is strong and demonstrable”, saying it was “highly likely that the coronavirus pandemic will accelerate the impact of the internet on the types and modalities of terrorism”.<sup>212</sup>

- 6.5 The scale of lawful online extremism is eye-watering. Internal government research has shown how, on average during April and July 2020, between 6,000-8,000 items of antisemitic content was uploaded every day to just one forum board, on just one particular platform.<sup>AK, 213</sup> One example of legal but harmful hateful extremist content includes a video, promoted during the COVID-19 pandemic, which spread false and dangerous antisemitic conspiracy theories linked to COVID-19 and had been viewed over 5.9 million times by June 2020.<sup>214</sup> Other research has found how hundreds of thousands of Far Right posts existed around COVID-19, and that there have been millions of engagements with known disinformation sites.<sup>215</sup>
- 6.6 A recent study indicates that online and offline hate incidents can often peak in tandem,<sup>216</sup> and there is a positive association between hate content on Twitter targeting race and religion, and offline racially and religiously aggravated offences in London. Whilst rejecting the idea that online hate is a causal mechanism for offline hate (but suggesting it is one amongst a range of factors), the authors concluded that:
- “online hate victimization is part of a wider process of harm that can begin on social media and then migrate to the physical world”.<sup>217</sup>**
- 6.7 When considering the hateful extremist harms that can arise from online content, the American website, Daily Stormer, stands as a prime example of both the hateful content that can so easily be found and shared online and the ease with which it can spread.

### Case Example: Online Extremism - Daily Stormer

Daily Stormer is an American website that has promoted antisemitism, Neo-Nazism and white supremacy,<sup>218</sup> using hashtags such as “#HitlerWasRight”.<sup>219</sup> It was founded by Andrew Anglin and takes its name from the Nazi propaganda tabloid sheet, Der Stürmer.<sup>220</sup> In November 2020, Daily Stormer website received 1 million visits.<sup>AL, 221</sup>

Daily Stormer is predominantly accessed by people based in the USA.<sup>222</sup> However, the harmful effects of its hateful extremist content can be transnational in nature, such as co-ordinated attacks on politicians outside of the US context. Between October 2014 and January 2015, UK MP Luciana Berger, who is Jewish and was at the time Member of Parliament for Liverpool Wavertree,<sup>223</sup> was subjected to a “cruel campaign of abuse” involving users of Daily Stormer and UK citizen Joshua Bonehill-Paine.<sup>224</sup> Bonehill-Paine’s posts drew on antisemitic conspiracy theories and dehumanising racist tropes.<sup>225</sup> For example, he described Ms Berger as “an evil money grabber” and published a post of a rat with Ms Berger’s face superimposed onto it.<sup>226</sup>

Daily Stormer readers sent antisemitic messages to Ms Berger.<sup>227</sup> At Bonehill-Paine’s sentencing hearing, Mr Justice Spencer stated that “at its worst [Ms Berger] received 2,500 antisemitic messages in a three-day period”.<sup>228</sup> Daily Stormer readers were guided of “do’s and don’ts” for the abuse to avoid directly breaking the law. This included avoiding direct threats or words of violence but using other language and names like “a hook-nosed y-- and a rat-faced k---”,<sup>229</sup> alongside advice for limiting traceability and

<sup>AK</sup> This figure is for all global users.

<sup>AL</sup> Although this data is for the most recent month, this has been seen consistently by internal government sources over several months while conducting research for this report.

creating anonymous email and Twitter accounts.<sup>230</sup> It has been argued that similar tactics, including previously classified psychological warfare tactics, are increasingly featuring in the larger digital ecosystem of the Far Right in online spaces.<sup>231</sup>

Bonehill-Paine's freedom of speech-based defence was dismissed in court, and he was sentenced for racially-aggravated harassment.<sup>232</sup> While the UK courts responded to Bonehill-Paine's criminal hate crime, there was no legal remedy for the wider hateful extremism encouraged by Daily Stormer. When sentencing, Mr Justice Spencer noted that Daily Stormer had taken up Bonehill-Paine's campaign against Ms Berger, and Bonehill-Paine had called on veterans of the campaign to be on standby.<sup>233</sup>

In her evidence during the trial of Bonehill-Paine, Ms Berger said "I knew that what happened online did not always stay online" making her feel under attack and causing upset to her family.<sup>234</sup> Despite such abuse, we know of only three individuals being prosecuted for this conduct: Bonehill-Paine, Garron Helm and John Nimmo.<sup>235</sup> In 2017, after the US 'Unite the Right' rally, Daily Stormer's domain name was seized by Google and removed from the server.<sup>236</sup> However, articles involving hateful and antisemitic language about Berger dating from 2014 still remain online.

- 6.8 Evidence suggests that unfounded conspiracy theories may act as a gateway for more extremist and supremacist narratives and content online.<sup>237</sup> As of August 2020, it was reported that several million Facebook users were in groups promoting QAnon,<sup>238</sup> with the most users advocating QAnon on Twitter being based in the US, UK, Canada and Australia.<sup>239</sup>
- 6.9 When considering conspiracy theories, it is important to recognise a range of theories, of which only some attempt to incite hatred and which propagate hateful extremist narratives. For example, a flat-earth theory would not meet our threshold for hateful extremism. However, advocating COVID-19 antisemitic conspiracy theories which stir up hatred would. A legal framework to counter extremism would only be concerned with those hateful extremist conspiracy theories which are deemed so harmful that they should be captured by criminal or regulatory laws.
- 6.10 The potential for extremist conspiracy theories to do real-world damage is clear, as extremist propaganda relies heavily on disinformation and conspiracy theories. Some researchers have suggested that "exposure to fake news and other misinformation may do most of its damage in increasing cynicism and apathy while feeding extremism and affective polarization".<sup>240</sup> Such conspiracy theories or narratives based on disinformation spread rapidly over social media and actively target and stir up hatred against a particular out-group. Some limited regulations from individual platforms are starting to be imposed, such as restricting QAnon content,<sup>241</sup> content that denies or distorts the Holocaust<sup>242</sup> and flagging misinformation.<sup>243</sup> While this is a positive move, it should not be the case that platforms' approach to tackling extremist content is reactive, often in response to heightened media attention and pressure. Platforms need to be proactive and actively seek out extremist risks on their sites, before they spread and cause irreversible damage.



- 6.11 Yet social media platforms have often been ineffective in removing other hateful extremist content. In November 2020, *The Guardian* reported that research from the Center for Countering Digital Hate (CCDH) had uncovered how extremist merchandise had been sold on Facebook and Instagram to help fund Neo-Nazi Ukrainian groups.<sup>244</sup> *The Guardian* reported that after “being contacted by the Observer, Facebook began taking down the neo-Nazi [sic] material”.<sup>245</sup> A similar incident was also picked up by *The Sun*, following CCDH research in Autumn 2020 regarding Daesh propaganda. This featured beheadings and glorifying 9/11 terror attacks to a combined 7,700 followers on Instagram.<sup>246</sup> Facebook, Instagram’s parent company, removed the accounts only after *The Sun* had approached them for comment, despite Instagram insisting it had not breached their guidelines.<sup>247</sup> This suggests a repeating, inconsistent and ineffective approach taken by some social media platforms in regulating extremist content.
- 6.12 The challenge of regulating extremist content is made more difficult as extremists regularly employ tactics designed to make their content appear harmless. Even on the big social media platforms, with clear terms of service, extremists can wrap up their narratives in ways which often stop short of being explicitly and overtly illegal. Reasons for these tactics may include to avoid being flagged by platforms’ algorithms hunting for key terms which might breach terms of service, or to show up in users’ recommended content. For example, content is often relayed through memes – providing visual representations of extremist ideas that may appear more trivial, humorous, and less hateful.<sup>248</sup>
- 6.13 In this way, subtly extremist content can infiltrate more banal spaces such as online chat boards, forums and increasingly in online video games.<sup>249</sup> Such engagement also means users build up familiarity with regular symbols, such as ‘Pepe the Frog’, which was not intended to be an extremist symbol by its creator, but has since been co-opted by extremists. Users may also look for particular insignias or logos which they begin to feel affinity for, succumbing to extremist branding or community atmospheres and potentially being groomed by extremists. We are also concerned about smaller platforms such as 8kun, 4chan, Gab, Telegram and BitChute, who continue to host and promote extremist content, but often have less stringent terms of services, which are exploited by extremists.

### Case Example: Online extremism – BitChute

BitChute was launched in February 2017. It offers “a platform for content that had been banned from other platforms”<sup>250</sup> (including YouTube)<sup>251</sup> in an apparent stand against ‘censorship’.<sup>252</sup> As of 25 January 2021, it is registered with Companies House in Andover, UK, and lists a UK national among its Directors.<sup>253</sup> BitChute hosts significant content which meets our working definition of hateful extremism, in both video content and comments. Some of the extremist content and support for terrorist causes found on BitChute are shown in the screenshots below, obtained from internal government sources during the period 5 June to 24 July 2020:

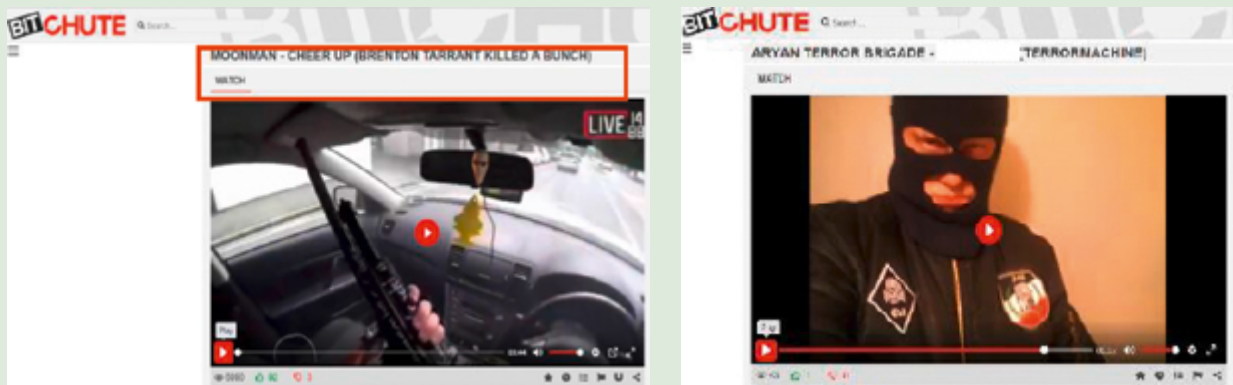


Figure 8 – These screengrabs show a clip of the Christchurch 2019 terror attack and a video promoting Far Right content on BitChute.

Other extremist content is shown in the following screenshots, taken on 24-26 June 2020:

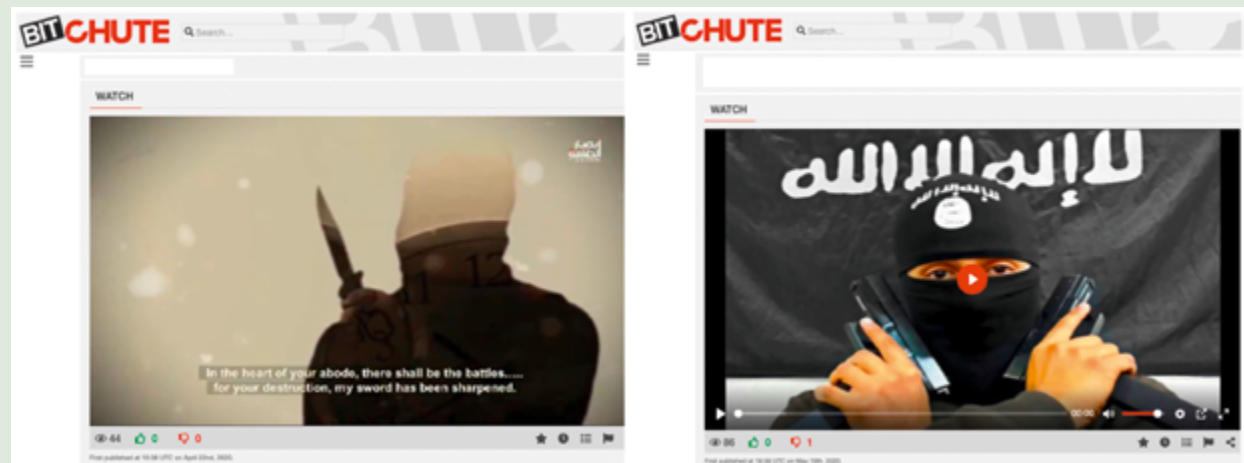


Figure 9 – Source for these screenshots: HOPE not hate. These two screenshots reportedly show “videos supporting groups and individuals linked to international terrorism”.<sup>254</sup>



Figure 10 – BitChute publicly promoted, on another platform, this content by a conspiracy theorist relating to the baseless Qanon conspiracy alleging a paedophile ring, despite being debunked and users flagging content for removal in August 2018. The text reads “we’re getting a lot of requests to take down [name removed] video. We’re not going to delete it, we’re going to promote it”. This suggests that even when content is requested to be taken down, BitChute instead promotes it. Source: Internal government sources.

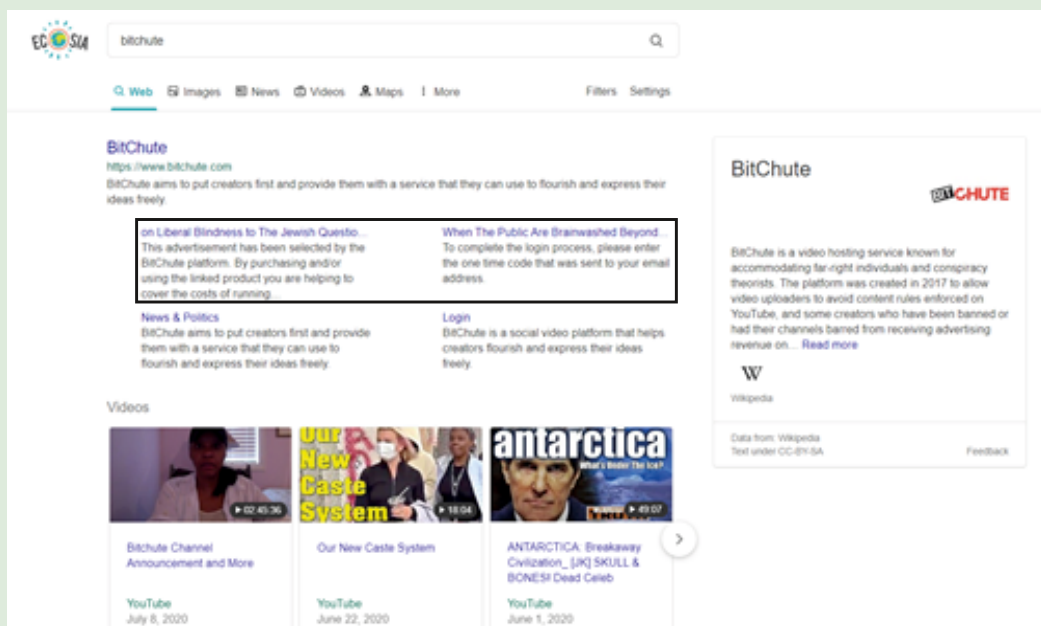


Figure 11 – The BitChute overview when searched for on Ecosia search engine, 19 August 2020. The title on the left in the blue box reads “on Liberal Blindness to the Jewish Question [sic]”, relating to Holocaust terminology and antisemitic conspiracy theories. The title on the right reads “when the public are brainwashed beyond...”, again hinting at conspiracy theories. These appeared when simply typing “BitChute” into the Ecosia search engine, showing their easy access. The above screenshot also shows how BitChute content is hosted and accessible on YouTube. Source: Internal government sources.

The screenshots above evidence videos supporting Islamist extremist organisations, Far Right extremist organisations, such as Combat 18, and convicted terrorists, such as Brenton Tarrant (along with partial clips of the 2019 Christchurch terror attack). There is also concern over the propagation of conspiracy theories and extremist content on BitChute. When searching for ‘gaming’ on 1 June 2020, for example, channels were returned on the first page of results providing links to 85 other BitChute channels with content relating to antisemitism, Far Right extremism and white supremacy.<sup>255</sup> More targeted searches for ‘QAnon’ on 1 June 2020 returned 8,048 videos and 42 channels dedicated to this widely discredited conspiracy theory.<sup>256</sup> On the same data, a search for the ‘Holohoax’ antisemitic conspiracy theory returned 2,737 videos;<sup>257</sup> and a search for ‘MGTOW’ [Men Go Their Own Way, an anti-women term associated with the Incel (‘Involuntary celibate’) movement] returned 7,718 videos.<sup>258</sup>

BitChute tweeted about having 20 million unique visitors in April 2020 alone.<sup>259</sup> This suggests a substantial audience is being exposed to its content. As of July 2020, the country where BitChute is most popular is the USA, with 37.9% of BitChute’s visitors being based there, while the UK ranked third with 4.8% of visitors. Yet over time, BitChute has seen a huge increase in popularity in the UK, rising from its ranking in UK internet traffic from 1,973 place on 4 June 2020 to 820 place on 24 July 2020.<sup>260</sup>

In one particular 30-day period, between June 2019 and June 2020, over half of BitChute’s visitors arrived directly to the video-sharing platform and not through a search engine.<sup>261</sup> Between June and July 2020, this pattern increased,<sup>262</sup> potentially indicating a dedicated following for BitChute starting to emerge. In the UK, some of those accessing BitChute were actively searching for Far Right extremist content, antisemitic content, disinformation, and conspiracy theories.<sup>263</sup> Based upon primary analysis by internal government sources, this could suggest those searching for such content are finding it on BitChute, meaning that the platform is used as an alternative to more mainstream video-sharing platforms.<sup>264</sup>

Hosting extreme content may also de-sensitise viewers to such materials, while normalising the messages and ideas behind such content. Yet such content is openly available on BitChute. BitChute itself is publicly available and does not require an account to view content. Consequently, this content is very easily accessible.

In July 2020, it was reported BitChute had removed “a small number of National Action videos” from their site.<sup>265</sup> In October 2020, Parliament approved a statutory instrument for Ofcom’s regulation of UK-based video-sharing platforms (VSP).<sup>AM</sup> BitChute now falls under Ofcom’s regulation as a Video Sharing Platform.<sup>266</sup> However, while new regulation on VSPs is a welcome step, it is too early to tell whether it will have any real positive impact on the prevalence and scale of hateful extremist content online. In January 2021, the Community Security Trust (CST) reported BitChute to Ofcom, evidencing recent antisemitic and extremist content including Holocaust denial and glorification.<sup>267</sup> As the regulator, we wait to see how Ofcom will respond to the concerns raised by CST.

<sup>AM</sup> Video-sharing platforms are services whose principal purpose, essential functionality or dissociable section is to offer programmes and/or user-generated videos for which the service provider does not have editorial responsibility but is responsible for the organisation of videos.

## What laws currently apply to the online space?

- 6.14 Although certain legislation might apply in cases of online hateful extremism (for example, provisions of the Public Order Act 1986, Crime and Disorder Act 1998, Protection from Harassment Act 1997 and the Racial and Religious Hatred Act 2006) researchers have reported this legislation is not consistently applied.<sup>268</sup> There are also two communications offences that can be used to prosecute abusive or offensive communications, falling short of stirring up hatred online. These are:
- Improper use of public electronic communications network contrary to Sections 127(1) or (2) of the Communications Act 2003 (maximum six months imprisonment); and
  - Sending a letter, electronic communication or article with intent to cause distress or anxiety contrary to Section 1 of the Malicious Communications Act 1988 (maximum two years imprisonment).
- 6.15 Despite this, official government data from 2018 illustrates that of all recorded malicious communications offences, both online and offline, only 3% result in criminal charges.<sup>AN, 269</sup> The Law Commission's report into abusive and offensive communications noted overlaps for hateful conduct between the online and offline space.<sup>270</sup> In particular, they recognise the targeting of women online,<sup>271</sup> and the vagueness of some concepts and definitions such as 'obscene' and 'indecent'.<sup>272</sup> The Law Commission argued for reviews regarding the threshold at which malicious and 'false' communications can be criminalised, online privacy abuses, and whether glorifying violent crime and encouraging self-harm should be considered in reviewing communications offences.<sup>273</sup> In their most recent Consultation Paper into harmful online communications, the Law Commission concluded that "the current patchwork of offences under-criminalises in some areas (by failing to proscribe certain forms of harmful behaviour)".<sup>274</sup>

## Responding to this threat: the Online Harms Bill

- 6.16 Plans for an Online Harms Bill were unveiled by the Government in 2019, as a legislative tool to hold websites accountable if they fail to tackle harmful content online. As of 25 January 2021, the Bill is still in the proposal stage. The Government published their Online Harms White Paper in April 2019, and has now published its Full Government Response ('FGR') to the White Paper consultation.<sup>275</sup> The FGR sets out the Government's proposals in greater detail and their intention to legislate, and is the most up to date version of the policy. The Government intend to introduce the Online Safety Bill to Parliament later this year.
- 6.17 Within the White Paper, the Government identified numerous harms, including "extremism", and recognised the urgent need to address safety online, stating:

<sup>AN</sup> Please note that some of this low figure may, in part, be explained by cases of no suspects being identified (22% of cases) and victims not supporting police action (46%).

**“we believe that the digital economy urgently needs a new regulatory framework to improve our citizens’ safety online. This will rebuild public confidence and set clear expectations of companies, allowing our citizens to enjoy more safely the benefits that online services offer”.<sup>276</sup>**

6.18 Furthermore, the White Paper outlined that:

**“the most appalling and horrifying illegal content and activity remains prevalent on an unacceptable scale. Existing efforts to tackle this activity have not delivered the necessary improvements, creating an urgent need for the Government to intervene to drive online services to step up their response”.<sup>277</sup>**

6.19 The White Paper outlined proposals to tackle harmful content, several of which we strongly agree with. We fully support the following recommendations from the White Paper:

- The need for “rules and norms for the internet that discourage harmful behaviour”,<sup>278</sup> [where provisions should ...] “apply to companies that allow users to share or discover user-generated content or interact with each other online”;<sup>279</sup>
- The establishment of “a new statutory duty of care to make companies take more responsibility for the safety of their users and tackle harm caused by content or activity on their services. Compliance with this duty of care will be overseen and enforced by an independent regulator”; and<sup>280</sup>
- “Developing a culture of transparency, trust and accountability. [...] The regulator will have the power to require annual transparency reports from companies in scope. These reports will have to outline the prevalence of harmful content on their platforms and what measures they are taking to address this. These reports will be published online by the regulator, so that users and parents can make informed decisions about online use. The regulator will also have powers to require additional information, including about the impact of algorithms in selecting content for users and to ensure that companies proactively report on both emerging and known harms”.<sup>281</sup>

6.20 Alongside these broader proposals, the FGR contains several more specific important and robust proposals that we endorse. For example, it posits that Ofcom, as the regulator, should have powers to require annual transparency reports which outline information about the prevalence of harmful content online and the processes companies are putting in place to address online harms. The regulator’s powers will also be designed to ensure action against companies without a legal UK presence, including – as a last resort – blocking platforms from being accessible in the UK.

6.21 Other proposals included measures to ensure compliance, such as the regulator potentially having powers to discipline companies failing their statutory duty of care. Such disciplinary actions may include substantial fines, the disruption of business activities, ISP blocking of non-compliant websites, or imposing liability on senior management individuals.



- 6.22 The proposals are for a strong regulatory regime that has the potential to become a robust legal framework which minimises the many legal and illegal harms that are occurring in society. However, at present there is not a clear mechanism to ensure how these powers would be applied to hateful extremism. The White Paper noted that, while extremist content and activity falls within the scope of the Paper, extremism is a harm with a less clear definition (when compared to the definitions of terrorism or revenge pornography, for example).<sup>282</sup> However, we commend the Government for stating that terrorism and hate crime will be considered a priority category of harmful content, which will be set out in secondary legislation.<sup>283</sup>
- 6.23 The FGR sets out that the regulatory framework will establish different requirements on companies in scope, with regard to categories of content and activity on their services. The categories will cover that which is illegal; that which is harmful to children; and that which is legal when accessed by adults but which may be harmful to them. However, the Commission believes that certain ‘legal but harmful’ categories of hateful extremist materials, as laid out in this report, may still be able to exist.<sup>284</sup>
- 6.24 The White Paper offered no clarity on what the Government defines as extremism, or the extremist content they believe should fall under it. No further clarity has been provided in the FGR. Nor did the FGR to the Online Harms White Paper consultation engage with the concept of hateful extremism. The continuing lack of clarity about what the Government understands ‘extremism’ to be will prove difficult for any regulator to oversee and will not provide the clarity that many social media companies are seeking.
- 6.25 The Government may not define ‘extremism’ at all, instead leaving it to companies to decide, and to set their own terms and conditions and to enforce those terms and conditions.<sup>285</sup> Such an approach will not result in a consistent approach taken by social media companies to the same hateful extremist content. This is particularly pertinent as much of this content is shared between different platforms. As highlighted above, social media companies often do not enforce their own terms and conditions with regards to hateful and violent extremist content. It is hard not to be sceptical about what these proposals could achieve in regard to hateful extremism, in the short- or long-term, or that they would make any substantial difference to the growing and frightening threat of hateful extremism online.
- 6.26 **If a legal framework for hateful extremism is developed as we suggest, this could be incorporated into the Online Harm Bill and provide the urgent clarity for both social media companies and the potential future regulator Ofcom.** In the absence of such a framework for hateful extremism, we do not believe the threat of online hateful extremism will be minimised sufficiently. We believe the Online Harms Bill needs to go much further in addressing online extremism and will not in itself offer a sufficiently robust response to the prevalent and appalling hateful extremist activities and material online.
- 6.27 We are also concerned about the framework set out in the FGR to the Online Harms White Paper, which will establish differentiated expectations on companies. The Commission believes that a small number of high risk, high reach companies, which could include larger platforms such as Facebook or Google, could be required to address content which is legal but harmful to adults, as well as illegal material.

However, the Government has not set out the specifications required to classify as a ‘high reach’ company.<sup>286</sup> Companies in Category 2 will only need to address relevant illegal content and activity (although Category 2 companies will also have to address legal but harmful material where it affects children, if the service is deemed likely to be accessed by children).<sup>287</sup>

- 6.28 There is a risk that the most potent and divisive content and extremist ideologies may sit within Category 2 platforms, in which case content may not need to be addressed. As we have laid out, it is the smaller platforms which propagate and host some of the most dangerous extremist content in Britain. While smaller platforms could still be considered a ‘Category 1 service’, namely based on risk, we are concerned about the threshold and criteria being used to determine which category services should sit under.
- 6.29 The Government have outlined their intention that “content published by a news publisher on its own site (e.g. on a newspaper or broadcaster’s website) will not be in scope of the regulatory framework”.<sup>288</sup> We accept this is important in order to preserve a free press. However, in recent years there has been a growth in so-called ‘news websites’, which are used as a cover for what are in fact ‘alt-right’ or Islamist platforms designed to propagate extremist narratives. The framework will need to grapple with this complex reality. We have seen several extremist organisations extend their reach by presenting themselves as news syndicates and ‘journalists’. The Government must ensure that so-called ‘news’ outlets, which are in fact extremist platforms, are included within any regulatory framework.
- 6.30 Beyond this, we are concerned that the new framework will not go far enough in tackling the spread of extremist conspiracy theories and disinformation, which have only increased in scale and reach in the last few years. As noted above, we are only concerned with those conspiracy theories which can reasonably be described as harmful and extremist. We commend the creation of the Government’s cross-Whitehall Counter Disinformation Unit, and their plans to include disinformation and misinformation that could cause significant harm to an individual within the scope of the framework duty of care, potentially as a priority harm.
- 6.31 However, according to the FGR, the online safety framework will expect companies to take action against disinformation which is classed as illegal. Where disinformation content is illegal, it is almost always for other reasons – e.g. it falls under hate crime or incitement to violence and would become a matter for law enforcement, not the regulator. The framework would not make disinformation or extremist conspiracy theories illegal in themselves. Instead, the framework will introduce requirements on platforms for how they should take action against certain kinds of disinformation. We are not left any wiser on what these methods for tackling disinformation are, and whether it is believed they will have the desired effect or be effective in removing extremist content.
- 6.32 It is important to recognise that the harm of disinformation can be experienced by entire demographics and can impact local community tensions, even undermining our democratic institutions. Tackling such content is made harder, as the majority of it will be considered legal but harmful. We suggest that the Government also needs to provide clarity on extremist conspiracy theories; **the Commission recommend that**

**Government should devise a classification system for such conspiracy theories, based on the level of harm and potential risk of harm. In the absence of the classification system, the regulator and social media companies are unlikely to know what should or shouldn't be removed, especially if such conspiracy theories/disinformation are considered legal.**

- 6.33 A carefully devised standardised classification system for extremist content, based on the scale of harm to individuals, to public order, and to undermining our democracy, could be (among other things) included in a “code of practice” for hateful extremism. This classification system could also include extremist conspiracy theories and disinformation. In effect, a classification system could become a guide and a reference point for the regulator and social media platforms – providing transparency, clarity, conformity and consistency.
- 6.34 Therefore, although we support and credit the Government’s desire for a safer world online, we believe they need to go much further in tackling extremist content online. The framework only mentions extremism in passing and places too much trust in service providers to tackle this growing issue. The White Paper also serves as a reminder of the need for a more robust legal footing for countering hateful extremism, noting that:
- “The regulatory approach will impose more specific and stringent requirements for those harms which are clearly illegal, than for those harms which may be legal but harmful, depending on the context”.<sup>289</sup>**
- 6.35 As we have already outlined, we believe our laws have failed to evolve in response to the threat of hateful extremism. It is our belief that a great deal of the online hateful extremist activity we have evidenced in this report should be designated illegal but is currently classified as lawful. If we want to counter hateful extremism, this needs to urgently change. As the Online Harms Bill is primarily about regulating existing legal frameworks, introducing a legal framework to tackle hateful extremism would help provide greater clarity, not only to users but also to social media companies and regulators.
- 6.36 In encouraging the Government to take a robust approach with implementation of the framework, with a statutorily underpinned regulator with strong enforcement and sanction powers, we can draw a parallel with the regulation of the financial sector, with regard to ‘anti-money laundering’ and counter terrorism finance provisions and powers. Over recent decades, especially since the G7 established the Financial Action Task Force on Money Laundering (FATF) in 1989, countries, including the UK, are regulated. Banks and other financial institutions consequently built stronger regimes. They are forced to keep their attention on this subject by enforcement action. The White Paper lists the many types of harms magnified by the online world and extremism is one. Our view is that a comparably robust regulatory approach to that taken with the finance sector should be brought to bear behind standards set in law and by a regulator on those companies that fall short.
- 6.37 To conclude, the current online harms proposals are for a strong regulatory regime that has the potential to be a powerful part of a legal framework to counter hateful extremism amongst the many legal and illegal harms that it seeks to confront.

However, at present there is not a clear mechanism to ensure these powers would be applied to hateful extremism. Beyond designing an online harms framework which is suitable for countering the harms of online extremism, we urge the Government to consider drafting a Code of Practice for countering hateful extremism online, outlining how platforms can commit to providing clarity, conformity, and transparency.

## Attempts by other democracies to counter harmful content online

- 6.38 Our government is not the first to grapple with the issue of online harms. Several other Western democratic states such as Australia, France,<sup>290</sup> Germany, and New Zealand have unveiled a number of approaches to curb online harms while also respecting the freedoms of their citizens as enshrined in law. While the jurisdictions of other countries reflect their own cultures and traditional practices – including what is already built into their legal constitutions – and look to focus on harms more broadly (as opposed to just hateful extremist content) we can look to international comparators to see how they have sought to protect against harmful content online.
- The Sharing of Abhorrent Violent Material Act (2019) in Australia requires online platforms and service providers to “expeditiously” remove “abhorrent violent material” (much of which could be classified as mindset material) and refer relevant cases to the federal police.<sup>291</sup>
  - Germany also has its Network Enforcement Act (2017), also known as NetzDG, which states that “manifestly unlawful content” is required to be deleted within 24 hours of a complaint and also imposes transparency.<sup>292</sup> The Act has been hailed by some academics as “the most ambitious attempt by a Western state to hold social media platforms responsible for combating online speech deemed illegal under the domestic law”.<sup>293</sup> Comparatively, in the UK, while the Communications Act 2003 may protect against some specific actions such as using an electronic communications network to send a message of a menacing character which would include a threat of violence, no similar legislation to NetzDG currently exists in the UK.
  - New Zealand’s Films, Videos and Publications Classification Amendment Bill (2020) seeks to provide additional regulatory mechanisms to “manage harms caused by content that is livestreamed or hosted by online content hosts”.<sup>294</sup>
- 6.39 These countries have highlighted the potential for the UK to protect freedom of expression alongside seemingly robust measures. Getting this balance right is important; should any proposal over-reach, it could restrict fundamental freedoms enshrined in law, as well as fuel extremists to strengthen their ‘grievance’ narratives to encourage hateful actions in the name of their causes.

# Freedom of Expression and Article 17 of Schedule 1 to the Human Rights Act 1998

- 7.1 The United Kingdom is wonderfully diverse, made up of different races, political opinions, sexualities, religions, and beliefs. The protection of individual liberties and our wider fundamental freedoms are a defining feature of our society. Tolerance, pluralism and broad-mindedness are important principles of a liberal democracy. Freedom of expression constitutes one of the essential foundations of a democratic society, which allows for its progress and for the development of every individual.
- 7.2 Developed over centuries in British common law, the right to freedom of expression was subsequently enshrined in Article 10 of Schedule 1 to the Human Rights Act 1998 ('Article 10'), and in Article 18 of the Universal Declaration of Human Rights. The right to freely express our views, to satirise, to offend irrespective of whether our view is held by a minority or majority of people, is part of freedom of expression. Freedom of expression includes the offensive, the shocking, the dissenting and the critical. In the 1976 case *Handyside v United Kingdom*, the European Court of Human Rights held that:
- “it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”. This means, amongst other things, that every “formality”, “condition”, “restriction” or “penalty” imposed in this sphere must be proportionate to the legitimate aim pursued”.**<sup>295</sup>
- 7.3 However, this right is not unlimited, and one’s freedom of expression can not become a harm to others. It is for this reason that freedom of expression is a qualified right, in recognition that hate content can denigrate the rights of others and lead to serious and threatening consequences. The rights of the individual to freedom of expression must be balanced against the duty of the state to act proportionately in the interests of public safety, to prevent disorder and crime and to protect the rights of others. The second clause of Article 10 outlines when expression can be restricted in order to preserve a functioning democracy, but those limits must be lawful, necessary and proportionate. It states that freedom of expression:
- “may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.**<sup>296</sup>
- 7.4 The UK is also signatory to several UN conventions which outlaw hate speech and discrimination. These include the Convention on the Elimination on all forms of Racial Discrimination (CERD) which imposes a duty on Britain to:
- “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin and also the provision of any assistance to racist activities, including the financing thereof”.**



- 7.5 The UK is also a signatory to the International Covenant on Civil and Political Rights which declares “any advocacy of national, racial or religious hatred that constitutes incitement of discrimination, hostility or violence shall be prohibited by law”.<sup>297</sup>
- 7.6 Article 14 of the ECHR requires that all of the rights and freedoms set out in the Convention which are incorporated into UK law by the HRA 1998 must be protected and applied without discrimination on grounds of sex, race, colour, language, religion, opinion, association with a minority, property, birth or other status. Incitement to discrimination would amount to depriving a group of its rights. As we outlined in our *Challenging Hateful Extremism* report (2019), freedom of expression does not protect statements that unlawfully discriminate against, harass or stir up violence or hatred against other persons and groups, particularly by reference to their race, religious belief, gender or sexual orientation. Nor is anyone permitted to use their right to freedom of expression to limit or undermine the human rights of others.<sup>298</sup>

## Freedom of expression in the courts

- 7.7 There is already a recognition of this qualified right in case law. For example, Zakir Naik, a Muslim public speaker who made several controversial statements in the decade following 1997, including that every Muslim should be a terrorist, was banned from entering the UK in 2010.<sup>A0, 299</sup> Despite Naik lodging a judicial review of the decision,<sup>AP</sup> in which he disassociated himself from previous comments, the argument that the exclusion impinged on Naik’s Article 10 rights of freedom of expression was rejected.<sup>300</sup> The Court of Appeal found that there could be impact on others if his statements were taken out of context due to his prominence as a speaker.<sup>301</sup>
- 7.8 Similarly, Alison Chabloz, a prominent UK blogger who describes herself as a “Holocaust revolutionary”,<sup>302</sup> has written and performed songs that deny the Holocaust, relying heavily on antisemitic tropes. Performances of these songs have been uploaded to YouTube and Far Right and Neo-Nazi platforms.<sup>303</sup> In 2018, Chabloz was prosecuted for sending grossly offensive, indecent, obscene or menacing material through a public electronic communications network. This was the first conviction in the UK over Holocaust denial on social media. Chabloz had sought to rely on Article 10 arguing her freedom of expression was being impinged on. This argument was rejected, with the Court ruling that the songs were not a critique of the Holocaust, rather an attack on Jews and therefore upheld her conviction. Attempts by Chabloz to paint her comments as satire were rejected on grounds that they intended to offend, with the judge stating that Chabloz’s songs “appear to have been designed to spitefully offend others in as grotesque and unpleasant a manner as she felt able to achieve”,<sup>304</sup> therefore impacting on others and invalidating Chabloz’s protections under Article 10.
- 7.9 These are important cases which highlight how Article 10 must be balanced with other human rights obligations and can be lawfully restricted for those who engage in extremist speech.

<sup>A0</sup> In August 2005, following the London bombings of 7th July, the then Home Secretary adopted a new policy of exclusions based on a list of “unacceptable behaviours”. These include using any means or medium to express views which foment, justify or glorify terrorist violence or other serious criminal activity or seek to provoke others to commit such acts, or which foster hatred which might lead to inter-community violence in the UK.

<sup>AP</sup> In 2011, Naik appealed the decision of the High Court, with the appeal being rejected by the Court of Appeal in October 2011 and his exclusion upheld.

## Article 17 European Convention of Human Rights (‘ECHR’)

- 7.10 Article 17 prohibits the destruction of and excessive limitation on the rights and freedoms set forth in the European Convention of Human Rights, which was incorporated into UK law by the HRA 1998. The effect of its inclusion is that a person or a group of persons cannot attempt to rely on the rights enshrined in Article 10 to derive the right to conduct activities intended to destroy those very same rights enshrined in the Act.
- 7.11 We have already outlined the consequences of hateful extremist activity: creating a climate conducive to terrorism, hate crime or violence and the active attempts to erode or destroy the fundamental rights and freedoms of our democratic society. The protection of our fundamental rights and freedoms is considered vital for the functioning of a democracy as outlined in Article 17. The Article prohibits the abuse or destruction of the rights and freedoms listed in the European Convention of Human Rights:
- “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”.**<sup>305</sup>
- 7.12 This Article has a very clear link with democracy. The general purpose of Article 17 is “to prevent totalitarian or extremist groups from exploiting in their own interests the principles enunciated by the Convention” and to **“provide democracies with the means of combating acts and activities which destroy or unduly restrict fundamental rights and freedoms, whether those acts or activities are carried out by a ‘State’, ‘a group’, or an ‘individual’”**.<sup>306</sup> As Lord Anderson QC notes, human rights have a “muscularity” about them, with which they are rarely credited; rather than hampering the fight against terrorism and extremism, they reinforce its legitimacy.<sup>307</sup>
- 7.13 Case law demonstrates that groups seeking to propagate hatred are prevented by Article 17 from relying on Article 10 to challenge actions taken by state authorities. These include cases of religious hatred and antisemitism.<sup>308</sup> However, Article 17 only applies to activities aimed at the destruction of these rights.
- 7.14 Hateful extremist organisations and individuals are actively propagating, recruiting, and engaging in activity, as outlined in this report, which encourages the promotion of supremacist ideologies. This often results in stirring up hostility, discrimination and violence against others. Most notably these organisations and individuals include those who are motivated by or who seek to further Neo-Fascist, Neo-Nazi, or Islamist ideologies which would result in the denigration of the democratic rights and freedoms as prohibited by Article 17. This is serious enough to warrant interference in the right to freedom of expression of those extremist organisations and individuals.
- 7.15 Neo-Fascist and Neo-Nazi organisations seek to restrict, and in many cases destroy and replace, the rights and freedoms of our democracy with an extremist society. Likewise, radical Islamist extremist organisations, which fall short of advocating violence, are active in encouraging and promoting the establishment of a caliphate

within which state law is derived from Sharia rather than a liberal democratic governing system, while also rejecting peaceful relations with what they perceive to be illegitimate states or rulers.

- 7.16 It is notable that, in Germany, the Constitution sets out the requirements of citizenship and the protection of democratic principles such as peace, the rule of law, and human rights. The role of the domestic intelligence agency, the Bundesamt für Verfassungsschutz (BfV), includes protecting the Constitution in recognition of the “vulnerability of democracy and the fact that it has adversaries who want it abolished”.<sup>309</sup> As a result, BfV are explicit in monitoring and countering a wide array of extremist actors including Far Right, Islamist, and Left Wing extremists. In the UK, in the absence of a written constitution, Article 17 provides a key legal tool to ensure our democracy protects itself from the dangerous activity of extremist groups. This is why we have explicitly included Article 17 as part of our definition of hateful extremism.

## **Weaponisation of freedom of expression by extremist actors: the need to respond**

- 7.17 Debates about the limits and boundaries of freedom of expression have become more frequent and, unfortunately, polarised in our society. The boundaries of what constitutes freedom of expression have become increasingly blurred. From a counter extremism perspective, this is problematic. Far Right activists increasingly use the mantra of ‘free speech’ to justify promoting hateful extremist narratives about minority groups. Online platforms, such as Gab, BitChute, 4chan, and Telegram, which host some of the most hateful extremist content, promote themselves as platforms opposed to censorship and freedom of expression. Unlike more mainstream online platforms, they boast that they are committed to freedom of expression at all costs. This is an incorrect interpretation of freedom of expression. As we have outlined above, freedom of expression is a qualified right which can be legitimately curtailed and restricted. Such claims are an abuse of the law and an attempt to weaponise freedom of expression to justify the promotion of hateful supremacist ideology and activity.
- 7.18 As a society we must recognise that concerns around protecting freedom of expression are not the only concerns that must be considered in countering extremist content as expressed within Article 17 and other areas of law. While we must support protecting freedom of expression, adhering to its stipulated limits is vital and we must recognise the deliberate tactic employed by hateful actors who weaponise freedom of expression to denigrate the rights and freedoms of others.
- 7.19 One challenge facing counter extremists is how extremists have become more tactical in spreading their propaganda. They often use subtle and coded messages which may not be overt and explicit and which rely on using more implicit language, satire, memes, cartoons, diagrams, images, or dark humour to spread their extremist ideologies – often to avoid detection by virtual service providers and law enforcement agencies. Therefore, the Commission believes, as outlined earlier, that a classification system alongside a legal framework is required. The former will help provide necessary analysis and interpretation of such content alongside a picture of the scale, influence and reach, and harm which would be used by any proposed framework

of criminal, civil, or regulatory offences. Any legal framework would also need to focus on i) intent ii) evidence of repeat and persistent behaviour and iii) evidence of promoting a supremacist ideology.

- 7.20 Where behaviour and material would not meet the threshold of the proposed legal framework, we encourage more speech and public debate to counter such views. This is vital in our democracy and must continue. One challenge however, that has been raised with the Commission, is the reach that extremist propaganda has online. Some extremist content is viewed millions of times, in contrast we have been told that counter-narrative material does not have the same reach. We believe more speech is required to counter extremist views but, unfortunately, algorithms and the current structure of some social media platforms can drive users to increasingly divisive content to encourage longer user time on the platform.<sup>310</sup> This is a genuine problem – there is no level playing field on online platforms and extremists appear to have the upper hand. No amount of ‘more speech’ to counter hate speech will be achievable under the current structures of online platforms which disadvantage counter extremism efforts.
- 7.21 As the extremist threat evolves and grows, it is right to reassess the limits of the law in order to preserve our democratic society. This is why a clear line must be drawn around the possession of extremist violent content. Legally, this line has already been drawn around i) terrorist content only for the purposes of “the commission, preparation or instigation of an act of terrorism”; ii) child sexual offences content; this includes child exploitation content depicted in cartoons, even when no child was harmed in the making of that cartoon; and iii) extreme pornography.<sup>311</sup> These three areas are deemed horrific enough in our society that simply possessing it, regardless of intention, is sufficient for it to be illegal. This is because as a society, we have decided it is entirely unacceptable to possess such heinous content in any form and there is no strong justification or basis for possession. Only in certain circumstances is possession of such content justified for example journalistic, academic and other reasons as outlined in law.
- 7.22 It is our view that the same rationale must be applied to hateful extremist content. Extremist content, such as beheading videos or extreme violence, can never be in the public’s interest and should be criminalised in the same way as child sexual offences content. This is even more the case when such material is easily uploaded, shared, and accessed by anybody on online platforms and can be viewed by thousands if not millions of people, including young people. This would ensure extremist content was removed as expeditiously and thoroughly across platforms and internet providers as is child sexual offences content. Concrete steps towards this would undoubtedly improve the removal of extremist content and would provide the clarity that currently does not exist with online extremism.

## **The right to offend**

- 7.23 As we’ve set out, it is important to recognise that while the right to freedom of expression is qualified, this does not mean that people lose their right to speak freely about all manner of issues. There is no right not to be offended. The courts have been

explicit that freedom of expression includes the right to be offensive, to ridicule, and to insult. As noted earlier, Lord Justice Sedley set this out unambiguously in 1999 when stating that:

**“Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having”.**<sup>312</sup>

- 7.24 Examples of views which may be considered offensive but are perfectly legitimate in a democracy – and which would not fall under our definition of hateful extremism – would include, for example, that ‘homosexuality is sinful’ or that ‘a woman’s place is in the kitchen’ or that ‘I dislike and oppose religion and religious practices and believe them to be oppressive’. These are opinions that might cause offence to some people, but they are lawful opinions which must be protected.
- 7.25 As such, it is important to recognise and protect against the risks of over-reach when it comes to potential restrictions on freedom of expression. Efforts to restrict hateful extremism should not be disproportionate and restrict content and behaviours that fall outside of hateful extremism. The case of Harry Miller provides an example of the risks of over-reach. Ex-police officer Mr Miller was visited by police at his place of work in January 2019 and told that his tweets would be recorded as a ‘hate incident’ (not a criminal offence). Officers also spoke to Mr Miller on the phone and, according to a judge, he was reportedly left with the impression that he might be prosecuted if he continued tweeting. The police action followed complaints about tweets by Mr Miller, made between November 2018 and January 2019, which related to transgender identity and debates about reforming the Gender Recognition Act 2004. For example, in one post Mr Miller wrote: “I was assigned mammal at birth, but my orientation is fish. Don’t mis-species me”. Mr Miller’s barrister argued that the police actions had a “substantial chilling effect” on his rights to free speech. The police’s response to Miller’s alleged transphobic tweets was ruled by the High Court to be unlawful.<sup>313</sup> Whilst this report outlines the importance of tackling hateful extremist materials and behaviours, it is essential that this is done so in a proportionate and clear way that protects legitimate freedom of expression.
- 7.26 Ensuring the correct balance is critical; we must avoid ‘over-reach.’ However, we evidence in this report repeat examples of ‘under-reach’ in relation to hateful extremism which is allowing extremists to persistently operate lawfully despite their dangerous activity.

## **Extremists creating a ‘chilling’ impact on freedom of expression**

- 7.27 We must, however, also recognise the climate created by extremists which is contributing to a ‘chilling’ impact on freedom of expression. We have been concerned to hear how extremists, by engaging in abusive language and disinformation are creating a climate of censorship. Journalists who investigate and report on extremists and their activity often find themselves receiving threats and abuse by them and their supporters, or experience intimidation regularly.<sup>314</sup> Counter extremists in particular are a target of hatred from Far Right, Far Left, and Islamist activists. The Commission evidenced this in our report *Challenging Hateful Extremism* where we showed how

78% of respondents to our survey had experienced abuse, intimidation or harassment because of the work they do countering extremism. The impacts they described are significant. Of the 65 respondents who told us that they had experienced abuse, intimidation, or harassment, over a third (36%) said that their relationships with family and friends have been affected and 32% said they have been ostracised by their community. Just over half (51%) reported apprehension about speaking up online or in public, 45% reported suffered stress, anxiety, or panic attacks and four in 10 (40%) reported feeling a threat to their physical safety.<sup>315</sup>

**7.28** Just as some within Far Right movements have weaponised ‘free speech’ to justify propagating hatred against out-groups, so increasingly Islamists have weaponised ‘anti-racism’ debates; employing the language of ‘Islamophobia’ to shut down legitimate debate and criticism of Islamist extremism and scrutiny of their activity. This undermines the experiences of genuine victims of anti-Muslim hatred and undermines efforts to counter Islamophobia. There is no doubt, as the Commission has seen, that anti-Muslim hatred and discrimination has a devastating impact on the lives of Muslims. British Muslims told the Commission first-hand about the negative impacts that the ‘Punish a Muslim Day’ letter for example had on their lives and their families’ lives, most notably Muslim women. However in contrast to the prevailing narrative of Islamists, challenging Islamist extremism is not Islamophobic. It is instead vital and legitimate work, often carried out by Muslims themselves and attempts to label it as ‘Islamophobic’ is misplaced and harmful.

**7.29** CAGE is an advocacy organisation whose stated aim is “to empower communities impacted by the War on Terror”.<sup>316</sup> As we have evidenced previously, the organisation’s senior leaders have advocated supporting violent jihad overseas,<sup>317</sup> and their activities to oppose counter extremism and terrorism efforts, including calling for a repeal of all counter terror laws instituted since 2000.<sup>318</sup> As we have seen first-hand, CAGE has labelled counter extremism efforts as ‘Islamophobic’.<sup>319</sup> In our view this is highly misleading and inflammatory and we believe this will discourage others from speaking out against Islamist extremism. Recognising the threat extremists pose to freedom of expression is critical and the Commission calls on free speech organisations to play their part in countering extremists in order to preserve this vital right.



# Conclusions and Recommendations

- 8.1 The harm of hateful extremism within the UK is of great concern. In this report we have provided examples of dangerous activity that current legislation is unable to deal with, nor was it designed to. This includes glorifying terrorists online, sharing graphic and violent propaganda (e.g. beheadings) and promoting extremist narratives, which advocate eroding the rights and freedoms of others in our democracy. Current legislation allows people to intentionally stir up racial or religious hatred against a group of people as long as such material is not threatening. This is being fully exploited by extremists to the detriment of our society.
- 8.2 The harm of violent extremist material to radicalise people, especially young people, requires a more robust response. Like Judge Lucraft QC and CT Policing, we are especially concerned at the limited coverage of the current offences relating to the possession of violent extremist and terrorist content (with legitimate exceptions, such as academics). The egregious nature of this material is defined as ‘mindset material’ and many of those convicted of terrorism or that carried out attacks, had in their possession a significant amount of such violent and frightening material. We are concerned that, whilst such materials may not explicitly encourage emulation of terrorist acts, they clearly glorify terrorism, helping to radicalise individuals and create a climate conducive to terrorism.
- 8.3 The need to act against hateful extremism is exacerbated by three further factors. Firstly, law enforcement bodies and regulatory agencies have shared with us the significant operational challenges they face in countering hateful extremism. Many of those we spoke to explicitly outlined the need for more robust legal and operational mechanisms to confront hateful extremism, similar to those which exist in counter terrorism and hate crime legislation.
- 8.4 Secondly, despite the desire of successive governments to address the threat of extremism since the London bombings in 2005, their efforts have been hampered by an ambiguous and incoherent counter extremism policy and approach. This was also why a proposed Extremism Bill in 2015 failed to materialise. As the only public body to have reviewed the Government’s 2015 Counter-Extremism Strategy, we found that the Government’s wide-ranging definition of extremism<sup>AQ, 320</sup> suffers from being broad and unfocused,<sup>321</sup> and is considered ‘unhelpful’ or ‘very unhelpful’ by 75% of public respondents to our call for evidence.<sup>322</sup> We have already called for an urgent overhaul of the Government’s approach to countering extremism. While the Government’s Online Harms proposals are for a strong regulatory regime that has the potential to become a robust legal framework, there is currently no clear mechanism to ensure these powers would be applied to hateful extremism. We are sceptical of the proposed framework split between ‘Category 1’ and ‘Category 2’ services, as outlined earlier.
- 8.5 Finally, the tactics of extremists continue to evolve and become more sophisticated. They are able to co-ordinate locally, nationally, and transitionally. Extremist groups have skilfully exploited online platforms, to spread toxic messages directly on fringe sites and in more subtle forms (such as memes) on mainstream sites, in particular targeting young people. Their exploitation of the COVID-19 pandemic has also

<sup>AQ</sup> Extremism was defined in this strategy as “the vocal or active opposition to our fundamental values, including democracy, the rule of laws, individual liberty and the mutual respect and tolerance of different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist”.

highlighted their capacity to adapt and exploit crises both online and offline; skillfully spreading disinformation, extremist narratives, and dangerous extremist conspiracy theories.

- 8.6 The Commission has attempted to address the threat of hateful extremism. We have defined the narrow scope of activity which we believe requires a legal response and evidenced the serious harm it is causing. We have highlighted in this report how some of this activity is captured by existing legislation; most notably hate crime and counter terrorism legislation. However, a great deal of hateful extremist activity is currently lawful in Britain because of i) the lack of legislation designed to capture specific activity of hateful extremism we have identified and ii) the existing scope in current hate crime and counter terrorism legislation designed to capture these crimes but not hateful extremism. Alongside this, our laws have simply failed to keep pace with the evolving threat of hateful extremism. This is allowing extremists to operate lawfully, freely and with impunity.
- 8.7 These legal gaps must be addressed if we are to strengthen our counter extremism capability. A new legal framework would help strengthen our overall ability to counter hateful extremism, from providing greater clarity to law enforcement agencies and regulators, to ensuring that online hateful extremism would be classed as illegal. That is why our main recommendation is for the Government to commission work that will devise a legal framework to counter hateful extremist activity. We also call on the Government to ensure there is an offence for possession of terrorist content, whether it is useful or not for the preparation or instigation of terrorism. Beyond the purposes of journalism and academia, we do not believe there are beneficial or justifiable reasons for possessing such material, as is the case for child sexual offences.
- 8.8 In this report we have not gone into full details of what this legal framework could or should look like. Nor have we suggested whether it requires a range of offences or a legal definition. This was not the purpose of this report. Exploring the details of the framework is the work that should now be undertaken, and we will not attempt to pre-empt a legal framework. However, we will state that any legal framework should be based on an objective, evidenced-based approach. It could also include a combination of civil, regulatory, and legal measures.
- 8.9 Any framework to counter hateful extremism must be proportionate, particularly in protecting freedom of expression. One reason that the Government's proposed Extremism Bill failed to emerge was its failure to provide a legally acceptable definition of extremism and the inability to provide clarity on the actual problem and harm the Government sought to address. Without this, the risk of bringing law-abiding people under unnecessary scrutiny is unacceptable. The lack of clarity on what type of behaviour and activity would be criminalised and the justifications were insufficiently articulated, leaving legitimate concerns about the implications for freedom of expression. Unlike the Government's vague definition of 'extremism' we have articulated a narrower definition of 'hateful extremism'. This brings a new perspective and tighter focus on tackling the most egregious and concerning aspects that result in dangerous consequences to our citizens, our communities, and our democracy. This report has addressed the need to protect freedom of expression but

that this must be balanced with other human rights concerns, including the protection from racial, religious stirring up and hostility and our democratic freedoms and rights as stipulated in Article 17 of Schedule 1 to the HRA 1998.

- 8.10 Based on these conclusions, we present three primary recommendations to the Government.

## Recommendations for the Government

8.11 **Recommendation 1 – To commission a legal and operational framework to robustly counter the hateful extremism threat.**

- 8.12 The framework should seek to address the threat laid out in our working definition, i.e. activity or materials that create a climate conducive to terrorism, hate crime or other violence, or attempts to erode or destroy the fundamental rights and freedoms of our democratic society as outlined in Article 17. All provisions must demonstrate proportionality to the threat and ensure compatibility with human rights legislation.
- 8.13 In this report we have also laid out where the gaps in the current law are, and the legislative hole which allows hateful extremists to operate with impunity. A legal framework to combat hateful extremism could include civil, regulatory or criminal provisions and would also need to focus on i) intent ii) evidence of serious or persistent behaviour iii) evidence of promoting a supremacist ideology as outlined in our definition and iv) evidence of activity that is creating a climate conducive to terrorism, hate crime or violence or activity in breach of Article 17. The framework may include:
- Powers to tackle those who intentionally and persistently engage in hateful extremism. This could include banning groups and organisations or imposing conditions on individuals, with criminal sanctions for breach.
  - Restrictions on the material extremists produce, possess or share and those storing or transmitting it if it reaches a high threshold. For example, possessing the most serious material which glorifies or encourages terrorism, as suggested by the Chief Coroner Mark Lucraft QC. The intent would be to mirror the effect in child sexual offences legislation, making possession an absolute offence – with the same safeguards for journalists, academics and others. We believe this will sit best in a dedicated framework for hateful extremism, unless a solution can be found to incorporate it into counter-terrorism legislation.
  - Specific offences to capture behaviours that are currently legal, such as glorifying terrorism.
  - Powers which would enable all law enforcement agencies, regulators, public bodies and government bodies to tackle issues within their remit, including Ofsted, Charity Commission, and Ofcom.
  - Legal safeguards which could include a focus on proving intent, objective assessments of hateful extremism, high levels of authority required to prosecute as well as clear freedom of expression, journalistic and other safeguards.

- The potential for developing a robust classification system that would categorise and assess the scale, influence and harm of hateful extremist activity and material. Such content could include memes, videos, extremist conspiracy theories and harmful disinformation. In the absence of this, the regulator and social media companies are unlikely to know what should or shouldn't be removed.

8.14 This report has evidenced how repeat and persistent activity of hateful extremism, motivated by or for the purposes of advancing a political, racial or religious supremacist ideological cause, spans across individuals, groups and organisations. We have seen how the threat is magnified by online platforms which enable the transmission of hateful extremism whether through a lack of capability to tackle it, recklessness or design. For a legal regime to be successful it must impact across this whole ecosystem of hateful extremist actors and their enablers.

8.15 **Recommendation 2 – To expand current offences relating to stirring up of hatred and strengthen current resources and capability of law enforcement agencies.**

8.16 To deal with acts of extremism which do not currently fall under hate crime or counter terrorism legislation, we recommend the following amendments which could provide substantial impact against hateful extremists.

8.17 In relation to **hate crime legislation**, we recommend:

- Creating a new variation of the stirring up of hatred offences that requires simply to prove the intent to stir up racial hatred with respect to the use of words or behaviour or the display, publication or distribution of material. This would adapt Sections 18 and 19 of the Public Order Act 1986 and similar provisions in subsequent legislation relating to other protected characteristics; and
- Extending the stirring up of hatred offences, as part of hate crime legislation, to include sex.<sup>AR</sup> This would help protect against the rising Incel threat.

8.18 These recommendations mirror some of the suggestions made by the Law Commission in their current consultation on hate crime.

8.19 In relation to strengthening current resources and capability of law enforcement agencies, these are limited most notably when extremists use theological or religious rhetoric that diminish the rights of others, often against people of the same religious background. We therefore recommend agencies are supported with training and other capabilities to ensure that victims are supported and perpetrators are prosecuted.

8.20 **Recommendation 3 – To elevate hateful extremism to be a priority threat alongside terrorism and online child exploitation; and to implement the most robust proposals in the Online Harms White Paper.**

8.21 This would allow us as a society to collectively reject online hateful extremism in all its forms by making glorification, encouragement or possession of extremist content illegal, in the same way that all child sexual offences are currently illegal.

<sup>AR</sup> We note here that the Law Commission are currently consulting on extending hate crime legislation to sex and other protected characteristics.

- 8.22 **We urge the Government to implement the most robust proposals in the Online Harms White Paper.** These include giving the regulator powers to require annual transparency reports which would be published online and would outline both the extent of, and solutions to, harmful content hosted on their platforms; improving the ability of independent researchers to access tech companies' data; and potentially requiring further information regarding the operation of algorithms. The regulator's powers would also be designed to ensure action against companies without a legal UK presence, including – as a last resort – blocking platforms from being accessible in the UK.
- 8.23 Further measures that we support include measures to ensure compliance, such as the regulator potentially having powers to discipline companies failing their statutory duty of care, and this may include substantial fines, the disruption of business activities, ISP blocking of non-compliant websites, or imposing liability on senior management individuals.
- 8.24 **Alongside this, we recommend the Government devises a classification system for various categories of extremist content. The classification system as noted above could be a useful tool in tackling online harms as part of the Online Harms Bill.**
- 8.25 **We also recommend the Government issues a Code of Practice for countering hateful extremism online.** This could include a carefully devised standardised classification system for extremist content, which could become a guide and a reference point for the regulator and social media platforms – providing transparency, clarity and consistency.
- 8.26 This Code should apply to all platforms, no matter their size or reach, ensuring clarity, conformity, and transparency.
- 8.27 We recommend the Government begin supporting the delivery of these recommendations as soon as possible, in light of the persistent threat picture facing Britain and ensure enough resources are provided to support efforts.

### **Other recommendations**

- 8.28 The Commission recognises that the law is just one lever which must be utilised in countering extremism. While it will make a positive difference, a legal approach on its own will not bring about the required outcome of marginalising extremist groups and propaganda. There is a lack of sufficient research and understanding of what interventions are the most useful in countering extremist narratives, including disinformation and extremist conspiracy theories. A combination of both legal and non-legal interventions are required to ensure an effective, robust, and holistic approach to countering extremism. Other non-legal levers might potentially include those in technology, education, or non-governmental and faith-based approaches. These different sets of interventions are all needed if we are to develop a whole society approach to countering extremism. This was a key focus of our 2019 *Challenging Hateful Extremism* report. We cannot rely alone on either legal or non-legal interventions if we are to be effective in reducing this threat.<sup>AS</sup>

<sup>AS</sup> Examples of effective types of interventions are outlined in our 2019 *Challenging Hateful Extremism* report, as referenced throughout this report.



- 8.29 Different groups of people require different interventions. The law can often be a blunt tool and is not always the right response. For example, where a child has been radicalised into extremism, a non-legal intervention through education, support, or counselling may be a better lever to employ. In contrast, a committed and active hateful extremist recruiter or ideologue who is engaged in repeated and persistent offending, who is clearly causing harm, would need a combination of both legal and non-legal interventions.
- 8.30 Our 2019 report also scrutinised the Government's 2015 Counter-Extremism Strategy. We called for a complete and urgent overhaul, as the approach taken was framed by a confusing and unnecessarily broad definition of extremism, leading to the approach being ineffective. The Strategy is outdated and increasingly unable to respond to the growing and evolving ecosystem of hateful extremism which has changed significantly in the last five years, especially in online spaces. The Government's Counter-Extremism Strategy should be refreshed on a regular basis in line with the changing picture of hateful extremism in Britain.
- 8.31 Britain is one of the most diverse and inclusive countries in the world. Our democratic freedoms define who we are as a nation. Pluralism, individual liberty, equality, freedom of expression, and freedom of religion are all values we cherish and must protect. As the Commission's work has shown, hateful extremist activity stands in stark contrast to these freedoms; they are a direct assault on our citizens, our society and our democracy. In light of the legal gaps which allows extremists to operate lawfully and the growing hateful extremist threat, we call on the Government to implement our recommendations. Collectively we must all take this threat to our citizens, our communities and our democracy seriously. We must act decisively to ensure we are able to respond to activity that seeks to normalise the stirring up of hatred and violence, damage social cohesion and our democratic society.







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Sarah Whitehouse QC

# Annexes

# Annex A: The Commission for Countering Extremism: Who we are

The Commission for Countering Extremism ('the Commission') was established in March 2018 under the leadership of Sara Khan to challenge all forms of extremism. The Commission supports and provides the Government with impartial, expert advice on the tools, policies and approaches needed to tackle extremism. In October 2019, we published our landmark report '*Challenging Hateful Extremism*', following the first ever national conversation on extremism. Our report comprehensively assessed the extent of extremism in England and Wales and the effectiveness of the current response in countering it. To do so, we visited over 20 towns and cities across the UK, held 16 roundtables, commissioned 19 academic papers, carefully reviewed hundreds of pages of government reports and documents, and engaged extensively with supporters and critics alike. We also launched the first ever public consultation on extremism and received almost 3,000 written responses. We commissioned The Policy Institute at King's College London to analyse the data using methods drawn from grounded theory to identify reoccurring themes. We also asked NatCen Social Research (NatCen) to conduct focus groups in several locations in England and Wales to better explore public perceptions of extremism and its consequences. This gave us detailed insights into both extremism and efforts to counter it.

Alongside terrorism and violent extremism, we identified a distinct activity of extremism which we describe as 'hateful extremism'. Our findings indicate that hateful extremism consists of a framework of behaviours, beliefs, and harms.

As the only public body to have reviewed the Government's 2015 Counter-Extremism Strategy, we acknowledged there is some good work being delivered. However, we concluded the definition of extremism and strategy employed by the Government was unfocused, unnecessarily broad, and outdated. Not enough was being done to counter hateful extremist ideologies and behaviours in a targeted way, and we put forward a set of recommendations for the Government to take forward.

In July 2020, we published a report examining how hateful extremists have been exploiting the COVID-19 pandemic and our concerns about the long-term socio-economic impact of COVID-19 in providing a climate conducive to hateful extremism. In this report, we published another set of recommendations for the Government.



# Annex B:

# The Terrorism Act:

# Definition of Terrorism

The Terrorism Act 2000 defines terrorism as follows:

- (1) In this Act “terrorism” means the use or threat of action where:
  - (a) The action falls within subsection (2);
  - (b) The use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public; and
  - (c) The use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.
- (2) Action falls within this subsection if it:
  - (a) Involves serious violence against a person;
  - (b) Involves serious damage to property;
  - (c) Endangers a person’s life, other than that of the person committing the action;
  - (d) Creates a serious risk to the health or safety of the public or a section of the public; or
  - (e) Is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.



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