

Islamophobia – Crippling Counter-Terrorism

The impact on counter-terrorism policy and operations if the UK government adopts the definition of Islamophobia proposed by the All-Party Parliamentary Group (APPG) on British Muslims

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Foreword by Lord Carlile of Berriew CBE QC



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Foreword

by Lord Carlile of Berriew CBE QC

former Independent Review of Terrorism Legislation (2001 – 2011)

The term 'phobia' implies a mental condition founded on fear – such as the fear of crowded places, or of ghosts. Islamophobia is different: the 'phobia' element is co-opted for a different purpose – to describe an extreme form of political opposition to Islam (or is it to Muslims, or to some Muslims whose opinions or even some theology one does not accept?). Finding a single definition for such a political construct is as difficult as a true definition of Conservatism or Socialism.

The All-Party Parliamentary Group on British Muslims [APPG] fell into the trap of attempting to define a political construct. In doing so they confused issues of religion and theology with raw political questions and have left a demonstrably open field for damaging and even absurd conclusions.

The authors of this paper have exposed the difficulties left by the APPG. Successful and accepted counter-terrorism measures would run the risk of being declared unlawful. The Prevent strand of counter-terrorism policy, which would be thrown into turmoil by the APPG, provokes a refrain of clichéd criticism, but that is rarely evidence based: Prevent demonstrates statistically and evidentially a high net profit of success, which would be lost. The APPG definition would lead to Judicial Review litigation that would hold back the evolution of better counter-terrorism law and practice hand in hand with strengthened religious tolerance.

Correctly, the authors refer to the work of the Extremism Commission. The last thing Sara Khan and her Commissioners need is a definition of the kind proposed by the APPG. In my view, better by far a Code of Practice, a set of examples, and the flexibility of an evolutionary approach to address their difficult challenge.

Executive summary

1. Acceptance by the UK Government of the definition of Islamophobia proposed by the All-Party Parliamentary Group (APPG) on British Muslims would:
 - Seriously undermine the effectiveness of the UK's counter-terrorism strategy (CONTEST) putting the country at greater risk from Islamist¹ terrorism.
 - Lead to government departments, the police, intelligence agencies, Crown Prosecution Service (CPS), judiciary and Her Majesty's Prison and Probation Service being branded and labelled '*institutionally Islamophobic*' by Islamist campaign groups and others, an allegation that would be impossible to refute owing to the indistinct and imprecise nature of the APPG definition of Islamophobia.
2. The strategy and methodologies used by the UK National Counter Terrorism Policing Network and intelligence agencies for combating Islamist violence are identical to those used to counteract all terrorist threats. Any undermining of this strategy or hampering of operational capabilities would have a major detrimental impact on the UK's ability to keep communities safe, including keeping Muslim communities safe from far right terrorism, and intra-Muslim sectarian attacks.
3. The 'Pursue' and 'Prevent' strands of the UK CONTEST strategy would be the most adversely affected if the Government accepted the APPG definition of Islamophobia:
 - i) Pursue strand of CONTEST
 - Police executive counter-terrorism powers would be degraded, in particular as relating to:
 - Powers to stop and search extremists travelling through ports and after terrorist attacks (for instance, returning ISIS fighters from Syria);
 - The prosecution of individuals for possession of material for terrorist purposes and dissemination of terrorist publications (Sec. 2 Terrorism Act 2006);

- The prosecution of individuals for membership of, encouragement of, and support for a proscribed ('terrorist') organisation (Sec. 11 and Sec. 12 Terrorism Act 2000) (for instance, Anjem Choudary, leader of the UK extremist group al-Muhajiroun who was convicted of encouraging support for the proscribed organisation ISIS).
 - Disruptive and investigatory powers² used by Government Ministers to prevent and disrupt terrorist activity would also be undermined, in particular:
 - Powers relating to exclusion and revocation of nationality, for instance, those that relate to ISIS individuals who wish to return to the UK and who pose a serious threat to national security.
- ii) Prevent strand of CONTEST
- The Prevent Strategy would be severely damaged, in particular, the 'Prevent duty' (Sec. 26 of the Counter Terrorism and Security Act 2015), weakening the ability of the country to divert individuals away from all forms of extremism and terrorism, including Islamist and far right terrorism.
4. The Independent Commission for Countering Extremism led by the Extremism Commissioner Sara Khan has an opportunity to assess as part of its national consultation into extremism whether it is necessary for the UK Government to define anti-Muslim hatred in order to ensure that future counter extremism strategies and policies are effective. Alternatively, the Commission may be minded to explore whether it is preferable not to attempt to define anti-Muslim hatred (as this paper asserts) but to create instead a future Code of Practice on extremism; one which would include guidance on both anti-Muslim hatred and intra-Muslim hatred directed at minorities from within Muslim communities.

Introduction

In the aftermath of the recent far right terrorist attack in New Zealand, it is vitally important that the UK Government has a consistent and coherent strategy for dealing with all forms of violent extremism and hate crimes that can, if left unchecked, inspire and incite terrorism. The current counter-terrorism strategy CONTEST deals with all forms of terrorism, including Islamist, Irish and far right extremism / terrorism, and resources are allocated based on the level of threat posed.

Over the past twenty-five years, the vast majority of the UK's counter-terrorism resources have been devoted to dealing with the consistently high level of threat from Islamist terrorism – both globally and in the UK. In recent times, the danger posed by far right related terrorism has increased, albeit from a relatively low base, as demonstrated by the disruption of four far right plots by counter-terrorism policing in the past 18 months.³

Partly in response to this, and to the growth in the reporting of Anti-Muslim hate crimes, there has been much debate about whether the Government should adopt a new definition of Anti-Muslim hatred labelled 'Islamophobia', as proposed by the All-Party Parliamentary Group (APPG) on British Muslims.

In November 2018, the APPG published its Inquiry into a working definition of Islamophobia,⁴ recommending the adoption of the following definition:

*"Islamophobia is rooted in racism and is a type of racism that targets expressions of Muslimness or perceived Muslimness."*⁵

Since publication, various prominent Members of Parliament and campaign groups have publicly called for the UK Government to accept and adopt the definition. This would in effect mean that all forms of criticism, abuse, hate and anti-Islamic/anti-Islamist sentiment could potentially be treated as a 'racist' as well as a 'hate' crime. The Labour⁶ and Liberal Democrat parties, the Mayor of London⁷ and a number of local authorities⁸ have since adopted the APPG definition.

A Policy Exchange Research Note by Sir John Jenkins and Trevor Phillips published in December 2018 examined the APPG definition and the potential for it to impact freedom of speech and, in particular, the freedom of the media.⁹ In its conclusion, the paper also raised a series of important questions about how the definition might impact the Government's counter-terrorism policy:

“Could acceptance of the new definition of Islamophobia narrow Government policy options? How could Prevent and Pursue – key planks of the Government’s counter-terrorism policy – survive in their current form once this new yardstick of ‘Islamophobia’ became enshrined in official culture? Many of those who are seeking to weaponise this definition already denounce Prevent as ‘Institutionally Islamophobic.’”

This follow-on research paper addresses these particular questions, mindful of two crucially important truths: firstly, that anti-Muslim hate crimes and far right extremism are increasing; secondly, that the longstanding significantly more serious threat continues to be posed by Islamist extremism.¹⁰

Context of extremism and freedom of speech

The UK has a long history of addressing terrorism threats of all kinds, including Irish terrorism and far right terrorism, but it is only in the last twenty-five years that the UK has had to respond to Islamist extremism / terrorism. At the present time, most terrorist threats to the UK come from Islamist extremism – but in the context of the UK’s history of tackling terrorism, this timeframe is relatively recent. In October 2018, the national head of counter-terrorism policing, Assistant Commissioner Neil Basu confirmed that “The overriding threat to the UK remains from those inspired by Daesh and the resurgence of Al-Qaeda...”; and “across the counter-terrorism network at the moment, we are recording a record high of over 700 investigations”. Furthermore, “about 80% of those investigations continue to be Islamist jihadist threat”.¹¹ The Director General of the Security Service MI5 also recently wrote that ‘Islamist terrorism predominates by scale’ when considering the threat the country faces from violent extremism.¹²

To a large extent, the growth of both Islamist and other forms of terrorism are domestic ‘home grown’ challenges originating from within the UK; the majority of arrests for terrorist activity of all kinds in the UK having been of individuals who were born and educated here, as opposed to having entered as immigrants or visitors. For instance, since 11 September 2001, 60% of all those arrested for terrorism offences (the vast majority of whom were motivated by Islamist extremism) considered themselves to be British or of British dual nationality.¹³ It is surely important to ask why so many British nationals have supported violent extremism to this extent. Equally, we must continue to urge leaders from communities within the UK to assist with preventing extremism in the future. Freedom of speech is vital to achieving this and addressing the underlying causes of Islamist, far right and other forms of terrorism.

Hence, there are legitimate concerns about the potentially unrestricted parameters of the APPG ‘Islamophobia’ definition. If formally adopted by the UK Government, it is plausible that independent commentators such as journalists, politicians and others ‘expressing’ opinions relating to the causes of Islamist terrorism could be labelled as and potentially prosecuted for – being ‘Islamophobic’. Furthermore, if these expressions were deemed to be a type of racism, then the individuals concerned could be charged with race hate crimes.

In essence, therefore, the proposed definition risks diminishing freedom of speech and impairing our ability, as a society, to debate the causes of Islamist extremism. Inadvertently, it could work against the necessary current call for

open and far reaching debate on Islamist and other threats, and effectively introduce a blasphemy law which could result in police interventions and arrests by officers for alleged Islamophobic ('racist') words and behaviour.

How the UK CONTEST strategy could be seriously undermined if the Government accepted the APPG definition of Islamophobia

The UK Counter Terrorism strategy CONTEST has evolved over many decades to become highly effective at facilitating a uniquely collaborative interaction between the police and intelligence agencies, allowing for pre-emptive identification and disruption of terrorist threats leading to arrests, convictions and prison sentences. The high number of disrupted Islamist and, to a lesser extent, other terrorist plots, and the resulting convictions for terrorist offences over the past twenty-five years, is evidence of the success of the 'UK CT Rule of Law Model' against terrorist threats. It is a threat-based model that is geared towards dealing with the highest threats to the UK's national security which have been largely but not exclusively Islamist threats over the past twenty-five years. For instance, on 30 September 2018, there were 224 persons in custody in Great Britain for terrorism-related offences; 80% categorised as holding Islamist extremist views, 13% supporting far right extremist ideology and 7% supporting other ideologies.¹⁴

The recent surge in terrorist threats has placed increasing demands on the UK CT Rule of Law Model, resulting in MI5 and the National Counter Terrorism Policing Network engaged in unprecedented numbers of operations. The Director General of MI5, Andrew Parker, described the threat as follows:

"The scale at which we are operating is greater than ever before. We are now running well over 500 live operations involving around 3000 individuals known to be currently involved in extremist activity in some way. As well as those we are looking at today, risk can also come from returnees from Syria and Iraq and also the growing pool of over 20,000 individuals that we have looked at in the past in our terrorism investigations. And there will be some violent extremists not yet known to us at all."¹⁵

The vast majority of these operations are against Islamists. Should the UK CONTEST strategy be judged through the prism of the APPG Islamophobia definition ('...**a type of racism that targets expressions of Muslimness or perceived Muslimness**') individuals currently involved in or previously investigated for extremist activity will be afforded an opportunity to challenge and label any operational activity by the police service and intelligence agencies as 'Islamophobic targeting' of 'Muslimness', undermining without just cause the UK

CT Rule of Law model and inherently damaging community confidence in it within Muslim communities.

Campaigners have already demonstrated their willingness to challenge the UK's counter terrorism laws in the courts, as seen with the case of Muhammad Rabbani of the advocacy group CAGE. Mr Rabbani was prosecuted in September 2017 after refusing to disclose passwords to electronic devices when stopped and searched under Schedule 7 of Terrorism Act 2000 while travelling through Heathrow airport. However, in what has become an important test case, Rabbani challenged a ruling found against him in the Court of Appeal and has subsequently vowed to pursue the matter through the Supreme Court.¹⁶ While Rabbani had contested his case on confidentiality grounds, in the future the APPG's Islamophobia definition could provide activists with the basis upon which to fight further such test cases on the grounds of racial discrimination.

Whilst the UK counter-terrorism model must remain open to scrutiny and review, constant challenging of the covert nature of many police and intelligence agency operational activities would likely result in an undermining of legitimacy of these organisations and a reduction in wider public confidence of the entire CONTEST strategy, thereby making the country less safe from all forms of terrorism.

The labelling of government, police, intelligence agencies, Crown Prosecution Service, judiciary and Her Majesty's Prison and Probation Service as 'institutionally Islamophobic'

The APPG report *Islamophobia Defined* provides a wide-ranging discussion of matters relating to Anti-Muslim hatred and a series of claims that effectively accuse the British Government and public sector bodies, including those within the criminal justice system, of 'institutional Islamophobia'. From the arguments set out, the APPG Islamophobia definition almost seems designed to advance opposition to existing counter-extremism and counter-terrorism work.

The report thus claims a clear linkage between Islamophobia and counter-terrorism initiatives in a way that can only serve to undermine the legitimacy of government policy and practice in this area. Indeed, the APPG's report firmly advances the claim that anti-Muslim prejudice is embodied by the institutions of the British state, particularly through counter-terrorism policies and operational implementation. The report directly addressed the use of the term 'institutional Islamophobia', saying:

"There is also offered the case to favour the term 'Institutional' rather than 'Structural' Islamophobia. While the latter suggests a certain degree of transcendence that places the burden of Islamophobic practices on somewhat abstract constructs, the former clearly points at people and institutions 'engaged in practices that discriminate against Muslims'. Or as a participant at the Sheffield community consultation event put it: "Any definition of Islamophobia has to recognise that Islamophobia is perpetuated in political rhetoric and a broad range of policy measures. So, it's perpetuated in counter-terrorism, in community cohesion, in integration, in immigration debates, and worst of all, in the continuous racialisation of criminality."¹⁷

The report uses this participant feedback unquestioningly to support the wider claim that Islamophobia is expressed through national institutions. More specifically, the APPG's report presents the argument that counter terrorism measures – specifically Prevent in this case – are one of the channels through which British Muslims are subject to alleged 'institutional Islamophobia', with the report presenting the following argument:

“The anonymous forms allowed space for individuals to share further information with the APPG which went beyond victim experiences, providing some scope for individuals to speak about the impact of Islamophobia on Muslims as a group. One individual told us, ‘Islamophobia is felt by the whole Muslim community through institutionalised Islamophobia, through security measures like Prevent. Islamophobia is felt when I am under scrutiny for possible acts that I don’t even think of doing; when I am questioned without reason...’.”

In this way the report uncritically presents and effectively endorses statements from those surveyed, using quotes from their feedback to construct the case that the Prevent strand of CONTEST and counter-terrorism practice are discriminatory and Islamophobic.

Given that the report is written with the expressed aim of combating Islamophobia and given that the report argues for its definition to carry legal weight (through the targeting of ‘Muslimness’ being adjudged ‘racial discrimination’), the unavoidable conclusion is that the APPG’s Islamophobia definition and report envisage some significant alteration, or even repealing, of existing counter-terrorism and counter-radicalisation measures.

Should the Government accept the APPG definition of Islamophobia it is inevitable that Islamist organisations will exploit the opportunity that this decision affords to brand the component parts of the UK counter-terrorism criminal justice system as ‘institutionally Islamophobic’ based on arguments relating to the misguided concept of ‘disproportionality’, for instance, the currently higher numbers of Muslims stopped at ports, arrested, charged and convicted of terrorist offences compared to non-Muslims and alleged inequality of the length of sentences between Muslims charged with terrorist offences compared to non-Muslims. This in turn would lead to the police, Crown Prosecution Service, judiciary and Her Majesty’s Prison and Probation Service all being branded ‘institutionally Islamophobic’.

Various campaign groups have already made similar arguments without making any reference to the fact that the threat from Islamist terrorism is currently disproportionately higher than from other possible threats. For instance, CAGE made the following comment in a press release following the sentencing of two Islamists, Yusuf Sarwar and Mohammed Ahmed, for preparation of terrorist acts (Sec 5, Terrorism Act 2001): ‘There can be no doubt regarding the growing evidence that Britain has a two-tier criminal justice system. Muslims receive the severest punishment and the highest sentences compared to non-Muslims’.¹⁸

How the Pursue and Prevent strands of the UK CONTEST strategy would be adversely affected if the Government accepted the APPG definition of Islamophobia:

Pursue strand of CONTEST

Police pre-cursor executive counter-terrorism powers would be seriously undermined if the APPG definition is accepted, and in particular, those relating to:

- the stop and search of extremists travelling through ports and after terrorist attacks (Schedule 7 and Section 47A of the Terrorism Act 2000 and Schedule 3 of the Counter-Terrorism and Border Security Act 2019);
- the collection or possession of 'information of a kind likely to be useful to a person committing or preparing an act of terrorism' (sec. 57, 58 and 58A Terrorism Act 2000) and
- membership of and encouragement of support for a proscribed ('terrorist') organisation (Sec. 11 and Sec. 12 Terrorism Act 2000).

Stop and search counter-terrorism powers

The success of the UK CT Rule of Law model relies on a range of 'pre-cursor' counter-terrorism legislative powers designed to counter the activities of terrorists. Specifically, Schedule 7 and Section 47A of the Terrorism Act 2000 and Schedule 3 of the Counter-Terrorism and Border Security Act 2019 give police important powers to stop and search people travelling through ports and after terrorist incidents. The current context of the territorial defeat of ISIS in Syria and the challenge of dealing with terrorists from this region coming back to the UK make these powers particularly important at this time.

Should the Government accept the APPG definition of Islamophobia, Schedule 7, Sec 47A and Schedule 3 powers are more likely to be challenged by Islamist campaigners and their supporters who would seek to label police officers using the power as both 'Islamophobic' and, therefore, racist. There would likely be an increase in formal complaints against officers using the power, leading to futile investigations and potentially unfair judgements by the Independent Office of

Police Conduct (IOPC). This, in turn, could lead to the power subsequently falling into disrepute with officers, who would be discouraged from using it.

Possession of material for terrorist purposes (Sec 57,58, and 58A Terrorism Act 2000) and dissemination of terrorist publications (Sec. 2 Terrorism Act 2006)

As a consequence of the nature of the contemporary Islamist threat in recent years with terrorist groups such as ISIS exploiting internet and social media opportunities, a high number of Islamists have been arrested and subsequently convicted of possessing and, to a lesser extent, disseminating extremist/terrorist literature, notable examples being the on-line magazine 'Inspire' produced by Al-Qaeda and the on-line ISIS publication 'Dabiq'. These convictions have successfully disrupted Islamist activity by preventing those in possession of this literature from going on to carry out the type of terrorist acts these on-line magazines glorify. Yet, perhaps unsurprisingly, the legislation which enables such intervention has been criticised by a number of campaign groups who oppose the UK Government's counter-terrorism strategy, legislation, policy and operational practice. Acceptance by the Government of the APPG definition of Islamophobia would therefore likely embolden these groups to make their arguments even more forcibly. For instance, they would likely assert that judgements made by both the police and subsequently the Crown Prosecution Service about what is or what is not extremist material were prejudiced against Islam as a religion and Islamic discourse and were therefore Islamophobic.

For instance, commenting upon the conviction of Ahmad Faraz on 12 December 2011 under the title 'Conviction of Thought: How Islamic concepts are ruled on in UK courts', Asim Qureshi of the campaign group CAGE asserted:

"The conflation made ... between traditional jurisprudence and modern conflict scenarios, presented a somewhat false understanding of the way in which Islamic argumentation has developed over a 1400 year history. While the prosecution and the judge claimed that this case was only about whether or not the dissemination of these materials could amount to an offence, the reality is that precedents were being set in the way that Islam and Islamic jurisprudence is understood by the courts. This is an extremely dangerous precedent, as it will only serve to restrict the space of legitimate and necessary Islamic discourse...the very notion that a pseudo-expert on Islam could be relied on to secure convictions over areas of Islam which are highly contested, serves to have a negative impact on the manner in which Muslims engage with their religion and how they go about debating concepts. The criminalisation of certain types of Islamic thought will not make ideas

*disappear, rather it will force discussion on such matters underground.*¹⁹

Membership of or inviting support for a proscribed ('terrorist') organisation (sec 12, Terrorism Act 2000)

Prosecution of individuals for membership of a proscribed organisation is a power rarely used but it is a vitally important one for disrupting terrorist activities. Under the principles of the proposed Islamophobia definition, however, this key tool in the country's counter-terrorism armoury could be challenged. The legislative means by which an organisation can be proscribed long predates the advent of Islamist terrorism in the UK. Prior to the introduction of additional powers under the Terrorism Act (2000), the legislation on proscription from the previous two decades was concerned with Irish terrorism.²⁰ Crucially, the Terrorism Act extended proscription to include both domestic and international related terrorism – which encompasses Islamist terrorism.

Tellingly, in March 2001, when the first Islamist terrorist groups were proscribed in the UK, suggestions of anti-Muslim bigotry were raised almost instantly. At the time the Guardian newspaper ran a story detailing that the list of 21 newly proscribed organisations was 'majority Islamic', while the then Secretary General of the MCB, Yousuf Bhailok, stated that the move was of "grave concern", claiming that the newly proscribed organisations included groups engaged in legitimate activities in defence of Palestinian rights.²¹ The Palestinian groups on that list – whose proscription was being objected to – included Hamas' Izz al-Din al-Qassem Brigades and Palestinian Islamic Jihad, along with the military wing of Hezbollah.²² In response to allegations of discrimination, Home Office minister Charles Clarke was obliged to explain that the move was not targeted at a "specific community" – adding that "any perception that we are targeting the Muslim community is entirely wrong".²³

Yet, under the terms of the APPG's Islamophobia definition, it appears clear that a proscription list such as that from March 2001 – which for the first time outlawed Al-Qaeda in the UK – would have been branded Islamophobic and racist. Similarly, more recent terrorism convictions might not have been possible had this definition been adopted. Particularly notable here is the case of Anjem Choudary and his group Al-Muhajiroun (ALM). Although ALM had disbanded in 2004 to avoid proscription,²⁴ it lived on under a number of aliases, including Islam4UK, Need4Khilafah and Muslims Against Crusaders – all of which were subsequently proscribed by June 2014.²⁵ Given the names adopted by these front groups, it is likely that activists would have sought to use the Islamophobia

definition to challenge this decision arguing that proscription targeted 'expressions of Muslimness', if not 'perceived Muslimness'. That activists would oppose the proscription of such groups cannot be in doubt. In 2010, when plans to proscribe Anjem Choudary's Islam4UK were first announced, iEngage (now MEND) published a piece criticising that move and the proscription of groups under terror laws in general.²⁶

Inevitably, the proposed APPG definition would become pertinent to the most high-profile cases, such as those comparable to Anjem Choudary's own conviction in 2016 for inviting support for ISIS, also an offence under the Terrorism Act (2000). Again, there is no reason to think that extremists armed with the APPG's definition would not seek to argue against the proscription of a group such as ISIS. While some would contest whether such groups genuinely represent 'expressions of Muslimness', proscription might still be challenged on the grounds that this is the targeting of 'perceived Muslimness'. The bar for prosecuting membership of a proscribed organisation is set high and the time served in prison for the offence may not be long. Nevertheless, outlawing terrorist groups is an important means of disrupting and shutting down many of their activities. The undermining of this power would be a significant blow to the UK's counter-terrorism efforts.

Disruptive and investigatory powers²⁷ used by Government Ministers to prevent and disrupt terrorist activity would be undermined if the Government accepted the APPG definition (e.g. powers relating to exclusion and revocation of nationality).

Successful counter-terrorism strategy relies upon a range of powers that enable terrorism to be prevented and disrupted. These include: the proscription of terrorist groups; the confiscation of passports; revocation of citizenship; and prohibiting being present in a designated area.

In recent years, the UK and many other governments have legislated to deal with the particular challenge of Islamists travelling to and returning from theatres of war such as Afghanistan during the era of Al-Qaeda, or more latterly Iraq and Syria during the era of ISIS. Under British law, the Home Secretary can revoke citizenship if it is 'conducive to the public good', and so long as it does not render a person stateless. The Home Secretary Sajid Javid recently confirmed that "Over 100 people have already been deprived in this way",²⁸ and it is probable that most if not all of them will have been known Islamists whose citizenship was revoked based on an assessment of the threat they posed to the UK if they were allowed to return.

During the recent national debate about the Home Secretary's decision to revoke the citizenship of Shamima Begum who voluntarily left the UK as a juvenile aged 15 years and who subsequently married an ISIS jihadi fighter, a former senior Metropolitan police officer Dal Babu, who was representing Begum's family, criticised the decision and also the initial missing persons investigation conducted by the Counter Terrorism Command (SO15) four years previously. Commenting on the investigation, he said:

"What happened was that they [the police] made assumptions. You had a police service with very little understanding of cultural issues, a failure to understand the Muslim community, a group of white men and women who, without understanding the community, decided what should happen and what shouldn't".²⁹

Measured against the APPG definition of Islamophobia, these criticisms – which are of course themselves discriminatory against white police officers – would amount to an allegation of institutional Islamophobia against the Metropolitan Police.

The revocation of citizenship is a power used rarely. It is possible, however, to foresee how extremists on whom it was applied, or their associates, could also allege that these decisions were an example of the 'targeting' of 'Muslimness' on account of the over-representation of Muslim individuals against whom this power is used. The campaign group MEND has already protested an *'imbalance in current legislation that leads to hugely disproportionate number of British Asian Muslims being targeted over and above all other ethnic or religious groups...'*³⁰

With regards to the new offence of being in a designated, prohibited area (created by the Counter-Terrorism and Border Security Act 2019), MEND commented that the legislation *'disproportionately targets Muslim communities, as designated areas are clearly far more likely to be Muslim-majority areas'*.³¹ Similarly, the group has previously suggested that measures such as the confiscation of passports or Temporary Exclusion Orders would potentially be used against ordinary Muslim families undertaking legitimate trips such as holidays, Hajj or Umrah³² which is untrue.

During the House of Lords Debate on the second reading of the Counter Terrorism and Border Security Bill in October 2018, Lord Ahmed of Rotherham, a member of the APPG on British Muslims was particularly critical of many of the measures proposed in the Bill, as well of the direction of the UK's counter terrorism legislation more broadly. Referring to the proposed legislation being debated at the time, Lord Ahmed stated; "The Government's own inadequate

impact assessment does not even refer to the fact that this major piece of legislation will have a differential impact on many citizens and communities.”³³ During his speech Lord Ahmed went on to elaborate:

“For a moment, I will highlight the impact on the Muslim community. This proposed legislation would place Imams, scholars and Muslim speakers in a difficult position when they are talking about overseas conflicts in which Muslim communities are suffering and local scholars have already declared resistance as legitimate. As a consequence of the definition of terrorism and the extra offences created in the Bill, speakers and comments may be deemed terrorist or seen to be encouraging terrorism when they are discussing matters overseas and pose no threat to the UK whatever. Clauses in the Bill make this even more likely.”³⁴

Lord Ahmed further criticised elements of the Bill relating to expressions of support for a proscribed organisation and provisions on obtaining or viewing material online likely to be useful to a person committing or preparing an act of terrorism.³⁵ In the case of the latter measure, Lord Ahmed warned that “in communities originating from conflict zones such as Syria and Libya, viewing and sharing conflict scenes from those areas is common as they have a legitimate interest in the conflict and want to keep up to date,” but noted that “some of these viewings and materials may be deemed terrorist in nature.”³⁶ Ahmed argued that even where an investigation did not lead to prosecution, “the burden of proving ‘reasonable excuse’ will cause much distress, especially to young people.”³⁷

If the APPG definition of Islamophobia is adopted by the Government, it is easy to see how these same arguments that Lord Ahmed deployed could be used to allege that decisions by Ministers relating to disruptive and investigatory powers were Islamophobic.

Prevent strand of CONTEST

The ‘Prevent Strand’ of the CONTEST strategy, in particular, the Prevent duty, (Sec. 26 of the Counter Terrorism and Security Act 2015) would be seriously undermined if the Government accepted the APPG definition of Islamophobia.

If adopted by the Government as an official definition of anti-Muslim hatred, the APPG Islamophobia definition would leave the way open to extremists and campaign groups seeking to dismantle the Prevent component of the Government’s CONTEST strategy. Prevent is the UK’s counter-radicalisation scheme which works through public bodies to safeguard those at risk from being

drawn into terrorism or supporting terrorism. Prevent was made a statutory duty by the Counter Terrorism and Security Act (2015). The duty covers local authorities, schools, NHS trusts, universities, the police, prisons and the probation service. These institutions are obliged by law to take appropriate measures to protect against radicalisation into violence. Where required, individuals at risk may be offered support through the voluntary and confidential multi-agency Channel process.

According to Home Office figures released in December 2018, 1,267 people have been successfully supported through Channel since 2012.³⁸ Of those who participated in Channel in 2017-18, 45% were referred over concerns related to Islamist extremism and 44% were referred over concerns related to far right extremism.³⁹

It is surprising therefore that a number of members of the APPG have presented Channel as being unduly focused on Muslims. Naz Shah, who holds the position of Vice Chair of the APPG on British Muslims, has been particularly critical of the Prevent referral programme stating that the “consensus among Muslim communities nationally is that Prevent stigmatises them” pointing to the majority of children referred to Channel being Muslim⁴⁰.

Another member of the APPG on British Muslims, Baroness Afshar, speaking in the House of Lords in September 2017 made a short statement expressing the view that the Government had defined Muslims as the focus of Prevent. As Baroness Afshar explained in her remarks:

*“My Lords, are the Government aware that, by defining Muslims as the real focus of Prevent, Prevent has an incentive to be an agent provocateur – to actually find Muslims who are defined as other and as potential terrorists? This in itself creates a sense of otherisation which alienates many law-abiding Muslims and makes them feel as if they are defined as the enemy within”.*⁴¹

Baroness Warsi, who acts as Treasurer to the APPG, has also been an outspoken critic of the Prevent duty. In March 2017, days after the Westminster terrorist attack, she called for Prevent to be paused and placed under an independent review.⁴² At the time Baroness Warsi said that the programme had “huge problems”, saying that its brand had become “toxic”.⁴³

While Baroness Warsi has stated that she supports the principles behind Prevent, during the Lords debate on the Counter Terrorism and Border Security Bill in December 2018, she was critical of the programme in practice⁴⁴. For Baroness Warsi, it appears that her objection particularly concerns the question

of which groups the Government and public sector will engage with. Since 2009, when the Labour Government broke ties with the Muslim Council of Britain over serious and evidenced concerns about extremism,⁴⁵ there has been an ongoing policy – increasingly codified by the 2011 Prevent review, the 2015 revised Prevent duty guidance and the 2015 Counter Extremism Strategy – to avoid engagement with certain groups like the MCB⁴⁶.

During her remarks on Prevent in the December 2018 Lords debate, Warsi appeared to allude to this policy, but referred to “disengagement with British Muslim communities”⁴⁷, rather than disengagement from specific problematic organisations. Baroness Warsi suggested that one of the biggest challenges for the police has been, “operating Prevent within a policy of disengagement with British Muslim communities whereby more and more individuals and organisations are simply seen as beyond the pale and are not engaged with.”⁴⁸

The question of Prevent and government non-engagement with certain Islamist groups may prove particularly pertinent to the proposed APPG Islamophobia definition. The decision by the UK Government to avoid engaging with a small number of Muslim groups owing to their apparent support for extremism might bring accusations that the policy “targets expressions of Muslimness”. Disengagement from a particular Islamist group could then be presented as disengagement from an entire community.

Despite evidence from research conducted by Policy Exchange to show that there is strong support among British Muslims (over 85%) for a range of government actions and policies to counter radicalisation leading to violent extremism, including support for ‘government funding for special programmes to help Muslim communities combat violent extremism’,⁴⁹ the Prevent strategy has been subject to a long campaign to discredit the programme as illiberal and Islamophobic. It is notable that several of the most prominent groups in this campaign are cited by the APPG’s Islamophobia report as having provided evidence to the study.

The APPG’s definition of Islamophobia is constructed in such a way, that if adopted by government and the public sector it would embolden those seeking to challenge and overturn Prevent. The APPG’s report *Islamophobia Defined* calls for the Islamophobia definition to be accepted ‘*within the legal and policy frameworks*’.⁵⁰ Given legal weight, the definition would lay the groundwork from which to mount a significant challenge against the UK’s Prevent strategy.

For counter-radicalisation programmes to be branded Islamophobic, activists and campaigners would only need to make the case that Islamist extremism is

'perceived' as an expression of Muslimness by those countering ('targeting') it. Specifically, the successful delivery of Prevent and Channel referrals could be severely harmed by the definition. Whether this involved a public body denying an extremist speaker an uncontested platform, or concerns raised about an individual on account of a sudden change in certain behaviours in conjunction with other signs of extremism, the vital work of counter-radicalisation could essentially be shut down. For instance, it is conceivable that Local Authorities such as Oxford City Council that have already accepted the APPG definition of Islamophobia are likely to find it increasingly hard to implement their statutory obligations under the Prevent Duty in the future, as decisions to refer vulnerable individuals are likely to be increasingly challenged.

It is notable that groups that have vocally opposed or criticised Prevent – such as Cage, MEND and the MCB – are referenced by the APPG's report for having provided evidence to the study. Unsurprisingly then, there is a degree of continuity of argument between the allegations of Islamophobia made by these groups, and the way in which Prevent is represented in the APPG's own report. Similarly, the report specifically credits Dr. Antonio Perra, who until July 2018 was a senior policy analyst at MEND.⁵¹ The acknowledgements note that, "Particular thanks are also due to the staff of the Aziz Foundation and especially Dr Antonio Perra, whose considerable support to the secretariat in the preparation of this report has been immensely valuable."⁵² Perra has indicated that his involvement may have been considerable, listing on his LinkedIn page that he "co-edited" the report.⁵³

Challenging Prevent in the Courts

A record already exists of activists seeking to overturn elements of counter-terrorism legislation in the courts. Notable are the legal challenges made to the Prevent duty by Dr Salman Butt, editor in chief of the Islamist website Islam21c.⁵⁴ In December 2016, Dr Butt pursued a case against the Secretary of State for the Home Department, challenging the Prevent duty in Higher Education on the grounds that the Prevent duty Guidance breached existing laws with regards to the duty to ensure free speech in higher education institutions, as well as also challenging the retention and dissemination of personal data by the Extremism Analysis Unit in the Home Office.⁵⁵

In June 2017, Mr Justice Ouseley found in favour of the Home Secretary against the challenge to Prevent. However, with regards to balancing Prevent safeguarding against the duty to protect freedom of expression, Mr Justice Ouseley noted that in certain circumstances, higher education institutions can decide 'that the freedom of speech duties and the academic freedom duties to

which they have to pay particular regard, are more important' – a point that was celebrated by the campaign group Cage which presented this point as vindicating claims that Prevent has a 'chilling effect' on free speech.⁵⁶

In the event that the Government were to formally adopt an Islamophobia definition that defined prejudice or discrimination involving Muslims or 'Muslimness' as a form of racial discrimination, the way could be open for activists to demonstrate in courts that the UK's counter-terrorism laws and counter-radicalisation programmes in themselves amount to racism. Traditionally, such activists and groups seek to undermine the Government's counter terrorism strategy whilst staying silent on what could replace it.

Targeting 'Muslimness'

The definition of Islamophobia proposed by the APPG on British Muslims defines Islamophobia as targeting 'expressions of Muslimness' or 'perceived Muslimness'. For those who will seek to use this definition to challenge and overturn counter-terrorism legislation and the associated counter-radicalisation programme – in this case Prevent – the task will be to demonstrate that these policies specifically focus on aspects of the Islamic religion and various forms of Muslim identity. This is a line of argument that has already been made by a number of controversial campaign groups, several of them with strong Islamist links and leanings. Notably, these same organisations are listed as having provided written or oral evidence to the APPG's Islamophobia report, with some having their work referenced and drawn upon in the text of the report. The arguments that these campaign groups have been making about the targeting of Muslims and Islam seem to have been reflected in the APPG's report, and indeed in its proposed definition.

To give but one example, in a recent paper on the then Counter Terrorism and Border Security Bill – now the Counter Terrorism and Security Act 2019 – the Islamist-linked lobby group Muslim Engagement and Development (MEND) has argued that counter-terrorism legislation has specifically focused on expressions of the Islamic religion, resulting in Muslims being disproportionately identified as extremists, which accordingly has the effect of disadvantaging them in having a role in public life and wider British society.⁵⁷ The paper uses this as the basis from which to argue for the amending of the legislation in question.

Framing Prevent as Discriminatory

Activists and groups opposed to the Prevent programme have routinely claimed that it discriminates against Britain's Muslim communities. This is despite the fact that the scheme is prescriptively designed to focus on any type of person at

risk of being drawn into any form of extremism, regardless of their ideological, ethnic or religious background.

If adopted by government, the proposed APPG Islamophobia definition would be exploited by those seeking to take legal action to challenge the Prevent duty on the grounds that it is discriminatory and Islamophobic. Such arguments have already been made by activists who insist – contrary to any evidence – that Prevent is discriminating against Muslims. The adoption of the definition would only create the conditions for these already well-rehearsed arguments to be deployed in court and with legal weight.

As noted above, these widespread claims that Prevent is responsible for anti-Muslim discrimination are made despite the evidence that the duty guidance is not written with a focus on any specific group, while disregarding the evidence of the large numbers of individuals referred to Channel on account of concerns about possible far right extremism⁵⁸. Indeed, in the Muslim Council of Britain's 2016 paper on Prevent, the argument is made that despite terror laws not being written with reference to specific religious groups, they are still in effect discriminatory. The MCB paper claims that through these laws, "Suspect communities are created, fuelling Islamophobia: whilst the language of the legislation is faith-neutral, there is a serious concern about discrimination in the implementation of terrorism legislation."⁵⁹

The families of three London school girls who went to Syria in 2015 complained that the police failed to give them crucial information that could have stopped their daughters from joining ISIS: specifically, the police had failed to tell them that their girls' 15 year old schoolfriend went to Syria two months earlier; and the police failed to pass them potentially crucial information 12 days before the trio boarded a flight to Turkey. Had they known, the families said they would have been alerted to the fact that their children may be in danger. What was left unsaid in the contemporaneous public debate was that if Islamist campaigning groups have their way and curtail the ability of the police to monitor individuals 'at risk' --- the police would not have had the tools to obtain the information expected by the parents in the first place⁶⁰.

The depiction of Muslim communities being singled out for unique treatment by the British state has been a key feature of the campaign against Prevent, and such claims would likely be strengthened if the APPG's definition achieved a legal status. CAGE's submission on the Islamophobia definition clearly links both border security, and the Prevent duty, with the claim that these policies single out the Muslim community uniquely. As that paper stated:

“It is not just the police at ports, it is education, healthcare, banking and even charity sectors, that all come under the purview of the security lens, creating an environment that Muslims should be constantly surveilled. This is exacerbated by the Prevent policy. This results in blanket securitisation of a whole community.”⁶¹

Under the proposed APPG Islamophobia definition, claims about the negative impact of Prevent and the wider counter-radicalisation approach of the Government would likely become a new, decisive front in the ongoing campaign to dismantle Prevent. Given that the APPG’s proposed definition states that Islamophobia is a phenomenon that ‘targets expressions of Muslimness’, accusations that Prevent is specifically focused on Muslims, or even that it is focused on certain extreme activities relating to a small minority of Muslims, could become an extremely serious matter in the eyes of the law. This could be the foundation from which a major legal challenge might be mounted against the Prevent duty.

The people who for years have been agitating against security-related policies in the mainstream and social media are the same people who have been assiduously working to shape the views of non-Islamist Muslims on these matters. Furthermore, they are the same people who have now been given a more influential platform – the APPG on British Muslims’ report – to amplify the same views. They may amount to a substantial number of individuals in total, but they nevertheless constitute a very small pool of people within the total number of Muslims in Britain. In effect, it is this small pool of people who are continuously agitating to frame government policy.

The role of the Extremism Commission in helping to provide advice and guidance on Anti Muslim hate

The independent Extremism Commissioner Sara Khan commented in September last year on the use by Islamists of the concept of 'Islamophobia' for political gain saying "They and their sympathisers weaponise Islamophobia in an attempt to shut down legitimate debate about Islamic extremism while undermining the general struggle against anti-Muslim hatred."⁶² She also observed that the APPG definition was deficient because it did not address the issue of some Muslims targeting fellow Muslims with hate and 'doesn't go far enough in protecting victims and risks stifling vital work to counter Islamist extremism'⁶³.

More recently, Sara Khan welcomed the APPG's 'attempts to provide much needed clarity on anti-Muslim prejudice' but stated that she 'did not believe they have recognised all victims of anti-Muslim hatred or provided guidance on some of the most crucial issues'. She wrote that she wanted 'an inclusive definition fit for a country that values diversity and freedom of expression and that understands that anti-Muslim hatred can also be experienced by Muslims at the hands of other Muslims'. She also wrote that the APPG definition 'worries me as Lead Commissioner for Countering Extremism because it is alarmingly ambiguous when it comes to those who are brave enough to speak out about Islamist extremists and Muslim hate groups'⁶⁴. Regrettably, her comments were met by heavy public criticism by Baroness Warsi (the Treasurer of the APPG) on British Muslims who tweeted: "This opinion piece is confused on so many levels. When even Islamophobia itself can be used by @CommissionCE as a stick to beat those 'nasty bad Muslims'. I despair Sara."

Defining Islamophobia is therefore a highly emotive issue with strong opinions being expressed, not least within UK Muslim communities. Yet, whilst the debate rages on, anti-Muslim hate is left unchecked with the public confused and ill-informed.

This paper is critical of the APPG's definition of Islamophobia for the reasons given but the authors recommend that the Extremism Commission should explore as part of its national consultation into extremism whether it is necessary for the UK Government to define anti-Muslim hatred in order to ensure that future counter extremism strategies and policies are effective or whether it is more preferable for a Code of Practice on extremism to be written. This would also provide an opportunity to include the forms of Intra-Muslim

hatred that see Muslim minorities persecuted within their own communities – something which goes unaddressed in APPG’s Islamophobia report and definition. The authors recommend the latter as a way forward for addressing this complex vexed issue. Taking account of the fact that the Government has struggled to define ‘extremism’, it is reasonable to assume that the Government will similarly struggle to find a workable definition of anti-Muslim hatred.

Conclusions

Acceptance by the UK Government of the proposed APPG definition of Islamophobia would result in the effectiveness of its own counter-terrorism strategy (CONTEST) being seriously undermined, making the country less safe from all forms of terrorism.

The strategy and methodologies used for dealing with far right extremist threats by the UK police counter-terrorism network and intelligence agencies are identical to those used for combating Islamist and all other terrorist threats. Any undermining of these strategic and operational capabilities as a result of Islamist groups exploiting a new definition of Islamophobia would have a seriously detrimental impact on the UK's ability to keep communities safe from terrorism, including keeping Muslim communities safe from far-right terrorism.

At a time when the country faces an unprecedented threat from terrorism including increasing far right threats, it is vital that the UK Government's CONTEST strategy is not undermined or degraded in any way as it would likely result in damage to public confidence in the agencies charged with combating terrorism.

Adoption of the APPG definition of Islamophobia by the UK Government would potentially result in government departments, the police and intelligence agencies being branded and labelled '*institutionally Islamophobic*' by Islamist campaign groups and others, an allegation that would be impossible to refute owing to the nebulous and expansive formulation of the APPG definition of Islamophobia.

The Pursue and Prevent strands of the UK CONTEST strategy would be the most adversely affected if the Government accepted the APPG definition of Islamophobia, in particular, police executive counter-terrorism powers to stop/search extremists travelling through ports and after terrorist attacks (for instance, returning ISIS fighters from Syria or travelling far right extremists).

Disruptive and investigatory powers⁶⁵ used by Government Ministers to prevent and disrupt terrorist activity (e.g. powers relating to exclusion and revocation of nationality) would also be undermined. This would represent a particular risk in the case of individuals linked to ISIS or the far-right overseas who pose a serious threat to national security and wish to return to the UK.

The Prevent strand would be seriously undermined if the Government accepted the APPG definition of Islamophobia, in particular, the statutory duty of local

authorities, schools, NHS trusts, universities, the police, prisons and the probation service to safeguard those at risk from being drawn into terrorism or supporting terrorism (Sec. 26 of the Counter Terrorism and Security Act 2015), weakening the ability of the country to divert individuals away from all forms of extremism and terrorism.

One option is for the Extremism Commission to draft a future Code of Practice on extremism which sets out real life and hypothetical examples of extremism including anti-Muslim hatred and Intra-Muslim hatred. This approach would ensure an evolutionary approach to the problem, to meet changing circumstances and events.

Endnotes

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