

Operating with Impunity

Hateful extremism: The need
for a legal framework

Summary Version





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.

Consequently, 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.

A handwritten signature in blue ink, appearing to read 'Mark Rowley', with a stylized flourish at the end.

Sir Mark Rowley QPM

Background and Terms of Reference

The Commission's flagship report, *Challenging Hateful Extremism*,¹ identified and evidenced a new category of extremist activity, described as "hateful extremism".^A 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

^A 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.² 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. 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.
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 70-100³ 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.
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.
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.
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....".⁴ 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^B 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.**

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.
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:

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.
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**

^B 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.

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.

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^c and growth in Far Right extremist actors and organisations.** Further challenges are presented by a rise in ‘mixed, unstable or unclear ideology’,^{d, 5} 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*,⁶ 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

^c Incel refers to the Involuntarily Celibate movement.

^d 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.

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”.⁷
 - **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

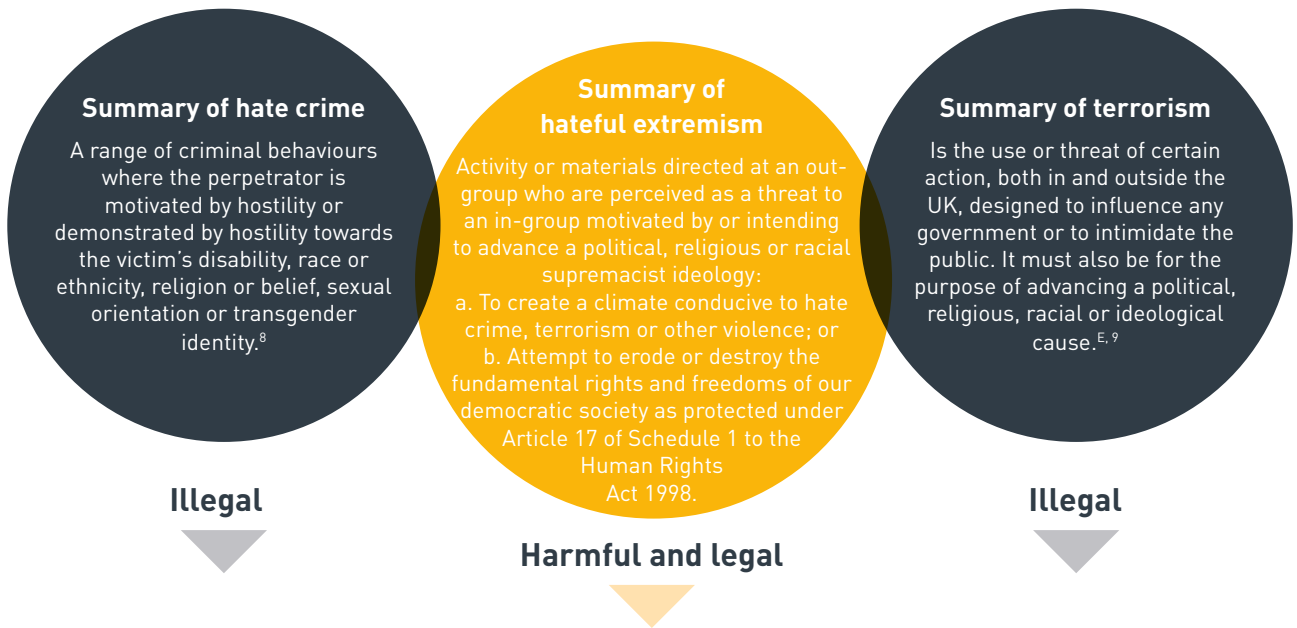
13. **Our definition of hateful extremism highlights that solely looking at extremist activity through the lens of counter terrorism and/or hate crime is flawed.** Yet this was the approach taken by successive governments for many years. As a result, extremist groups and individuals who did not engage 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.
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.
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.
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.
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.

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.
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.
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.

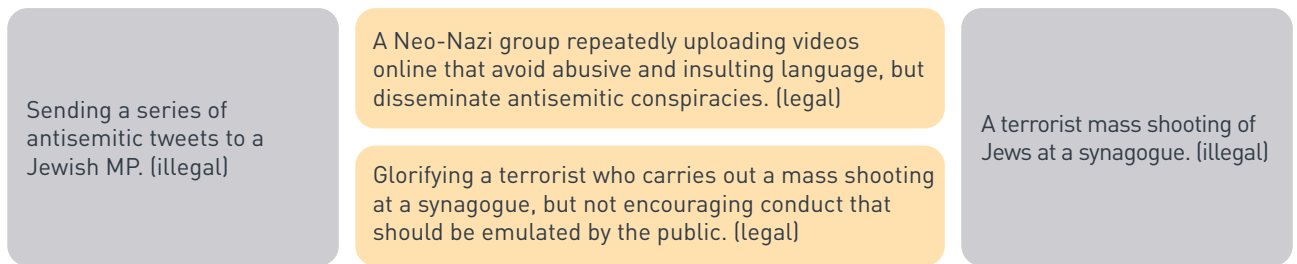
- Legal safeguards which could include a focus on proving intent, objective assessments of hateful extremism, high levels of authority required to instigate a prosecution as well as clear freedom of speech, journalistic and other safeguards.
- The potential for developing a robust classification system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

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.
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.
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

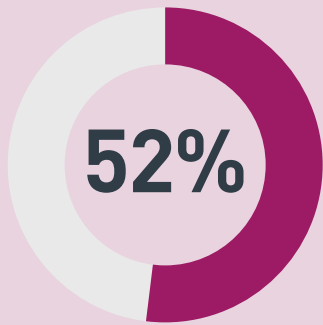
- Recommendation 1** – To commission a legal and operational framework to robustly counter the hateful extremism threat.
- Recommendation 2** – To expand current offences relating to stirring up hatred and strengthen current resources and capability of law enforcement agencies.
- Recommendation 3** – 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.

^E 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.¹⁰

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.^{F, 11}

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

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**.^{H, 13}

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".^{I, 14}



^F Nationally representative YouGov poll

^G Nationally representative YouGov poll

^H Focaldata poll of 2,076 UK 16-24 year olds

^I 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.¹⁵

From January 2019 to June 2020,

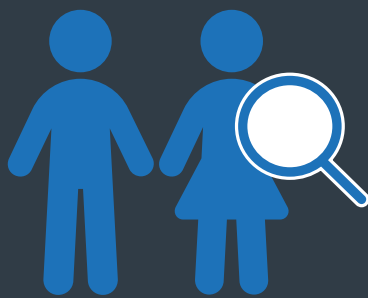
over 1500

children under 15 in England and Wales had been referred to Prevent.¹⁶

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 2014-5.¹⁷



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



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”**.^{J, 19}

^J Savanta ComRes poll of 2,022 British adults aged 16-30

Hate crime and terrorist threats are also increasing

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).²⁰

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).²¹



There were **over 800 terrorist investigations** across the Counter-Terrorism network as of September 2020,²² up from over 700 in 2018.²³

Between March 2017 and March 2020, nine terror attacks were carried out on UK soil,²⁴ while a further 22 terrorist plots targeting UK soil were foiled between March 2017 and September 2019.²⁵



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%).^{K, 26}

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).²⁷



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.²⁸

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



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

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 10,168.³¹



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

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**.^{L, 33}

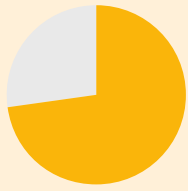


6,000-8,000 items of antisemitic content alone were uploaded on average every day between April and July 2020 to just one forum board on just one platform.³⁴

^K Ofcom poll of UK people aged 16+

^L 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**.^{M, 35}



78%
of adult respondents to a June 2018 poll thought **more needed to be done** to tackle extremism in the UK.^{N, 36}

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.³⁷



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



^M Poll of 1,495 adults (aged 18+) from Great Britain, collected by YouGov

^N Poll of 1,495 adults (aged 18+) from Great Britain, collected by YouGov

Recommendations

Recommendations for the Government

1. **Recommendation 1 – To commission a legal and operational framework to robustly counter the hateful extremism threat.**
2. 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.
3. 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.

4. 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.
5. **Recommendation 2 – To expand current offences relating to stirring up of hatred and strengthen current resources and capability of law enforcement agencies.**
6. 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.
7. 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.⁰ This would help protect against the rising Incel threat.
8. These recommendations mirror some of the suggestions made by the Law Commission in their current consultation on hate crime.
9. 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.
10. **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.**
11. 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.
12. **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

⁰ We note here that the Law Commission are currently consulting on extending hate crime legislation to sex and other protected characteristics.

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.

13. 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.
14. **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.**
15. **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.
16. This Code should apply to all platforms, no matter their size or reach, ensuring clarity, conformity, and transparency.
17. 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

18. 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.^P
19. 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

^P Examples of effective types of interventions are outlined in our 2019 *Challenging Hateful Extremism* report, as referenced throughout this report.

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.

20. 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.
21. 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.



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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