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Joint Committee on Human Rights

Oral evidence: [Legislative Scrutiny: Counter-extremism Bill](#), HC 647

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Written evidence from witness:

- David Anderson QC, UK Independent Reviewer of Terrorism Legislation
- Lord Carlile of Berriew QC CBE

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Members present: Ms Harriet Harman (Chair); Karen Buck; Mark Pritchard; Lord Bhatia, Baroness Buscombe; Lord Henley; Baroness Lawrence; Baroness Prosser; and Lord Woolf

Questions 1-14

Witnesses: **David Anderson QC**, UK Independent Reviewer of Terrorism Legislation and **Lord Carlile of Berriew QC CBE**.

Q1 Harriet Harman MP (Chair): Lord Carlile and David Anderson, thank you for taking the time to come along and talk to us today, particularly as I know that the pair of you are in high demand among Select Committees. As you will recognise, the focus of this Committee is on human rights and their implications and context in relation to counter-extremism, Prevent and investigatory powers. Thank you very much indeed for joining us.

In order to get us up to speed and to start from where we started in this context, with the Prevent strategy, could say something briefly on that strategy, as various iterations of it been in place for some years now? How successful do you think the strategy has been, and what have been the most significant human rights issues that it raises?

David Anderson QC: Alex is certainly the expert on the first six years of the strategy. The first major change was in 2011, when it was reformulated in a number of ways. To take a headline, I believe that the strategy was focused away from simply countering violent extremism to countering non-violent extremism as well. There was also a decision not to fund, or indeed act through or talk to, groups that might be considered non-violent extremists. There had been a view that those groups might be a useful way of reaching the violent people, but that view was repudiated.

The next changes were those that I have encountered in my five years as independent reviewer, although I would stress that I do not review the Prevent programme and do not

see privileged documents in relation to it. In 2013, Lee Rigby was killed, as was Mohammed Saleem in the West Midlands—they were the only two terrorist murders that we have had in this country in the last 10 years—and a prime ministerial working group was formed. It did not consult the public, and at the end of 2013 it produced a very short document which you could say was the nucleus for the counter-extremism strategy that followed. Since then, in 2015, we have had the introduction of the Prevent duty—for example on universities and schools, medical staff and others—which is an actual duty to prevent people under their care being drawn into terrorism. Under the counter-extremism strategy, which was launched last October, we have seen various initiatives including the promise of a counter-extremism Bill. You may have seen evidence that I have written on that in the past.

The Chair: Thank you very much. Would you like to add anything, Lord Carlile?

Lord Carlile of Berriew: Yes, Chairman. My headline for this is that we are dealing with art, not science. It is very difficult to be precise as to how you measure what Prevent should be or how successful it has been. I have been watching Prevent since it was invented. It started on a very small scale. At one stage, the police were the main instrument for Prevent. I was the independent reviewer of the 2010-11 Prevent policy, one of the more successful and achieved aims of which was to remove the police from being the main instrument for Prevent and to devolve it to local authority and third-sector staff.

But since 2011, there has been a sea change in the nature of the terrorist threat. Frankly, in 2011 we had absolutely no idea that ISIL would rise as it has. It was inconceivable to us in 2011 that substantial numbers of young women would be going to Syria or Iraq to become involved with ISIL, the most obvious example being the three young women from Bethnal Green, but they are only examples. We have had to struggle with the change in scale of the threat. Although I have some significant reservations about what was in the Government's manifesto, particularly the fleshing out of the manifesto in so far as it was fleshed out late last year, I nevertheless recognise that the Prevent policy needs to be re-examined.

My bottom line in answer to whether it is working, or how it has worked, would be that Prevent has worked when it has been devolved down to the lowest possible level of management. In Birmingham, for example—the Trojan horse issue apart—Prevent has been very well managed at ward level by very good local authority staff. Those people are not necessarily highly paid, but they know their communities, and that has been effective, with the police taking a backseat and becoming involved only when there was a possible criminal issue for them to investigate. I believe that that principle should continue to be applied and operated on a national basis.

My final comment at this stage is that a real problem with Prevent has been the inconsistency of its application. In some areas, there are Prevent co-ordinators working for local authorities who are doing great work. In other areas, including some London boroughs, I have observed Prevent co-ordinators who are basically co-ordinating themselves.

The Chair: Okay, thanks very much indeed. The answers that you have both given have more or less covered the second question, but there is a further question. Sorry, I think that Lord Henley would like to pitch in.

Lord Henley: I wanted to ask Lord Carlile if he could add to his last answer about them co-ordinating themselves. Could you add to that?

Lord Carlile of Berriew: Yes, I am saying that local authorities have a duty to ensure that Prevent functions in their local authority area. It has not always been 100% successful, but in some London boroughs, and I will take Waltham Forest as an example because I have been there and looked at it, it has been working quite well. A great deal of work has been done, and American academics are using it as an example of what they might create in the United States. I have been to other London boroughs where there was a Prevent co-ordinator who did not appear to me to be co-ordinating anything at all, because they were so far behind in the activity that they had taken on in the context of Prevent.

Lord Henley: Do you mean that he or she just did not know what they were doing?

Lord Carlile of Berriew: They knew what they were supposed to be doing—I would not blame them particularly—but to co-ordinate Prevent you need more than your salary; you need some resources and the wherewithal to be able to engage with paid staff and particularly with the third sector. In this context, and I would like to say this early on, Muslim women’s organisations are extremely important. I cannot overestimate the influence that British Muslim women have over their menfolk in this context.

Ms Karen Buck: I want to explore that a bit further. If I was newly appointed to a Prevent role in a local authority, how would I start to benchmark what I would be expected to do? Particularly at a time when local authorities are effectively being reduced by half or more in their budgets—I do not want to draw you down the resource route too much—how would I go about making the case to a local authority that, “This is what I need to do and this is the resource that I need to have”?

Lord Carlile of Berriew: The Prevent co-ordinator needs to use the principles of social entrepreneurs, because no two local authorities are the same. Newham and Waltham Forest are quite different, although they are not very far from one another. I live in Hackney, which is quite different from Newham, so there is a contextual issue related to the ethnic groups living in that borough. The same could be applied to places such as Leeds or Middlesbrough, where some absolutely exemplary work has been done in Prevent. So the co-ordinator has to use an entrepreneurial approach to advocate to the local authority, which pays their salary, what they should do and what structures they should set up to make Prevent work. It does not actually need to be very expensive. I could give you two examples of the details of schemes that cost less than £30,000 a year and had only one paid person running them but that had a dramatic effect on this issue.

Q2 The Chair: We obviously all have a massive stake in these things working effectively, but perhaps I could take you back to one of the things that I was asking about. What do you think have been the most significant human rights issues raised, if any, or have there been no issues of freedom of expression or of speech, belief, assembly and all those rights?

Lord Carlile of Berriew: David has written about this.

The Chair: Have you been troubled by any boundary there?

David Anderson: Particularly over the last three or four weeks, I have been talking to a lot of Muslims all over the country—in places such as Leicester, Dewsbury, Bolton and

Manchester. One has to distinguish the perception from the reality. I am no judge of the reality. I have no function in reviewing Prevent. I do not go in and see whether all these stories that are swirling round are actually true or not. But there are certainly very strong concerns indeed, I would say, and not just from what one might call politicised Muslims or self-appointed community leaders but from quite normal, ordinary people. I do not think that they relate to every aspect of the Prevent strategy. For example, I have never heard anyone complain about the activities of the Internet Referral Unit—these spiders who trawl through the web and get on to Google when they find horrible videos so that those videos disappear from YouTube. I do not think that I have heard anyone speak against that. Nor have I heard anyone speak against the duty on schools to promote British values. Most Muslims in this country entirely approve of British values and they like the label as well—they like the fact that they are British.

Of the three things that I really hear concerns about, easily the biggest at the moment is the Prevent duty in schools. You could put that in human rights lawyer terms and say that it is about infringing freedom of expression. I have heard complaints from teachers. I remember talking to a lady in the north-west who teaches at a college for 16 to 19 year-olds. ISIS comes up quite often. She used to use that as an opportunity for a discussion: “What are they doing? Why are they using violence? Are there other ways of doing it? What about Martin Luther King? What about Mahatma Gandhi?” Someone mentioned the IRA. “Is that the same as ISIS?” You would have a discussion and the toxic views would come out, which would hopefully be blunted or neutralised—or at least the people who held those views would be given something else to think about. She says that if that happens now, you absolutely choke off the discussion because the teachers are watching their backs and they do not want to be reported.

The second group of people from whom you hear is parents. I had not appreciated this until I spoke to them. There are Muslim parents who do not like talking about these things in the home, because if the subject comes up and the child goes into school the next day and perhaps gives an inaccurate or colourful account, saying “We were talking about terrorism last night”, and some half-trained teacher misrepresents that and thinks that they had better be safe and make a Prevent referral, the whole family could be in trouble.

I have also heard about teachers who themselves feel vulnerable. I met a teacher who was at the time suspended from school. I did not do the investigation to know the rights and wrongs of it, but a fellow teacher—perhaps one who did not like her very much—complained about her and said that she had indicated an intention to go to Syria that summer. The teacher told me that she had said that she was going to attend a fundraising dinner for Syria. In any event, the Prevent referral was made and she was suspended. She was the only Muslim teacher in a well-to-do white school south of Manchester.

All these ways make people feel inhibited. You can say that that is a breach of their human rights, but a more powerful argument is to ask why these matters are not being ventilated. Why are they not being talked about in a controlled manner in a space where ideas can be challenged in the way that ideas have to be challenged if they are going to be dismissed?

I am sorry that that has been a very long answer, but can I quickly raise two other rights? One is the right to express one’s religion under Article 9 of the European convention. I think that here there is a lot of uncertainty. For example, I spoke to a boy of secondary school age. He and some of his friends wanted a place to pray at school—a lot of Muslims

pray five times a day. There was a faith room in the school, but the godless Christians who made up most of the student body were not very interested in using it. When he asked whether they might use it for Muslim prayers, panic ensued. Various contradictory answers were given and eventually the room was locked as the most effective answer. I wonder whether, as well as all these rules setting out what you are not supposed to do, there should be some sort of charter of religious freedom: “This is what we understand the practice of your religion might require and we as a school commit to providing it for you”.

The third one, on which I will be very brief, is Article 8 on private life. I have been alerted to this only relatively recently, so I will not say much about it, but there was a proposal in December 2015, which has been consulted on, to put schools under a duty to monitor the online activities of their students. If that is simply a question of blocking websites that students obviously have no business being on, it is hard to see that anyone would have any objection. I think that some of the responses to that consultation have asked, first, whether the Joint Committee on Human Rights has been made aware of it and, secondly, just how far this monitoring is expected to go. To a lot of people, particularly if they feel beleaguered anyway, monitoring sounds a bit like profiling.

The Chair: That is very helpful and interesting, so thank you. Doreen, do you want to come in with your next question?

Q3 Baroness Lawrence of Clarendon: Yes. I think that most of what you have talked about has been about Muslim women and their influence. One of the most significant concerns raised about the Prevent strategy has been its impact on community relations and the view that it may lead to discrimination against members of minority communities. This was considered when the strategy was reviewed in 2011. How much progress has been made to address this concern?

Lord Carlile of Berriew: Some progress has been made. I will mention Birmingham again. Some years ago, there was a project called Project Champion in Birmingham, which involved putting cameras on tall poles around a mostly Muslim community. The cameras were switched on for a day and a half. There were demonstrations. The cameras were a disastrous error of judgment and they were switched off. Several years later, they were moved and became part of the lighting at the Olympic Park in 2012, so at least a use was found for them, which was encouraging. But it was a disastrous error of judgment. To be fair, lessons were learned in Birmingham from that error of judgment, which was one of the reasons why the police immediately started moving off the Prevent front line.

I want to use the opportunity in answering Baroness Lawrence’s question to say something that relates to the previous question. I absolutely agree with David Anderson about the potential rights issues that arise, although I do not think that I would take quite as dramatic a view as to the effect that there has been. For example, my view is broadly that the “have regard” duty in the legislation that was enacted last year is a perfectly reasonable thing to require of public and educational authorities, but that we should rewrite the code for guidance at least on an annual basis at the moment in the light of experience.

The real point that I wanted to make is about the leadership of Muslim communities. I hope that they will not think that what I am saying now is critical; I believe that it is just a reflection of reality. I have had many meetings with Muslim communities over the years and they are mostly led by gentlemen of at least my age—often considerably older. We all

know, especially those of us, including a number of you, who live and work in professional and business communities, that there are now thousands of brilliant young men and women out there who are British Muslims and have the capacity to lead the Muslim communities. My plea to the Muslim communities is that they should now recognise that leadership should pass to a younger generation. I believe that if the leadership of many Muslim communities, local and national, were passed to that younger generation, we would find far less conflict and far fewer prognostications of doom.

David Anderson: I agree with that, and there is some sign of it being acted on. If you saw the evidence of the Muslim Council of Britain, for example, to the Home Affairs Select Committee, you will know that it sent along three people who I would say were all under 35 and one of them, at least, was female. I entirely agree with what Alex has said about the importance of getting women involved in these dialogues.

Baroness Lawrence asked whether communities were properly involved. Frankly, I am not sure that they are and I would put it on two levels. The first is transparency. A number of rumours are swirling around about Prevent. I am sure that most of them are not true and some are the consequences of sloppy journalism. For example, every Muslim group I have seen over the last month has talked to me about the “terrorist house” incident, where the eight year-old boy wrote in his homework “I live in a terrorist house” and the police went round to his house. They searched the house and looked into his parents’ laptop, so everywhere you get: “Aren’t the police stupid? Don’t we live in a police state?” What no one tells you, because they probably do not know, is that two days after that story went right around the world the police woke up and went to the *Lancashire Telegraph*. They gave it a copy of the boy’s homework and he had indeed written “I live in a terrorist house”, but in the paragraph above he had written “I don’t like it when my uncle beats me”. This had been a safeguarding intervention that, through sloppy journalism or otherwise, had been made into something it was not. I would like to see much more transparency, for example about training materials, so that people know what is going on. I do not know whether this is true, but I have heard that in Lincolnshire 95% of the Prevent interventions are to deal with the extreme right wing. If that is true, it needs to get out there. People have to see that this is not just a conspiracy about Muslims.

The second thing that you need, transparency apart, is to make Muslims feel properly involved and give them some ownership of this policy, to the extent that it is about Muslims. Prevent is a lightning conductor for all sorts of other grievances; a lot of what you hear is when things are blamed on it. Prevent is seen as something that is pushed on to them. If you look at the fact that the working group that I mentioned was kept so narrowly in 2013 that there was no public consultation and no White Paper on the counter-extremism Bill, one can understand why people feel that it is being foisted on them.

I wonder whether misjudgments are being made as well. In the working paper in 2013, I noticed that there was a reference to “misplaced concern” about being seen to attack “Islam itself” as the reason why the Government had not gone further into non-violent extremism. They thought that concern was misplaced. All I can say is that when I talk to people—perhaps you will say that they are not very typical, but I think it is a pretty wide cross-section—they do feel that core values of Islam are being attacked. They feel that people are being stopped from praying and that the Government want to ban the full-face veil, which as far as I know they do not. Nobody has said that the Government do. None

the less, that perception is there. It is partly a consequence of not feeling involved in the development of these policies.

The Chair: Thanks very much indeed.

Q4 Lord Woolf: I would like to follow up on what has just been said, because you have touched upon what I wanted to know. Among the people out there to whom you, at least, have talked, is your impression that they see the Government's policy as an effort to suppress the expression of religious and political views, for reasons other than the prevention of violence?

David Anderson: There are people out there who want to create that story and promote grievance because of it. They are sometimes not very nice people, whose interests do not coincide with those of this country. The danger is if that toxic story gets wider currency, which is why one has to be so careful about transparency and engagement, and about doing things with consent. I am afraid that that version of events has spread to a certain amount. I am not saying that it is the view of the Siddiqui family from "Gogglebox" or that wonderful woman who won the bake-off, or anybody like that. But if you go to meetings, there is very often an edge there and a body of people who I am sure would sign up to that version. There are people who say that some of the police powers, such as that which the police exercise at the port, is nothing more than an opportunity to gain intelligence on practising Muslims so that their activities can be suppressed. I am afraid that this sort of thing happens when you have a minority that feels beleaguered. It is a good opportunity for these myths to flourish—and the best answer to them is sunlight and engagement in good faith.

I agree with Alex that engagement has improved. After that Project Champion incident, which was seen as evidence that this was nothing but a spying operation by the police, the police ensured, for example, that when they participate in Prevent they do so in uniforms. Everybody knows that someone is a policeman and has confidence when they are not. But the reality is that the police are still very involved in Prevent, if only for the pragmatic reason that if you want something organised—if you want people to be brought to a meeting or caused to focus on something—it is often only the police who are well equipped to do that.

Lord Woolf: You used the word "sunlight". On the advantages of that, I think that everybody would sign up to the need for it. But what is not being done now that you think could be done to introduce the sunlight?

David Anderson: I cannot see why Prevent training materials should not be made public. There are some terrible myths going around. People have told me that their cousins were trained under Prevent and that they were told all sorts of things, which I am sure they were not. My daughter, who is a teacher, was trained under Prevent. I managed to get a look at the materials and they seemed absolutely fine to me. Some materials were leaked by the organisation CAGE, which of course put its own spin on them, and the heavens did not fall down as a consequence of those documents being in the public domain. Why do the Government not take the initiative to claim credit for being transparent and do the job themselves?

Lord Carlile of Berriew: One or two things could be done to shed more sunlight on this issue. First, we might do a very radical thing and consider abandoning the four Ps; we could stop calling Prevent “Prevent”. In Northern Ireland, the nearest equivalent to Prevent is called Engage, which seems a much better name for what is being attempted. The other way of shedding some sunlight on these issues is for the Government to be far better and more prepared to provide a clear narrative in relation to terrorism. During my years, before David became the independent reviewer, I said constantly to the Government: “You need to tell the public what this terrorism threat is”. They should use hypotheticals if necessary, but use those that are near enough to the truth so that Muslim communities and non-Muslim communities can know what is being dealt with. There has to be a more ubiquitous understanding of the terrorism threat. There could also be a much better narrative of the achievements of Prevent. I could tell you anecdotes of successful Channel programme activity with individuals that would warm your hearts. I do not know why the Government do not warm people’s hearts in the same way and engage those communities.

Q5 Mark Pritchard: I am glad that Lord Carlile mentioned that at the end, because, Mr Anderson, you gave an example of people welcoming the intervention on unpleasant internet activity. Apart from that—I think there was one other example—the feedback has mostly been negative, at least in the examples that you gave. Can you give some other positive examples of where you have had discussions with community leaders and families who have been happy about someone being prevented going on to acts of terrorism or preparing for them, or prevented going into unsavoury company?

David Anderson: Alex is right that one does not hear these stories. There is a constant media barrage of how useless Prevent is, which comes from the media on both the left and the right, depending sometimes on which community is being looked at. I do not review the Prevent programme. Incidentally, another good way of injecting sunlight if the Government do not want to do it themselves would be to appoint somebody to do the sort of job that Alex did, and I do, in relation to the counter-terrorism laws: an honest broker who can look at all the classified stuff and report back in unclassified terms. That could reassure communities that feel affected.

So far as my evidence of successes is concerned, I have not been briefed on those or been tasked to look at them, but I have, for example, had a conversation with a man of about my own age who is a veteran of the conflict in Bosnia. He is sometimes brought in to have a word with young hotheads who might be thinking of doing the same thing in Syria, and, if he is to be believed, he sometimes succeeds in calming them down. I have never been in any doubt that good work is done under Prevent, but it is very difficult to measure. If the perception is that it is a spying programme or aimed at the core tenets of Islam, then you risk the bad outweighing the good.

Mark Pritchard: But the example that you gave of the far right-wing in Lincolnshire is perhaps mitigation that you would use in any conversations that you had with regard to it being a conspiracy against Islam.

David Anderson: Except that it is not public information. I am only reporting gossip; I have no access to the secrets of the Government on Prevent. If I had that access, I would not even have mentioned the gossip.

Mark Pritchard: So on madrassahs and the non-regulated educational sector, there have been statements by the Government in the past few months and then perhaps some reconfiguration of their position. I wonder whether either of you have a view, briefly, on that.

Lord Carlile of Berriew: I certainly do. In relation to madrassahs or non-conventional schooling, I have seen very large organisations of after-school Koranic schooling in the London area, which involves hundreds of pupils going to classes every day after school in term time with absolutely no control over the way they are run. I am not saying that the organisations I saw were badly run. I do not know that, but it was a matter of great surprise to me that there was absolutely no scrutiny of what they were doing. This does not apply just to Islamic communities. I know that it causes difficulty when one stops to talk about Sunday schools or other religious organisations, but we have to ask ourselves a question in the light of other evidence, which is nothing to do with Prevent: should these organisations be controlled in some way or at least subject to a light-touch, Ofsted-like scrutiny? I believe that they should.

The Chair: Are you talking about activities that involve any public money? If there was no public money, what could you see as the basis for the intervention?

Lord Carlile of Berriew: Well, do not forget that there is an Independent Schools Inspectorate, which inspects all independent schools and does so rigorously.

The Chair: But those schools have charitable status, which allows them tax advantages, so there are various public policy engagements with them. They also provide schooling during the statutory school age. But are we not talking about after-school activity? So on what basis would you do that, aside from the fact that there are large numbers of Muslims together?

Lord Carlile of Berriew: I would not advocate doing anything for children who are after compulsory school age. I am talking about children who are of compulsory school age. My view is that, whatever the basis of the organisation, if children are in a situation where they are being educated or trained in some way outside their normal inspected schools, there should be some kind of light-touch, Ofsted-type system that ensures that what is being conducted is appropriate and safe. This is just a question of child safeguarding; it is as much about child sexual abuse as it is about radicalisation—probably more so. It seems to me to be a sound principle that we should not abandon the scrutiny of the quality of what children receive the moment they walk out of their comprehensive or private school and go to another organisation that educates them for two hours after school.

David Anderson: As Mr Pritchard says, the policy has changed. I believe that in 2014 the intention was to have a voluntary code for madrassahs and so on. In 2015, that was hardened up, and the intention is to have compulsory inspection. I can only speak from my own experience. A couple of weeks ago I spent an hour in the Dewsbury madrassah. The children there were between the ages of four and 13 or so. They were in segregated classes by gender, which were extremely well disciplined. The children were filling in workbooks about the requirement of Islam. The older ones were learning the Koran in the Arabic language, which of course they did not understand. They knew the alphabet, so they were memorising the sounds. I asked the people in that mosque about compulsory inspections; I always do when I go to a mosque. After the Prevent duty in schools, this is the thing that worries them most, because they see it as an attempt to inhibit what to them is a very

precious core practice of Islam, which is aimed largely at primary school children. If there is evidence that madrassahs have been used to radicalise people, I could see the argument that perhaps something needs to be done. I did not see in the counter-extremism strategy that madrassahs were identified as one of the institutions where radicalisation was said to be taking place. My only advice to government would be to tread very, very carefully in this area. If you have compelling evidence that makes it necessary, perhaps it needs to be done, but at the end of the day these are volunteers passing on their religion in a disciplined and structured way to young people who seem only too happy to learn. I have no doubt, particularly if it is done by a secular organisation such as Ofsted, that it risks creating considerable ill feeling.

Q6 Baroness Buscombe: This brings us on to a couple of questions, which I am going to ask as one, in a sense. They are about independent oversight of the Prevent strategy. I will ask David Anderson the first question, and ask you the second, Lord Carlile, as it is easier to respond that way.

David Anderson, you have suggested that there should be independent oversight of the Prevent strategy. Why is this necessary, and what type of oversight would be most appropriate?

Lord Carlile, you conducted, I understand, a one-off independent review of the Prevent strategy in 2011. Do you agree that there should be continued independent oversight following that?

David Anderson: I would say this, wouldn't I, but I direct the comment as a compliment to my predecessor when I say that I think that the independent review of the terrorism laws has worked very well. It has worked for communities that might otherwise be, or indeed might still be, suspicious of how those laws are used, because I can go before them and account for what I have seen and read and perhaps help to remove some misconceptions. I think it also works for government, because since most of it works well most of the time, to have an independent person saying it has a value for government that it would not achieve if it was simply a Minister saying it. I am not saying that it is acceptable or a good idea across the board. I am a great believer in parliamentary control rather than lots of faceless, unelected experts, but where you are dealing with an area where, first, everything happens in secret and, secondly, there is real potential for inhibiting people's human rights, there is a very good argument for independent review, and I would apply that to the Prevent strategy as a whole. I do not think it is a job for a QC; I think you need people with other talents, and you need more than one person, possibly even a parliamentary committee. That is the first idea.

The second idea is much more specific and one that I presented to the Home Affairs Select Committee. It is based on what I perceive as the acute crisis of confidence about the Prevent duty in schools. I repeat that I am not saying that these teachers are behaving or not behaving as badly as they are supposed to be. I am not saying that the police are overreacting, but, my goodness, that story is out there, and even if it is only a three-month inquiry conducted by a respected former police officer who has respect in the Muslim community—and such officers definitely exist—and perhaps someone from the affected communities who understands about schools, such an inquiry could really shed some light on that. They could look into some of these stories, such as the ecoterrorism and the

terrorist house—the stories one hears everywhere one goes—and perhaps see what the truth of them is. If the truth is unpalatable, they should be fearless and recommend change. If, on the other hand, some of these stories are being exaggerated for effect, they will be in a good position to say that too.

Lord Carlile of Berriew: I agree with everything that David has just said, but bear in mind that you are talking to two people who are institutionalised reviewers, so we would say that, wouldn't we? From our point of view, I would say that reviews have been shown to work. It is important that the reviewers should not have circumscribed powers, because powers inhibit your action. Reviewers can help the Government by challenging them and by giving reasons for changes in the law being required. I cannot see anything being lost by reviewing the Prevent policy. Indeed, you asked what I did in 2010-11. One of things I recommended, which now exists, was the creation of a Prevent oversight board. But it has not done what I expected or wanted it to do, having put the idea forward. I am a member of the Prevent oversight board. It has met very rarely, although I have to say that the last time I went to a meeting a few weeks ago there were no fewer than five Ministers present, which gave me the impression that they wanted to start doing something. If the board is not exercising effective and ongoing oversight over the strategy, which is what I intended for it, an individual reviewer would do a much better job.

The Chair: We are moving on to Karen's questions on education. After you have answered them, perhaps you could answer a question from me at this point too—particularly you, Alex. When I say "after school", I do not mean "after school age"; I mean not during school hours.

Lord Carlile of Berriew: So do I.

The Chair: You might have Irish dancing classes. All sorts of things go on after school that are groups of particular communities getting together to do things. If you are going to protect non-discrimination and freedom of religion, how do you examine what are described as madrassahs, although that is not the technical term, but not examine Sunday schools, line-dancing classes, Irish dancing—everything that is going on in that after-school ecology, or do you just have to scrutinise and bring within regulation absolutely everything that is done with young people after school hours, even if it does not involve public money?

Ms Karen Buck: Can I supplement that question, because my question is on exactly the same point? I was just looking at what the Government published in November on out-of-school settings. It says, "We recognise that out-of-school education settings can provide enriching activities ... arts, language, music, sport and religion ... We are aware of examples of excellent provision ... We want these settings to continue to provide children with ... opportunities", but, "It is right to expect children to be in a safe environment and somewhere which does not teach children views which undermine our fundamental ... values", and are consulting on a system that would require such settings to register, "A power for a body to inspect settings" and "A power to impose sanctions where settings are failing to safeguard and promote the welfare of children".

Picking up particularly on what you said about that, David, does that get any alarm bell ringing for you?

David Anderson: It does. I apologise; I may not be fully apprised of the detail, but I thought it was intended that only institutions that took children for more than a certain number of hours a week would be inspected. It may be that madrassahs are more heavily represented. These children in Dewsbury went to the madrassah five or six evenings a week for two hours every evening, so for 10 or 12 hours every week. Would that be sufficient reason in itself to justify inspection? I do not think so, because if you are an aspiring belly dancer you might spend that amount of time doing ballet. If there is evidence that these madrassahs are hotbeds of radicalisation—I certainly have not seen any, but, then, I have not been looking for it—perhaps the case could be made. Even then, it would be much better if the inspection came from the Muslim faith and was not imposed on it by a secular body, because trying to explain that to the pious Muslims of Dewsbury, or indeed anywhere else, would be a really hard task.

Ms Karen Buck: This is a version of what you are saying, but might there be a sort of civic society response to that? Last week, by sheer coincidence, I was at a Trust for London-funded project that had spent three years working in partnership with the volunteers who are running supplementary school activity to develop their safeguarding and quality control, not as an inspection or registration process but as a partnership to help their learning experience. Are there ways in which one could achieve some of the same aims, particularly in relation to safeguarding in its wider sense, without having to have a formal regulation?

David Anderson: Quite possibly, but I do not have the expertise to tell you anything that you do not already know.

Lord Carlile of Berriew: We are talking here really about the details of legislation. It is well within the capability of the Government and the people who draft legislation for them to produce a scale below which one would not have to register and carry out inspections. But I do believe, and I am not talking about madrassahs here, that there are child protection issues that need to be addressed where large numbers of children are attending an institution of some kind out of school hours. What is the rationale for requiring a child safeguarding policy for the school they attend but not for an organisation they spend 10 hours a week at. I see no intellectual basis for making that distinction. Therefore, some system of fairly light-touch registration and inspection on requirement would be justified, but it would have to be proportionate, obviously. It would be ludicrous for a ballet class run by a ballet teacher for four children coming for an hour, although she, or he, has probably had a CRB check anyway, as it happens. That does not always happen with the organisations that we are talking about.

The Chair: Before I bring Mark in, is not the intellectual justification that one, school time, is a statutory obligation? In the independent sector, there are tax relief and charitable issues, so public finances are involved, and in the state sector obviously public obligations are involved. What happens after school is in the private realm, where obviously there is a safeguarding duty, as there is in the home. The intellectual justification is the separation, is it not? Your idea is that it would be quite easy for statute to work out the difference between an Irish dancing class, which I am sure would have been suspect as an IRA breeding ground in the past, and what is called a madrassah now. How will you distinguish between those that should be looked at and those that should not, or do you just look at any group that is gathered together for a number of hours?

Lord Carlile of Berriew: I am going to use words that you will recognise as a lawyer, “with great respect”, which means that I do not agree.

The Chair: I am only asking a question.

Lord Carlile of Berriew: I do not agree because, first of all, to take your example of the home, the state has immense powers over what happens in the home. It has the power to intervene in any home on the suspicion of any wrongdoing against children in the home. We are talking about a setting in which maybe very large numbers of children are gathered together—I have seen a similar example in London: 10 hours a week, hundreds of children—and it seems to me that there is no intellectual difference between the need to safeguard children in their school and in an out-of-school institution.

The Chair: In that case, they would definitely have to include the evangelical Christian black churches gatherings, which have similarly large numbers of children after school. Anyway, I was only asking a question, so there is no need to be respectful in your response. I was not postulating anything; I was asking a question.

Lord Woolf: You asked a very long question that did not involve respect and did not use the word “respect”.

Q7 Baroness Prosser: I have two questions. Sticking, first, with the madrassah example that you gave, I think you said that some of the children were as young as four. Is the Prevent programme tweaked in some way so that it deals with children as young as four and as old as 16 or 17, because the messages have to be completely different? How does it work in primary education? Secondly, a large number of minority ethnic communities live in what you might call segregated circumstances in towns and areas where they are very much the majority population, so the schools are the majority of one community. Is there anything in the Prevent programme that works towards ensuring that there is greater integration, because there is nothing like the young people who are learning all this stuff at the madrassah putting it into context and talking to pupils and young people from other backgrounds and other religions or none to enable those things to be weighed in the balance. The whole segregated thing strikes me as a bit worrying, really.

David Anderson: First, as regards primary age, yes, the Prevent duty applies even to nursery school teachers. You will find in my report of September 2015 an appendix with stories about four year-olds, and so on. I am not against there being a duty on schools. Take my namesake, Ibrahim Anderson—red bushy beard, convicted three or four weeks ago of recruiting for Islamic State, and turned in actually by a couple of Muslims who did not like the look of his stall on Oxford Street or what he was saying. It came out at his trial that he had been photographing his six year-old and eight year-old sons in front of the black flag holding swords pointing at heaven. If that kind of suspicion came to the attention of a teacher, you would hope that anyone with any common sense would do something about it.

Baroness Prosser: But is the Prevent programme variable, because dealing with children who are very young and dealing with older children, young people, is different, is it not? It is not a one size fits all.

David Anderson: It is. The police, for a start, are very keen not to be the first port of call for a lot of these school cases. That must be so even more strongly when you are dealing with people of primary education.

Shall I finish very briefly on integration, and then Alex can have his say? You are absolutely right; Dewsbury is a very good example. As I understand it, in Savile Town, which is the Muslim district of Dewsbury, the primary education is pretty much 100% Muslim. I do not know what happens when those children get to 11 and go to the secondary school, which I understand to be much more mixed. It must be quite a shock to them, coming from a fairly conservative Gujarati or Kashmiri community in some ways, where they have mixed only with their own kind, to discover that in fact they are part of a much bigger country where some people probably view them with a degree of wariness. Is there anything in the Prevent programme to try to bus people into different primary schools, and so on? No, there is not. The reality is that often people in both communities prefer to live with their own kind. That is a very difficult thing to avoid.

I do not wish to be political here, but I spent some time in Leicester with a wonderful youth organisation called Build. They made the point that as a consequence of the local authority cuts they cannot do a lot of the things that they used to do on a cross-community basis. For example, they used to take people of different ethnic groups cycling around Rutland Water, or rock climbing at the local school. Now, the school closes its gates at half-past three, and if you want to use the rock climbing wall you pay £45 an hour. People are not organised or do not have the money to do that, and a lot of these very useful cross-cultural after-school activities are not happening.

Baroness Prosser: You would have thought that we would have learned some lessons from the north of Ireland, really, would you not?

Q8 Ms Karen Buck: This question applies more widely in the education setting and goes back to some of the things you were saying, David, about some of the anxieties in schools about how to have these debates. Where is the right balance to be struck between freedom of speech, promoting debate and challenging unacceptable ideas about extremism as opposed to violent extremism?

David Anderson: I am barely qualified to answer the question. It is not something that I could talk to a lot of people about. I spoke to a university yesterday evening, and I asked them about this. They seemed reasonably relaxed on the basis that, although the Prevent duty went through—and there will be people who know much more about its parliamentary passage than I do—it was made explicitly subject to the statutory duty to protect free speech. Certainly the person I spoke to who was going to draft the guidelines did not feel that this would be a significant impediment to people coming and having their say. It is a very complicated subject, and I suspect that there are many people in this room who are better equipped to talk on it than I am, so I am not going to say any more.

Lord Carlile of Berriew: I agree with what David has just said. Just to return to Lady Prosser's question, the Prevent policy has no syllabus as such. It is less interventionist than your question implies. It tends to be demand-led, so interventions in primary schools are likely to result from some particular event having come to the notice of a teacher or a member of staff at the school. One is always anecdotal on this issues, but I have heard many anecdotes about the process that is followed. A teaching assistant hears something,

and there will then be a meeting involving the managers of the school—the head teacher, the deputy head teacher, the TA and the class teacher—who will make a sensible decision, hopefully, as to whether they should take what they would regard as the big step of raising this with the local Prevent team. It is better that there should not be a structured syllabus behind this, because that would inhibit the best practice.

Q9 Mark Pritchard: It is not unusual for two judges or senior QCs—you have both sat on the Bench at various times—to have a difference of opinion on a wide variety of matters. But on madrassahs, one can argue that in the minority of cases where people go to them that there may or may not be some issues around Prevent. What is clear today, gentlemen, is that you have a difference of opinion on something that needs to be addressed, is very important, and much concerns many people in and outside those Muslim communities. Clearly there is a difference of opinion between you, which is fine, but given that you are probably the most experienced legal minds on counter-terrorism in this country, can you reassure me before I leave the Committee today that those differences are minor rather than major? It certainly sounds as if they may be major.

Lord Carlile of Berriew: I hope I have made it clear that I come to this not as a counter-terrorism issue but as a child safeguarding issue. Over a great many years—decades—I have done a lot of work connected with children who have been abused, in institutions as well as in the home. My sense is that whatever the foundation of any institution, whether it is religious—there have been plenty of examples of abuse in religious institutions—or totally secular, you have a duty of care to those children to safeguard them against abuse. That abuse may include radicalisation, but that is not the focus of my attention. The main difference between David Anderson and me is probably about presentation. I would argue that if something is to be done about such organisations, it should be founded on basic child-protection concepts rather than on terrorism concepts.

David Anderson: I think all good lawyers agree on one thing: that opinions are pretty worthless if they are not founded on evidence. We certainly agree about the need for safeguarding. That is provided for in many ways. To my mind, whether it is enough to have CRB checks, whether you also need some duty that rests on the person running whatever course it is, or whether you need to go further still by having an inspection system—or, in the case of madrassahs, a secular inspection system—depends on how big the problems are. I just do not know how big they are.

Mark Pritchard: My final point on this is that you mention secular, which is where you agreed with Lord Carlile, who suggested a secular, light-touch inspection of madrassahs. Is there is the potential for misinterpretation in having one rule for one part of the community and one rule for others? The Church of England, the Baptist Church, the Methodists, Afro-Caribbean Pentecostal churches, whatever church it might be, have one singular and secular oversight, because that is the only choice. So why should there be one rule for madrassahs and another for everybody else? Does that not undermine the social cohesion that we all want to see and currently enjoy?

David Anderson: I do not wish to emphasise disagreements, but I did not agree that secular inspection of madrassahs was a good idea, except possibly if the evidence so commands it as an absolute last resort. In any religious institution, I would have thought it far better to do it by a voluntary code of practice, if one could, or by some system within

the faith itself that would be more sensitive to the sort of concerns you raise. To impose secular inspection would not only cause a lot of aggravation; I would also question how effective it would be.

Q10 Lord Woolf: As the last answers perhaps come to the point that I was interested in, I would be interested to hear what our experts have to say about this. If one allows the activities of the Prevent policy to be isolated as Prevent action, the minute you give it a label of that sort it is inevitable that the perception of those who are to be investigated will be affected by the purpose. I wonder whether Lord Carlile was indicating that this is part of the problem, but I cannot see how to get over the perception difficulties unless you make it clear that you are doing it as part of a general responsibility to keep children under a certain degree of supervision for any routine activities involving them. It should not be something that creates this perception, and if it is to succeed the perception must be the right one.

Lord Carlile of Berriew: I absolutely agree with what Lord Woolf has just said. Indeed, there is not really much difference between us, because we have not come here to tell you what systems should be adopted; that would be a matter for legislation. But something that, to be lawful anyway, would have to be free from discrimination may be needed at an appropriate level. We are not talking about three or four people gathering for a ballet lesson in a room.

Lord Woolf: Again, I would ask Lord Carlile for his experience, as it is important to this Committee, which is concerned with human rights. In so far as we are involved, surely there must be some element that reflects the human rights of the children. They have a human right to be properly educated.

Baroness Buscombe: I wonder whether it might be helpful to say educated as well as protected. Just to throw this into the pot, I am a governor of a primary free school, which is bursting at the seams. As governor, it is my duty to the school to sign up to a safeguarding policy that I have taken for granted extends not only to normal school hours but to all the myriad post-school activities that happen to take place within the school grounds. What we are talking about here is the mere extension of something like that safeguarding policy, which I would hope and expect becomes the norm in all schools, to other locations that take in children. It is as simple as that. Perception would not be a problem if it was seen as perfectly normal in one environment where children are, which happens to be schools and their playgrounds, and put into another environment, which might be a madrassah, a village hall or town hall.

David Anderson: If there is a need for that, I would not argue against it and I see the advantages of non-discrimination. I just think that one has to bear in mind that there is always a flipside to these things. People who give up their time after school are not always easy to find in schools or communities. If they are burdened by a further apparatus of inspection, one may not find so many volunteers in future.

Q11 The Chair: Okay. Thanks very much. Moving on to the forthcoming Bill, the expectation is that there will be: banning orders, with a new power for the Home Secretary to ban extremist groups; extremism disruption orders, which will be a new power for law enforcement to stop individuals engaging in extremist behaviour; and closure orders, a new power for law enforcement and local authorities to close down premises used to support extremism. My question is twofold. First, what problems are there that are not covered by

existing laws that operate in those areas? There is obviously already a lot of law in those areas. Secondly, to the extent that new powers are being brought forward that are beyond existing powers, how do you do that in a way that does not infringe on freedom of assembly and expression, religion and family life, et cetera? This is specifically about those three things that are countenanced in the Bill.

Lord Carlile of Berriew: You may have given the very reason why there is no Bill as yet. Some of these powers will be extremely difficult to define. I can tell you that whatever is in the Bill is likely to be butchered in the House of Lords in any event, because that is the sort of thing that happens in the House of Lords, which may well be where human rights are protected—how can I put this—at least as well as in the other place.

I am very concerned about making unlawful that which we have always taken to be lawful. I do not have a problem about inchoate criminal law, as a person would be tried by a jury where it involves the incitement or encouragement of a crime, but I have real concerns about introducing remedies that would be used against things that we have long accepted as perfectly lawful. It would of course apply across the board: it could apply to creationism or to people who refuse to speak English but will only speak Welsh. It could apply to all kinds of things, so I have real concerns about these proposals. In fairness, one should say that they are only proposals at the moment, and plainly a great deal of genuine thought has gone into how to turn them into draft legislation. Perhaps the reality is that we should just wait and see, because I suspect it will be a much-diluted version of a sentence in a party manifesto.

David Anderson: You ask what evil it was aimed at addressing. It is not really for me to speak for the Government on this, but the sort of speech that one saw as a justification for it drew attention to the undoubted fact that there are organisations, which I am not going to name, partly because—

The Chair: Can I just butt in? I was not asking about what evil it is intended to address, because I think we all agree on that. I am just asking where the existing powers are insufficient. There are a whole load of powers that might be sufficient or insufficient. My question is: where are the problems which the existing powers cannot deal with? And to the extent that you go beyond the existing powers, do you run slap bang into human rights problems, or is there a space? Lord Carlile says that that space is quite difficult to identify.

David Anderson: The example given in the counter-extremism strategy was the notional situation in which people are being taught that the kuffar—whether you call that the non-believer, the white person, the Christian or whatever—are inferior. That might fall short of incitement to religious hatred, because you would not have the necessary threat which the law provides for. It might also fall short of incitement to racial hatred, because you would not have abuse, insult or threat. Various groups were identified that were thought to push this sort of propaganda and which in some cases did seem to be an entry point for people who went on to become terrorists. That, I think, was what they were trying to address.

I entirely agree with what Lord Carlile has said about the difficulties in defining what you mean by extremism, which seems to me to be practically impossible. That is my first reservation. I also have great reservation about using a system of civil orders as a

substitute for trial by jury. My third reservation relates to whether this will do more harm than good, and although it is not yet very much on the radar of the people I am speaking to, if and when the Bill is progressed I have no doubt that it will become so very quickly and will become extremely controversial, not only in the House of Lords but in other communities in this country.

Q12 Mark Pritchard: Do you feel that proselytisation or evangelisation, as well as those who claim absolutism for their religion, should be protected in the eventual Bill? Some constituents have written to me on these two issues. Do you have your own concerns about such a case going to court, because often in this space the police are supposed to arrest people based on the law, the courts are supposed to prosecute based on the law, and we write the laws, but unfortunately there are some elements, such as the Crown Prosecution Service, that want to write guidelines that I sometimes think in cases like this can be broader perhaps than those under the very careful consideration given both in the Commons and the Lords to making sure that it is quite definitive and specific.

In summary, on the issue of claiming absolutism for one's religion and proselytisation, do you think there is that potential danger once this leaves this place, goes into the criminal justice system and ends up in a court some time?

David Anderson: It is very difficult. Those of us who go to church occasionally and mumble the Nicene creed are, I am sure, claiming the rightness of the religion that we at least nominally adhere to. Christianity is a proselytising religion, Islam is a proselytising religion, and I do not see how one can ban proselytising. Of course, there are issues, particularly in prisons, where a lot of radicalisation takes place and which seem to be a far greater priority, on any view, than madrassahs, and the prelude to that may be proselytisation, but you cannot stop people from proselytising others to their faith. You can stop them proselytising others to joining a terrorist group and stop them threatening people into a particular course of action, but I just do not think it would be realistic to go further than that into the heart of what a religion is all about. You cannot stop people believing that their god is the only true god or that their faith is the only truth faith.

I would be much more worried about apostasy than proselytising—about what happens at the other end. There is an issue there, frankly, with some Muslims. We have seen recent cases in Bangladesh and Pakistan and echoes of that in this country, where people who want to leave their faith find that life is made very difficult for them, and I would hope that the Crown Prosecution Service would be alert to the possibility in an extreme case of prosecuting in relation to that.

Mark Pritchard: Just on that point, somebody might well have a singular experience in choosing to leave a particular faith and go to another faith, or to no faith at all. That is called apostasy in some faiths, but some might say that that apostasy came about as a result of proselytisation or evangelism. It is easy to make that link, and it is probably the usual link to make, but it is not necessarily always the case when somebody has become a so-called apostate or has changed faith. Does that concern you?

David Anderson: We are a democracy founded on principles of human rights, including international human rights, and it seems to me absolutely essential that among those is the freedom of conscience, which must include not only the freedom to worship but the

freedom not to worship. Of course there is a freedom to express your religion, but that is subject to the rights and freedoms of others. It seems to me that the law needs to defend the right of the apostate not to be subject to threats of violence, and it needs to do that quite irrespective of the question of proselytisation, which is simply seeking to persuade people to believe one thing or another. Think back to the Cold War: we never criminalised being a communist, put people under communist banning orders or made it a crime for people at universities to try to persuade others to their political way of thinking. If one goes down this route, one is not too far away from that territory.

The Chair: Could we have one final question, from Oliver, on the Investigatory Powers Bill?

Q13 Lord Henley: We have talked about other Bills. Can we move on to the Investigatory Powers Bill, purely because I sat on the pre-legislative scrutiny Committee on that Bill and I would be very interested to know what either or both of you thought about it. We now have the Government's response, which I am sure you have read in great detail.

Lord Carlile of Berriew: With the other nine documents.

Lord Henley: Yes, so there are not that many pages to read. Anyway, I would be grateful for your comments.

The Chair: In relation to the human rights context.

Lord Henley: Yes, sorry.

Lord Carlile of Berriew: First, if I may say so, I think your Committee did a magnificent job, and the Government on the whole have responded pretty positively to the Committee, supporting, I think, 80% of the recommendations made by it. There will obviously be extensive debate about the human rights aspects of the other 20%. I think the Government were unfairly criticised for rushing, when actually, because it is a carry-over Bill, it has left extensive parliamentary time—10 months—for all these issues to be considered. I hope we will have a constructive parliamentary debate that will not be dominated by the otherwise brand name “snoopers’ charter”. Whoever invented it should be given a large sum of money and employed by a branding agency, but it does not lead to a constructive debate. I broadly agree with what David has written about these proposals. The authorities need most of the powers at least that they are asking for, subject to controls.

My only reservation about the recommendations on the Bill is the role to be played by the judges. I will of course accept the role to be played by the judges, but I do not think it is a natural role for them. It is a “We’ve got a problem. Send for the judges” reaction. But if that is what we have to do to get the necessary powers through, I can live with it.

David Anderson: I think there is a human rights issue in relation to this Bill that dwarfs all the others, and it is the question of the compatibility of bulk collection and retention of data with Article 8 of the European convention and its equivalents under the Charter of Fundamental Rights of the European Union. Those who have looked at the security case in this country have generally speaking been pretty comfortable about these powers; I include myself in relation to the powers that I have been able to look at, as well as the Commissioners and the Intelligence and Security Committee and, indeed, the Investigatory Powers Tribunal. You might have seen only this morning the report of the

UN's privacy rapporteur, which said that these practices should be outlawed and suggested that they are incompatible with judgments of both the Court of Justice of the EU and the European Court of Human Rights in Strasbourg. I do not go that far. I do not think that those courts have yet come to a final position on these issues, but I think we are right to be concerned that there are differences in the way our judges look at these issues. On the retention of DNA in the Marper case, for example, all our judges in three courts in a row—10 judges—said that it was fine to retain indefinitely the data of people who had been arrested but not charged. Seventeen judges in Strasbourg to nil took the opposite view, and there are judges from Germany and countries of eastern Europe who had a rather different experience in the 20th century and who are more privacy-minded and less inclined to tolerate these powers than people are here. I hope we are not heading for a bust-up on that, but from the lawyers' point of view that remains a major issue.

Baroness Buscombe: Is that not therefore more of a problem with the ECHR, which is of the 20th century? We are now in the 21st century and in a very different environment.

David Anderson: My view is that you can detect a difference in approach with the ECHR, which has traditionally been more tolerant. The Venice commission and the Strasbourg court have been more tolerant to bulk collection. The Court of Justice of the European Union, which comes relatively fresh to all this with its new charter of fundamental rights, has been saying things, in cases such as Digital Rights Ireland and the Schrems case, which on the face of it are more hostile to the idea on principle. A case brought by David Davis and Tom Watson, which I think will be heard in that court on 12 April this year, may give us a fairly early indication of what it will say about the bulk collection of even some fairly unremarkable types of data: traditional call logs, the details of when an email was sent and so on. I would guess from the fact that that hearing has been expedited that the court may want to have its say before the Bill has completed its parliamentary passage.

Lord Carlile of Berriew: May I make a couple of points on this? First, in one of those 10 documents I think GCHQ has made a compelling case for bulk data collection, with a helpful narrative of a kind that we have never seen before from it. Secondly, my own view is that the 10 British judges are a pretty reliable bunch, particularly when taken together. There is a tendency among some organisations and parts of the media to take a worst-case analysis, which is based on the standards of the least trustworthy member of the Council of Europe. It is not right to take that worst-case analysis in looking at British law. I do not believe that we have ever had a malign law officer in my adult life or, although I have disagreed profoundly with some of them, that we have had a malign Home Secretary in my political life. We need to look at our own position and evaluate it in this context.

The Chair: Are we not talking about retention rather than collection by government?

David Anderson: Even the collection is at least a nominal infringement of privacy under the convention—perhaps more than nominal. Of course the longer it goes on, the stronger the infringement. May I strongly support one point that Lord Carlile just made? I probably support everything that he said, but it is his point about the case that GCHQ has now presented for the operational usefulness of bulk powers. I can only imagine how difficult it was for the agency to get itself to the position of producing that 50-page document when, of course, the whole nature of intelligence work is about ensuring that your enemies do not know what you are capable of doing, and what you are not, and how you are going to use

these powers, or are not. I hope that those who are entrusted with making decisions on these matters, including judicial decisions, will at least have regard to that evidence before they make their minds up. It is such an important issue that it really needs the most careful scrutiny.

The Chair: Thank you both very much indeed for your evidence. I think there are activities, elsewhere in the undergrowth, scrutinising the efficacy of these policies. Our particular focus is on those policies' compatibility with human rights, which are important in principle for their own sake and, ultimately, for their efficacy anyway. It has been very helpful for us to hear from you—from two of the horses' mouths—and we will no doubt want to talk to you further once the Bill is published. Mark has a final question.

Q14 Mark Pritchard: Do you think it is possible for any Government to get the human rights equilibrium right between civil liberties and security?

Lord Carlile of Berriew: Yes, but there will not be unanimous acceptance that they have got it right. It is also an equilibrium that moves; it is not a constant. I said earlier that we did not understand in 2011 what ISIL would amount to at all, so the equilibrium has moved.

David Anderson: You can get most people on board if you land on the right spot. We are not far off that with counter-terrorism law, and I think we have the potential to get there even with surveillance. On countering extremism, which you asked us here to talk about, it is currently looking a little more difficult. The key to it is engaging people. If the aim is to bring people together against the people of violence on the extremes, you need to talk to people and get their buy-in to what you are proposing.

The Chair: Thank you very much indeed.