



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Legislative Scrutiny: Counter-extremism Bill](#), HC 105

Wednesday 29 June 2016

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Members present: Ms Harriet Harman (Chair), Ms Karen Buck, Baroness Hamwee, Lord Henley, Baroness Lawrence of Clarendon, Jeremy Lefroy, Mark Pritchard, Baroness Prosser, Amanda Solloway, Lord Trimble, and Lord Woolf

Questions 1-15

Witness: **Karen Bradley**, Parliamentary Under Secretary of State, Home Office (Minister for Preventing Abuse, Exploitation and Crime)

Q1 Harriet Harman MP (Chair): We have had time for everybody who has come in, including your team of civil servants, to settle themselves down. We have all had the chance to see your really welcome statement in the House today, and I will start by asking you a question about that. Rightly, you do not pull any punches in saying what a high level of concern the Government have about far-right extremism. You identify “marches and demonstrations, sowing divisions and fear in our communities” and right-wing “groups broadcasting extreme racist and anti-Semitic ideology online, along with despicable hate speech”. You talk about the hate crime action plan that is forthcoming. I have two questions. First, do you see the work arising from the current situation and that will feed into the hate crime action plan finding its legislative expression in the forthcoming counter extremism Bill? Will there be legislation from this work, and, if so, will it be in that Bill? Secondly, you say, “In this country, we have some of the strongest legislation in the world to protect communities from hostility, violence, and bigotry”, which implies that we do not need extra legislation. If we do not need extra legislation for that, why do we need extra legislation for other non-violent extremism?

Karen Bradley: It may help if I start by setting out the link that I see between counter extremism and hate crime. That might help to put it into context and to answer some of your questions. The public promotion of an ideology that can lead to greater harms is what I see as extremism, for the purposes of the counter extremism strategy and the forthcoming Bill. As a Government, we believe that the harms that it can lead to are terrorists and terrorism activity, violence against women and girls—for example,

FGM and forced marriage—hate crime, which is a potential result of extremist activity, and wider social harms. Those wider social harms can lead to division within society, discrimination and so on. With respect to the legislation on hate crime, which is very specific and relates to crimes that are committed because of somebody's race, religion, sexuality or disability, there are very robust laws in place to tackle that. What we are looking at in the counter extremism strategy is the promotion of an ideology that could lead to the hate crime. We are looking at where there is a need for us to be able to take action against the promotion of that ideology. Does that make sense?

The Chair: Does that mean that you envisage banning orders, extremism disruption orders and closure orders being used against right-wing-inspired and organised extremism, in the same way as you envisage them applying to Daesh/ISIL-inspired extremism?

Karen Bradley: To be very clear, the whole counter extremism strategy has been a strategy for all forms of extremism, future-proofed for future types of extremism that we cannot possibly imagine. Yes, the civil orders that we are looking to consult on and introduce would apply to all forms of extremism, be that Islamic extremism, far-right extremism or anti-Semitic extremism. If it is activity that would fall under the law as set out, which we will consult on, the law will apply, as it will cover all types of extremist activity. As I said, it will be future-proofed for possible types of extremism that we cannot even imagine.

Q2 Lord Henley: Minister, could you take us on to the Bill itself and what is being proposed? We know that the Home Office has a propensity to legislate. It has always been one of the great generators of legislation, as I have known in all my years in this House. We know that you published the strategy in October and that some mention of the measure was included in this year's Queen's Speech. What we really want to know is where we are now. What is the proposed timetable for bringing forward legislation? When the original Bill was published last year, the Government expected it to make provision for the new banning orders, extremism disruption orders and closure orders. The description of the new Bill mentioned in the Queen's Speech was relatively brief; it just used the words "a new civil order regime". What has changed, what will be introduced, and when?

Karen Bradley: The Bill is only a very small part of the counter extremism strategy. In the strategy itself, it is one chapter out of seven, and it should be seen in that context. The counter extremism strategy is far wider than just legislation, but clearly there are matters that we need to legislate for. The main elements of the Bill will be restricting the activities of extremists. We will consult on a new civil order regime, as well as on failure to comply with the restrictions and how we might apply that as a criminal offence. We will include in the Bill safeguarding children from extremists. There will be amendment to Ofcom powers to deal with the very specific concern regarding internet access on Freeview boxes, and provisions on intervention in local councils. Those will be the elements of the Bill, and I want to assure the Committee that we will consult on all aspects of any Bill before it comes forward. That will be a

full public consultation, which will be launched at some point. At this stage, I cannot give you a date for that, but it will be released in due course.

Lord Henley: I am going to ask a further question, which you do not have to answer. Obviously things have changed, with the events of last week. It is possible that, with new leadership and all that, other legislation may go forward but the Home Office will continue to push for the legislative part of this strategy, which, as you say, is a small Bill. Can you give us some indication? Business managers always want to know how many clauses there are going to be so that they can see how it will slip in. Will it be the sort of Bill that can be done, in Lords terms, in two days in Committee, six days in Committee, or what?

Karen Bradley: I cannot give that indication at this stage, because we will be consulting on everything in the Bill. Therefore, it will very much depend on the consultation responses and working as widely as possible to make sure that we get a Bill that addresses the heart of that. I fully recognise that there are concerns that the Bill may end up with unintended consequences. We want to avoid that as much as possible.

Lord Henley: Again, I am probably being a bit unfair. Even with consultation, you should have some idea as to which bits, following the consultation, will require legislation and which bits will not. I hope that as little as necessary will require legislation, because legislation takes up time and I do not think one should legislate if there are other ways of doing it. Might you be able to get by without legislation, or do you think that, whatever happens, legislation is likely, although it might be quite small legislation and the rest can be done by other means?

Karen Bradley: I used the example of the amendment to the Ofcom powers. Even that requires legislation. There will need to be some form of legislation. What I cannot tell the Committee today is how big that will be—how many clauses; and I cannot make any comments about how long it will take to debate those clauses. I know that occasionally there are very short Bills that seem to take a very long time to debate. I cannot give that indication at this stage, I am afraid.

Lord Henley: Okay. Thank you very much.

The Chair: Are you saying that we are still on for banning orders, extremism disruption orders and closure orders? Does the migration to the description “a new civil order regime” mean that there will no longer be banning orders, extremism disruption orders and closure orders, or is a new civil order regime just the description of those three orders?

Karen Bradley: We are going to consult on what is an appropriate civil order regime, so at this stage I cannot answer that question definitively. It will be part of the consultation.

Q3 Mark Pritchard: Lord Henley asked whether it will be a big Bill or a small Bill. It will obviously have something in it, and clearly there will be important measures. You have made reference to some already, and possibly there will be some additional ones, which the Chair

has just asked about. Today the Prime Minister referenced the hate crime action plan and updating that. Would the Bill be a place where any outputs from that review would fit? Would it be a natural home?

Karen Bradley: Are you asking whether there will be outcomes from the hate crime action plan that might need legislation in the Bill?

Mark Pritchard: Correct. You said earlier to Lord Henley that “there are matters that we need to legislate for”. Although there is existing government legislation for many hate crimes, the review of the hate crime action plan, and what we have seen in the last few weeks around the referendum—pre and post-referendum—shows that we may need to strengthen laws further. First, do you think that is likely? Secondly, is this a natural home for it, or would it require yet another Bill?

Karen Bradley: The hate crime action plan does not require additional legislation from the work we are doing, which is cross-government and wider work with other agencies—local government, civil society, et cetera—on how we can address the issues of hate crime. The hate crime action plan is not looking for further legislation. However, the new civil orders regime that we will consult on could very well be used to disrupt activity that could lead to hate crime.

Mark Pritchard: The hate crime action plan could be seen as an addendum to or a strengthening of the Prevent strategy.

Karen Bradley: No, I would not see it in that way. I see the hate crime action plan as a very stand-apart piece of work. We have a hate crime action plan from the previous Government. This is building on that. We have had success, with increased reporting. We have not seen increased prevalence of hate crime, according to the Crime Survey of England and Wales, but clearly more work needs to be done. We are taking the good work that was done under the previous Government and building on it, but that is a separate strand of work from what is happening on counter extremism and on Prevent.

Mark Pritchard: You mentioned Ofcom and safeguarding children. I want to ask you about countering extremism in prisons. Do you envisage that forming part of any potential Bill?

Karen Bradley: That will be part of the consultation. We would welcome responses on action that can be taken with regard to that issue. As you rightly say, it is a very important point. I have a young offender institution in my constituency. Having visited it, it is very clear that there are concerns about breeding extremism and radicalisation within prison.

Q4 Lord Trimble: A moment ago, you said that you were going to consult on what is an appropriate civil order regime. I am fascinated by the use of the word “civil”, because one normally thinks of that in contradistinction to “criminal”. Is one right in thinking that this opens up a very wide area? There are, as you know, some people who have doubts about

whether the Prevent strategy is properly directed and whether the use of the criminal law in this area is appropriate. Can you say anything more about what is implicit in the word “civil” and about how wide the consultation will be?

Karen Bradley: The consultation will be wide. It will be on everything in the Bill, so it will be a very wide consultation. The “civil” point is about the threshold. The issue we have is that the criminal law threshold is very high. I see this in so much that I do as the Minister for Preventing Abuse, Exploitation and Crime, for example with activities such as stalking; if one waits until stalking reaches criminal levels of activity, it is too late. We need to intervene sooner. That is why we have been consulting on a civil order regime for stalking. We have done the same on FGM protection orders, which are civil orders to try to make sure that the harm does not take place. We do not want to get to the point where a crime has been committed and an arrest has to be made because FGM has been committed on a girl. We want to be able to intervene sooner, at the civil threshold of proof. We are looking at a civil threshold for extremist activity that does not meet the criminal threshold but on which action needs to be taken. We are also doing so with a view to having a criminal offence, should that civil order be breached.

Lord Trimble: We will want to come back to this.

Lord Woolf: Like the member of the Committee who spoke previously, I am rather concerned about the use of these civil orders. Will they have sanctions? If so, what will the nature of the sanctions be?

Karen Bradley: That will be part of the consultation. There is no proposal at this stage. There is no draft civil order. We are consulting on how we could make a civil order regime that allowed us to take action at a lower threshold than for criminal activity, and on the appropriate sanctions that would be required for breach of that civil order.

Lord Woolf: Will it be like an ASBO?

Karen Bradley: Again, that will be part of the consultation. I cannot say definitively today that it will be like an ASBO, an FGM protection order or any of the other civil orders that we have. We will look carefully at the consultation. To take this back, we know that there is activity that is harmful—that is causing harm to our society—on which we can take no action today. However, we need to get it right, because we do not want to impinge on people’s civil rights or on religious freedom. We do not want people not to be able to behave in perfectly harmless ways; we want to target harmful activity.

Lord Woolf: It will be very difficult to know what the process will be. Is it intended that these orders should come before criminal courts or another sort of court?

Karen Bradley: What is the most appropriate way and what is the most appropriate body to issue the orders will be part of the consultation. At this stage, I have no view on what would be most appropriate. We know that different ones are used for different types of civil orders.

Lord Woolf: Do you agree that in this area great sensitivity is required, because otherwise you can make the situation worse, rather than better?

Karen Bradley: I absolutely agree. That is why we are taking our time. We are trying to do this in as measured and as careful a way as possible, with as much consultation and work with others as possible. You are absolutely right. If this was easy, it would have been done years ago and we would not be sitting here with the problem, but we need to tackle it. It is about coming up with a way that is appropriate and proportionate and does not target perfectly innocent, harmless activity unnecessarily.

Lord Woolf: I gathered from your earlier remarks that this will be a central part of the Bill. Indeed, as I understand it, it is one of the reasons why you think that there is a need for a Bill.

Karen Bradley: Yes. As I said, we believe that there is a need to restrict the activities of extremists, which we propose should be done through a civil orders regime. That is part of the consultation. We also believe that there is a need to take action to safeguard children from extremists, to have intervention in local councils and to deal with a very small loophole in the Ofcom powers.

Lord Woolf: When you talk about a civil order, what you mean is an order that does not have the protection for the citizen that a criminal order would require. Is that correct?

Karen Bradley: We would have to look at how we framed and defined it and how the orders were used. It is all part of the consultation. I would not wish to take a definitive view at this stage.

The Chair: Harry, would you like to raise the point about certainty, which is the next point that we were going to raise?

Q5 Lord Woolf: Indeed. Extremism is “vocal or active opposition to our fundamental values”, as I think we say, but are not these civil orders very much an interference with our values? Our values are that, if the criminal law is to be used, the citizen gets the protection of the criminal law protections that exist, before you can punish someone. Is there not a danger that this will undermine the very values that you want to protect?

Karen Bradley: As I said, this is not easy. That is why we need to work with all bodies, including the members of this Committee, to get it right. There is activity that we know is causing harm to our society and against which we are unable to take action in an appropriate way today. Therefore, we need to get this right. We will make sure that it is part of a full, open, public consultation, working with experts and others to make sure that we get it right.

Lord Woolf: It is certainly a very good idea to have the widest possible consultation, but surely if the Government are going to bring out a Bill, as is your intention, they have a responsibility to determine what they want to achieve by the Bill that cannot be otherwise achieved.

Karen Bradley: Absolutely. We believe that this is the appropriate way to proceed, as part of the wider counter extremism strategy. There is no draft Bill today. We are looking to consult, to make sure that we get it right.

Lord Woolf: I hope that I have covered the point.

The Chair: You have, thank you. Minister, can I follow up on that? If you are dealing with the law, whether it is civil orders or the criminal law, you have to have certainty in the law. Is it not the case that you have come up against a brick wall in how you reduce to legislative form the descriptions of the behaviour that you are trying to address? Things like fundamental values, democracy, the rule of law, individual liberty, mutual respect and tolerance are okay to say and to have in a general strategy, but how do you put them into law? I am not tolerant of different beliefs that are homophobic; I am intolerant of those, yet within your description I would be included as extremist for not being prepared to tolerate beliefs that are homophobic. We are all trying to help, but could you be open? Is there a real problem about putting this into law? The values are fine when it comes to us all having a sense that we know about them, but very different when it comes to putting them into law.

Karen Bradley: As I said, if this was easy, government would have done it years ago. This is not an easy thing—it is complicated. You are right: once something is defined in legislation, unintended consequences can arise and it can end up not fulfilling the task you wish it to do. There is also the risk—something we are very aware of and on which, therefore, we wish to work as closely as possible with everyone—that, if a definition is too narrow, it is very easy to change one's activity to escape it. We need to make this something that actually works, that works within the law, and that law enforcement or other agencies can use effectively. That will all be part of the consultation. We welcome all views on that, so that we can get it right.

Q6 Amanda Solloway: I have a quick question about who would be included. I do not know how you would do this—it seems complicated—but I am thinking about vulnerable people who are attracted to extremism. We had the awful Jo Cox case as an example of where somebody takes something right to the end and does something completely vile. I wonder how that will be reflected in the people included.

Karen Bradley: We have to distinguish between criminal activity that is a crime today—it might be hate crime, which is a crime today, violence against women and girls, which is a crime today, or terrorism, which is a crime today—and the public promotion of extremist ideology, which is the activity we are looking at through the counter extremism strategy. Let us take the horrendous example of the Jo Cox case, which I have just talked about in my Statement downstairs. That was beyond anything

that any of us could possibly have imagined; it was totally and utterly shocking. The activity of the individual in carrying out that crime is a crime. Nothing we are looking at in this legislation changes or affects that. What we are looking at in the strategy is anybody who may be promoting that kind of activity and whom we cannot currently deal with through existing legislation.

You made a point about vulnerable people. It is very important that we protect vulnerable people who may be led to behave in this way. It is the issue of normalising and socialising. If the activity is allowed to carry on and there is public promotion of the ideology and we all accept it, so that it becomes the acceptable level, vulnerable people will think it is normal and that it is something they can do, and will then go on to commit crime. That is the bit we want to deal with.

Q7 Mark Pritchard: You mentioned trying to avoid unintended consequences. Harry mentioned values and fundamental values. Of course, in our society, freedom of speech and freedom of religion are part of our fundamental values. Is there not a danger that the eventual Bill could see a clash—a battle—between freedom of speech and freedom of religion and, let us say, equality laws, which I support, and public offence? You mentioned public promotion. For example, the public promotion of the orthodoxy of the absolutism of a religion, or the public promotion of the proselytisation of the absolutism of a religion, would cause offence. If somebody says, “This is the only way”, or, “My religion is the only true religion”, that has the potential to cause public offence. How do you balance that with freedom of speech and freedom of religion?

Karen Bradley: There is tremendous concern that somehow we will impact on freedom of speech and people’s rights. That is why we are taking our time and doing this very slowly and carefully: to make sure that that does not happen. We need to distinguish between the preaching of a religious belief that is not harmful and does not lead to harmful activity, and the preaching of intolerance and the preaching of an ideology that leads to some form of crime, hatred or division in society. What we want to do—I do not think there is any disagreement about this; it is just about how we do it—is to defeat those who are trying to destroy our values and undermine our way of life. That is what we are looking to achieve through the counter extremism strategy. It is not about freedom of speech and preventing people living their lives. The vast majority of people live their lives in a way that harms nobody and does not cause division, irrespective of their religion, their sexuality, their gender or anything else, but there is a very small minority who do. It is that active promotion that we are looking to address.

The Chair: Could I follow up quickly on that point? This strategy, with the civil order regime, which will be a legal entity, as a Bill, regards extremism as people who do not have tolerance of different faiths. That is Mark’s point. If you think that your own faith is the only true faith, you are not tolerant of other people’s beliefs and faiths, because you are strongly committed to your own. Within the definition we have so far, that would be extremism. Does

the strategy, as it is published, not go further than you have just said, because it goes further down stream in the system, with these civil orders, to tackle anybody who is not tolerant of somebody else's faith?

Karen Bradley: This point has been raised on a number of occasions. It is important to be clear about the difference between the strategy definition and the definition that may be in the legislation, on which we will consult. One should not take the strategy definition and assume that that is the definition that would be in the legislation. On the very point that you raised previously, Madam Chair, once something is in law it is a different matter from its being in a government strategy that provides guidance and direction. That point has been raised. Fiona is not here today, is she?

The Chair: She is on her way to raise that point—trust me.

Karen Bradley: I was expecting it. In fact, I was disappointed that she was not here, because it is a point that I have discussed with her. She has worked with my colleague, Lord Ahmad, on exactly that point, which is about how we get this right. Her point is that preaching absolutism about a religion should not be extremist activity. I agree with her. That is absolutely not what we are trying to achieve. What we are looking at is the preaching of ideology that leads to harmful behaviour.

Q8 Baroness Prosser: Can I take you back to the consultation process, which is wrapped around all of this? It is quite clear, both from what you have said and the nature of the questions that have been asked, that it is really difficult to define activity in a way that everyone will immediately be clear about. By the time we get to the legislation, hopefully that will happen, but how will we ensure that the consultation process is understood by everybody out there in the same way? That is going to be quite tricky. That is one thing about the consultation. Where is the clarity?

Secondly, I think you suggested that, by the time the consultation happens, there will be no draft Bill. How clear will you be on what you are likely to put into the draft Bill when the consultation process starts, so that people know?

Thirdly, have you thought about how long the period for consultation will be? For lots of organisations, it is quite tricky to answer these things as fully as they would like in a very short timescale. We do not really want it to happen when everyone is on holiday, so to speak.

The Chair: Will there be a draft Bill? Will the Bill be published in draft form?

Baroness Prosser: That is the point I was making.

Karen Bradley: It is probably easiest to talk first about the consultation and the process, and then about the Bill point. It will be a full public consultation. I cannot tell you when it will be released, but it will be a full, thorough public consultation. I am acutely aware that one does not want to release a public consultation on the first day

of the school holidays, for example, and expect a response by the end of the week after.

Baroness Prosser: Do you have any idea how long a period you will give?

Karen Bradley: All I can say is that there will be a full public consultation. I cannot tell you definitively the number of weeks at this stage, nor can I give you the date when it will be released. We will make sure that we engage fully with all parts of society—faith groups, wider community groups, the legal profession, law enforcement, parliamentarians and others.

On the Bill, it is my understanding today that our intention is not to publish a draft Bill but to say, “This is what we would like a Bill to achieve. We would like to consult on how to achieve that”—for example, by having a civil orders regime for dealing with extremist activity, or protecting children. Of course, the DfE carried out a full consultation on that, but we want to look at how we would legislate for it and on the proposed local authority measures. It will be a consultation on all measures in the Bill, but without a draft Bill being there up front.

The Chair: Bearing in mind the difficulty of reducing this to legislative form, is it not exactly the sort of measure that should be in a draft Bill, rather than a Bill that is produced to bring before the House? I cannot think of any other example that does not more nearly fit having the Bill published in draft, for everybody to be consulted on.

Baroness Prosser: Hopefully, that would pick up the point that you and the drafters of the Bill might have some agreed definition of terms, otherwise it will lead to great confusion.

Karen Bradley: The intention has not been to publish a draft Bill. The intention has been to consult fully and then to work towards a draft Bill. I will take the Committee’s points on board, but this will not be a short process, if that makes sense.

The Chair: It certainly does not sound as though it will be a short process.

Q9 Baroness Lawrence of Clarendon: The Government may be saying what they think the Bill will look like, but if people are not able to visualise it and see exactly what is in it, how can you have a consultation on something? To me, that is quite difficult. You need to see something written down, so that you can go through it and check whether or not there is something you want to go back to the Government on and question. I do not see how you cannot have a draft for people to see.

Karen Bradley: For example, let us look at the civil orders regime. We know what we want to achieve from that regime. What we want to consult on is how we best capture the behaviour we are looking to apply civil orders to, and how we best ensure that there is an appropriate threshold and that the harms that we are looking to address are dealt with. I am not sure that that necessarily needs a draft clause to say, “This is what we might want it to look like”. That might lead merely to a tweaking of that

clause, rather than what might be right, which is a whole new way of looking at it. That is part of the consultation process.

The Chair: If we have this in October, are you talking about a White Paper then, or a Green Paper, to generate consultation? What is the product you will be consulting on? We have the strategy, and we know that we are not going to get a draft Bill. What will we be consulting on?

Karen Bradley: We will be consulting on the measures that we would like to introduce, but without the actual wording of the clauses.

The Chair: Will it be another strategy? Will it be a Green Paper or a White Paper—or what?

Karen Bradley: It will not be another strategy. It will be a full public consultation.

The Chair: On this?

Karen Bradley: No, on the measures that we would like to introduce in the Bill.

The Chair: But how will we know what they are?

Karen Bradley: The measures as to what we want to do will be set out as I have described to the Committee.

Baroness Hamwee: Is it possible to have a consultation without setting out the definitions? That is what we keep talking about.

Mark Pritchard: Chair—

The Chair: Minister, can you answer Sally's question? Then we will have Mark's.

Karen Bradley: Yes, I think that it is. It is possible to say, "We want to address this concern. We want to deal with this harmful activity—the public promotion of an ideology that leads to harmful criminal behaviour. That is what we wish to address. We want to ask interested parties—the public and people who are practitioners—how best to do it".

Mark Pritchard: It may be different or even unorthodox—I have only been in this place for 11 years—but if you have a strategy, and then you have a consultation and then you work towards a draft Bill, it may be a better way of getting business done. I do not know. Let us look at it, let us have a go and let us try to get that draft Bill right.

Q10 Ms Karen Buck: I am slightly less concerned about whether there is a draft Bill or not, but I echo Sally Hamwee's point about the definition. What is coming out from our questioning is this: what threshold would there be on whatever form of order you choose to have that would make the difference between freedom of speech and things we would tolerate, even if we do not like them, and behaviour, actions and language that would tip us

over into something that would require action to be taken? Until we know the Government's thinking—where that threshold is going to be—it seems that it will become meaningless.

Karen Bradley: This is not easy. As I have said already, if it was easy, it would have been done 20 or 30 years ago. We are looking at how we deal with people and organisations that are publicly promoting an ideology where the activity they are undertaking is not criminal and does not go beyond reasonable doubt but we know that that activity leads to a hate crime, a terrorist activity, or maybe FGM. When we did the Serious Crime Bill last year, we had long debates about whether we needed some form of order, civil or criminal, to stop anybody publicly promoting FGM, for example. We had long debates about that. It was concluded that, within the current regime and the current law, it would be very difficult to make it a criminal offence to put up a poster saying, "Commit FGM on a girl". However, we all agree that that activity is unacceptable. Therefore, we need to look at how we can introduce a civil order regime that has the right threshold—the right level of applicability—to stop somebody putting up a poster saying, "FGM is something you should promote".

Ms Karen Buck: I absolutely agree with that. Surely the point is that that is a simple, clear, concrete measure that the Government can decide to support or not to support. It is measurable. If Parliament decides that that is something we want to stop, it can do so. In what way is that equivalent to a poster that in some way undermines mutual respect and tolerance of different faiths? That is the point. You are comparing a very specific and measurable action with something that is so broad, nebulous and subjective that we do not know how to assess it. That is why the definition is so critical.

Karen Bradley: I absolutely agree. I am giving you an example of the stream of activity that we are looking to address through the counter extremism strategy.

The Chair: Karen's point—I am sorry; there are many Karens here—is that there is a definition of FGM: we know what FGM is. The difficulty is that we do not know what "opposition to our fundamental values" is. Very good work has been done in relation to FGM, but quite frankly that is not helping us here to understand what the Government are heading towards in relation to extremism.

Karen Bradley: That is the point that I have made about the difference between a crime that is committed and the promotion of an ideology that might lead to somebody committing the crime. I use FGM as an example because it is quite tangible and we can understand it. We are not talking about the person committing the FGM—that is already a criminal activity; we are talking about somebody who might promote FGM but is not committing a criminal activity themselves. The counter extremism strategy has been seen through the prism of Islamic extremism leading to terrorism, but I want to be clear that it is much wider than that. It is about the promotion of ideology that leads to criminal behaviour, which might be hate crime, violence against women or girls or terrorist activity—the crime itself. That is the difference between the strategy and the crimes it may lead to.

The Chair: The point that all the Committee members are going to on this is that FGM is an action. You are talking about taking action against the preparatory activities that might lead to the crime of FGM. We are talking about tackling preparatory activities leading to something, but we do not have any clarity about the definition of what that is. We know that it is not religion. We know that it is not belief, of itself, or ideology, of itself, so what is it? How will people understand where the dividing lines are between free speech and freedom of religion and this extremism?

Karen Bradley: That is why we need to consult so widely and fully on the definition.

The Chair: Are you consulting in order that somebody else can come up with the ideas?

Karen Bradley: No. We are making sure that we can listen as widely as possible, to make sure that we get the definition right. You have expressed here exactly the kinds of thoughts and conversations that we have been having as to how we get this right, so that we tackle the activity but do not impinge on freedom of speech and expression that does not lead to harmful activity.

The Chair: Jeremy will be next, as he has to leave for another Committee.

Q11 Jeremy Lefroy: I want to follow up on what Karen Buck was saying. It seems to me that, in order to preserve free speech, there will have to be an incredibly close alignment of the promoting activity with what is actually criminal. In the case you mentioned, Minister, you talked about FGM, quite rightly, and a poster promoting that. To me, that is quite clear. I see no problem with having a civil order banning a poster promoting FGM, because it leads to FGM. That is so close to the actual criminal act that it is very easy to get it, but, if we are talking about faiths, I could quote any number of verses from the Bible or the Koran that could easily be seen as inciteful, and might be taken by people, particularly those who are vulnerable, as causing an action. We have seen cases of that in our history, perhaps even our most recent history. That is what I am really worried about. Unless what is called the promotion of activity, which you talk about, is incredibly close to an actual existing criminal activity, it just will not work. If it is incredibly close to an existing criminal activity, do we need this?

The Chair: Do we have the law already there?

Lord Trimble: What you are dealing with now is incitement. That is already a criminal offence. If somebody is promoting an activity that is criminal, you already have them on incitement. Maybe what you want to do is look again at the definition of incitement.

Karen Bradley: I would welcome all those thoughts as part of the consultation. You are absolutely right, Lord Trimble. It is already criminal to incite. What we are looking at is a civil order that would allow an intervention on a civil basis, prior to reaching that criminal level of activity. That is the important distinction.

Jeremy Lefroy: The problem I see, as a complete amateur—I am not a lawyer at all—is that “civil” tends to mean that the field is open; it is not criminal, but civil, and less seriousness is applied, because there are not criminal penalties. The tendency will therefore be to interpret it in quite a wide fashion, as opposed to criminal, where clearly the burden of evidence is much greater, and courts will inevitably view it fairly narrowly. I worry that, in the end, civil penalties are just as bad at restricting freedom of speech as criminal penalties are. Therefore, if the provision is interpreted in a fairly broad way, we will end up with just as much restriction on freedom of speech, with people being fined for doing this, that and the other, as we would if it were criminal.

Karen Bradley: As I have said, this is all for consultation. We envisage a civil order regime, the breach of which would be a criminal act. We are looking at quite a high threshold, because breach of it would be not a civil penalty but a criminal penalty. We are looking at what would be the right threshold and level for that civil order, so that we can deal with activities that do not get to the criminal level of activity for incitement.

Lord Trimble: You are saying that you want to attach criminal penalties to acts that are not criminal.

Karen Bradley: The breach of the civil order would be the criminal activity. That is what we are looking at and want to consult on, to make sure that we get it right.

The Chair: It sounds like a back-door exercise, where you say, “It is too difficult to define it such that it would be appropriate in the criminal law, so let’s go for a civil law regime”. Actually, once you have a civil order, all you will have to prove to the criminal courts is breach of that order and you will have a criminal offence. Is that not very worrying, since we are talking about freedom of speech, freedom of religion, freedom of expression and freedom of belief? Are those not the very British values that your counter extremism strategy says it is trying to protect?

Karen Bradley: I do not necessarily agree with that point. We all know that the criminal level of proof—beyond reasonable doubt being able to form a case and take a prosecution—is a very high bar, quite rightly.

The Chair: But the only thing you will have to prove is breach of the civil order. All you have to say to the court is, “Here is the civil order. By the way, it has been breached”. The criminal court will not look behind the grant of the civil order. It will just say, “Is this the order the court made? Has it been breached?” Am I right, Harry?

Lord Woolf: That is what I would expect. That is what I am worried about.

Lord Trimble: Unless we put in some safeguards.

Karen Bradley: That is what we want to consult on: the threshold at which the civil order should be applied, and in what way the criminal penalties would work for

breach of that civil order. That is part of the consultation. We wish to hear full views, and I am sure we will hear full views from the Committee, on that point.

Q12 Lord Woolf: I suggest to you that, as far as my knowledge goes, there is no precedent for this. It is a process of consultation about something new, but the something new that could have the effect is not even provisionally defined. You can argue, first, whether it should be the subject of any order. If it should be the subject of any order, how will that be done?

Karen Bradley: That is why we want to make this a full public consultation, consulting with all to make sure that we get the definition right. We want to have powers that can be targeted at the harms and can be used quickly, if they need to be, and to make sure that there are strong safeguards, so that those powers are only ever used against the most dangerous extremists who are currently beyond our powers to reach. That is what we need to consult on.

Lord Woolf: Very properly, you are consulting on this proposal. With respect, I suggest to you that, unless you put a provisional view as to what you are really thinking about, it will be very difficult to have an effective consultation process. The wide consultation process that you want will not take place, because nobody will really know what is in your mind.

Karen Bradley: I take that point, and I will reflect very carefully on the points that have been made.

Baroness Lawrence of Clarendon: You talk about consulting. I am not a lawyer, so I do not understand the point about the civil and the criminal. Will you focus mainly on people with a legal mind, who can give you a view and have some understanding, so that when you come to your draft Bill there is some understanding? If not, people like me will not understand the point about the civil and the criminal. That needs to be quite clear. If you are to have a wide consultation, will you look at a legal brain to help you to get to that point?

Karen Bradley: I am looking at all brains to help us, but, yes, I want anybody and everybody to be involved in the consultation. Clearly, we need to have experts involved in the consultation.

Q13 Amanda Solloway: As you know, the Prevent strategy was started in 2011. We have it in Derby, actually. One of the things you have to be careful about with something like that is that, if it is implemented, it can be implemented inappropriately and can sometimes increase support instead of having the effect you want. Are you going to do some kind of analysis of the Prevent strategy in order to influence the way you go forward?

Karen Bradley: The Prevent strategy is part of our counterterrorism strategy. That is not the same as the counter extremism strategy, because extremism is wider than terrorism. It is hate crime and the other harms that can be caused to society by the promotion of ideology that leads to harm. In the SDSR, we announced that we would review the Prevent strategy alongside the Prepare, Protect and Pursue parts of the Contest counterterrorism strategy.

Amanda Solloway: The independent reviewer of terrorism legislation suggested that there should be an independent review. You are saying that that will be carried out.

Karen Bradley: Yes, but that is not part of counter extremism. Counter extremism is separate. The portfolios in the Home Office are that the Security Minister has responsibility for counterterrorism, whereas the counter extremism strategy sits with the Minister for Countering Extremism, who is Lord Ahmad. I have the responsibility of covering it in the House of Commons.

The Chair: Are the counter extremism strategy and Prevent not both about tackling upstream the sort of extremism that, in the Government's view, can then become violent and criminal extremism? How come an independent review of the Prevent strategy is not a necessary part of the evidence that should be looked at in order to have evidence-based policy-making for this policy? I would have thought that a thorough, rigorous and independent review looking at how the Prevent strategy has operated in practice would be exactly the sort of evidence that should be out there when you are consulting on the provisions—whatever they are—that will go into this Bill.

Karen Bradley: Clearly, we need to look at the evidence for all sorts of strategies and work that go on across government, but I want to be clear that they are separate matters. The Prevent strategy is part of counterterrorism. It is very much related to those who are involved in, or potentially involved in, terrorist activities. We are looking at a different form of activity; there is cross-over, but it is a different form of activity. It is the promotion of an ideology that could lead to hateful activity.

The Chair: It sounds to me as if I cannot tell the difference between those two different sorts of activity. If there was a definition, perhaps we would be able to work it out. It is certainly not clear to me why the Prevent activity is not focused on the sorts of issues that you raise in the counter extremism strategy.

Karen Bradley: We will take that point as part of the consultation.

Q14 Ms Karen Buck: I have a quick question on schools. Do you expect anything in the legislation to apply in the area of schools?

Karen Bradley: Yes. We are looking at an out-of-school setting measure, which is the issue of Ofsted inspections of out-of-school activities. As you know, at the moment Ofsted reviews and inspects schools. It does not inspect activities carried on outside the formal school setting. We are looking to introduce a measure that will enable Ofsted to inspect an out-of-school place, if there are reported concerns about it. It will do so on a discretionary basis, not mandatorily—or mandatorily. I am sorry. Mr Pritchard is not here; he normally uses the long words and gets me tongue-tied. We will consult on that. The Department for Education carried out a consultation on its original proposals, and all measures in the Bill will be consulted on.

Baroness Hamwee: On the question of Ofsted, David Anderson has expressed some concern—I would not say opposition—about using a secular organisation, Ofsted, to inspect some out-of-school settings that are religious. I wonder whether you have a word to say about that and about what systems would be proportionate. You talked about discretion, but that is quite difficult in this area, is it not?

Karen Bradley: The point I am making is that the safeguards that are available for in-school education are not mandatory for out-of-school education. We are looking at how we can apply them as needed and appropriate. The Department for Education conducted a consultation, the responses to which will come forward shortly. These measures will be part of the counter extremism Bill. We will be able to consult on them then, as part of that work.

Baroness Hamwee: I am saying that the Human Rights Committee will always be concerned about the proportionality of any action. I can see that being another minefield. We understand the term “safeguarding” in the context of physical harm, child sexual abuse and so on. How do we apply it in a way that draws the line between religious freedom and safeguarding that really protects children? Has work been done on quite what it means in that context?

Karen Bradley: The Department for Education consultation on the matter took responses on all those points. A response will be forthcoming in due course from the Department for Education.

Baroness Hamwee: Will the consultation we have spent a lot of time talking about cover the next step in the out-of-school settings?

Karen Bradley: The consultation we are talking about today will be on all measures in the Bill as proposed, which includes the out-of-school settings measure. There was a previous consultation—

Baroness Hamwee: I am aware of that. I am just wondering whether the next one will be another step in that process.

Karen Bradley: Clearly, it will be responsive to the original consultation.

Baroness Hamwee: I understand that. I was going to make the point that Lord Woolf has made about needing something concrete to respond to. We have been pressing you very hard, so let me phrase this as a request. What we will be asked to respond to will include things such as the burden of proof for a civil matter. As the Chair said, it goes straight from breaching an order into the criminal realm, where all you are doing is looking at whether the order has been breached, so the burden of proof—whether it is on the balance of probabilities or beyond reasonable doubt—comes up at a very early stage. My request is that it is more than just the narrow definitions; it is how you apply them.

Karen Bradley: Absolutely.

The Chair: To be clear, we have the proposition that Ofsted—an education-based organisation, not a religion-based organisation—will inspect Sunday schools, madrassahs, after-school clubs run by churches, for example, during weekdays or at the weekend, or holiday play schemes run by religious organisations. If there is a complaint, they will be inspected on whether or not what is going on there is opposition to our fundamental values. That will be a pretty tall order for Ofsted, will it not? Have you asked it about this? Is it looking forward to doing this?

Karen Bradley: It is worth going back to the issue. Schools and childcare providers are regulated under child protection, education and childcare law; for example, corporal punishment is banned and requirements are in place to ensure background checks, et cetera. Those safeguards are not mandatory in out-of-school education settings. We are concerned about potential harms that could come to children from the lack of those safeguards, but we need to be proportionate. I receive comments from my constituents about their concerns about Sunday schools, et cetera. This is not intended to restrict activities that are harmless and are good for children. We want our children to be able to enjoy those activities. That is why the Department for Education consulted fully on it, and the responses to that consultation will come forth in due course.

The Chair: Ofsted would not necessarily inspect a church service that said that homosexuality was a bad thing, but it could inspect a Sunday school setting where people were saying that homosexuality was a bad thing.

Karen Bradley: Forgive me, but I would ask that you wait for the Government's response to the consultation on those particular issues.

The Chair: Okay. I was just channelling Fiona at that point.

Karen Bradley: You are doing it very well.

The Chair: She will definitely be after you on that one. Can we go from out-of-school clubs to universities?

Q15 Lord Trimble: We have touched on some of the issues. The question I have for you is: how is a university to know that what it is dealing with is “vocal or active opposition to our fundamental values”, which is the definition of unlawful extremism, or whether it is to be regarded as something that is protected under the Education Reform Act 1988: namely, that academic staff must have the “freedom within the law to question and test received wisdom and to put forward new ideas and controversial or unpopular opinions”? How do you tell the difference?

Karen Bradley: In relation to the Bill on counter extremism that we are looking to put forward, we will consult on all those matters and we will ensure that full responses are received from universities and others. It is not part of the Prevent work that universities are expected to carry out today.

Lord Trimble: But how do they tell the difference? I have given you two definitions. One is about “active opposition to our fundamental values”. The other talks about questioning and testing “received wisdom” and putting forward “new ideas and controversial or unpopular opinions”. That might be the same thing, by two different phrases.

Karen Bradley: That is why we need to consult very fully on the definition for the Bill: to ensure that we have an appropriate and acceptable definition that works and achieves the objective we are trying to reach.

Lord Trimble: Which of the two definitions are you going to choose, or do you want to have a third one?

Karen Bradley: Let us consult on the definition. Then we will agree, hopefully.

The Chair: Thank you very much indeed, Minister. I appreciate that you have been as open as you can with us. If I can sum up—you can tell me whether I am wrong—obviously the Government embarked on this some time ago. It was in the Queen’s Speech in 2015, since when there has been a strategy and another Bill was announced in a subsequent Queen’s Speech, but we still do not know what civil orders are being talked about, what the sanctions are likely to be and what the definitions are. We have no specificity about the timetable: when the consultation will start and how long it will be. We know that there will be no draft Bill, but we are none the wiser about anything else. From listening to this, all the evidence appears to be that you have hit a brick wall. There are some very good intentions and shared concerns, but you have come up against a brick wall as regards how you make them into a Bill to bring before Parliament. Is that not the truth of the situation?

Karen Bradley: I disagree that we have hit a brick wall. This is something we have to get right, and that means taking our time and working with others. We are acutely aware of the risks if we get it wrong and the impact that could have on society. We do not want that to be the case. Therefore, we want to work with everybody to make sure that we get it right.

The Chair: So we should not hold our breath waiting for the Bill.

Karen Bradley: As I said, there will be a full public consultation, which will come forward in due course.

The Chair: Thank you very much, Minister.