HOUSE OF COMMONS

Home Affairs Committee

Oral evidence: Counter-terrorism, HC 750

Tuesday 30 January 2018

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Watch the meeting

Members present: Yvette Cooper (Chair); Rehman Chishti; Sir Christopher Chope; Stephen Doughty; Tim Loughton; Stuart C. McDonald; Douglas Ross; and Naz Shah.

Questions 1–53

Witness

David Anderson QC, former Independent Reviewer of Terrorism Legislation

Examination of Witness

Witness: David Anderson QC.

Q1 **Chair:** I welcome everyone to this session of the Home Affairs Select Committee. David Anderson is to give evidence before us today.

Mr Anderson, we obviously wanted to ask you both about your reflections on your previous experience as Independent Reviewer, but in particular about your most recent review of the terrible terrorist attacks that we experienced in this country last year. We note the tribute you have paid to the work of security services and the police, who obviously do so much work to keep us safe, but also your reflections on how much they have also been keen to learn lessons as well. That is what we want to focus on initially today.

Can you say something initially about your reflections on the need for better information sharing between the intelligence agencies, the police and the Border Force as well?

David Anderson: The intelligence agencies already share a lot with counter-terrorism policing. They work closely together. That relationship is widely envied and widely imitated around the world, not always with the same success that we enjoy here. What these reviews illuminated was that intelligence sharing, as you might expect, is much less advanced when it comes to neighbourhood policing, which has its own very important role to play in fighting terrorism. Not just neighbourhood policing, but other agencies as well—be they local authorities, prisons, education authorities and so on.

The big leap made in these internal reviews, which I was simply assessing—and it was a big leap, particularly for MI5—was to decide that we have to let go of a little more of the knowledge we derive from intelligence and share that out rather more widely than we do at the moment. There are obviously risks in doing that—risks, for example, as to source protection—but you do not have to tell people everything.

You only perhaps have to tell the Borough Commander, for example, "There is a particular gym in Barking that we think may have been used by people who pose a national security concern. Could you keep an eye on it for us?" or to say to the people policing South Manchester, "We know you have your hands full with other types of crime, some of it quite serious, but you should know that a couple of these gang members are of interest to us also for national security purposes. Can you see what you have on them?" They would be releasing information in the expectation of getting more information back that would help inform their strategic priorities.

Q2 **Chair:** If the focus there was around the importance of neighbourhood policing, does that then change or inform the assessments that you think that police forces and the Home Office should make given the significance of neighbourhood policing as part of counter-terrorism efforts?

David Anderson: Neighbourhood policing is already recognised to be a vital part of counter-terrorism efforts—not just in the sense that they might sometimes have useful intelligence that will help them to do their job, but because if they are doing their job well and if they have the resources to do it properly, they will know the communities that they are policing.

What Robert Peel called "policing by consent" we nowadays call "community policing". It seems to me it is the one great advantage that we have in these islands over the way that policing is done on the Continent. If it is done well—and on the whole, it is—then one does get a degree of co-operation from communities, which is very helpful for all sorts of reasons.

Q3 **Chair:** Should the significant reduction in neighbourhood policing, and some forces proposing the end of neighbourhood policing altogether, be a concern for us from a counter-terrorism point of view?

David Anderson: It is always a concern if police do not properly know the community where they are supposed to be operating. I sense a possible political angle to the question and I had probably better not go there.

Q4 **Chair:** On the information sharing and the relationship with the Border Force, from the outside, the fact that Salman Abedi, the Manchester attacker, was able to travel repeatedly to and from Libya and not to be stopped—and for that not to have been raised as a significant issue in terms of the policing approach—does raise some significant questions. What were your reflections on that?

David Anderson: I would say he is from a part of Manchester where quite a lot of people have family in Libya. Quite a lot of people travel to Libya and it is not the practice of the police to stop everybody with a family connection with a dodgy place. If it was, they would be stopping a lot more people than they do.

What one has to remember about Abedi is that although there was some minor criminality on his record, although he was known to have some involvement in gangs, although he was thought to have had a couple of indirect connections with persons of national security interest, he was not very high up on the radar. He was not someone who, certainly until shortly before the attacks, anyone perceived as a major national security threat.

Q5 **Chair:** Given that he was a subject of interest at one point, even though that was closed, do you think there was a case for adding to that or for reopening that, given the number of times he had travelled to Libya and back again?

David Anderson: He was a subject of interest twice, but both times it was kind of a mistake. The first time they had intelligence that a dangerous person had been walking through Manchester with somebody

else, it was wrongly thought the somebody else might be Salman Abedi. For that reason he was made a subject of interest—very briefly, once they realised it was not him.

The second time they thought he was a direct contact of quite a big jihadist in Libya. When they looked more carefully, it turned out that he was just in the address book of somebody else who was a direct contact of the person in Libya. Again, it was not as damning as it looked.

Having said that, they did slip up at the port, because a few months before the attack—as I said in my report—they did have intelligence, which certainly, read now, looks very worrying. They did have the opportunity once they knew he had gone to Libya to put a port stop on him so that when he did come back he would have been questioned. MI5 accept themselves that would have been the sensible thing to do; it plainly would. As it happened, he came back only four days before the attack, so one could question whether it would have made a difference. But it might have done.

Q6 **Chair:** Given there has obviously been a lot of discussion by the Government of the issues around the people returning from Syria, do you think there should be more significance given to those travelling to and from Libya?

David Anderson: It is very easy for me to sit here and pontificate on operational matters. Libya is obviously a very dangerous place. It is a state that does not enjoy consistent strong government and therefore it is the sort of place that jihadis, perhaps driven out of other theatres of war, might be tempted to go and settle. There is no question about that.

My sense of the police and of MI5 is that they are alert to these threats. The directions given to police at the ports and to immigration officials are constantly changing in the light of the threat as it evolves. I am not going to sit here and say they are getting it wrong, although I have no doubt, particularly after what we saw in Manchester in June, that they will be very alert to the problem that you mentioned.

Q7 **Chair:** Would you expect information on individuals travelling to and from somewhere like Libya frequently to be passed to counter-terrorism intelligence in any way?

David Anderson: Yes. You take me on very neatly to the second big change suggested as a consequence of these reviews. That is about squeezing more use out of relevant data, whether that is travel data or it could be online purchasing data, for which you might need co-operation of private companies. I suspect there is more to be done.

If you look how clever private sector companies are, using data aggregators, putting together everything they know about people to make credit reference scores and so on, you can see that there is scope for Government as well to use data perhaps a little more cleverly than

they do—always, of course, acknowledging that these sort of activities, when done by Government, need to be very carefully safeguarded.

Q8 **Stephen Doughty:** I just had some questions about the operations in relation to both borders and forces locally. Do you think there is a problem? We were talking about that issue between the security services and local police forces—sharing information and all the difficulties around that.

Do you think there is inherently a problem with geographical forces from elsewhere in the UK going in and conducting operations in one area, both from the point of view of potentially not fully understanding local context or, conversely, not having the best intelligence and awareness of the situation that they are going into?

David Anderson: If you are talking about counter-terrorism and the whole counter-terrorism network as it was established after 7/7, it is based first of all not just on the Met, but on significant centres of expertise, as you know, in the main regions where terrorism is on the map—indeed, at least to some extent in every region. It is also based on the idea of interoperability: people being able to come in when they are particularly needed for one purpose.

I remember when the Ipswich murders took place about 200 metres from my house. I was brought in to be interviewed, like many of the men on the street. We were interviewed by police officers from a far-distant constabulary who obviously did not know the town very well. I do not think that was the wrong thing to do. Obviously, people who do not know the area might not function always as well as those who do, but it is good that we have police forces that are as flexible as they are, particularly when they are divided up into so many separate forces.

Q9 **Stephen Doughty:** I can understand that in theory. However, I would say we have very strong community policing in the South Wales police and some very good relationships and very much that model of policing by consent that you described. But sometimes there have been problems, whether it is from Manchester or the north or whatever—their counter-terrorism units coming in and conducting operations. They are very necessary operations, but perhaps those units have not understood some of the sensitivities there.

David Anderson: One has to look for the greater good. I remember during the G8 summit a lot of British police officers ended up in Northern Ireland, and for some of them that was a bit of culture shock. But the Northern Irish would still rather have had them there than have them at home.

Q10 **Stephen Doughty:** I want to ask specifically about ports of exit and detention of individuals. I have become aware of a number of cases recently—I do not want to go into the specific details—where individuals are only being removed or detained at the very last stage before boarding aircraft or ships or even when they have boarded. They have

been through pre-boarding checks, they probably checked in online; they have gone through the check-in desk. They have gone through security checks and they are about to get on to a plane, then they are detained.

That strikes me as wrong: if they are a concern, how are they getting that far? Also, if they are subsequently not charged or found not to be involved in anything they should not be, they will miss their flight, miss their transport and do not appear to get any compensation as a result. Is that how the system is supposed to work?

David Anderson: Ideally, of course it does not work like that. No one wants it to work like that, because there is a potential for creating a very bad image if you take somebody off the plane. You would probably accept that if, for the sake of argument, those people were three schoolgirls on their way to Turkey, perhaps intending to head on to Syria after that, it would still be something worth doing.

It might be something you would like to take up with my successor, Max Hill, because he will be more up-to-date than I am on this one. But what the police told me when I used to put these stories to them was that we are always trying to get better advance notice of who is on the plane. As soon as they get the passenger manifest from the airline they can start running checks. It is getting better. It has not always been possible to get those details in time to check things in quite the way one would have liked. It may be that in a case like that they end up having to take somebody off the plane.

Q11 **Stephen Doughty:** Suppose an individual is wrongly detained—it turns out they have nothing to hide, they do not have any problems at all and they are simply not charged. If their travel has been disrupted and they are not able to get on the flight they were supposed to, should that be compensated in some way?

David Anderson: Perhaps it should depend whether the police are in any way at fault, which of course they may have been. The other possibility is that people miss their planes because they are being questioned for such a long period of time. The police are as helpful as they can be in trying to get alternative bookings made, but certainly if people suffer financial loss for that sort of reason I would think compensation may have to be looked at.

Q12 **Stephen Doughty:** Asking about foreign fighters, people who have been involved particularly in Syria and Iraq, and following on a little bit from what the Chair was saying, there were some significant concerns—forgive me if you are not aware of any of this—that a significant number of British individuals were allowed to escape Raqqa in particular. There was a BBC investigation into this. It is believed that they may well have travelled to other locations, whether Libya or Afghanistan; obviously, we have seen Daesh-linked attacks in Afghanistan in recent days. Is there a wider concern that individuals may travel to a third location—for example, Libya, Afghanistan, elsewhere—and then make it back to the

UK at some point once they have committed further atrocities?

David Anderson: Some almost certainly want to die and have died or will die out there. Others may want to come back. My sense is that we are not seeing as many, certainly in recent months, returning as some might have expected. Others will try their luck in some other theatre or some other part of the Middle East or elsewhere, which I think is what you are describing. I am sure battle-hardened jihadists are a menace wherever they are in the world.

Q13 **Stephen Doughty:** But some of them may then choose to return to the UK even at the end of that process.

David Anderson: They may. My sense is that we are not seeing at the moment returners in great numbers. That could always change.

Q14 **Tim Loughton:** The police and security services are supposed to be aware of around 3,000 people with active involvement in terrorism in some way—that may just be the tip of the iceberg—before those who may then be coming back, which we have just referenced. What is your analysis as regards the supply and demand of police—everything from community-led services through to the full-blown intelligence service—to be able to look out for that level of potential threat?

David Anderson: They are stretched, which I am sure you have heard from others. I think you have heard from Mark Rowley that there was a big uptick in the number of suspected plots around the beginning of last year, a couple of months before the Westminster attacks. That has continued at pretty much the same level since. I do not think it has continued to grow, but I understand it has not fallen either.

Everything the police and security services do in this field is a question of priorities. They are weighing up relative threats. They are deciding where to put their resources. You saw, for example, in what I was able to write about the London Bridge case that although they were on to Khuram Butt, one of the perpetrators, and although they had associated him with possible attack planning, certainly back in 2015—he seemed after that to get interested in other things—they did twice have to suspend their investigation into him for resourcing reasons. That is not unusual. It is something that happens quite a lot because resources are not infinite.

Does that mean that they are struggling and that they are not on top of the problem? No, I do not think it does. It is quite unnerving as an outsider to go in there, to spend some time with an analyst, to look at the stuff that is coming on to his or her screen every day and to ask yourself, "How do they make these decisions and how confident can they be that the right investigations are being prioritised?"

Of course, one could spend infinite money. We already spend £3 billion on counter-terrorism, not counting borders and prosecutions. One could spend more. At the end of the day, one has to reflect that in the last four years more than 20 attacks were prevented and despite the horrific

events of last year—one could not feel worse for the families and survivors—one still has to reflect that those were the only mass casualty terrorist attacks we have had since 7/7 in 2005.

Looked at overall, I would say they are on top of the problem, but neither they nor I could offer any undertaking that more people will not, from time to time, get through.

Q15 **Tim Loughton:** To be more on top of the problem, where would additional resources best be concentrated?

David Anderson: In November 2015, after Charlie Hebdo, there was a huge uplift in counter-terrorism resources directed particularly at MI5, which is at the moment in the process of expanding its numbers from about 4,000 to about 5,000. My sense is that they are probably absorbing that extra capacity about as fast as they can.

You will be aware of the time it takes to get people security cleared and all the rest of it. The police will tell you that they do need more money and I am sure they could put the money to good use. But again I am reluctant to be dragged into a debate on this because I am conscious that there are many priorities. There are many other ways, horrible ways, that people get killed.

Q16 **Tim Loughton:** Without getting you to comment on where there are potentially current shortfalls in police operations generally, just to look more strategically, both from a preventative point of view as well as a day-to-day operational point of view, if we had more agents there, would they be able to have more surveillance of certain intelligence operations or whatever?

In the longer term, more strategically, if either existing resources are to be used better or more resources are to be used more effectively to try to cut off the supply of terrorism and inclinations to do terrorist things, where do you think we should be changing our strategy or prioritising our strategy, just on a strategic view?

David Anderson: A lot of people talk about deradicalisation. Everything I know about deradicalisation is that it is extremely difficult and it is much better if you can persuade people not to be radicalised in the first place. There we get into the area of Prevent and whether that is as effective as it could be, which is perhaps something else you will want to talk about.

On the operational side, these allocations are constantly reviewed and there are difficult decisions to be made. For example, as a consequence of the two changes that I mentioned, the better use of data and the greater intelligence sharing, you are going to end up with more leads coming into MI5, potentially more suspicious people, more difficult decisions about who you follow up, potentially more subjects for investigation. Where is the resource for that going to come? Is it going to come from people we have already identified as the highest priority risk? That is not an easy decision.

What MI5 decided was that there would be some modest reallocation so as to ensure that the people who are former subjects of interest, and perhaps some of these new leads, there would be resource to deal with those as well. But at the end of the day you cannot say with certainty what is going to work best until you have tried it. There is a slight element of operational judgment there, which it is quite difficult for someone like me just to parachute in and declare upon.

Q17 **Tim Loughton:** I am guessing you would not say that we are close to reaching a successful tipping point, at which point potential terrorists or terrorists potentially about to commit atrocities decide the risk/reward ratio is too low, because the intelligence services and counter-terrorism services generally are on top of the situation too much, therefore will go somewhere else. You are not saying that we are as on top of it to deter people from continuing to try—that is not the impression I am getting—in which case, surely the refocus needs to be to the Prevent strategy and nipping the issue in the bud in the first place.

It is quite interesting, your mention of grassroots level, of neighbourhood policing and neighbourhood intelligence. Are we in some ways focusing too much on the fire-fighting at the top of intelligence gathering, rather than taking a much more strategic view: that we need to be at the grass roots before the grass grows? What is your general view on how good we are in having an effect on those areas now?

David Anderson: In terms of how our security services are perceived by potential terrorists, I think the perception is they are fierce and they are effective. That may well be the reason or one of the reasons why we are not seeing very many of these foreign fighters returning to try their luck in the UK. They know that if they do, they are very likely to be picked up at the port, they will be prosecuted if they possibly can be, and if not, we have a range of orders, including some rather extreme executive orders as well as covert surveillance that they could be subject to.

If you listen, as I have been able to do, to the conversations that these people have when they are under surveillance, there is not the sense, "We can say anything we like; they are not going to be on to us." There is a sense that we have very good intelligence agencies. That is also that perception in the US, on the Continent of Europe, among our intelligence partners. They think we are quite good at what we do.

Although, of course, the solution to the problem in the long run is more than just keeping a lid on it, we have to keep a lid on it as well. Of those 3,000 people you mentioned, they are not all interested in attack planning—there are probably only a few hundred in that category—but there are others interested in funding, in the facilitation of travel. You need to keep tabs on these people to varying degrees because they have the potential to do us harm.

I do not think one can take money out of that, certainly not in the current threat climate. The time may come, and who knows what the

psychological effect will be of the collapse of the Islamic state? A lot of these young men and boys that go out there, they are attracted by winners, just like the boy who wants to support Manchester City. You are going to go for somebody that is winning. When it starts losing and looking a bit ridiculous and being defeated, maybe it is the sort of thing that will turn the tide. I am not wishing to sound over-optimistic here, but no terrorist movement lasts forever. I am quite sure that we are in some kind of a generational struggle here, but we cannot be sure that the threat is going to continue forever at the very elevated level it is now at the moment. As long as it is at that level, there is no substitute for the sort of things we are doing under Pursue and the sort of things that MI5 and the other agencies are doing to keep a lid on it.

In terms of the methods used, here we obviously get into things that it is not easy to talk about in any public setting, but there are various types of intelligence. There is human intelligence, there is digital intelligence and there is open source intelligence. All are important. What the intelligence agencies and the police are trying to do is to keep on top of, in particular, new technologies as they emerge, so as to enable them to do the best job they can.

Q18 **Chair:** Just to follow up, what would be interesting to understand, given your many years of experience observing this area, is what you would see as being the priority for further investment. If you had £20 million additional to spend, for example, which area would you put it into—whether it be neighbourhood policing, an MI5 operation, Pursue or Prevent? Drawing on all that experience, what is the area where you would say, "To be honest, this is the thing we should be doing more of or pushing further on right now"?

David Anderson: I suspect that at the moment I probably want more analysts in G branch of MI5, but that is not something you can just snap your fingers and have happen. There is recruitment and training involved. Hopefully, in a few years' time, that same demand will not be there.

In terms of policing, it seems artificial to think about it purely in terms of counter-terrorism because of course police do all sorts of jobs, but certainly anything that helps police remain in touch with the communities they have to police can only be a good thing.

Q19 **Naz Shah:** My question leads on from what the Chair has asked. Which issues and reforms should the Government prioritise in its ongoing review of its counter-terrorism strategy?

David Anderson: It is a bit late for a Christmas list, but let me mention two or three things. There is a power already to stop people at the port in order to determine whether they are a terrorist: schedule 7 to the Terrorism Act. That is the only reason you can use it: in order to determine whether someone is a terrorist.

It became obvious to me during my time as Independent Reviewer that police were using this power also to stop people who might be spies or who might be involved in nuclear proliferation. I asked the police to quantify for me, by reference to the intelligence reports that they got out of these stops, what proportion related to counter-espionage and counter-proliferation. Over a five-year period, they said that counter-espionage accounted for 5% to 8% of their intelligence reports and counter-proliferation accounted for 8% to 17% of them.

Whenever I used to go to police conferences, people would often come up to me and say, "Is it right that I am being asked to stop a Chinese student on the basis he might be a terrorist, or an Iranian nuclear engineer?" There was a slight uneasiness in some quarters that quite a narrow power was being extended, no doubt for very good operational reasons, to try to encompass people who did not fall within it.

It is not a theoretical concern. We saw it at Heathrow Airport in 2013 when Mr David Miranda, Glenn Greenwald's partner, was caught coming through Heathrow and he was carrying lots of stolen documents. He might have been a thief, he might have been a spy, but the only power they had to stop him was under the Terrorism Act.

We ended up with years of litigation in the courts in which they tried to demonstrate in fact he might have been a terrorist. The courts said, "Yes, just about he might have been a terrorist" so it was okay. I do not think that is good for the definition of terrorism or the rule of law. I have said several times, "Why do you not give yourselves the power to stop people on a similar basis who pose an equal but different threat to national security for one of those two reasons?" That would be one thing I would like to see.

On the other side of the coin, because obviously I am looking out for civil liberties as well as trying to strengthen things, the proscription of organisations has become a one-way street. No one is ever de-proscribed unless they go to the courts. The Home Office fights to the last and most people cannot afford that. Anyway, a lot of people do not want to put their heads above the parapet and say, "I represent a terrorist organisation".

It got to the stage where the Home Office admitted to me, as Independent Reviewer, that no fewer than 14 international organisations were proscribed as terrorist organisations despite the fact that they did not satisfy the statutory requirements for proscription. This was not an area where you could say, "The Home Secretary's judgment—it is not for anyone else to question that". The Home Office themselves were admitting to me—and allowing me to publish incidentally, which I did twice—that these organisations did not even meet the statutory criterion of "likely to engage in terrorism".[1] Again, that seems to me an issue of

[1] Note by witness: Witness wishes to clarify that the statutory requirement for

the rule of law. What they say is, "If they do not like it, they can apply" but in practical terms, as we have seen, that is very difficult. That is another thing I would change.

Thirdly, we do not need wholesale reform of our laws. We already have a lot of criminal offences. A lot of them are what I call precursor offences, so they go back well before the stage of an attempt or a conspiracy or an incitement. But there might be room for a little bit of tweaking, particularly when you are looking at the hate preacher area. I recorded in my last report that Anjem Choudary—now eventually in prison—was referred unsuccessfully to the Crown Prosecution Service 10 times for prosecution while they tried to get him on various other offences that could not quite be made to stick.

I suggested in my last report a couple of tweaks that might at least be thought about. One of them, for example, is that there is an offence of encouraging people to engage in terrorism—quite right too, but that offence can only be committed in a public place. My suggestion—it might be controversial; it would need debate—is let's at least think about making it an offence to encourage someone privately to engage in terrorism. That might enable, for example, the police to get somebody into the living room who is able to report back to them. They might have the evidence for a prosecution or a conviction.

I am not saying that has to be done tomorrow; I am saying anyone who thinks honestly about this realises that, particularly where hate preachers are concerned, we do need to keep the law under review. I hope when we see the Counter-Terrorism Bill, which I think is promised for later this year, some thought will have been given to those things.

Q20 **Naz Shah:** Are there any other major outstanding issues that you would like to see addressed? In particular, with reference to the assessment of current sentencing and control regime for terrorist suspects.

David Anderson: The Chair remembers very well the ins and outs of control orders and TPIMs. We now have what I call TPIM mark 2, which is halfway back from TPIMs to control orders. What was wrong about control orders was that they could be given indefinitely and I thought that was just unjustifiable. If you cannot convict someone in a court of law, you cannot keep them under constraint forever. They are now limited to two years; I think that is right.

But where—as we can now see from the evidence—the coalition Government went too far was in removing the power to relocate people when they were on TPIMs. The consequence was that people started escaping and there was a certain amount of reluctance after that to use them because they did not appear very safe and because there was no doubt a political price as well to be paid for using them.

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proscription (Terrorism Act 2000, s3(4)), is that an organisation must be 'concerned in terrorism'.

What we now have is two-year TPIMs with the ability to relocate. They are still not used in large numbers. At the last count there are six or seven in force. But then you do not want to use too many of them because if someone is under a TPIM you have effectively tipped them off and therefore they are very unlikely to do anything that might cause them to be prosecuted. It is also very expensive to keep someone under a TPIM—very expensive—not least because of the risk they might abscond and embarrass everybody, as well as damaging national security. They deprive you of flexibility to assign your resources somewhere else. TPIMs mark 2 work better than control orders and better than TPIMs mark 1.

Sorry, you asked about something else as well.

Naz Shah: It was about assessment of current sentencing.

David Anderson: Terrorism sentencing is already really high. I am sure that one of the things that is being looked at, as they are looking at this new Bill, is bound to be, "Are the sentences high enough? Could we be doing more?" What the police say is, "We are all about disrupting terrorists. The best way to disrupt them is to convict them of something and put them away for a very long time". I do understand that and I do not have any particular view on any sentencing changes there might be.

I would just point out that if you compare it with Northern Ireland, the sentences seem to me to be a very long way apart. A similar offence in Northern Ireland will tend to result in a much lower sentence. I am not saying that is because Northern Ireland gets everything right, and it may be influenced by historic factors going back to the Belfast agreement and special arrangements at that time that were made for convicted prisoners. But when you have the job of looking at both, as I did, the distinction is quite striking. That is the sort of area where my successor, Max Hill, is placed probably to do a better job than me because he is a proper criminal barrister, who has been in the criminal courts all his life and who will have a very acute feel for these kinds of things.

One thing I would welcome—and I believe it may be happening, but apologies if I am not fully up-to-date—is the adoption of some sentencing guidelines in relation to terrorism offences by the Sentencing Council, effectively by the judges themselves. This is an area where people need to be sure that there are strong principles consistently applied, in particular, Muslims. Muslim groups would often say to me how unfair it was. They would take an example of an ex-soldier who was done for some right-wing extremism and then they will take an example of a Muslim who had been sentenced to much longer and they would say, "This is not fair". It is always difficult to compare individual cases with each other, but if you have a proper framework and guidelines and indicative ranges for sentence then it becomes much easier to show people that the system we have in England and Wales, and no doubt sentencing in Scotland, is fair.

Q21 **Naz Shah:** Thank you; you have answered one of my questions that I have further down, which was the applicability in Northern Ireland. What is the appropriate law enforcement response to British citizens and residents returning from fighting in Daesh in Iraq and Syria?

David Anderson: They should be prosecuted if they can be. My understanding is quite a number have been, although I could not put a percentage on that. It is always difficult to convict people for offences they have committed abroad, particularly when the foreign Government is not particularly likely to be giving you much assistance. This would certainly be the case with Syria. But that should be the first option.

In relation to the others, all these people need to be looked at very carefully and my first reaction would not be to look at them in a particularly generous spirit. The starting point has to be that these are potentially very dangerous people. We have seen a large number of them return in the past, but if you talked to the security services, what they all tend to tell you is the ones who have come back tend to be the ones who went in the early days, maybe for very good reasons. Maybe they went out there as charitable workers and then they stayed or they got in with the wrong crowd or they went out of curiosity or they went to get married to somebody or to live in an ideal state. Some of those people were disillusioned and do need to be treated sensitively when they come back.

With the ones who stayed out there, past the beheadings of 2014, past the battles and so on, one has to be quite sceptical. That is not to say they are all evil. Human beings are very complicated. But there are fortunately, even for the ones that we cannot prosecute, a lot of things we can do. You have mentioned TPIMs, temporary exclusion orders. There are other kinds of surveillance that may have the advantage that they are not aware of it and therefore if they do start engaging in terrorist activity then they can be picked up for that. There is Prevent and there is the Channel programme.

I made a radio programme on Prevent, which was aired in July last year. The first interview in that programme was not with a Muslim, but with a 20 year-old ex-Nazi, but he was explaining how he had been experimenting with explosives. A couple of Northern Irishmen his father's age had been getting him into this and helping him prepare for the race war and showing him how to kill Muslims. They were buying bomb ingredients off the internet. They were letting them off in a quarry. He became homeless and rootless. He was picked up in a hostel where he was staying because somebody was alarmed by the way he was talking. He was referred to the Channel programme. He agreed to co-operate with that. To hear him speak now in that radio programme demonstrated to me that whatever its faults, for some people at least, Prevent can work marvels. That is an option as well for some people.

Q22 **Naz Shah:** That brings me nicely on—it is as if you have read my notes—to the Prevent issue. Sir Peter Fahy in 2015 talked about Prevent and how it could possibly be alienating the community and you certainly

talked about it in 2015. In February 2015 you said—again, the same words—it could work if it is right. I am going to ask you a few questions about the Prevent strategy and then come on to your recommendations you have made. To what extent does the current Prevent strategy launched in 2011 differ from the one that preceded it?

David Anderson: I should preface all my answers by saying of course I was never the Independent Reviewer of Prevent. I just was inquisitive about Prevent because when I come to places like this it is what people want to ask me about or did want to ask me about. I probably do not need to tell you what the main changes were, but one was to open it up very explicitly, not just to Islamist terrorism, but to other kinds of terrorism as well.

One was to direct it towards not just violent extremism, but to non-violent extremism. One was to couple it with what Baroness Warsi called a disengagement strategy. I do not know if that is quite a fair way of putting it or not, but what it amounted to was that the Government were paying fewer people and also talking to a smaller range of people, particularly in Muslim communities, than it had done before. All three things were controversial.

Q23 **Naz Shah:** Towards the end of your term as Independent Reviewer, you called for Prevent to be subject to an independent oversight, for the strategy to be managed on a cross-departmental basis with evidence on safeguarding rather than terrorism. How likely is it that the Government will implement your recommendations?

David Anderson: It certainly has not done everything I said. There has been some movement. The first thing I asked for was transparency, because it seemed to me, particularly when I went around mosques and so on, there were a lot of stories out there and a lot of people were quite reasonably saying, "We do not know who is being subjected to this. It is all secret. It is all part of the secret state". The Government have responded to that.

It produced a document[2]—I cannot remember the month, but it was towards the back end of last year—in which it set out for the first time proper statistics broken down by region in terms of who went through Channel, how many extreme right-wing, what happened to Prevent referrals. Answer: some of them ended up in Channel, but a lot ended up in mental health or addiction or other treatments. I would give them good marks for at least having started that process. There is more to do.

The second thing I said is there had to be more engagement with communities. I still think they should talk to more people than they do. But locally in particular there are some examples of quite good engagement. If you look at somewhere like Hammersmith and Fulham

[2] Note by witness: https://www.gov.uk/government/collections/individuals-referred-to-and-supported-through-the-prevent-programme-statistics

where there is a Prevent advisory group, it brings in people from the community, it occupies a lot of time. It is a lot of hard work. It presumes on the goodwill of those who agree to come in, but it certainly has benefits. Look at somewhere like Leicester, where I have gone a couple of times to talk to people in the community about Prevent. There are plenty of other examples too; probably more to be done on that.

The independent review I thought was a winner for the Government, because if they wanted people to trust their strategy, just like they want people to trust their terrorism laws, they put someone like me in who can look under all the stones and then report back and say, "I did not like that one, but the rest is not too bad". If they were confident in their product I was encouraging them to do that. They have not done that.

What I would say on that is that since I made those calls there have been some independent reviews. In particular, there was one from the universities of Durham, Huddersfield and Coventry into the operation of Prevent in schools, where they interviewed more than 300 teachers and educators in West Yorkshire and London. They came up with some clear conclusions about how Prevent was perceived by teachers in schools. I suppose the headline was it was not nearly as bad as some people were saying. I consider that useful, objective evidence, which it is good to have out there, although again there are other aspects of Prevent that certainly need attention as well.

You mentioned the cross-departmental thing. I mention that because I was lucky enough to speak to the Security Minister in Canada, where they have not moved as fast as we have with Prevent. I was talking to the Minister about how they had set it up and said, "Did you learn lessons from the way we do it in the UK?" He indicated very politely that, yes, he felt they had. I did not get the sense that all the lessons were necessarily positive ones. But one thing he said was that they were locating it there not in the equivalent of the Home Office. They did not want to give people the idea it was securitised. Instead it was being located in an independent office into which there would be cross-departmental input. That seemed to me, particularly when you are looking at an area like schools or indeed universities, maybe a positive direction in which to go.

They have been reviewing Prevent for months and years. I am told there is to be a CONTEST revision probably sometime this year. I thought it was going to be probably sometime last year. I guess we will have to see what that looks like when it comes out.

Q24 **Naz Shah:** Do you think Prevent needs a rebrand or a more fundamental reform is needed to regain the trust of the Muslim communities?

David Anderson: It is all about trust, if what you are trying to do is to convene the great middle of this country, all of us basically wanting the same things, wanting to live a peaceful family life with decent jobs and all the rest of it. If you want to bring those people together against those of violence on the extremes—and I say "extremes" in the plural—then you

somehow have to bring them with you. I do not see how you do that except by talking to them and by helping them trust what you are proposing, or better still, engage them in the business of making the proposals. That would seem to me absolutely fundamental.

Q25 **Naz Shah:** How important then is it to have an actual definition of extremism to be able to regain the trust of the Muslim community?

David Anderson: I have always had some difficulty in understanding the counter-extremism strategy and exactly what it is about. The first reason is the one you give: how do you define extremism? We have seen various attempts to do that. I mentioned in my last report in December that the police, when they are looking at so-called domestic extremism, as it is still called, have three competing definitions on the go. Although they asked for a single definition in 2012 they have not been given one. That is very difficult.

A second gap in my own understanding of the counter-extremism strategy is how it fits in with Prevent. The Government always insists that it is quite different from Prevent. It is possible they are stopping the same sort of extremism being shown in a different direction. I am not quite sure. Certainly if you look at the Prevent higher education guidance, for example, it is partly about making sure people with extremist views do not come and speak in universities. I find that a little difficult to grasp.

The third difficulty I had with it is perhaps not so much with the strategy as with the Counter-terrorism Bill that was announced in the Queen's Speech in 2015 and 2016. It is not that a counter-extremism strategy is a bad thing. If it is about encouraging people to see the virtues of diversity and tolerance I would have no difficulty with funding people, funding civil society groups, community groups who want to put out a positive message, whether that is about female emancipation or against groomers or against Islamophobia or anything else, that seems to me a right function of Government. For myself, I would not criticise people who take money to do that thing. But where I have difficulty is if it suddenly becomes coercive. That is where you go back to the definition.

If you cannot define what you are talking about, it does not stop you having policies. Who can define mental health problems? It does not stop us having mental health interventions. But when you start having coercive laws and say, "We are going to put people under extremism disruption orders if they indulge in extremist activity" and you cannot define extremist activity, except by reference to not promoting British values or something like that, then you are in trouble. The criminal law or coercive law of any kind cannot afford to be as vague as that.

I do not understand at the moment what the counter-extremism question is being designed to do. I saw a reference in the job description to "stopping the scourge of extremism". If that means the sort of coercive measure that I have described, then I have reservations about it. I wrote a report, which you were kind enough to cite in a speech in Parliament,

Ms Shah, in which I pointed out 15 difficulties that I thought there would be with such an approach. But then it also says that the aim is, "to discuss with individuals from all areas of society". My understanding from the new Lead Commissioner is that is how she intends to begin.

As far as I am concerned, the jury is out, but if I might permit myself a comment on the new Lead Commissioner's appointment. I am very encouraged by two things: one is her insistence on human rights as a starting point for this. I do not think human rights is in any way an impediment to countering extremism. It is a basis for countering extremism. The second point is that in evidence to the Joint Committee on Human Rights in 2016 she expressed what I would describe—I hope I am not maligning her—as views very similar to mine on the coercive laws that were being proposed in 2015-16. I did not get the impression from her evidence that was the approach she thought was going to be productive.

Q26 **Naz Shah:** That leads me to two things. You and I have had many conversations on Prevent and the issue of Prevent not having the trust of the community. I agree insofar as that human rights experience is very important and it does not impede the discussion around extremism. Seeing as you have brought it up, this particular appointment, I would ask you this: given your experience and interest in Prevent and the conversations that you and I have had with Muslim groups, given that over 100 Muslim organisations have written to the Home Secretary, including my own letter, then does that not worry you, that we do not have again—as Prevent did not command, and remains to not command—the trust of the wider Muslim community, the mainstream Muslim community? We have the Muslim Women's Network, the largest Muslim women's organisation in the country, coming out and refusing to engage. Have we not gone through an exercise of failure before we have even started?

David Anderson: My understanding is that the new Commission is not all about Islamist extremism; I certainly hope it is not all about Islamist extremism. It is important obviously that the Commission has credibility with the country as a whole. The only other point I would make is that, as I understand it, the Lead Commissioner is one among others. What I would say is give her a fair chance. Wait until the Commission is assembled and wish her the best of luck. I suspect she may need it.

Q27 **Naz Shah:** I would agree with your latter point. That is a conversation for another hearing because I cannot agree with the rest of it. I do not feel she commands the respect of the community. I do not see any experience with right-wing extremism, which brings me on to my next question.

In terms of Prevent and the issue of right-wing extremism, what are we trying to do here when we are talking about the objective of countering extremism? Is it because extremism leads to violence and we do not want the violence or is it because extremism is bad and we do not like it?

That is thought policing, which is what Sir Peter Fahy talked about. In all of his conversation there seems to be an emphasis on Islamist extremism as opposed to right wing, because obviously there has been a massive rise in the right-wing extremism.

David Anderson: If I may put it this way, the majority community could always usefully turn on ourselves what we are proposing should be turned on minority communities. The sort of people who say, "Why didn't the Muslims turn in X, Y or Z" may also perhaps have to ask themselves, "Why is it that the other people in that pub did not turn in A, B or C" or, "Why didn't the people who heard that foul rant have something to say about it in return?" I agree that there are two sides to that coin. I would also agree with you that this is part of the reason why the state has to tread extremely carefully in terms of policing extremism.

Yes, of course it must police the law and prosecute people who infringe the law when it is in the public interest to do so, but if you are getting close to the state having an opinion on what opinions the rest of us have, it is a bit like Queen Elizabeth I, who said she was not going to make windows into men's souls. That is still quite a good basis on which the state should proceed.

Q28 **Naz Shah:** Your continued view is that the Government should not be trying to legislate on a definition for extremism and should not be proposing additional coercive measures on extremism?

David Anderson: I think it is very difficult to go down the route of coercion when you cannot properly define what you are talking about. I can only assume that Government lawyers for more than a year were trying to reach a definition that they could advise would stand up in a court. That Counter-Extremism Bill, twice announced in Queen's Speeches, never saw the light of day. That would be difficult. I am not against a counter-extremism strategy because one can promote things, as with my example of mental health, without needing a particularly precise definition of what it is you are talking about. But in terms of coercive rules you have to be very careful. That is how I have read the public statements of the Lead Commissioner as well, for which I salute her.

Q29 **Sir Christopher Chope:** Can I take you back to what you were saying about possibly bringing in new offences of encouraging people to engage in terrorism, whether in a public or private space? You were saying that might be contained in a new Bill being brought forward by the Government.

David Anderson: I do not know what is in the Bill. I was recycling a few of my own recommendations.

Q30 **Sir Christopher Chope:** If we are going to legislate in an area like that we need to prepare the ground. Somebody has to start floating this as an idea seriously and start providing some draft definitions to it and looking at how it would stand up in law and why we need it. Obviously you are no

longer doing the job you were doing, but do you see anybody engaging in that at that moment, whether it be in the Home Office or anywhere else in the Government?

David Anderson: I am not aware of a consultation on it, which is all I suggested. But that may be because they thought it was a rotten idea and they are not going to do it. You have to ask them about that.

Q31 **Sir Christopher Chope:** Would you expect a consultation or something like that before it was the subject of legislation?

David Anderson: It would be sensible to consult as widely as possible.

Sir Christopher Chope: Exactly.

David Anderson: Although I should say that Ms Shah raised the question of perceptions in Muslim communities, and I have never found any substantial resentment about the criminal law and the way the criminal offences are framed even though they are quite extensive. There seems to be a very strong feeling, "If that is the law, that is the law". What people are much more worried about are things that they see as indiscriminately aimed at Muslims, be that stop and search, as it used to be, or be Prevent.

Q32 **Sir Christopher Chope:** That takes us on to encryption of communications, because the Government are saying that if you were not able to have encrypted communications then it would make life a lot easier in dealing with terrorism. It seems as though they may be going down such a road in Australia. What do you think about this? Do you think the Government are ever going to achieve access to encrypted communications for these security purposes?

David Anderson: No.

Sir Christopher Chope: Because of what?

David Anderson: Because end-to-end encryption is not only a fact of life, it is, on balance, a desirable fact of life. Any of us who do our banking online, for example, are very grateful for end-to-end encryption. One has to remember two other things. First, that does not mean that the tech companies cannot do more to help Government; they can. Even the ones with business models based on end-to-end encryption, as I understand it, could do more than they do.

But the other thing I would balance it with is that, yes, it is more difficult to get hold of the content of someone's communications than it was when they just used a BT landline or even an unencrypted mobile. But on the other hand, at the same time, you have all these new sources of intelligence coming in. Who would have thought 30 years ago you could track someone's movements around London by their Oyster card? You do not even need the Oyster card anymore if you can get the location data from the phone company—and at the moment we do have that location

data—it is almost as good as having someone on their tail the whole time.

If you look at a modern car, I have just bought a new car—it has been a very long time since I had a new car—and it was like stepping into a new age. My car now remembers who has been sitting in it on pretty much every journey it has ever had, because it politely asks whether the different people sitting in it would like to connect their phones. I do not know what use the car companies make of this data, but you could see that if you are looking at this from the perspective of the police or the intelligence agencies, you would be looking another big source of information.

Yes, the content may be diminishing and that may be undesirable from a law enforcement point of view, but one has to balance that with all the communications data that is coming in. Most strikingly in the new Investigatory Powers Act, the internet connection records, which will enable them to ask your broadband provider for a note of all the websites that you have been on in the last year and when you have been on them. That information can be used for a wide variety of purposes. The more people live their lives online, the more revealing that behaviour becomes about what they were doing.

My sense is this is sometimes portrayed in very black and white terms, as the world is going dark and because of encryption we are all doomed. I am not trying to downplay the significance of that. It is very significant, but it is being balanced by new sources of intelligence and information coming in all the time. In a sense we are in a sort of arms race where, to my mind, neither side utterly predominates.

Q33 **Sir Christopher Chope:** The tech companies you say could do more. What more do you think they could do?

David Anderson: The response to end-to-end encryption, or one of the responses, was the practice of equipment interference, which is a very polite name for hacking or the implantation of malware when done by the state. This was secret until 2015, but it was avowed at that stage and is now provided for very fully in the Investigatory Powers Act and associated codes of practice. My understanding is that if you want to interfere with a mobile device or a laptop or whatever it might be, it can be a lot easier if one has the co-operation, if not of the manufacturer of the device, then possibly of someone who provides an app that might be used on the device. I suspect that is as far as I should go down that line, but certainly there are things that could be done falling far short of providing a back door that could still be useful.

Q34 **Sir Christopher Chope:** What about what they are trying to do in Australia? Are you up to speed with what they are trying to do?

David Anderson: Not fully up-to-date with that, I am afraid, no.

Q35 **Sir Christopher Chope:** What about the Investigatory Powers Act?

There seems to be a lot of discussion about whether we are going to be able to do what we want to with that with EU law et al. Where do you think we are getting to with that?

David Anderson: We had a Court of Appeal judgment this morning after the case brought—I must give them credit—by David Davis and Tom Watson challenging the rather venerable, and I had always thought rather benign, practice of requiring telecoms companies to keep records of whom we phoned when, how long the conversation lasted and where we were. Of course if it was a landline it was obvious where you were. If it is a mobile, you get access to location data to tell you those things.

The European Court of Justice in December 2016 gave quite a controversial ruling in which it suggested that what it called the "general and indiscriminate retention of data for law enforcement purposes" was unlawful, although it seemed that it was all right if you kept it only in respect of people in particular areas where there was a high likelihood of serious crime. Then even in those areas, or to the extent that it was lawful, they set out various conditions.

What the Court of Appeal has done this morning is interpret that judgment in part and said in future you must have independent authorisation of requests for communications data from telecoms companies. In other words, the police cannot authorise it themselves, there has to be a new body to authorise it. That body is already being set up. The Government anticipated this. It is called OCDA, the Office for Communications Data Authorisation. I think they are trying to find sites for it as we speak and they are beginning to recruit and train for it. That was the main thing they said.

There was another aspect as well, which was about limiting it to serious crime. The Government have consulted on that. The consultation is closed. They suggest serious crime should be anything for which the maximum sentence is six months or more, which does not sound serious to everybody, but that is the basis on which they have consulted.

However, these are only the foothills, as you suggest in your question, because I am sure that these conditions could be swallowed without undue difficulty. The real question is do we in this country practice general and indiscriminate retention by issuing retention notices to telecoms companies?

There is a dispute about that and that will be resolved in a High Court case that is going to be heard in February. The implications of that one are huge. Just as huge is the bigger issue still. This was the plain vanilla data retention as practiced for years and used in criminal courts up and down the country. What about the bulk collection of data by intelligence agencies by tapping cables coming across the Atlantic, for example? Is that going to fall foul of the same principle?

There are two cases on that. One is in Strasbourg in front of the European Court of Human Rights, which was heard last year. We are waiting for judgment on that. The second is in Luxembourg, the court of the EU, where a reference was made by the Investigatory Powers Tribunal last year. Those two big questions still have to be resolved.

Q36 **Sir Christopher Chope:** Obviously we subscribe to the European Convention on Human Rights, whatever happens on 29 March next year, so we would be bound by that judgment. Would that judgment also apply in the EU as well?

David Anderson: I do not want to tire everybody with the law, but there is a national security exception in the EU treaty. The reason the Investigatory Powers Tribunal asked whether it even had to look at EU law was because it seemed to them that this exception must apply to anything that the intelligence agencies were doing. If that is right, the EU court will say so and only the police will have to worry about the EU, save only for this.

In the European Convention on Human Rights, whose case law has been rather more moderate in this area and more attuned, one might say, to operational needs as opposed to the protection of privacy, there is no national security exception, so whatever the Court of Human Rights says about intelligence agency activity will affect us from that point of view.

Sir Christopher Chope: Fascinating, thank you.

David Anderson: If you are a lawyer, but quite worrying, I suspect, if you work in intelligence.

Q37 **Chair:** In terms of the Government's response so far, do you think those will address the points raised by the Court of Appeal?

David Anderson: What they said they would do in the consultation was the two things that the Court of Appeal has said they must do, so you could say that they called that right. Will they be required to do more? We will have to wait for what the High Court and perhaps eventually the European Court of Justice says about that.

Q38 **Chair:** What do you see as being the implications of this for whether or not Britain can get a data adequacy agreement with the EU?

David Anderson: We will obviously need to be able to show that as well as implementing the data protection regulation, in other ways as well we provide equivalent protection to the privacy rights of our citizens and to data privacy. Does that mean we should immediately throw up our hands, assume the worst and remove what are, in my experience, exceptionally useful capabilities both for the detection and prosecution of crime and for keeping us safe at the national security level, not just from terrorism but from cyberattack? No, I would not counsel the Government to do that. I think they are right to of course comply with the law, but equally to question where the law appears not to be clear.

The Court of Appeal said this morning that the judgment in Davis and Watson—or Watson, I should call it—is not clear. They should continue to challenge that. I do not think by doing so they are going to put themselves in bad odour with other member states or indeed with the Commission. If you look, for example, at the Watson case, I think you had eight or nine other member states supporting the UK in the submissions that the UK Government were making about the great utility of this power and how important it was to keep it. You also had the European Commission onside. Indeed, as recently as 2005[3] there was a Data Retention Directive passed by the European Parliament and the European Council that required everybody in Europe to have the facility to require this data to be retained.

The biggest problem, I suspect, on this issue and perhaps generally with the adequacy agreement will be in the court, where the Court of Justice at the moment has a very pro-privacy streak. What we saw both in the American case with safe harbour and in the Canadian case with passenger name records—in fact, both those countries are in the position I assume we will be in, trying to achieve some sort of endorsement of the way they treat the data of Europeans—is they got the deal through at the political level. It was at the legal level when it was challenged in court that it came unstuck.

Q39 **Stephen Doughty:** Briefly, given we are talking about technology, I want to come to the other issue about social media companies and their hosting and dealing with terrorist or extremist content. Notwithstanding what you said about proscription earlier on and its limits and its weaknesses, obviously the list of proscribed organisations is there for everybody to see. We had evidence the other week from Twitter, Facebook and Google/YouTube where they admitted that the only proscribed organisation they were actively searching for was ISIS/Daesh. Does that surprise you and concern you, that they are not looking for the other proscribed organisations as a matter of routine?

David Anderson: I heard that evidence and it did surprise me. My sense is these companies are doing more than they did, but there are whole areas where they are not doing anything. The area you identify is one of them.

Another one that came to my mind is Google search. I heard you questioning, very skilfully, if I may say so, YouTube about their takedown policy and so on, but if you search on Google for the principal Islamic State magazine—I will not dignify it by naming it or indeed publicise it, but the name is well-known—and you click "images" you come up on the very first line with illustrated instructions for how best to use your knife to kill somebody, how best to hire a vehicle and how to deploy it in order to kill the maximum number of people on a pavement. This from the master of search engine optimisation, who even if they believe it is wrong

[3] Correction by witness: Should read 'Directive 2006/24/EC'

to ban the transmission of this sort of information, surely do not have to make it available on the very first line of a simple Google search.

No doubt they tell you they are doing what they can. It is good that they are at least trying to co-operate, but if I may say so, my message to you would be to keep up the pressure.

Q40 **Stephen Doughty:** It is funny you mention that, because I was searching for something during the course of this hearing and one of the first things that came up on Google was, "ISIS is not a terrorist organisation" which I find extraordinary. That is one of the first things that pops up on the top of my search.

In terms of the basic standards then they should be doing, you would say as a basic they should be routinely searching for all proscribed organisations at the very least?

David Anderson: Of course we get into difficulties here. We are looking largely at American companies, in many cases west coast companies. They have a distinctively American idea of free speech and I have had the opportunity to talk about this with Google's general counsel. I suspect members of the Committee probably have as well. Inevitably they will see some of these things differently and if speech does not involve an imminent threat to an individual, then whether it comes from a terrorist organisation or not is not in their minds determinative of whether it should be banned.

I think they have to recognise that they are working now in a global environment and they have to be responsive to concerns like this. I would rather they were responsive than we end up in a world where some heavy-handed attempt is made to regulate everything. One could imagine that coming. One has seen a sort of beginning of it in Germany with their—

Q41 **Stephen Doughty:** On that specifically, obviously Germany has taken that approach. What do you make of these proposals for tariffs or fines or some sort of more punitive measures being taken if they do, for example, fail to take down content? I reported a bunch of cases involving Northern Irish terrorist organisations at that hearing and they have taken a month to remove an account on Twitter. They have just sent me the report in the last two days that shows up the IRA. That is not acceptable to me and I would be inclined to go down the more punitive route. What do you make of that?

David Anderson: I think the German law has only started to operate very recently. I spoke to some Germans who are in quite a good position to know a couple of weeks ago, who seemed to think it was a positive experiment. It is, at the end of the day, an experiment. That would be one possible way to press them if one were going to need to legislate.

I think another way is transparency. I do not think they are telling us enough. They will come along, these companies, and tell you, "We have

5,000 extra people now looking at content" but if you say to them, "How many of those are in Germany?" they will not tell you. Perhaps the answer is they are all in Germany because that is where the penalties are, in which case that might be a sign that a law like that is a good example.

More than that, if we are as a state effectively outsourcing these Ofcom-like functions, if you like, to private operators, that may be inevitable. It may be the way we have to go, but surely if we are going to do that we need to see not just their terms of service but the internal guidelines that they are applying when they decide to take this video down and to leave that one up. It seems to me that that is a bare minimum. I think there is quite a lot as well to be said for transparency in terms of algorithms, but that is rather a different topic, possibly for a different committee.

Q42 **Chair:** Are you concerned about the algorithms and the way in which they operate, whether it be search algorithms or the kinds of algorithms that recommend you things once you are online, whether it be on a social media platform or any other?

David Anderson: There was an article recently in the *Yale Journal on Regulation*, which I assume is a reputable publication, though it is not my bedside reading. It is about dispute resolution online. It made the point that eBay resolves something like 60 million disputes a year between buyers and sellers. That is probably more than the entire court capacity of the western world. They did not say this specifically of eBay, but they said it of some of these companies: that when they resolve a dispute, they are not just looking at who is right and who is wrong, but at how many social media followers each party has. They are looking at the e-commerce spend of the party to the dispute and their immediate family. In other words—and as a lawyer, I am horrified by this—you are more likely to win the case if you are rich and well-connected.

If we are going again to outsource this adjudicative function, which is a core function of the state, to social media companies or online commerce companies, it may be a very rational thing to do, certainly a lot easier clicking a few buttons than going down to the Small Claims Court, but if we are going to do it, surely we ought to have transparency. We ought to have visibility of these algorithms and we ought to have the ability, if we need to do so, to regulate them.

Q43 **Chair:** Do you think there is also an issue where if the purpose of the algorithm is to keep you clicking or to provide you with what you will be most likely to pursue next, that in fact what the algorithms do is promote extremism or shift people further on a journey towards extremism, because that is what will most motivate people to press the next click button? Do you think that in fact the way in which the algorithms are being designed and the business model itself is also potentially making this worse?

David Anderson: I do not have specialist knowledge of that, but it is a possibility. I think this whole business of whether we regulate the internet, and if so, how, is probably—leave aside Brexit—the big legislative issue worldwide of the next 10 years. I rather admired something Liam Byrne wrote about this. He drew a comparison with the last Industrial Revolution. He said we had 13 sets of Factories Acts and it took about 100 years before we tamed the worst abuses of the last Industrial Revolution. I think anyone who thinks they have easy answers to this one is deluding themselves. We have a long way to go on this and a lot of thinking to do about it.

Q44 **Douglas Ross:** Could I apologise? I missed the earlier part of your evidence, so if this has already been covered, please just tell me. I want to go back to your report. There was media coverage when it was published that said in terms of tracking the attackers there was some considerable similarities between your report and the report after the 2005 terrorist attacks. Do you think that is fair criticism, because it was worded in such a way that the intelligence agencies have not moved on in that time or is it because there are just far more people to track?

David Anderson: I think it is fair criticism and it raises a really difficult issue when you are gathering intelligence that is applied not just here, but in other countries as well. A person who was on the radar of the intelligence agencies maybe a few years ago who is under surveillance, that surveillance throws up nothing particularly suspicious so you throw them back into the pile that says not particularly interested, but will remember that they were once people of interest.

The widely-cited figure for former subjects of interest is 20,000. I think if you look carefully it is over 20,000 and as I said in my report, even that figure does not include former leads, people who never had a file on them but came up in leads. Nor does it include the historic cases of pre-2009, which are not included in that figure.

It is a very large number of people and the Intelligence and Security Committee in 2013 documented in rather surprising detail four different ways in which Government have sought to identify which of those people were most likely to re-engage. It was a problem here because of the six attackers in these four incidents I was looking at, two had been subjects of interest and were now in the past.

But I think things are already better than they were. I was able to say in relation to the Manchester attacker, Salman Abedi, while appreciating this is absolutely no consolation to anyone who was affected by the attack, they did get surprisingly close to him, despite the fact that he was not very high up anybody's list until very late on.

One of the ways they did that was they ran a huge exercise on all the former subjects of interest, a very resource-intensive exercise, seeing which ones are most likely to re-engage, looking at the various factors they fed in. He came up in the very small number of people that were

listed as a top priority to look at. They had arranged a meeting for 31 May last year. As it happens, it was nine days after the attack. One of the problems with that exercise is that it was not performed often enough. That is changing. That is going to be performed effectively on a constant basis and certainly more frequently.

The other change that is really going to make a difference there is the better use of data. One might be looking at data, for example, on travel patterns. That might give you some indication if we should be zeroing in and looking more carefully. For example, what about online purchasing? We have seen plenty of examples of people buying bomb precursors online, assuming some basic level of co-operation from the companies involved. There might be room there for finding other sources that could help narrow down that search a little more.

It is always going to be difficult. You are looking at huge numbers of people. Human nature is unpredictable. Khalid Masood, the Westminster attacker, was 52 years old. He had a history of violence, but he was released from prison for the last time in 2003 when he was 38 years old. I used to sit part-time as a criminal judge and I saw lots of men like that: violent youth, get to their mid-30s, perspectives change, different priorities and 12 years later they are not going up at the top of anybody's list for a vicious assault on a police officer. But that happened and that one would have been very difficult to spot, however clever your use of data.

Q45 **Douglas Ross:** Just on that, there certainly seems to be a clear shift to the cells operating and organisations importing these things with great accuracy from that point of view, from just going and purchasing a couple of big knives and hiring a car in obviously a more amateur way of carrying out these attacks. Do you think the security services are adapting enough? Can they prevent these or see a progression within an individual that may lead to that individual carrying out an attack?

David Anderson: They are just much more difficult to prevent. If you have been radicalised very quickly, probably online largely, and if you have bought a couple of knives or hired a van then it is going to be difficult to stop you. Whereas if you are taking directions from Pakistan or Syria and there are 15 people in on a plot and you have been inquisitive about airline security systems and so on, then you will be leaving traces and clues all the time.

The potential damage is less from these do it yourself attacks, but it is always going to be more difficult to stop them. As indeed we see in Northern Ireland, where a lot of the attacks are not at all sophisticated. You are looking at improvised explosive devices, maybe a homemade mortar someone has welded together in a barn. The number of casualties is small, but even in that small place, with the amount of police activity there is, there are frequent terrorist attacks, much more so of course than in Great Britain.

Q46 **Douglas Ross:** Can the agencies, the police and others, adapt their techniques to try to reverse this? Are they doing enough? If this is going to be a new preferred model because people see it is easier to get to their eventual outcome that they want because they do not leave this trail, surely the police and agencies have to adapt to that model?

David Anderson: All I can say is that they are. I can assure you they are not sitting round in MI5 longing for the good old days of Operation Overt, when people were signalling an intention to bring down eight transatlantic airliners. They are adapting, but the way they would put it is not that the age of the big plot has gone and we are now just involved in people with knives from B&Q. Only a few weeks ago there was a plot to bring down an airliner in Australia, which you may have seen, that might have had other ramifications. We had airliners brought down in Sharm El Sheikh, Sinai, one of those only an attempt.

The desire for the big spectacular has not gone, so I think they need the capability to react to the big ones as well as the small ones. As we saw from Salman Abedi, I do not how you would put him, and we have to be careful because his brother has not yet been extradited and the intention is to put him on trial. Although he was certainly not acting as part of a large group, you had a pretty sophisticated explosive device that was apparently put together rather quickly and easily.

Q47 **Douglas Ross:** You did allude to some of these things just being ordered. Some of the Committee were at the NCA last week and looked at the dark web and found how easy it was to go from a normal computer screen to the dark web. It just looks like Amazon, that you are going shopping. What more can be done to support NCA and others to stop the sale of these goods on the dark web?

David Anderson: It is a very specific question. My message would be do not despair. Yes, the dark web sounds terrible, but do not forget the Silk Road, the big drugs site on the dark web, was taken down twice by the FBI. WhatsApp is a wonderfully secure method of communication, but judging from my newspaper this morning what people write on WhatsApp sometimes gets to a wider audience. Although SIGINT and digital intelligence is terribly important, it is not the only future. Human intelligence and old-fashioned techniques of deception and subterfuge still have an important part to play.

Q48 **Douglas Ross:** Finally, you mentioned in some of the other answers about mental health and suchlike. It is obviously very difficult, but do you think more can be done to look at the mental health of an individual in terms of the people you looked at in these attacks and were there signs earlier that could have been acted upon that were not? How do we deal with that as another tool in terms of preventing these attacks going forward?

David Anderson: I do not want to sound as if I am here to defend the security services and say we have already thought of that, but it is

something they have thought a lot about. There is an Extremism Analysis Unit within MI5 that I have spent some time with and one of the very useful joint police and MI5 initiatives was the lone actor initiative. Of course lone actors are not all mentally ill, but more of them are mentally ill than people who work in cells. They work together to pool their expertise so that one could look for warning signs that somebody might be a lone actor.

In fact, I recorded in my report—I hope, otherwise I should not tell you, but I think I did—that Khuram Butt was put through two of these assessments. Are they going to find everybody? No, I am afraid they are not. But just as there is no inevitable pathway from religious extremism into terrorism, so of course there is no inevitable pathway from mental illness into terrorism. It is a risk factor, but you are looking at an awful lot of people who are mentally ill, most of whom will lead blameless lives.

Q49 **Naz Shah:** I have a few questions. I am not sure whether you have seen the Runnymede Trust Islamophobia report on the 20th anniversary of the definition of Islamophobia. One of the things they found with the Prevent strategy in particular was that they were uncomfortable with it in terms of racism. I will read their recommendation to you, "There should be a fully independent and fully transparent inquiry into the Government's counter-terrorism strategy. The Government should recognise its statutory equality obligation as set out in the public sector equality duties in the implementation of all counter-terrorism policies. Counter-terrorism measures must not lead to discrimination on the grounds of race, colour, religion, dissent or national or ethnic origin in purpose or effect".

My question would be when you were reviewing the legislation, were there ever any EqIAs? If there were, were they published and has it ever been reviewed since it was originally implemented?

David Anderson: I certainly never conducted any such formal assessment. I did every year look at the question of whether I thought there was discrimination on the grounds of race among people being questioned in the street and among people in particular being questioned at the port. Some people on both sides used my evidence in the case of Beghal, which ended up in the Supreme Court. It split the Supreme Court. Four said it was not disproportionate and the other one said he thought it was indirectly discriminatory. That issue particularly in relation to schedule 7 has certainly gone through the courts. No, I have not been involved in any formal exercise such as you describe.

Q50 **Naz Shah:** There has never been an equality impact assessment on the counter-terrorism strategy?

David Anderson: I could not say that for sure. It is simply not something I was ever asked to do.

Q51 **Naz Shah:** Do you think integration, women's rights and other similar topics should be tackled under the umbrella of extremism or do you think that by doing so it poisons the entire discussion?

David Anderson: I think we have lacked over the last years a proper strategy for social cohesion and integration. I think as a consequence of that, or perhaps simply because it seems easy to find money when something has a counter-terrorism label on, Prevent has been asked to do too much. I do not think it is a great way to encourage cohesion or integration to go in and say, "We are part of a strategy that is here to stop you becoming terrorists".

Q52 **Naz Shah:** If you think extremism is not the space for these issues then what do you think might be included within the Extremism Commission?

David Anderson: I think they have to work out what they think they are about. There is a definition of extremism. It is not a particularly precise one, but one perhaps does not need a particularly precise one to work with. It is certainly not for me to give advice to the new Commissioner, but if I was confronted with what I consider is a very difficult job, I think that rather than spend a lot of time trying to produce a watertight definition that I suspect would be impossible, I might try to identify three or four strands of extremism from various different perspectives that it might make sense to try to tackle. That might be a more practical way of going about it, rather than getting hung up on definitions that I do not think at the end of the day are going to get us very far.

Naz Shah: I asked this earlier: what exactly do you think this Commission will be doing? Is it to look at extremism? Given your recommendations, what you said to me on the key point, extremism is not where the focus needs to be in terms of the conversation that we are having. The point is what you have said is that while concerned with the Bill and its progress, 15 issues of particular sensitivity may be defined. How extremist activity is to be defined is one of them. Then the reasons for believing that existing means of control—these are the ones that I have picked out of the 15—including the various precursor offences under the Terrorism Act as well as hate speech offences. Again, it comes to that conversation: is it thought policing? Are we not eroding some of our British values by stopping some conversations happening? Is that not one of our strong British values?

For me, certainly when we are talking about Muslim issues, there is absolutely no conflict between my Muslim values and British values. There is zero conflict between either. Religious conservativism is not extremism, so where is this conversation going? I have serious concerns about it.

David Anderson: When I did my programme, I visited a school. You probably know Carlton Bolling College in Bradford. I sat through a two-hour session with 12 and 13 year-olds where the English teacher, who was also an imam—this is a 95% Muslim school—was talking them through tolerance: what it meant to be extreme, what it meant to be intolerant. From there they moved on to violence and terrorism and it was a really useful session. They were shown footage of a horrible terrorist atrocity in Pakistan where a lot of children were killed. To watch

these young Bradford kids look at the screen, as children just like them were screaming in terror and people just like their mums and dads were trying to rescue them and make it better, I thought was a really powerful message. It was a good example of how this thing should be done.

At Carlton Bolling they do not think they can sell that sort of thing under the Prevent label because it puts too many people's backs up, so they call it "getting on together". That would be my example of something that do you need to deal with it under the strategy of, "We are going to stop you becoming terrorists" or should it be more part of the social education that everyone in this country needs?

Q53 **Naz Shah:** I agree with you, David, that we need to look at it from a safeguarding point of view. As you have touched on, the majority of referrals for Channel under the CONTEST strategy end up being referred to mental health institutions and other areas where it is not necessarily about terrorism per se. I absolutely agree with the conversations that need to happen.

The terminology "British values" and how it is applied to the conversations of extremism—if we go back to the Presidents Club dinner, that was something that has been going on. Which bit of that was British values? This conversation that we are not having about how we define British values, until it comes to Parliament and we see what happened. That is closed down now. That was allowed. Which bit of that was British values? I think for me there is a conversation to be had about how we are defining all of this.

Chair: That is a pretty wide-ranging final question for you.

David Anderson: I will give you a short answer. I agree with you that such a general definition cannot be safely used as a backing for coercive measures. That is why I described the Counter-Extremism Bill, when I was allowed to see it in an early draft in 2015, as the most concerning document I had seen in four or five years as Independent Reviewer of Terrorism Legislation. But does that mean that schools and other civil society groups have no part in countering Islamophobia, in countering sexism, in countering other tendencies that threaten a plural and diverse and tolerant society? No, it does not. They absolutely do have that function. I think the state has a function also to facilitate it and to support it, if necessary. If that is what a counter-extremism strategy means, then I can live with it.

Chair: Thank you very much for your time this afternoon and for the wide range of issues that you have responded to us on. We obviously look forward to taking evidence from your successor in due course as well, but I just wanted to conclude by giving you our thanks on behalf of Parliament for the immense amount of work that you have done on behalf of all of us, both in terms of protecting our security and also protecting civil liberties and the public service that you have given. We appreciate that. Thank you.

David Anderson: Thank you very much.