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***Policy Brief*****Interview with Max Hill, QC, Independent Reviewer of Terrorism Legislation for the United Kingdom****by Sam Mullins<sup>1</sup>*****Abstract***

*The following text is a transcript of an interview between the author and the Independent Reviewer of Terrorism Legislation (IRTL) for the United Kingdom, Max Hill, QC, which took place on March 9, 2018 in Garmisch-Partenkirchen, Germany. Topics discussed included the role of the IRTL, prosecution of terrorism in the UK, returning foreign fighters, terrorism prevention and investigation measures (TPIMs), deportation of terrorism suspects, the involvement of children in terrorism, hate-preachers, and the British government's efforts to counter non-violent extremism. The transcript has been edited for brevity.*

**Keywords:** terrorism, counter-terrorism, prosecution, security, human rights, civil liberties, United Kingdom.

***Introduction***

Security versus civil liberties. How to safeguard the population from the actions of terrorists, while at the same time preserving fundamental rights such as freedom of speech, movement and association? This is the age-old debate that lies at the heart of counter-terrorism (CT) in liberal democracies. The precise balance varies from country to country and across time but in the aftermath of attacks it is particularly likely to tip in favour of security, sometimes at the expense of certain liberties.

The UK is no stranger to terrorism, but - similar to many other countries around the world - it has been on a heightened state of alert since 2014 when ISIS declared its caliphate, and last year the UK was rocked by a string of successful attacks, resulting in 36 fatalities [1]. Within days of the attack on London Bridge and Borough Market in June 2017, Prime Minister Theresa May declared that “If human rights get in the way of [new measures to counter-terrorism], we will change those laws to make sure we can do them” [2]. But although strong powers may well be appropriate, the danger in adopting such a stance is that we end up sacrificing our way of life and playing into the terrorists' hands. Indeed, a key part of terrorist strategy is to deliberately provoke a heavy-handed response that only adds fuel to the fire [3]. In striving to maintain balance, the British government relies –at least in part– on the Independent Reviewer of Terrorism Legislation (IRTL).

Anti-terrorism legislation in the UK has been subject to independent review since the 1970's. However, the first IRTL was formally appointed on September 11<sup>th</sup>, 2001, just a few hours before the fateful attacks on the US by al-Qaeda [4]. The Independent Reviewer's role is “to inform the public and political debate on anti-terrorism law in the United Kingdom” by way of regular reports submitted to the Home Secretary or Treasury, which then go before Parliament [5]. In addition, the IRTL gives evidence to parliamentary committees and also produces one-off reports on request from Ministers, or at his/her own initiative. These functions are facilitated by virtue of a high level of security clearance, which enables access to secret national security information and personnel. In addition, the IRTL travels widely, engages with all segments of society, and frequently contributes to public discourse on matters of terrorism and CT, utilizing a variety of different platforms.

In March 2017, Max Hill succeeded David Anderson to become the third IRTL. Appointed Queen's Counsel in 2008, he has been practicing law for thirty years and has fifteen years' of experience prosecuting terrorism cases ranging from the Real IRA to ISIS [6]. These included the 2003 ricin conspiracy [7], the 21/7 bombings in 2005 [8], the prosecution of Anis Sardar [9], who was responsible for the murder of an American

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1 The views expressed in this article are solely those of the author/interviewee.

serviceman in Iraq in 2007, and the recent prosecution of Zakaria Boufassil and Mohammed Ali, who gave £3,000 to Mohamed Abrini –allegedly a key player behind the Paris and Brussels attacks– in July 2015 [10]. Mr. Hill also acted for the Metropolitan Police in the Inquests into the 7/7 bombings in London in 2005.

On March 9, 2018 - a year into his new role - Mr. Hill addressed the Program on Terrorism and Security Studies (PTSS) [11] at the George C. Marshall European Center for Security Studies in Garmisch-Partenkirchen, Germany. Following his remarks, he was gracious enough to grant an interview. Topics discussed included the role of the IRTL, prosecution of terrorism, returning foreign fighters, terrorism prevention and investigation measures (TPIMs), deportation of terrorism suspects, the involvement of children in terrorism, hate-preachers such as Anjem Choudary [12], and the British government's efforts to counter non-violent extremism. The following transcript of that interview has been edited for brevity.

### ***Interview Transcript***

**Sam Mullins (SM):** *People in the UK and elsewhere are becoming more aware of the role of the Independent Reviewer of Terrorism Legislation, but for the benefit of those for whom this is new, could you start by briefly explaining your new position?*

**Max Hill (MH):** The task is to provide independent scrutiny of the use of the legislation – the two Terrorism Acts (2000 [13] and 2006 [14]), the [Terrorism Prevention and Investigative Measures] TPIM Act (2011) [15], and TAFSA, the Terrorism Asset-Freezing Act, 2010 [16]. In the minds of many there should be a wider remit to look at policy and strategy around counter-terrorism government-wide, but that's not my remit.

The way which I have engaged has been to travel as widely as I can. And where I engage at a civil society level, I have said you can say anything you like to me. If that involves expressing your views on things like Prevent [17], I won't shut you down but you need to know at the very start that I'm not going to make recommendations on Prevent and I don't review it. But it seemed to me it was necessary to have those conversations because of the confusion in so many minds between policy and statute. You only uncover that confusion and have a chance of dealing with it if you allow people to say what they think about state intervention into their society. I have tried to separate out the areas within my remit and those that aren't, but I've been as open as I can to conversation across the whole piece.

**SM:** *Your background is as a prosecutor, with fifteen years of experience prosecuting terrorists of all stripes. How does prosecuting terrorism today compare to, say, ten or fifteen years ago and what would you say about the evolution of CT in the UK from a prosecutor's perspective?*

**MH:** The way we prosecute hasn't changed dramatically in many respects, although at the practical level, the courtroom presentation of a terrorist case has changed really significantly. In the last of the IRA cases, which is where I came in, we were looking at human witnesses and paper documents and nothing else. Now, although many witnesses are still available to be called, we have full, electronic presentations of evidence, and that has increased efficiency. Particularly when you're dealing with either foreign conflict, or terrorism which has been borne out of a foreign theatre, bringing far-flung countries to bear on the mind of a jury in London or elsewhere in England was a challenge. Now, that's much easier to do.

That's been accompanied by the emergence of expert witnesses, where necessary, to assist judge and jury, and advocates, with situational evidence, country-based evidence. If you're trying to bring to a jury's understanding separatist conflict in Pakistan, or ideological conflict in Somalia, or terrorism in Syria, expert witnesses can be very appropriate. That's developed over time, and has also expanded in appropriate cases to theological guidance. Those aspects of prosecution were absent fifteen years ago.

**SM:** *You mentioned Syria, which raises the issue of returning foreign fighters. One of the challenges seems to be in obtaining sufficient evidence where people have spent time in a conflict zone and there are limited opportunities to confirm what exactly people were up to. Figures published by British media in 2016 suggested that only about 20% of known returnees from Syria and Iraq had been charged with an offence [18]. In*

*your view, how serious a problem is this apparent lack of, or difficulty in gathering sufficient evidence?*

**MH:** It's important to emphasise that in the vast majority of cases returning foreign fighters will be prosecuted. But I've been at pains to leave at least the possibility, let's say in the case of radicalised teenagers or schoolgirls, of other options on return. In terms of the statistics of those who have returned and have been prosecuted, I think that actually we have to wait and see, because in the vast majority of cases those who've returned and have been through the system of investigation and prosecution originally travelled out before the declaration of the caliphate. So, these are British citizens who went out there between 2011, at the start of the conflict, and 2014, when there was a more confused picture on the ground. And, of course, there were legitimate reasons for travel – aid convoys etc. So, where people have returned and there's been a non-prosecution decision, I think that is reflective of the time-period in which these people were actually in Syria or Iraq.

We've not yet seen, to its full extent, the return of those who left after the declaration of the caliphate. Where they did, and where they now return, it is even more likely that they will be prosecuted. But I don't think we've seen that yet. Your question is obviously going to that category of people who require prosecution, but against whom there's intelligence and not evidence. That is a real phenomenon. In terms of legal instruments, that is where the TPIM Act comes into play. And I've said before that I would predict at least a modest rise in the use of TPIM legislation, perhaps to deal with these sort of cases. You have to make a decision between closing criminal proceedings to reflect this issue or maintaining the primacy of open proceedings in our criminal courts, in which case you need the part open, part closed process that's already available under TPIMs and that is the solution that I prefer.

Yes, we do have one recent precedent case (Incedal [19]), for part-closed proceedings in a criminal court, and therefore there may be an argument that with certain returning fighters yet to come [back to the UK], where there is heavyweight intelligence but a lack of evidence, you could make the case for another Incedal-style criminal charge. The court of appeals at the highest levels scrutinized the procedure that was used in Incedal and Lord Chief Justice Thomas ultimately approved it but said that it should be used very rarely. As a criminal lawyer, I believe I speak for almost everyone by saying we do not want to see the proliferation of closed criminal trials. Fortunately, because we have closed process in civil proceedings, we have another route to take, and I think the better route forward.

But there will undoubtedly be a longer conversation about the extent to which intelligence-led information can or should be filtered through to open court proceedings. There are a number of ways of doing that. Gisting, or the process of redaction, is the most obvious that can and should be used. But the impossibility of opening up information that would place covert human intelligence sources at risk means that there is always going to be intelligence information that you cannot deploy in open court.

The final possible mechanism would be to introduce the non-jury trials [NJT] that we still see in Northern Ireland. The availability of jurors in Northern Ireland, where jurors are selected from communities that have been in conflict in recent history, is much narrower than in England and Wales. So, there are particular reasons why there are good arguments for retaining NJTs in Northern Ireland, but I don't see any good reason for introducing them in our larger population in England and Wales.

**SM:** *You've pre-empted my next question, which is to do with the appropriateness of TPIMs in dealing with people who can't be prosecuted but against whom there is substantial intelligence. Of course, TPIMs are a very expensive tool to apply and there were some high-profile cases where people actually absconded while subject to these measures.*

**MH:** Yes, there has been one or two celebrated absconder cases, although that happened more, funnily enough, under control orders (the precursor regime) than under TPIMs. The Independent Reviewer sits as an observer on every TPIM review group [TRG] meeting. These meetings take place regularly throughout the year - at least quarterly - and I'm always looking at the necessity and proportionality of the TPIM legislation.

What I'd add to that is that the future use of the TPIM Act could, in my view, be a little more flexible, and although everyone hates the phrase 'TPIM lite', I would encourage the imposition of TPIMs, provided it passes the necessity and proportionality tests, in cases where you don't have to apply the full suite of measures against each individual.

What we tend to see at the moment is a very low number of TPIMs where those subjects are facing almost

all of the measures, and in almost every case, relocation up to 200 miles from home is used. I accept that it's a necessity in the cases where it's currently imposed, but it would be perfectly in tune with the legislation to say that a TPIM is going to be imposed without relocation, but in order to protect against unwarranted use of the internet or communication with online propaganda in mind, where an individual will stay at home, will be subject to electronic and other monitoring, and will be subject to a TPIM. That would be an appropriate use of the legislation. So, I think when we talk about modest expansion, if that's the method by which they expand, that would come at lower cost. A relocation TPIM is extremely costly – it involves teams of officers in locations around the country. Doing it at a lower cost but with sufficient effectiveness would be a good thing. Every time any form of legislation is used that doesn't involve actual remand into custody there is a risk of absconding, but that's a risk for security services to manage day-by-day, case-by-case.

**SM:** *Another somewhat controversial issue, and one of the things that the UK has often struggled with, has been the deportation of both suspected and sometimes convicted foreign terrorists. The Abu Qatada [20] saga, of course, comes to mind, but there are numerous other cases where it's been extremely difficult, if not impossible to deport foreign terrorists from the UK due to human rights issues. By comparison, other European countries such as France and Italy appear to make use of deportations far more often (Italy has deported more than 260 terrorism suspects since January 2015 [21]). Of course, David Anderson and Clive Walker's recent report on deportation with assurances (DWAs) explores this issue in detail, [22] but I'd be interested to hear your thoughts on the reason for this disparity, and whether you think the UK could or should strive to increase its use of deportations as a CT tool?*

**MH:** It comes down fundamentally to the state's responsibility for an individual, however odious that individual may be. The leading writing on it is David Anderson's and Clive Walker's report and I would defer to that. However, the principles that have underpinned removal of people from this country for some time now include the twin objectives, to put it one way, or the collision to put it another way, between national security risk and safety on return [to the person's country of origin]. Of course, wherever you identify a person who represents a risk to national security, we all want to take every step to minimize that risk and one way to minimize it is to remove the individual.

But we live in a rights-based society in Europe. That means article 2 [of the European Convention on Human Rights [23]], and article 2 mandates contracting states to consider what in this context we describe as safety on return. Although that has been irritatingly difficult for the British state to apply, it's right that states should maintain that responsibility. Equally, because of the international nature of terrorism, as we've seen over the last handful of years, the mere fact of successful deportation doesn't necessarily negate the risk because individuals can travel back or, still worse, can train and send others back whom we're not expecting. So, I think deportation, with the right assurances, has its place and is being used, but shouldn't be seen as a one-stop solution to risk from individuals or groups. Sometimes one country ridding itself of a problem is merely giving that problem to another country. Sometimes [deportation is] an effective tool, but for those who would argue politically, as it were, that it's a one-stop solution that rids a state of the problem, it's much more complicated than that.

**SM:** *When it comes to prosecuting terrorists, you've previously pointed out that existing criminal legislation is often sufficient. We saw this in a number of recent prosecutions in the UK - for instance both the murderers of Lee Rigby [24] and of Jo Cox [25] were convicted of murder, rather than terrorism. Yet many people seem to think there's a double-standard in how terrorism cases are dealt with. The perception is that there's a bias towards using the term terrorism and applying terrorism legislation when the offender is Muslim. Can you give us your thoughts on this issue and talk us through the decision-making process in terms of what kind of charge is ultimately applied?*

**MH:** You don't take a charging decision based exclusively on the sentencing power that it may give a court months or years later. You look at the seriousness of the offending and the most apt and frankly, the most straightforward way of describing to judge and jury what you allege the individual has done. If they have taken life unlawfully then in the vast majority of cases the Common Law offence of murder is fit for purpose. And if they have deployed explosive substances or devices, then in the majority of cases the Explosive Substances Act of 1883 sets it out clearly and simply [26]. So, as a prosecutor you look for appropriate solutions to what sometimes could otherwise be a more complex problem.

Although the section 1 definition of terrorism [27] is comprehensible if very carefully explained, if you don't

need to use that definition as part of the evidence proving guilt, why would you? So, I think that sometimes it's not actually about the charging decision. The use of the word 'terrorism' is still very important at the policing and investigative stage so that if, heaven forbid, there were another Lee Rigby case or another Jo Cox case, it's important on day one to describe that activity as terrorism in both cases. But in charging decisions you look at what is most appropriate and worry less about applying the terrorism label. In that context, the Counter-Terrorism Act 2008 [28] created a schedule of offences, which at the sentencing stage are aggravated by the presence of terrorism. So, you can pick up the terrorism context specifically as part of the sentencing exercise. You don't have to advertise that at the front end of a criminal trial.

In fact, because there are one or two gaps on the schedule in the 2008 Act, I would support, if the government chooses to go this road, the addition of some other general crime offences to that schedule. I think an example of that would be section 18 of the Offences Against the Person Act 1861 [29] [wounding with intent to do grievous bodily harm], which doesn't appear on the schedule at the moment. So, we can badge things as terrorism early on as part of the investigation, and we should wherever it applies. We can badge things as terrorism at the sentencing stage. In the middle, when we're dealing with an indictment before a jury, what we should do is robustly cover all of the criminality. If that involves some bespoke terrorism offences all well and good. If it involves general crime offences, that also is appropriate.

**SM:** *You mentioned gaps in Counter-Terrorism. An unfortunate development that many countries around the world are currently facing is the increasing involvement of children, under the age of 18, in acts of terrorism. As a result of that, we're seeing changes in legislation - for instance in Germany [30] and Australia [31]- aimed at ensuring that appropriate powers are in place to monitor and manage the level of risk presented by radicalised children. You were personally involved in such a prosecution in the UK. What legal or other challenges does this pose, and do you see a need for legislative amendments in the UK to manage the risk associated with radicalised children?*

**MH:** I was involved in the prosecution of Michael Piggin, [32], who was 17 at the time he was charged under the Explosive Substances Act, to which he pleaded guilty for making pipe bombs. But he was also charged with preparation for terrorism, to which he pleaded not guilty and ultimately a jury failed to agree on that. It's a very serious aspect of any terrorism case where you're dealing with someone below the age of majority and there are any number of ramifications when that applies.

Starting with the age of criminal responsibility, that varies as you go around the world between about nine in some countries and at least eighteen in others. We [in the UK] have a comparatively low age of ten, so, put simply, we don't have a criminal age of responsibility problem in terms of charging young offenders. Heaven forbid we ever find individuals below the age of ten getting involved in terrorist activity, as opposed to being impacted by the terrorist activity of their parents. That's where the family courts - possibly with the use of closed material proceedings - need to intervene to safeguard those children.

But talking about those who are committing offences, criminal responsibility is a relatively settled issue in our jurisdiction. I appreciate, it is not so elsewhere. But taking individuals into custody pre-charge, and then at the remand stage, post-charge, then at the post-conviction sentencing stage, at all of those stages the age [of the suspect/ offender] has a real impact on what is appropriate. I'm particularly interested in the use of Terrorism Act custody suites for young offenders, and where we need robust rights-based procedures for adults in pre-charge detention, you absolutely need to provide support for young adults. There's a National Appropriate Adult Network [33] in England and Wales, which is extremely useful in this regard and the Independent Custody Visiting Association [34], which also plays an important role.

In the later stages, obviously separate sentencing regimes apply for young offenders. In between, in terms of trial, I think whether you're talking about young offenders charged with terrorism, or young offenders charged with other kinds of crime, we've seen a sharp rise in the detection of educational and other disorders at the point of admission into the criminal justice system. In the last decade, [there's been] a sea-change in terms of criminal court procedure for people who are off and on the autistic spectrum. The case of Piggin is a case in point because he suffers from Asperger's Syndrome [a form of autism [35]]. But with or without Asperger's we have a very well-worked, sophisticated system of intermediaries in crown courts

now, who are there to provide support and facilitate communication wherever a vulnerable individual is involved in the criminal justice system, which may be [as a] witness, victim, or defendant. The legal profession is undergoing specific training for the handling and questioning of young people and that's overdue. So, I think the system is reacting to this awareness that there are sometimes more young people going through, and young people with legitimate problems and concerns which need to be addressed.

Back to terrorism specifically, I don't see the need for any specialist regime in terms of offences for young people, and in the case of Michael Piggin, the old offences under the Explosive Substances Act proved valuable and his age was neither here nor there. However, the jury failed to agree that this young man, who was plainly criminal by virtue of his guilt under the Explosive Substances Act, was a terrorist. I don't know, but I suspect that at least part of the problem may have been describing someone of that age as being involved in preparation for terrorism. It may be that applying the section 1 definition to a young teenager like that was even more difficult than it is in some of the adult terrorism cases. Does that mean that we apply a separate terrorism definition for youngsters? No. Does it mean that we lack powers to deal with young people involved in terrorism? No, because general crime statutes provide an answer. But it certainly means that we have to watch this over time and make sure that our processes keep up with, not just the problem but also the needs of young people who are put in front of the courts.

**SM:** *Another challenge that I'd like to discuss with you, which is not new - and in fact is something that the UK and others have been struggling with for many years - is how we go about dealing with people who're involved in the radicalisation and recruitment of others. We mentioned Abu Qatada earlier, but, of course, there's been many others, including Abdullah el-Faisal [36], Omar Bakri Mohammed [37], Abu Hamza [38], and, more recently, Anjem Choudary, who was convicted of inviting support for a proscribed organisation [39]. It could be argued that individuals like these are in some ways more dangerous than someone who conducts an attack, since they often play key roles in the expansion of extremist networks. Yet they've also proven to be extremely difficult to prosecute. Choudary, for instance, evaded the law for many years and ultimately only received a sentence of five-and-a-half years. The maximum sentences for encouragement of terrorism [40] and inviting support for a proscribed organisation [41] are just seven and ten years respectively. So, I'm curious to know your thoughts on why it's so difficult to prosecute such individuals and whether or not you think it might be appropriate to allow longer discretionary sentences for these offences in more serious cases?*

**MH:** I do think that there are a number of what you might call middle-order terrorism offences for which the discretionary maximum sentence set by Parliament in 2000 or 2006 is proven by recent history to be too low. And so, I do think that you can make a case for increasing the discretionary maximum under section 12 [inviting support] to, let's say fifteen years. That is very different to imposing a mandatory minimum sentence, which I disapprove. We see it in other general crime areas in England and Wales - multiple burglary offences being one example, certain types of knife crime being another example - whereas in terrorism I would argue that we should not move to mandatory minimum sentences, but should provide the very experienced and senior judges who try terrorism with greater discretion and a higher potential maximum. I think you could very easily put the Choudary case in that category - a very significant individual. Anecdotally said, to have tip-toed along the margin between legality and illegality for many years. Highly significant within a certain, small sector of the community - the al-Muhajiroun membership. To find that an individual as significant as that is sentenced to no more than five-and-a-half years suggests that it is time for the discretionary maximum to increase. The offence itself, however, I think is fit for purpose. So, I endorse the use of section 12 to deal with that sort of individual, potentially with a higher maximum sentence.

This phenomenon of malevolent individuals online or offline, who are seeking to radicalise a very specifically targeted audience - the question that that poses is whether we need some further offence against that sort of activity? I find that difficult because, I think from the law-versus-rights perspective, section 12 is already a significant intervention bringing with it arguments about intervening against mindset alone, and that is why the sentencing remarks in the Choudary case are particularly apposite because the judge indicated that in section 12 cases, although individuals are sentenced for what they say, it's not just what they say, it's the target audience that they have in mind that is important [42]. There is a difference between a public speaker on a soapbox expressing views with which the majority disagrees - which to my mind is not terrorism - and an individual

who is specifically targeting what he or she knows to be a vulnerable, tiny minority who may be radicalised by his or her words. That, applying section 12, is or can be [considered inviting support for] terrorism. So, I think it is a powerful offence, with probably not a powerful enough sentencing provision [43]. I wouldn't go a step further and say that we need some other specific offence to deal with radicalisers or hate preachers.

That is all a separate argument to intervening against the platforms that they use for their messaging. The whole tech company debate has been raging, certainly since March last year. My position there has been that we should not intervene by criminalising tech companies and I don't see real force in the argument that we should regard them henceforth as disseminators and charge them under section 2 of the 2006 Act [44]. But, where I've been criticised for that, what I've repeatedly said is that the tech companies, if they haven't done so already, need to wake up, need to realise the abuse of their platforms by a minority, and we've got to see even greater cooperation with investigators. And more aggressive policy towards identifying [terrorist] material and taking it down. We do have the Global Internet Forum [45], which has made a very useful start in data-banking known extremist material so that that's accessible to all tech companies who can then identify and remove it. We do have, certainly in England and Wales, a very successful referral mechanism by way of the Counter-Terrorism Internet Referral Unit (CTIRU) [46], who would report that in almost every occasion that when they notify a webhost of extremist material, it is taken down within about 40 minutes.

What that leaves [us] is putting all of that together and finding a mechanism for stopping the material from being uploaded in the first place. And that's where at the moment I part company with the German solution, where forms of statutory coercion are being used against tech companies [47]. I would rather that we see the tech companies as part of the solution and not part of the problem. Of course, we'd have to revisit that if, let's say, in a year's time more progress hasn't been made. We have to maintain pressure on these vast companies with huge economic power at their disposal to do more, but legislating against tech companies I believe would come with unintended consequences, which unless we're very careful about it, could involve bearing down on the freedom of the internet generally, which would be to the detriment of all of us.

**SM:** *This brings to mind the counter extremism strategy and related efforts in the UK, which have slowly been gathering pace over the last few years. As you know, there were proposals for a counter extremism bill of some kind and although that appears to have fallen by the wayside, more recently we've seen signs of progress in the appointment of Sara Khan as head of the Commission for Countering Extremism [48]. The big challenge, of course, will be in coming up with an operational definition of 'extremism'. What are your thoughts on this, and do you think that measures such as the formerly proposed extremism disruption orders [49] (which conceivably might have banned certain individuals from working with children, or from broadcasting their views online) would be better reserved for those actually convicted of a terrorist offence, as opposed to merely being designated as an extremist in the absence of prosecution?*

**MH:** I find it much more comfortable to imagine a range of consequences on conviction, which would include disruption orders of some sort where, at the moment we have notification requirements and a raft of other consequences of imprisonment - that's much easier to contemplate than imposing those orders as a civil sanction without any prosecution.

What I think is very positive about the current government's approach is that they do appear to have rowed back from their intention to legislate against non-violent extremism. Where the law comes into play and is necessary and must be robust is in relation to violent extremism. That is what we want to outlaw and that is where there should be no safe place to hide for terrorists. Whether they're espousing violent extremism online or they're planning or executing their plots offline, that is where the law comes in as a statutory measure. Where it is non-violent extremism, if we intervene by creating criminal offences and we do that crudely or imperfectly, we will have done what I constantly warn against, which is to create a state in which freedom of thought is suppressed. There are very few countries in the world where that is regarded as a good thing.

From my position, reviewing legislation against violent extremism, I'm relieved that we don't face a further statute against non-violent extremism, which seemed to me would have led to endless arguments, not just about definition of terms but definition of territory covered by these twin statutory regimes. Far better to do what the government has, which is to say that in the non-violent sphere, there should

be a commission for countering extremism. I welcome that, and I also have welcomed Sara Khan's appointment. I've been disappointed that she's been so roundly criticised. It seems to me that it's vitally important that the lead commissioner is given the opportunity to set out her terms, to go through a long process of taking soundings far and wide and then to grapple with the fundamental problem of what is extremism in Britain today. All of that is being done on a non-statutory model, which I welcome.

Violent extremism has no place [in society]. Extremism is abhorrent, but if you get the mesh of the net wrong - in other words if you define your terms badly - that net will catch huge areas of free speech including the general political arena. The expression of a view, however much you might disagree with it, is part of a rights-based society. It's those who then act on that view and turn to violent extremism who must be hunted down and the force of the law applied against them.

**SM:** *I'd love to chat all day about this, but I realise you're a busy man! Is there anything else you'd like to highlight in conclusion?*

**MH:** Although it's been developed in a time of great stress and sometimes disaster through the attacks we've witnessed, what we have in Britain is a pretty remarkable and robust system of investigation and prosecution, which is now underpinned by very impressive interoperability between policing at a national level and at a local level, and between the other sources of investigation. It's never going to be perfect.

Questions are naturally asked about missed opportunities to intervene before one or more of the attacks last year. Further questions are asked about whether more needs to be done through legislation or otherwise. But in the midst of it all, we have a counter-terrorist machine, which demonstrated that it worked in very difficult circumstances running multiple, contemporaneous terrorism investigations, starting with Westminster Bridge, going on to Manchester Arena and London Bridge and Finsbury Park - and the system didn't wilt under that pressure.

So, if there is a positive [element] of the horror from last year, it is that we have a system that works far more often than not. We've got to continually strive to improve it. In a small way, I try to play my part in that. But if people ask me whether I'm dismayed by British policing, or disappointed by what I see, the answer is that increasingly over time it's the opposite, that we have an impressive and dedicated system from the CPS [Crown Prosecution Service] Counter-Terrorism Division, to national counter-terror policing, to regional units linking in with general crime policing, and I applaud that.

*About the Independent Reviewer: Max Hill, QC, is Head of Red Lion Chambers and, since March 2017, Britain's Independent Reviewer of Terrorism Legislation. Whilst unable to advise or appear in terrorism-related cases during his tenure as Independent Reviewer, Max Hill maintains a heavy-weight crime practice, defending and prosecuting in a number of complex cases of homicide, violent crime and high value fraud and corporate crime. He also has extensive advisory experience, both nationally and internationally.*

*About the Interviewer: Sam Mullins is a Professor of Counter-Terrorism at the George C. Marshall European Center for Security Studies, Germany, and an Honorary Principle Fellow at the University of Wollongong, Australia. He is the author of 'Home-Grown' Jihad: Understanding Islamist Terrorism in the US and UK.*

## Notes

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